

SUPREME COURT OF NIGERIA
FRIDAY 2ND MAY, 2003. SC. 33/1999
CORAM:- I. L. KUTIGI, U, MOHAMMED,
A. I. KATSINA-ALU, N. TOBI, D. O. EDOZIE, JJSC

BERNARD OKOEBOR
AND

..... APPELLANT

1. POLICE COUNCIL

2. INSPECTOR-GENERAL OF POLICE RESPONDENTS

3. COMMISSIONER OF POLICE
EDO STATE

PLEADINGS - Statement of defence - Failure to file - Where defendant fails to file a defence - He is deemed to have admitted claims in statement of claim - And cannot lead oral evidence to the contrary (H1)

COURTS - Hearing - Objection to - Likelihood of bias - If a party raises such objection on the part of the judge - It is safer in the interest of justice - For the judge to refuse taking the matter (H2)

PLEADINGS - Law - Pleading of - Though some specific laws are required to be pleaded - It is not the law that any law relied upon must be pleaded (H3)

COURTS - Actions - Address - Relevance of - At close of case for the parties - Court must ask parties to address it - As a matter cannot be adjourned for judgment - Without court being addressed (H4)

FACTS

Plaintiff's/appellant's story is that sometime in 1985 he was indicted by one D.S.P Kalu for leaving his duty post and for receiving bribe. Consequently the D.S.P immediately punished appellant with hard labour which involved leveling of a vast expanse of grassland. Yet after appellant had gone through the punishment the D.S.P subsequently set up machinery for him to be tried by police

orderly room for the said misconducts. Moreover the orderly room trial was presided over by the D.S.P. Appellant's protest on grounds of likelihood of bias was discountenanced. Eventually the orderly Room trial handed down a sentence of dismissal to appellant. Consequently, appellant instituted this action at the High Court of Edo State, claiming several reliefs and contesting his dismissal from the Nigeria Police Force.

Though defendants/respondents entered appearance, they neither filed any statement of defence nor made any attempt to defend the action. After hearing, the learned trial judge dismissed appellant's claims as he held that appellant, inter alia, failed to establish the nature of his appointment. Appellant's appeal to Court of Appeal was also dismissed. Court of Appeal held, inter alia, that appellant's reliance on the Police Regulations was unsustainable because he did not plead that the Regulations were applicable to his employment. Aggrieved further, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

"ISSUE 1: Whether the learned Justices of the Court of Appeal were right in law when they held that they entirely agreed with the learned trial Judge that the plaintiff failed to prove his claim and therefore not entitled to judgment.

ISSUE 2: Whether the learned Justices of the Court of Appeal were right in law when they failed to make any pronouncement on the issue of an orderly room panel trying an allegation of receiving N3.00 (three naira) bribe which said allegation amounts to a criminal offence.

ISSUE 3: Whether the Learned Justices of the Court of Appeal did not misdirect themselves in law when they held that Police regulations which is (sic) embodied in the statutes ought to have been pleaded and evidence given on same.

ISSUE 4: Whether the learned Justices of the Court of Appeal were right in law when they failed to make pronouncement on the trial court's failure to receive address from counsel

ISSUE 5: Whether the learned Justices of the Court of Appeal were right in law in not ordering a non-suit having regard to the circumstances of this case. "

HELD (Allowing the appeal per TOBI JSC, Kutigi JSC dissenting)

PLEADINGS - Statement of defence - Failure to file

1. The basic principle of law is that where a defendant fails to file a defence, he will be deemed to have admitted the claim or relief in the statement of claim. But where a paragraph of the statement of claim is notoriously false to the common knowledge of the court, like 10th July is Nigeria's independence anniversary, such a paragraph is not admissible because it is an obvious untruth. A defendant who fails to file a statement of defence cannot in law lead oral evidence because the oral evidence, not pleaded, will be to no avail. (p. 1481 F)

COURTS - Hearing - Objection to - Likelihood of bias

2. There are two issues raised in the above evidence. First, the objection was based on the fact that DSP Kalu was not the officer-in-charge of orderly room trials. Second, because appellant gave evidence against DSP Kalu in the attempted rape matter, he cannot get justice from the DSP. This was based on likelihood of bias.

In law, if a party raises objection as to the likelihood of bias on the part of the Judge, it is safer and more in the interest of justice for the judge to refuse taking the matter, unless it is clear that the party is raising the objection qua opposition lacking merit and is designed to delay the court process or an outright abuse of the judicial process. (p. 1486 A/D)

PLEADINGS - Laws - Reliance upon

3. With respect, I do not agree with the Court of Appeal. It is not the law of pleadings that laws must be pleaded before a party can rely on them. While the law of pleadings requires that some specific laws should be pleaded (e.g. statutory defence like the Limitation Statute), it is not the province of the law of pleadings, that any law to be relied upon by a party must be pleaded. As a matter of law, pleadings essentially contain facts relied upon by the parties and they are stated positively, precisely, distinctly and briefly. In view of the fact that the Police Regulations are enacted pursuant to the Police Act, Cap. 359 and by virtue of the provision of Section 18 (1) of the Interpretation Act, the Regulations qualify as law and need not be pleaded by the

appellant. (p. 1486 G)

COURTS - Action - Address - Relevance of

4. At the close of the case for the plaintiff and the defendant, the court asks the parties to address it. This is a duty which the court must perform. A court of law cannot adjourn a matter for judgment without asking the parties to address it. If a case is not defended, as in the instant case, the trial Judge must ask the plaintiff to address him. And I should add that the duty of the court is more compelling where the plaintiff is not represented by counsel.

In *Obodo v. Olomu* (1987) 3 NWLR (Pt. 59) 111, this court held as follows: (1) Address of counsel form part of the case and failure to hear the address of one party however overwhelming the evidence on one side vitiates the trial. (2) In a written address, the court must ensure that the parties exchange addresses. (3) An appellate court should not speculate on what the effect of a plaintiff's counsel's address would have been on the learned trial Judge's judgment because until the learned trial Judge's mind is exposed to an address, it is impossible to say what effect the address would have on the Judge's mind. (p. 1487 D/ G)

NOTABLE POINTS OF INTEREST

TOBI JSC

1. Distinction between pleading the law and raising a point of law

As a matter of law, a good pleading should contain facts not law. There is a distinction between pleading law, which is not permitted by the law of pleadings and raising a point of law in a pleading, which is permitted by the law of pleadings. Pleading law obscures and conceals the facts of the cases while raising a point of law defines or isolates an issue or question of law on the facts as pleaded.

In similar vein, the law of pleadings does not require pleading a principle of the common law, but the law requires pleading of customary law because by our law of evidence, customary law is a fact which must be pleaded and proved. (p. 1487 A)

2. The second punishment amounts to double jeopardy

Let me also make one point and it is the first punishment of leveling

a vast expanse of grassland. The respondents were not satisfied with that punishment. They gave the appellant the second and most serious one of dismissal. That is malice and only the respondents can defend such action. In my view, this is double jeopardy. (p. 1490 B)

EDOZIE JSC

3. Court must believe uncontradicted evidence unless it is incredible

The attitude of the courts to unchallenged evidence is not in doubt and it has been stated and re-stated in a plethora of decided cases. In *Irimi v. Erhrhobara* (1991) 2 NWLR (Pt. 173) 252 at 255, it was held that where the evidence of a witness is not inadmissible in law, uncontradicted and unchallenged, a court of law can act on it and accept it as a true version of the case it seeks to support. In the same vein, it was decided that wherever any evidence, whether affidavit or oral stands uncontradicted, unless the evidence is patently incredible, the court ought to regard the matter to be proved by that evidence as admitted by the adverse party. (p. 1491 D)

KUTIGI JSC - Dissenting

4. Court will not foist an employee on an unwilling employer

It is an established principle of law that an employer is entitled to retire or terminate his employee's appointment for good, bad or no reason at all, and the Court will not foist an employee on an unwilling employer or make an order of specific performance of an ordinary contract of service except there are special circumstances. Special circumstances have been held to arise where the contract of service has a legal or statutory flavour. (p. 1493 E)

5. Wrongful dismissal - Conditions of service must be tendered

It is also trite that when an employee complains that his employment has been wrongfully terminated or that he was wrongfully dismissed, he has the burden of placing before the Court not only the terms or conditions of his employment but the manner in which the said terms or conditions were breached by the employer

The Plaintiff's claims in my view cannot be properly adjudged without seeing the letter of his appointment and the conditions or terms of

his service. The lower courts found and I agree with them that the nature of appointment of the Plaintiff remains unestablished in the absence of his letter of appointment. His conditions of service also remained unestablished in the absence of his conditions of service. (p. 1493 H)

B

REPRESENTATION

F. I. Agboroh, for the Appellant

C A.O. Okeaya-Inneh with E.I. Iyoho, for 3rd Respondent

CASES REFERRED TO

Katto v. CBN (1999) 5 S.C. (Pt. II) 21

Emiri v. Imiye (1999) 4 S.C. (Pt. I) 1

Finnih v. Imade (1992) 1 NWLR (Pt. 219) 511

D Ofein v. Ejukwa (1994) 2 NWLR (Pt. 326) 303

Ayinke v. Lawal (1994) 7 NWLR (Pt. 356) 263

Iiri v. Erhrhobara (1991) 2 NWLR (Pt. 173) 252

Omoregbe v. Daniel Lawani (1980) 3-4 S.C. 108

Imade v. IGP (1993) 1 NWLR (Pt. 278) 550

E FCSC v Laoye (1989) 2 NWLR (Pt. 106) 652

A.G. Ogun State v. Coker (1993) 9 NWLR (Pt. 316) 214

CCB Nig. v. Nwankwo (1993) 4 NWLR (Pt. 286) 159

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

F REAN Ltd. v. Aswani Textile Industry (1991) 2 NWLR (Pt. 176) 639

Morohunfolo v. Kwara State College of Technology (1990) 4 NWLR (Pt. 145) 506

Buraimoh v. Bamgbose (1989) 6 S.C. (Pt. I) 1

STATUTES REFERRED TO

G Police Act Cap 359 LFN 1990, ss. 98, 99, 100 (1), 105 (1) and (2) and 106

Evidence Act LFN 1990, s. 149

Interpretation Act LFN 1990, s. 18(1)

Constitution of the Federal Republic of Nigeria 1979, s. 258(1)

H

LEAD JUDGMENT BY TOBI JSC

Constable Bernard Okoebor, the appellant, was enlisted in the

Nigeria Police Force in May, 1983. He wore Force No. NP. 136074. He was posted to 'B' Department, Signals Office, Police Headquarters, Benin - City. He worked there until 1985 when he was involved in a problem with the Police. He has told the story in his statement of claim. The summary of it goes as follows:-

On or about the 19th day of February, 1985, the appellant was indicted by Deputy Superintendent of Police, A. Kalu for leaving his duty post where he was assigned and for receiving a bribe of N3.00. Mr. A. Kalu immediately punished the appellant with hard labour which involved levelling of a vast expanse of grassland.

Thereafter, Mr. Kalu set up a machinery for appellant to be tried by Police Orderly Room. That was for the same alleged offences of leaving his duty post and receiving bribe of N3.00. Mr. A. Kalu was the chairman of the Orderly room trial. Appellant protested on the ground of likelihood of bias but to no avail. It was the case of the appellant that Mr. A. Kalu had old scores with him. It had to do with Kalu's involvement in attempting to rape a police woman and the role he (the appellant) played in the whole matter.

Appellant was tried. Punishment was handed to him. It was dismissal from the Police Force. The punishment of dismissal was orally announced to appellant. He was asked to hand in or hand over to the authorities any Police property or kits in his possession.

Appellant made efforts to get back his job. He wrote petitions but to no avail. Respondents were adamant. They meant the business of sacking the appellant. They did not budge a second. Exhibit B was the last correspondence from the 2nd respondent to him. The exhibit which sounded final is as follows:

"Bernard Okoebor,
c/o Ops/TRG Signals,
Police Headquarters,
Benin.

APPEAL AGAINST DISMISSAL NO. 136074 EX-PC BERNARD OKOEBOR

I refer to your representation dated 26th July, 1990, and wish to inform you that after thorough consideration of appeal, the Inspector-General of Police has considered the appeal as lacking in substance and has therefore accordingly dismissed it.

2. You are hereby advised by this letter to regard this issue

as closed as no further correspondence will be entertained from you on the issue again, please.

Sgn. (C.E. OBADAN) ACP
DEPUTY PROVOST MARSHAL,
FOR FORCE PROVOST MARSHAL

B “INSPECTOR-GENERAL OF POLICE.”

The appellant got the message. It was a clear message. As far as the respondents were concerned, the matter of his dismissal was closed. Appellant had no option than to seek redress in court.

C He did exactly that. He filed an action in the High Court of Benin. I should copy the reliefs here:

“1. A declaration that the orderly room trial of the plaintiff on the 8th March, 1985, by agents of the Defendants and the purported dismissal of the Plaintiff from the Nigeria Police Force based on the said orderly room trial is null, void and of no effect whatsoever.

D 2. A declaration that the service, appointment, and or status of the Plaintiff in the Nigeria Police Force as constable still subsist and that the purported dismissal of plaintiff by the agents of defendants by oral orders are invalid, null, void and of no legal effect whatsoever.

E 3. An order that the Plaintiff be reinstated to his employment as Constable in the Nigeria Police Force and that all Plaintiff’s rights, privileges and or benefits attached to his office or incidental thereto be restored until he voluntarily retires from service or attains retirement age which ever is earlier.

F 4. An order directing the Defendants to pay to the Plaintiff all salaries and allowances and benefits due to him since June, 1985, until he is finally reinstated.

G 5. An injunction restraining the Defendants by themselves, their servants and/or agents or otherwise whosoever from preventing the plaintiff from performing any of the functions and duties of his office or interfering with the employment of the rights and privileges and benefits attached to his office or incident thereto.

SPECIAL DAMAGES

(a) Salary and allowances from June 1985 December 1985 at
N300.00 per month N2,100.00

H (b) Salary and allowances of plaintiff for two years from 1986
- 1987 at N300.00 per month N8,400.00

(c) Salary and allowance of plaintiff for four years (48 months)

from 1988-1991 at N300.00 per month N27,840.00

(d) Increased salary scale and allowance from January 1992
to December 1992 at N300.00 per month N8,800.00

TOTAL N47,140.00

(Forty seven thousand, one hundred and forty naira)

(e) Increased salary scale from 1992 until judgment is delivered.” B

Although respondents entered appearance, they did not deem it necessary to defend the action. It became a one man show. Appellant gave evidence as the plaintiff. He did not call any witness. C
He tendered exhibits.

Appellant could not carry along the trial Judge in the case. He held the view that the plaintiff did not establish his “claims or any of them on the balance of probabilities.” Consequently, the suit was dismissed. Appellant was condemned to pay cost of N1,000.00. The D
learned trial Judge, Edokpayi, J., said at page 26 of the Record, and I quote him in extenso:

“It sounds strange and difficult to believe that the plaintiff who claimed to have been in permanent service could be orally dismissed E
even when the decision or recommendations of Kalu’s panel had not been submitted by the panel to the authority which set it up for consideration. I hold that the plaintiff’s letter of appointment was not produced in evidence and that ASP Arebu, Mr. Akiti, Mr. Isibor and Beatrice Esemokha were not called to testify in this case because if F
the letter of appointment was tendered and the above named persons were called to testify in this case, their evidence would have been unfavourable to the case of the plaintiff. The nature of appointment of the plaintiff remains unestablished in the absence of his letter of appointment. The report of Mr. Kalu’s panel has not been produced G
in evidence and no reason has been given for that failure.”

Dissatisfied, the appellant went to the Court of Appeal. He failed there too. Dismissing the appeal of the appellant, Akintan, JCA., said at page 82 of the Record:

“The position in the instant case is not that the failure of the H
appellant to prove his claim was due to any technical hitch. Rather, it is due to either he deliberately told lies to the trial Court or that he deliberately held back all the relevant documents that he needed to place before the Court so as probably to deceive the Court in giving

judgment in his favour or knowing that placing the documents he withheld before the Court, he would be unable to successfully maintain his claim before the Court. The plaintiff's case therefore is not such one in which an order of non-suit ought to have been granted."

B Still dissatisfied, the appellant has come to this court. Briefs were filed and duly exchanged. The appellant formulated five issues for determination.

C "ISSUE 1: Whether the learned Justices of the Court of Appeal were right in law when they held that they entirely agreed with the learned trial Judge that the plaintiff failed to prove his claim and therefore not entitled to judgment. (Ground 1).

D ISSUE 2: Whether the learned Justices of the Court of Appeal were right in law when they failed to make any pronouncement on the issue of an orderly room panel trying an allegation of receiving N3.00 (three naira) bribe which said allegation amounts to a criminal offence. (Grounds 2 and 3).

E ISSUE 3: Whether the Learned Justices of the Court of Appeal did not misdirect themselves in law when they held that Police regulations which is (sic) embodied in the statutes ought to have been pleaded and evidence given on same. (Ground 4)

ISSUE 4: Whether the learned Justices of the Court of Appeal were right in law when they failed to make pronouncement on the trial court's failure to receive address from counsel (Ground 5).

F ISSUE 5: Whether the learned Justices of the Court of Appeal were right in law in not ordering a non-suit having regard to the circumstances of this case. (Ground 6)."

1st and 2nd respondents did not file any briefs. Only the 3rd respondent filed a brief. There was a change of mind this time around on the part of the 3rd respondent. He formulated one issue for determination:

G "Whether the learned Justices of the Court of Appeal were right in law and on the facts when they affirmed the decision of the learned trial Judge that the Appellant therein had not proved his claim before the trial court."

H Learned counsel for the appellant, Mr. F.I. Agboroh, submitted on issue No. 1 that the proof required in a civil case where the statement of claim is not controverted by filing a statement of defence is a minimal one. The same situation, counsel said, applies where the

plaintiff gives evidence that is unchallenged by the defence, either by way of cross-examination or by tendering evidence in opposition of same. He cited *Ayinke v. Lawal* (1994) 7 NWLR (Pt. 356) 263 at 275 and *Buraimoh v. Bamgbose* (1989) 6 S.C. (Pt. I) 1; (1989) 3 NWLR (Pt. 109) 352 at 363 and 354. Counsel pointed out that it was as a result of the protest of the appellant on his dismissal that Exhibits A and B were written to him by 2nd respondent. ^B

It was the submission of learned counsel that since appellant led credible evidence which was not challenged, he was entitled to judgment. Pointing out that appellant's appointment is not by a letter, counsel referred to Sections 98, 99, 100(1), 105 (1) and (2) and 106 of the Police Act, Cap. 359, Laws of the Federation of Nigeria, 1990. He referred the court to the appellant's force number, which appears in Exhibits A and B and submitted that all these put together show sufficient proof that the appellant was a constable enlisted into the Nigeria Police Force. To learned counsel, no further burden is placed on the appellant to go beyond the above required proof. Accordingly, counsel submitted that the Court of Appeal was wrong when it held that it agreed with the trial Judge that the appellant failed to prove his claim and was, therefore, not entitled to judgment. He referred to *Ofein v. Ejukwa* (1994) 2 NWLR (Pt. 326) 303 at 318 and once again to *Ayinke v. Lawal* (supra) and *Buraimoh v. Bamgbose* (supra). ^E

On Issue No. 2, learned counsel submitted that the respondents had no right in law to conduct an orderly room trial in respect of an alleged criminal offence, as the allegation that the appellant took bribe of N3.00 is a criminal offence. He cited *Imade v. IGP* (1993) 1 NWLR (Pt. 278) 550 at 617 and 618; *Garba v. University of Maiduguri* (1986) 1 NWLR (Pt. 18) 550 at 585. Any allegation bordering on commission of crime cannot be adjudicated upon by G orderly room panel, learned counsel argued. He relied on *FCSC v Laoye* (1989) 2 NWLR (Pt. 106) 652 at 679 and 680; *CCB Nig. v. Nwankwo* (1993) 4 NWLR (Pt. 286) 159 at 169 and 170. Urging the court to hold that the orderly room trial is a nullity, counsel maintained that the High Court and the Court of Appeal were wrong in law when they failed to make any pronouncement on the legality or otherwise of the panel to try the appellant on an alleged offence of receiving N3.00 bribe. ^H

On Issue No. 3, learned counsel submitted that the Police

Regulations, which were made pursuant to the Police Act, Cap. 359, Volume 20 Laws; of the Federation of Nigeria 1990, are laws and evidence need not be led on them. To counsel, the only relevant stage at which reference ought to be made to the Police Regulations is at the address stage by counsel. He contended that the Court of
B Appeal was wrong in holding that the Regulations ought to have been pleaded and evidence given on them. He relied on *Finnih v. Imade* (1992) 1 NWLR (Pt. 219) 511 at 537.

On Issue No. 4, learned counsel submitted that the appellant's
C counsel as of right is entitled to address the court and the trial court was wrong in adjourning the matter for judgment without giving the opportunity to counsel to address the court. Counsel relied on *REAN Ltd. v. Aswani Textile Industry* (1991) 2 NWLR (Pt. 176) 639 at 672.

Learned counsel contended that the Court of Appeal was wrong when it held that the appellant sent a written address after the
D matter was adjourned for judgment. Counsel maintained that what is regarded by the Court of Appeal as an address is, in fact, a letter to the Registrar. He pointed out that the learned trial Judge did not even refer to any portion of the letter in his judgment and that the
E learned trial Judge did not order counsel to submit any written address. Counsel contended that the Court of Appeal was wrong when it failed to make any pronouncement on the trial Judge's failure to receive address from counsel.

On Issue No. 5, learned counsel submitted in the alternative,
F that the Court of Appeal ought to have entered a non-suit if that court could not allow the appeal. He therefore submitted in the alternative that this court should enter a non-suit in the unlikely event of the appeal not being successful. He urged the court to allow the appeal.

Learned counsel for the 3rd respondent, Mr. Okeaya-Inneh, dealt with the general principle of law with regard to the burden of
G proof in civil cases. He enumerated four principles on pages 4 to 5 of his brief and cited the following authorities: *Elias v. Omo-Bare* (1982) 5 S.C 25; *Woluchem v. Gudi* (1981) 5 S.C. 290; *Atilade v. Atilade* (1968) 1 All NLR 27; *Morohunfola v. Kwara State College of Technology* (1990) 4 NWLR (Pt. 145) 506 at 509.

Relying on the case of *Morohunfola v. Kwara State College of Technology* (1990) 4 NWLR (Pt. 145) 506 at 509, learned counsel
H submitted that if a plaintiff seeks declaration that the termination of his

appointment is a nullity, the plaintiff is required to plead five material facts. He enumerated the five facts at page 5 of his brief. Learned counsel submitted that as the appellant could not make out a case of unlawful dismissal, the Court of Appeal was right in dismissing the appeal. He cited *Katto v. CBN* (1999) 5 S.C. (Pt. II) 21 at 22.

Citing the case of *Emiri v. Imiye* (1999) 4 S.C. (Pt. I) 1 at page 19, learned counsel submitted that when an appellant is appealing from concurrent findings of fact and law, he must show exceptional circumstances why the appeal must be allowed and why the court must depart from the finding of the two lower courts. B

Learned counsel cited Section 149 (d) of the Evidence Act and the cases of *Bello v. Kassim* (1969) NMLR 148 and *Opolo v. The State* (1977) All NLR 312 without any submission. I think the authorities are addressed to the inability of the appellant to produce the conditions of service. I may be wrong. In do not have the jurisdiction to speculate. Learned counsel urged the court to dismiss the appeal. C

In this matter, the only case before the learned trial Judge was the case of the appellant. In law, he can stand or fall by his case. The respondents did not defend the action. In most cases where a plaintiff's case is not challenged, he succeeds. This is because the trial Judge has no other case to deal with other than the case stated by the plaintiff in his statement of claim and in oral evidence. E

As I indicated earlier, learned counsel for the appellant submitted that the proof required in a civil case where the statement of claim is not controverted by filing the statement of defence is a minimal proof. Some decided cases tow that trend. Counsel cited two. I will take the cases anon. F

But should that be the position of the law? If that should be the position, then it runs contrary to another basic principle of our adjectival law that facts which are not controverted, contested, or contradicted must be admitted without further proof. Where does this "minimal" criterion come in? How will courts of law measure the "minimal" and at what stage in the pendulum will the trial Judge come to the conclusion that the equilibrium of the minimal is achieved? The word "minimal" is not only vague but large and amorphous, and is incapable of specific measurement as it means "as little as possible," "very little." It is usually compared with the opposite expression of H

“maximum.”

Learned counsel cited two cases apparently to substantiate the principle of minimal proof. I want to take the two cases to see whether they dealt with the minimal proof principle as credited to them by counsel. The first case is *Buraimoh v. Bamgbose* (supra). In
B that case, Nnaemeka-Agu, JSC., said at page 363:

“It is noteworthy that all the evidence on the first point went one way because there is no iota of evidence from the defence even suggesting that the subject of the grant in Exhibit A was outside the
C area allocated to Alhaji Falohun as a result of the partition: it is not even suggested in cross-examination. It is of course settled that in such a case the onus of proof would be satisfied on a minimal of proof because there is nothing on the other side of the scale.”

It is clear that in *Buraimoh*, this court used the word “minimal”. If there is nothing on the other side of the scale, why the
D minimal proof? The learned Justice cited the case of *Nwabuoku v. Ottih* (1961) All NLR 487 to buttress or substantiate the principle of “minimal” proof. It does not, however, appear to me that the case this court cited went as far as to the minimal proof principle. Ademola, CJF., (a very fine Judge of blessed memory), said:

“It is clear from his judgment that the learned trial Judge gave no consideration whatsoever to the appellants evidence before him. His evidence was not at anytime rebutted by the defendant who did not go in the witness box to give evidence. The evidence of the
F appellant therefore stands uncontradicted. His evidence giving terms of the transaction between him and the respondent was in terms of the writ. In the absence of any evidence of rebuttal, the appellant was entitled to judgment, and I am of the view that the learned trial Judge’s duty was to have entered judgment in his favour.”

And so, I am fortified by the above that *Nwabuoku* is not
G an authority for the minimal proof principle. The above apart, the learned Justice did not invoke the minimal proof principle in *Buraimoh*. He rather relied and correctly for that matter on the admission of the party in deciding the appeal. And his reliance on the admission is based on the principle of law that admitted facts need no further proof. And so the minimal proof principle in *Buraimoh* was an obiter
H dictum which is not binding on me.

I take the second case. It is *Ayinke v. Lawal* (supra) In that

case, Iguh, JSC., said at page 275 ,

“This evidence was neither contradicted nor discredited by the defendants by way of cross-examination and, as such the case remained unchallenged. See *Bello v. Eweka* (1981) 1 S.C. 102 at 124. Where evidence given by a party to any proceedings was not challenged by the opposite party who, like in the instant case, had the opportunity to do so, it is always open to the court seised of the matter to act on such unchallenged evidence before it. See *Isaac Omoregbe v. Daniel Lawani* (1983) 3-4 S.C. 108 at 117; *Odulaja v. Haddard* (1973) 11 S.C. 357; *Nigerian Maritime Services Limited v. Alhaji Bello Afolabi* (1978) 2 S.C. 79 at 80 and *Bashali v. Allied Commercial Exporters Limited* (1961) All NLR 917; (1961) 2 SCNLR 322.”

Unlike Buraimoh, Ayinke did not go to the extent of mentioning the minimal proof principle. Ayinke was very specific on the principle of law that a court of law can act on unchallenged evidence.

The basic principle of law is that where a defendant fails to file a defence, he will be deemed to have admitted the claim or relief in the statement of claim. But where a paragraph of the statement of claim is notoriously false to the common knowledge of the court, like 10th July is Nigeria’s independence anniversary, such a paragraph is not admissible because it is an obvious untruth. A defendant who fails to file a statement of defence cannot in law lead oral evidence because the oral evidence, not pleaded, will be to no avail. See *Awoyegbe v. Ogbeide* (1988) 1 NWLR (Pt. 73) 695; *Aguocha v. Aguocha* (1986) 4 NWLR (Pt.37) 566; *Ugo v. Obiekwe* (1989) 2 S.C. (Pt. II) 59, (1989) 1 NWLR (Pt. 99) 566; *Ogboda v. Adulugba* (1971) 1 All NLR 68; *Atane v. Amu* (1974) 10 S.C. 237.

The two lower courts dismissed the appellant’s case because he failed to plead and lead credible evidence in support of his claim. Are the courts correct? Are they right? These are relevant questions.

Let me reproduce paragraphs 1, 5, 6, 7 and 21 (5) of the Statement of Claim:

“(1) The plaintiff is and was at all material times to this action a constable in the Nigeria Police Force and resides at No. 51 Esigie Street, Benin-City.

(5) The plaintiff was enlisted in the Nigeria Police Force in May 1983 as constable No. NP 136074. Thereafter, he was posted

to 'B' Department, signals office, Police Headquarters, Benin - City where he worked until his purported dismissal in 1985.

(6) Sometime on or about the 19th of February, 1985, the plaintiff was indicted by one Deputy Superintendent of Police, A. Kalu for leaving his duty post where he was assigned and for receiving a bribe. The said Deputy Superintendent of Police immediately punished the plaintiff with hard labour, to wit, the levelling of a vast expanse of grassland.

(7) Thereafter, the said Deputy Superintendent of Police A. Kalu set up a machinery for the Plaintiff to be tried by Police Orderly room trial for the same alleged offences of leaving his duty and receiving bribe of three naira, i.e., corrupt practice and discreditable conduct.

SPECIAL DAMAGES

(a) Salary and allowances from June 1985 December 1985 at
D N3. 00 per month N2,100.00

(b) Salary and allowances of plaintiff for two years between
1986- 1987 at N350.00 per month N8,400.00

(c) Salary and allowances of plaintiff for four years (48
months)
E between 1988-1991 at N300.00 per month N27,840.00

(d) Increased salary scale and allowances from January, 1992
to December 1992 at N300.00 per month N8,800.00

TOTAL N47,140.00

(Forty seven thousand, one hundred and forty naira)
F

(e) Increased salary scale from 1992 until judgment is delivered."

As it is, I have repeated paragraph 21 (5). It is for ease of reference.

Appellant tendered in evidence Exhibits A and B. I have re-
G produced Ex. B. I shall not repeat myself. Let me reproduce Exhibit A. It is also a letter from the 2nd respondent. It is a forerunner of Exhibit B. It reads:

"Telegraphic Address THE INSPECTOR GENERAL OF POLICE
NIGPOL, LAGOS FORCE HEADQUARTERS,
H Telephone No. 634001 ' KAM SALEM HOUSE
In reply please quote THE NIGERIA POLICE
MOLONEY STREET,

LAGOS.

Ref. No.AH/7370/PC. 136074/3. Date 28th Aug. 1990

Mr. Bernard Okoebor,
C/O Ops/Trg (Signals),
The Nigeria Police,
Headquarters, Benin.

B

APPEAL AGAINST DISMISSAL NO. 136074 EX-PC. BERNARD OKOEBOR

This is to inform you that your appeal dated 26th July, 1990 has been forwarded to AIG Zone 5 Benin for comments.

C

2. The out-come will be communicated to you in due course.

SGD. (C.E. OBADAN) ACP,

DEPUTY - PROVOST MARSHAL

FOR: FORCE PROVOST MARSHAL,

“:INSPECTOR-GENERAL OF POLICE”

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In his evidence in court, appellant said:

“In 1983, I was in the Nigeria Police Force. I joined the Force in 1983. I was dismissed from the Force in 1985 as Constable No. 136074 attached to ‘B’ Department signals, Police Headquarters, Benin City. I was on permanent employment with the Defendants. I was dismissed on the allegation that I took a bribe of three naira (N3.00). I did not take any bribe. I was instantly given a portion of grass to cut and I cut it. I was asked to appear before orderly room panel... After I had appeared before the panel, I was orally told that I was dismissed and that I should surrender my uniform to the Police and I did so... I want this court to hold that I am still in the employment of the Nigeria Police Force and to hold that I should be taken into the Force. I also want this court to hold that I should be paid all my salaries and arrears from the date of my dismissal till the date of judgment. I also want this court to hold that the dismissal is unlawful and I want it to be set aside. My arrears of salaries from 1985 till 1992 is N47,140.00 (Forty-Seven Thousand One Hundred and Forty Naira). From June to December, (N350.00). From 1988 to 1991 my monthly salary was five hundred and eighty naira (580.00). From January to December 1992 my monthly salary is seven hundred naira (N700.00) per month. From 1992 till date of judgment I want this court to order that I be paid as per the new increment.”

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A community reading of paragraphs 1, 5, 6 and 7, Exhibits

A and B and his testimony in court clearly show and prove that the appellant was an employee in the Nigeria Police Force. While paragraphs 1 and 5 averred to his employment in the Nigeria Police Force, paragraphs 6 and 7 show and prove that he was tried in orderly room. Apart from the fact that police officers are usually tried
B in orderly room, the paragraphs have some nexus with Exhibits A and B. From the state of the pleadings and the evidence in court, the averments in paragraphs 6 and 7 came before Exhibits A and B. In other words, it was after the appellant was tried in orderly room and
C dismissed that he petitioned to return to the Force.

The Court of Appeal relied on the decision of this court in *Morohunfolu v. Kwara State College of Technology* (supra). With the greatest respect, the decision does not apply in this case. The major difference between *Morohunfolu* and this case is that in *Morohunfolu*, the case was fully contested from the High Court to the Supreme
D Court. The defendant, the Kwara State College of Technology joined issues with the appellant and the issues joined were duly tried. In this matter, no issues were joined. As indicated above, the respondents did not file any statement of defence.

In his leading judgment, Belgore, JSC., correctly and carefully
E restricted himself to the facts of the case and said at page 517:

“There was no evidence before the trial court that the appellant was employed by the respondent because there is nothing in the pleading of the appellant to indicate when he was employed, what
F are the terms and conditions of his employment, what are his rights and obligations.”

Uwais, JSC., (as he then was), followed the same line with Belgore, JSC., and said at page 519:

“The appellant’s cause of action was based on contract of employment. It was absolutely essential therefore for the appellant,
G as plaintiff, to plead in his statement of claim the fact that there was a contract of employment between him and the respondent, as defendant.”

Even though the facts of *Morohunfolu* are not the same with those of this appeal, so much of the requirements dealt with in that case are present in this appeal. The fact of the employment of the
H appellant by the respondent is, as indicated above, already averred to in the statement of claim. One major term of the employment is

the payment of salary that is averred to in paragraph 21 (5) of the statement of claim. And what is more, the ipse dixit of the appellant added flesh to the bones, which are the pleadings. Neither pleadings nor the ipse dixit of the appellant were controverted or contradicted.

That takes me to the Orderly room trial. It is the objection raised by the appellant on grounds of likelihood of bias. Paragraphs 10 and 19 of the Statement of Claim are relevant here: B

“(10). The feud between DSP Kalu and the plaintiff started some time on or about January 13, 1984, when at about 9.30 p.m., during a night duty at ‘B’ Signals Office Police Headquarters Benin, plaintiff witnessed an attempt by DSP Kalu to rape one Beatrice Ezekhome a female Police personnel who raised an alarm attracting plaintiff and other colleagues to DSP Kalu’s office.” C

(19) The Plaintiff will contend at the trial of this suit that his dismissal was actuated by malice and was an exhibition of vendetta of DSP Kalu who swore to dismiss him from the police force.” D

In his evidence-in-chief, appellant said at page 18 of the Record:

“When I entered the orderly room, I discovered that DSP Kalu was the Chairman of the Panel and I objected to his sitting in my panel, because he is not the officer in charge of orderly room trials in the signal office. I raised my protest to ASP Arebun. I also objected to DSP Kalu sitting in the panel because sometime in 1984, I was on night duty in ‘B’ Department, Signals, Police Headquarters, Benin City. When I heard one lady Police shouting seriously and I rushed there and found out that DSP Kalu was trying to rape her. The lady Police reported the matter to the officer-in-charge of signals Department. An investigation panel was set up and the Police lady called Beatrice Ezekhome called me as a witness and I testified against DSP Kalu. Since then DSP Kalu swore to dismiss me from the police.....” E
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There are two issues raised in the above evidence. First, the objection was based on the fact that DSP Kalu was not the officer-in-charge of orderly room trials. Second, because appellant gave evidence against DSP Kalu in the attempted rape matter, he cannot get justice from the DSP. This was based on likelihood of bias. That is not all. There is evidence that appellant said in evidence at page 19 of the Record that all his efforts to call Benson Akiti as witness were thwarted by DSP Kalu. He said: H

“I requested to call Mr. Benson Akiti as my witness before the Panel but DSP Kalu said that it was not necessary and my allegations were ignored.”

In the absence of any evidence to the contrary, the above evidence is deemed to be true and accepted as such. In my humble view, respondents had a duty to lead evidence to the contrary, including calling DSP Kalu, if the evidence of the appellant was not true. In law, if a party raises objection as to the likelihood of bias on the part of the Judge, it is safer and more in the interest of justice for the judge to refuse taking the matter, unless it is clear that the party is raising the objection qua opposition lacking merit and is designed to delay the court process or an outright abuse of the judicial process.

The third issue is in respect of the Police regulations and whether they ought to have been embodied in the pleadings before evidence given on them. The Court of Appeal said at page 80 of the Record:

“Although much is said about the Police Regulations in the appellant’s brief, it was never pleaded in the amended statement of claim that the Police Regulations were applicable to his employment in the course of his evidence at the trial.”

With respect, I do not agree with the Court of Appeal. It is not the law of pleadings that laws must be pleaded before a party can rely on them. While the law of pleadings requires that some specific laws should be pleaded (e.g. statutory defence like the Limitation Statute), it is not the province of the law of pleadings, that any law to be relied upon by a party must be pleaded. As a matter of law, pleadings essentially contain facts relied upon by the parties and they are stated positively, precisely, distinctly and briefly. In view of the fact that the Police Regulations are enacted pursuant to the Police Act, Cap. 359 and by virtue of the provision of Section 18 (1) of the Interpretation Act, the Regulations qualify as law and need not be pleaded by the appellant.

As a matter of law, a good pleading should contain facts not law. There is a distinction between pleading law, which is not permitted by the law of pleadings and raising a point of law in a pleading, which is permitted by the law of pleadings. Pleading law obscures and conceals the facts of the cases while raising a point of law defines or isolates an issue or question of law on the facts as pleaded. See

Chief Nwadiaro v. The Shell Petroleum Development Company of Nigeria Limited (1990) 5 NWLR (Pt. 150) 322. In similar vein, the law of pleadings does not require pleading a principle of the common law, but the law requires pleading of customary law because by our law of evidence, customary law is a fact which must be pleaded and proved. B

Issue No. 4 is in respect of the learned trial Judge giving judgment without the address of the appellant. At the close of the case for the plaintiff and the defendant, the court asks the parties to address it. This is a duty which the court must perform. A court of law cannot adjourn a matter for judgment without asking the parties to address it. If a case is not defended, as in the instant case, the trial Judge must ask the plaintiff to address him. And I should add that the duty of the court is more compelling where the plaintiff is not represented by counsel. C

In Niger Construction v. Okugbeni (1987) 4 NWLR (Pt. 67) 787, Agbaje, JSC, said at page 795: D

“The right of counsel to address the court is provided for by rules of court, so there can be something in a complaint by counsel that the trial court has deprived him of his right to address the court on behalf of his client at the close of the case for both sides, for any discretion possessed by a trial Judge must be exercised within the confines of the law.” E

In Obodo v. Olomu (1987) 3 NWLR (Pt. 59) 111, this court held as follows: (1) Address of counsel form part of the case and failure to hear the address of one party however overwhelming the evidence on one side vitiates the trial. (2) In a written address, the court must ensure that the parties exchange addresses. (3) An appellate court should not speculate on what the effect of a plaintiff’s counsel’s address would have been on the learned trial Judge’s judgment because until the learned trial Judge’s mind is exposed to an address, it is impossible to say what effect the address would have on the Judge’s mind. F

Delivering the leading judgment of the court, Belgore, JSC., said at page 120: H

“The procedure whereby the parties to a case at the conclusion of evidence are to address the court on the evidence before the court, enumerating the issues canvassed and adverting to the law

governing the issues has taken such a root in our superior courts that denial of it cannot be regarded as mere procedural irregularity.”

Obaseki, JSC., in his concurring judgment, added at pages 123 and 124:

“The hearing of addresses by every court established by the Constitution of the Federal Republic of Nigeria is recognised by the Constitution. It is to be given before judgment is delivered. See Section 258 (1) of the Constitution of the Federal Republic of Nigeria, 1979. Its beneficial effect and impact on the mind of the Judge is enormous but unquantifiable. The value is immense and its assistance to the Judge in arriving at a just and proper decision, though dependent on the quality of address cannot be denied. The absence of an address can tilt the balance of the learned Judge’s judgment just as much as the delivery of an address after conclusion of evidence can.”

See also *Union Bank (Nig.) Ltd. v. Ajagu* (1990) 1 NWLR (Pt. 126) 328; *Ekanem v. Akpan* (1991) 8 NWLR (Pt. 211) 616; *Ugorji v. Onwuka* (1994) 4 NWLR (Pt. 337) 226; *Nwaubani v. Golden Guinea Breweries Plc.* (1995) 6 NWLR (Pt. 400) 184.

Dealing with the issue of address, the Court of Appeal said at page 81 of the Record:

“In the instant case, the defence was not represented in the lower court and the court was not addressed after the plaintiff closed his case. The learned counsel, however, later sent a written address to the court. But he entirely failed to raise the issue of non-suit in the written address.”

The written address referred to by the Court of Appeal is at page 21 of the record. It reads:

“Emmanuel O.
Ugokwe &Co.
Barristers & Solicitors,
18, Murtala Mohammed Way,
Benin.

3rd June, 94

“The Registrar,
High Court No. 3,
Benin City.

Sir,
RE SUIT NO B/22/93 BERNARD OKOEBOR
VS.

POLICE COUNCIL & 2 ORS.

We are Solicitors to the Plaintiff who gave evidence on the 30th May, 1994. The said suit was therefore adjourned for Judgment. B

Since we are not to address Court, we consider it necessary to bring the following points of law to the notice of the Court.

(1) Refer the Court to Sections 98 to 107 of the Police Regulation Cap. 359 made pursuant to Police Act Cap. 359 Volume 20 C Laws of the Federation of Nigeria, 1990, on the status of a Police Constable to the effect that the training period is the probation period and on confirmation force number is issued. Plaintiff was issued with Force No.

(2) Section 37(1) (g) of the Police Regulation which recognises cutting of grass as punishment and Section 221 of the Criminal Procedure Law. D

(3) Section 18(1) of the Interpretation Act on meaning of (law, and regulations) which gives the Police regulation force of law.

(4) The case of Imade v. I.G.P. (1993) 1 NWLR (Pt. 271) E page 608

With regards.

SGD. E.U. ETUKUDO ESQ
PLAINTIFF'S SOLICITOR" F

I do not think the Court of Appeal is correct in saying that the appellant was not represented by counsel in the High Court. It is stated at page 18 of the Record that one E.U. Etukudo appeared for the plaintiff who is the appellant in this court.

Although the letter sent to the court by learned counsel for G the appellant was not detailed, it addressed the main issues in the case before the court. Counsel referred to Sections 37(1) (g), 98 to 107 of the Police Regulations, Cap. 359, Laws of the Federation of Nigeria, 1990; Section 18 (1) of the Interpretation Act and the case of Imade v. I.G.P. (supra). Accordingly, I am of the view that there H was no miscarriage of justice in respect of the issue of address by the appellant, and I so hold.

Let me also make one point and it is the first punishment of levelling a vast expanse of grassland. The respondents were not sat-

isified with that punishment. They gave the appellant the second and most serious one of dismissal. That is malice and only the respondents can defend such action. In my view, this is double jeopardy.

B The biggest undoing or mistake (if it is a mistake at all) is the failure or, should I say, refusal on the part of the respondents to put up a defence at the trial. It is sad that the respondents decided not to defend the action. I would like to say that the respondents had the legal capacity to terminate this matter in limine at the High Court if they had defended the action.

C In conclusion, the appeal succeeds and it is allowed. I set aside the judgment of the Court of Appeal which affirmed the judgment of the High Court. I give judgment to the appellant as per his statement of claim. I award N10,000.00 costs in favour of the appellant. I also award N5,000.00 cost in respect of the proceedings in the High Court and the Court of Appeal.

D

MOHAMMED JSC

E I have had a preview of the judgment of my learned brother Niki Tobi, JSC., in draft and I agree that there is merit in this appeal. My learned brother has considered all the salient issues raised in this appeal and has left nothing for me to add. I set aside the judgments of both the High Court and the Court of Appeal and enter judgment in F favour of the appellant as per his claim in the writ. I award N10,000.00 costs in favour of the appellant in this court and N5,000.00 in the court below.

G

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment of my learned brother, Niki Tobi, JSC., in this appeal. I entirely agree with it. I have nothing useful to add.

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EDOZIE JSC

I had a preview of the lead judgment of my learned brother, Tobi JSC., I am in complete agreement with him that there is merit in this appeal and that it should be allowed. The appellant in his statement of claim pleaded eloquent facts and circumstances grounding his cause of action and led oral evidence in support thereof. For reasons best known to them, the Respondents neither filed a statement of defence nor did they by cross-examination discredit the testimony of the Appellant and in that situation left the evidence of the Appellant unchallenged. B

The attitude of the courts to unchallenged evidence is not in doubt and it has been stated and re-stated in a plethora of decided cases. In *Iriri v. Erhrhobara* (1991) 2 NWLR (Pt. 173) 252 at 255, it was held that where the evidence of a witness is not inadmissible in law, uncontradicted and unchallenged, a court of law can act on it and accept it as a true version of the case it seeks to support. In the same vein, it was decided that wherever any evidence, whether affidavit or oral stands uncontradicted, unless the evidence is patently incredible, the court ought to regard the matter to be proved by that evidence as admitted by the adverse party: *A.G. Ogun State v. Coker* (1993) 9 NWLR (Pt. 316) 214, *Ajomale v. Yaduat* (No. 2) (1991) 5 NWLR (Pt. 191) 266, *Odogwu v. Odogwu* (1992) 7 NWLR (Pt. 253). C

More recently, in the case of *Asafa foods Factory v. Alraine (Nig.) Ltd.* (2002) 5 SC (Pt. I) 1; (2002) NWLR (Pt. 781) 253 at 380 the principle was re-echoed by this court, thus: D

“Where evidence given by a party to a proceeding was not challenged by the other side who had the opportunity to do so, it is always open to the court seised of the matter to act on such unchallenged evidence before it: See *Omoregbe v. Daniel Lawani* (1980) 3-4 S.C. 108 at 117, *Odulaja v. Haddad* (1973) 11 S.C. 357, *Nigerian Maritime Services Ltd. v. Alhaji Bello Afolabi* (1978) 2 S.C. 79 at 81. This is because a trial court in civil proceedings is obliged to place the evidence of both parties on each side of the imaginary scale so as to determine which side outweighs the other. In the absence of the defendants in the present case adducing any evidence whatsoever, their own side of the imaginary scale remains weightless and unable to tilt the proverbial scale which already was heavily laden in one direction, to wit, on the side of the plaintiff.” E

From the materials which the Appellant placed before the trial F

court, which were unchallenged by the Respondents, the Appellant had established his case and was entitled to judgment. For these, in addition to the fuller reasons set out in lead judgment, I, also allow the appeal with the consequential orders made in the lead judgment.

B

KUTIGI JSC (DISSENTING)

C In the High Court of Edo State holden at Benin City, the Plaintiff sued the Defendants claiming various reliefs as contained in paragraph 21 of his Amended Statement of Claims, all as a result of his wrongful dismissal as a Police Constable from the Nigeria Police Force.

D Only the Plaintiff filed his pleadings at the trial. So also he was the only person who testified at the trial. He called no witnesses. The Defendants were absent and were not represented at the trial. At the end of Plaintiffs' testimony and without any cross-examination, judgment was reserved. In a considered judgment, the learned trial Judge carefully examined Plaintiffs' claims and his evidence thereon and came to the undoubted conclusion that the Plaintiff has failed to establish any of his claims and consequently dismissed them in toto. He concluded his judgment thus-

E "I am of the considered view that the Plaintiff has not established his claims or any of them on the balance of probabilities. Consequently this suit is dismissed with costs of one thousand Naira (N1,000.00) from the Plaintiff to the Defendants."

F Dissatisfied with the judgment of the trial court, the Plaintiff appealed to the Court of Appeal holden at Benin City. In a reserved judgment the Court of Appeal also unanimously dismissed the appeal and affirmed the judgment of the trial court. Again, the Defendants were absence and never represented in the Court of Appeal just as was the case in the High Court.

G Aggrieved by the decision of the Court of Appeal, the Plaintiff has further appealed to this Court. At the hearing of the appeal, Mr. Agboroh, learned counsel for the Plaintiff adopted his brief. For the first time since the inception of this case in 1993, one of the Defendants was represented. He was the 3rd Defendant. Mr. Okeaya-Inneh, learned counsel who appeared for him (3rd Defendant) also adopted

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his brief of argument.

In the plaintiffs brief, five (5) issues were formulated for determination in the appeal. I do not need to reproduce them here except issue (1) which to my mind is decisive. It reads-

“Issue (i) whether the learned Justices of the Court of Appeal were right in law when they held that they entirely agreed with the learned trial Judge that the Plaintiff failed to prove his Claim and therefore not entitled to judgment.’ B

I say straight away that both the Court of Appeal and the trial High Court were right when they held that the Plaintiff had failed to prove his claims. The reasons to me are quite simple. C

In the first place, the Plaintiff did not only fail to plead his letter of appointment but woefully failed to tender same at the trial. He also failed to explain how he was employed.

Secondly, the Plaintiff never pleaded his conditions of service nor did he tender any document to establish them. It is an established principle of law that an employer is entitled to retire or terminate his employee’s appointment for good, bad or no reason at all, and the Court will not foist an employee on an unwilling employer or make an order of specific performance of an ordinary contract of service except there are special circumstances. Special circumstances have been held to arise where the contract of service has a legal or statutory flavour (see for example Chukwumah v. Shell Petroleum Co. (1993) 4 NWLR (Pt. 289) 512, UBN v. Ogboh (1995) 2 NWLR (Pt. 389) 649. Mere and random mention of Police Regulations simpliciter in an address or a brief before the court, does not convert the employment, if any, to one with statutory flavour. D E F

It is trite law that evidence given on matters not pleaded, goes to no issue and will be disregarded by the Court (see for example Emegokwe v. Okadigbo (1973) 4 S.C. 113, Oke-bola v. Molake (1975) 12 S.C. 61). G

It is also trite that when an employee complains that his employment has been wrongfully terminated or that he was wrongfully dismissed, he has the burden of placing before the Court not only the terms or conditions of his employment but the manner in which the said terms or conditions were breached by the employer (see for example Katto v. C.B.N. (1999) 5 S.C. (Pt. 8) 21, Morohunfola v. Kwara State College of Technology (1990) 4 NWLR (Pt. 145) 506. H

The Plaintiff's claims in my view cannot be properly adjudged without seeing the letter of his appointment and the conditions or terms of his service. The lower courts found and I agree with them that the nature of appointment of the Plaintiff remains unestablished in the absence of his letter of appointment. His conditions or service also
 B remained unestablished in the absence of his conditions of service. (See *Morohunfola v. Kwara State College of Technology* (supra).

A plaintiff under normal circumstances can succeed only if he established his case on a balance of probabilities and not on
 C the weakness of the case for the Defendants. In this case, where the Defendants were not represented, the court was still bound to have evaluated and weighed the evidence to see whether or not the Plaintiff has established his claims. In other words, the onus of proof placed on Plaintiff herein would have been discharged on minimal proof there being nothing to put on the other side of the scale. (See
 D for example *Balogun v. UBA* (1992) 6 NWLR (Pt. 247) 336. What I am saying is that when a defendant is absent it does not ipso facto or as a matter of law, entitle a Plaintiff to judgment. The evidence proffered by Plaintiff though uncontradicted must be evaluated and
 E appraised by the trial court in order to determine its quality and see whether or not Plaintiff has proved his case as was done by the trial court here. (See for e.g. *Atilade v. Atilade* (1968) 1 All NLR 97, *Woluchem v. Gudi* (1981) 5 SC 290, *Emiri v. Imieyeh* (1999) 4 SC. (Pt. I) 1).

F This is a case where there has been concurrent findings of fact by the trial High Court and the Court of Appeal. These findings cannot ordinarily and lightly be set aside by this court unless there are special circumstances which would warrant such an exercise (see for example *Dibiamaka v. Osakwe* (1989) 5 S.C. 53; (1989) 3 NWLR (Pt. 107) 101, *Emiri v. Imieyeh* (supra).

G The Plaintiff has not succeeded in persuading me that there existed any special circumstance why I should interfere with the finding of facts. Besides, it is not every mistake or error committed by a court that results in the appeal being allowed, unless the error or mistake has occasioned a miscarriage of justice (see for example
 H *Oje v. Babalola* (1985) 4 S.C. (Pt. 2) 156, *Anyanwu v. Mbara* (1992) 2 NWLR (Pt. 242) 386). The Plaintiff has for example in his brief complained that the Court of Appeal was wrong when it held that he,

the (plaintiff) did not plead the Police Regulations in his Amended Statement of Claim as he ought to have done. But the Court of Appeal did not say that. What the Court said was that the Plaintiff did not plead the facts or how the Police Regulations applied to his case. The Court was therefore in order. In pleadings, the rule is clearly that every pleading must state the facts and not law. So where the Plaintiff in this case wished to prove that the Police Regulations applied to his case, he must state the facts which make the Regulations applicable to him. That is not the same thing as pleading the law. This he never did. It is fatal to his case. Issue (1) therefore fails. This knocks the bottom out of the Plaintiff's case completely. B C

Briefly, the Plaintiff also complained in issue (4) that the Court of Appeal failed to make a pronouncement on the trial court's failure to receive address from (Plaintiff's) counsel before delivering his judgment. I simply say that this is a non-starter. When the Plaintiff concluded his testimony without cross-examination on 30/5/94, the Court adjourned to 27/ 6/94 for judgment. His counsel was present. He did not ask to address the court. Could you blame the court for that? Counsel has the right to address the court, but he did not exercise his right to do so. The Defendants as I said before were not present at the hearing in the trial court. Nobody therefore addressed the court. Was anyone prejudiced in these circumstances? My answer is in the negative. The Plaintiff was clearly not prejudiced by failure of his counsel to address the court. This complaint has no substance (see for example *Obido v. Olonu* (1987) 3 NWLR (Pt. 59) 11, *Ugorji v. Onwuka* (1994) 4 NWLR (Pt. 337) (226) D E F

My conclusion therefore is that this appeal fails. And it is for the above reasons that I am unable to agree with the judgment of my learned brother, Niki Tobi, JSC., which I was privileged to read. The appeal is accordingly dismissed. The judgments of the lower courts dismissing Plaintiff's claims in their entirety are affirmed. The Defendants are awarded costs of N10,000.00 only. G