

**SUPREME COURT OF NIGERIA**  
FRIDAY 20TH JUNE, 2003. SC. 122/1999  
**CORAM:- M. L. UWAISS CJN, M. E. OGUNDARE,**  
**U. MOHAMMED, A. I. IGUH, D. MUSDAPHER, JJSC**

FRIDAY U. ABALOGU ..... APPELLANT  
AND  
THE SHELL PETROLEUM  
DEVELOPMENT CO. OF NIGERIA LTD ..... RESPONDENT

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ESTOPPEL - Estoppel by conduct - Plea - Exhibit N cannot be construed as an assurance - Nor can it be interpreted to override the express contractual stipulation - As to determination of Exhibit D (H1)

COURTS - Written agreement - Binding nature - Duty of court - Court must confine itself to the plain words and meaning - Which are derivable from the right and obligation - Of parties thereunder (H2)

CONTRACTS - Determination - Procedure - Where stipulated -The determination must be done in accordance with the procedure - stipulated in the contract (H3)

ESTOPPEL - Estoppel by conduct - Application of - Propriety - Estoppel by conduct cannot apply - Since there is no where in Exhibit N - That respondent promised appellant - Employment till retirement age (H4)

CONTRACTS - Terms - Collective agreements - Incorporation - They were not incorporated - Nor intended to be binding on the parties - Else they would have been expressly incorporated (H5)

CONTRACTS - Terms - Collective agreements - Relevancy - Even if the agreements had been incorporated - They would still be irrelevant to the issue of whether appellant's employment was lawfully terminated (H6)

### **FACTS**

The case for plaintiff/appellant is that he would be due for retirement from the employ of defendant/respondent on 3rd August 1996 and that respondent had written him on 25<sup>th</sup> January 1995 stating this fact. Nevertheless, respondent wrote him again on 31<sup>st</sup> January 1995 purporting to terminate his said employment with immediate effect. Hence, appellant filed this action at the High Court of Delta State, Warri contesting the alleged unlawful termination of his employment. Appellant argues that respondent was estopped by its letter of 25<sup>th</sup> January 1995 to appellant Exhibit N - from terminating appellant's employment with it.

It was in evidence that appellant signed a contract of employment - Exhibit D with respondent when he was confirmed as a permanent staff. One of the terms in Exhibit D provides that either of the parties thereto could terminate the contract by giving three months' notice or salary in lieu to the other. Though appellant claimed that the terms of Exhibit D was subject to variation from time to time through collective agreements, there was no provision in Exhibit D envisaging such variation. After the hearing, learned trial judge held that appellant's employment was lawfully terminated and that he was only entitled to three months' salary in lieu in accordance with the terms of Exhibit D. Aggrieved, appellant appealed to the Court of Appeal, Benin City. The court dismissed the appeal. Still dissatisfied, appellant filed appeal at Supreme Court.

### **ISSUES FOR DETERMINATION**

1. Whether the employment of the appellant was lawfully terminated by the respondent.
2. What is the measure of damages the appellant is entitled to if his employment was unlawfully terminated

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

*ESTOPPEL - Estoppel by conduct - Plea*

**1. It seems to me clear that Exhibit N is a mere notice by the respondent to the appellant that from the respondent's records, he would attain the age of 55 years on the 3rd of**

**August, 1996, and would be due to retire from the respondent's service on that date. The letter, therefore, advised the appellant of the necessary steps to be taken by him in the mean time. In my opinion, Exhibit N, cannot be construed as constituting an assurance or guarantee that the appellant would remain in respondent's employment until he attained the retirement age of 55 years. I am also in agreement with both courts below that Exhibit N cannot be interpreted to override the express contractual stipulation relating to the determination of Exhibit D by either party to the contract as provided under Clause 9 thereof. (p. 1857 C)**

*COURTS - Written agreement - Binding nature*

**2. Exhibit D, which the appellant duly accepted constitutes, without doubt, the full terms and conditions of the contract of employment between the parties and the same must be construed accordingly.**

**The court in construing the relationship of the parties to a written agreement must confine itself to the plain words and meaning which are derivable from their rights and obligations thereunder. (p. 1857 H)**

*CONTRACTS - Determination - Procedure - Where stipulated*

**3. Where, as in the present case, a contract contains a provision that either party thereto may determine it by specified notice or payment of prescribed sum of money in lieu thereof, such notice or payment as the case may be must be complied with in strict accordance with the terms of the contract. Where, however, the right to determine the contract by notice depends upon the performance of a condition precedent, the party seeking to exercise his right of determining the contract must first establish that the prescribed condition precedent was fulfilled.**

**In the present case, the only condition precedent for the determination of the appellant's contract of employment is as stipulated in Clause 9 of Exhibit D. Apart from the giving of 3 months notice or payment of 3 months salary in lieu of such notice; no other condition precedent for the effective exercise of the power to terminate the contract of service by**

**either party thereto was stipulated.** (p. 1858 B)

*Estoppel by conduct - Application of - Propriety*

**4. There are no facts constituting estoppel in pais or estoppel under Section 151 of the Evidence Act for application in favour of the appellant. No doubt, it is now well settled that where one party has, by his words or conduct, made to the other a promise or assurance which was intended to effect the legal relations between them and to be acted on accordingly, then, once the other party had taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance had been made by him. He must accept their legal relations as modified by himself, even though it is not supported in point of law by any consideration, but only by his word.**

**In this case, there is absolutely no where in Exhibit N that the respondent promised, assured or gave any guarantee to the appellant that he would remain in its employment until he reached the retirement age of 55 years.** (p. 1859 H)

*CONTRACTS - Terms - Collective agreements - Incorporation*

**5. The Collective Agreements were in no way incorporated in the Appellant's Contract of Service, Exhibit D. Clause 11 of Exhibit D provides thus:**

**"You hereby acknowledge that you have read our rules relating to confidential information and inventions attached to this letter. You hereby agree to be bound by all the undertakings of the said rules which form part of this letter of agreement."**

**It is plain to me that had the Collective Agreements, Exhibits E and F, been intended to be binding on the parties, Clause 11 of Exhibit D would have incorporated them as forming part and parcel of the Appellant's Conditions of Service just as the Respondent's rules relating to "Confidential Information and Inventions" were expressly incorporated into Exhibit D as forming part and parcel thereof.** (p. 1862 D)

*CONTRACTS - Terms - Collective agreements - Relevancy*

**6. I may add that even if Exhibits E and F had been incorporated expressly in Exhibit D, and I have clearly taken a decision to the contrary, they still would have remained immaterial and irrelevant to the central issue that arises for determination in this case which is whether the employment of the appellant was lawfully terminated under Clause 9 of Exhibit D about 2 years before he would have gone on retirement. This is because, Exhibits E and F, the Collective Agreements, deal exclusively with various benefits due to the respondent's employees if and when they attained the retirement age of 55 years for men and 50 years for women. But the central issue in these proceedings is whether the appellant's contract of service was lawfully terminated under Clause 9 of Exhibit D about 2 years before he would have gone on retirement. It is therefore, obvious that the Collective Agreements, Exhibits E and F, have no materiality or relevance whatsoever to the main issue for decision in this case as the appellant had not attained the retirement age of 55 years when his employment was terminated.** (p. 1863 B)

## NOTABLE POINT OF INTEREST

### IGUH JSC

#### **1. Estoppel could be used as a sword**

Although the plea of estoppel, generally, is a shield for the protection of a defendant, it has since been settled that it can never stand alone as giving a cause of action in itself to a plaintiff. Accordingly, the plea cannot do away with the necessity to prove consideration in law where that is an essential part of a plaintiff's cause of action. In that sense, it can validly be employed as a sword by a plaintiff, but this as above stated, must be confined to appropriate cases only. (p. 1859 F)

### **REPRESENTATION**

O. Mudiaga Odje, Esq., with I. Owighoriennta, Esq., for the Appellant

A. Mowoe Esq., for the Respondent

**CASES REFERRED TO**

- Sule v. Nigeria Coal Board (1985) 6 S.C 62  
 Combe v. Combe (1951) 1 All ER 767  
 Joe Iga v. Ezekiel Amakiri (1976) 11 S.C. 1  
 Ezewani v. Onwordi (1986) 4 NWLR (Pt. 33) 27  
 B Odjevwedje & Anor. v. Echanokpe (1987) 1 NSCC 313  
 Odjevwedje v. Echanokpe (1987) 1 NWLR (Pt. 52) 633  
 Ude v. Osuji (1998) 9 - 10 S.C. 188; (1998) 13 NWLR (Pt. 580) 1  
 Mogo Chinwendu v. Nwanegbo Mbamali & Anor. (1980) 3-4 SC 31  
 C Tika Tore Press Ltd. v. Ajibade Abina & Ors. (1973) 1 All NLR (Pt. 11) 244  
 Oyeyemi v. Commissioner for Local Govt (1992) 2 NWLR (Pt. 226) 661  
 Chukwumah v. Shell Development Company of Nigeria Ltd. (1993)  
 D 4 NWLR (Pt. 289) 512  
 Fakuade v. Obafemi Awolowo University Teaching Hospital Management Complex (1993) 5 NWLR (Pt. 291) 47

**STATUTE REFERRED TO**

- E Evidence Act Cap 112 LFN 1990

**LEAD JUDGMENT BY IGUH JSC**

- By a writ of summons issued on the 12th day of September, 1995, the plaintiff, who is the appellant herein, instituted an action  
 F against the defendant who is now the respondent, at the Warri Judicial Division of the High Court of Justice, Delta State, claiming as per paragraph 26 of his Statement of Claim as follows:-

- G “1. A declaration that the defendant’s letter dated 31st January, 1995, addressed to the plaintiff purporting to terminate his employment with the defendant is null and void and/or ineffective to terminate the plaintiff’s said employment in view of the special circumstances pleaded herein, including the defendant’s earlier letter dated 25th January, 1995, entitling the plaintiff to his normal retirement and end of service benefits and/or consequential vested rights.  
 H

2. A declaration that the plaintiff’s employment with the defendant does not terminate and/or come to an end until 3rd August, 1996.

3. A declaration that the plaintiff is entitled to:-

(a) *Normal salaries/allowances from 2nd February, 1995, to 3rd August, 1996, when he will have effectively retired from the service of the defendant, the total sum being N1,903,672.10 (One Million, Nine Hundred and Three Thousand, Six Hundred and Seventy-Two Naira, Ten Kobo).*

(b) *Gratuity of N972,663.82 (Nine Hundred and Seventy-Two Thousand, Six Hundred and Sixty-Three Naira, Eighty-Two Kobo).* B

(c) *Normal pension lump sum of N1,438,326.50 (One Million, Four Hundred and Thirty-Eight Thousand, Three Hundred and Twenty-Six Naira, Fifty Kobo).* C

(d) *Monthly pension of N36,474.90 (Thirty-Six Thousand, Four Hundred and Seventy-Four Thousand, Ninety Kobo) being N437,698.08 (Four Hundred and Thirty Seven Thousand, Six Hundred and Ninety-Eight Naira, Eight Kobo) per annum with effect from 4<sup>th</sup> August, 1996.* D

4. *An order directing the defendant to pay to the plaintiff the sums and/or entitlements claimed, as specified and particularized in reliefs 3 (a)-(d) above.*

5. *Any further relief and/or other order as this Honourable Court may deem fit to grant and/or make in the circumstances.”* E

Pleadings were ordered in the suit and were duly settled, filed and exchanged.

At the subsequent trial, the plaintiff testified on his own behalf and tendered several documents in support of his case. F

The defendant, for its own part, called no evidence but rested its case on the evidence led on behalf of the plaintiff.

The plaintiff's case, put shortly, is that on the 3rd day of May, 1971, he was employed by the defendant as an Assistant Supervisor as indicated in his letter of employment, Exhibit A. Under his contract of employment, the plaintiff was placed on probation for one year, at the end of which his appointment was subsequently confirmed by the defendant with effect from the 3rd day of May, 1972. Thereafter he became a permanent and pensionable staff of the defendant. H

The plaintiff claimed that he rendered diligent and satisfactory services to the defendant as a result of which he was promoted to Job Group Level 7 in 1974 as per Exhibit C. However, a formal

written contract of employment between the defendant and himself was not executed until the 1st day of May, 1974. This contract of service which was duly executed by the parties was tendered in evidence as Exhibit D. The defendant's Information Hand Book" and "End of Service Benefits' issued for the information of its staff were also tendered as Exhibits E and F respectively.

The plaintiff, on the completion of his 20 years service with the defendant in 1991 was issued with a "Certificate of Long Service", Exhibit H, and a "Long Service Award", Exhibit J. He also explained that the defendant by a letter to him dated the 25th January, 1995, Exhibit N, intimated him that he was due to retire from service on the attainment of his 55<sup>th</sup> birthday on the 3rd August, 1996. However, by another letter dated the 31st January, 1995 Exhibit O, the defendant purportedly terminated his employment. When all efforts by the plaintiff through his solicitor to prevail on the defendant to withdraw the letter of termination, Exhibit O failed, the plaintiff instituted the present action against the defendant claiming as above stated.

The defendant, for its part, elected to rest its defence on the evidence adduced by the plaintiff. It accordingly closed its defence at the end of the case presented on behalf of the plaintiff.

At the conclusion of hearing, the learned trial Judge, Akpiroroh, J., as he then was, after a meticulous review of the entire evidence and the applicable law on the 8th day of December, 1997, entered judgment for the defendant and dismissed the plaintiff's claims. Said he:-

*"The parties, as I said before, are governed by Exhibit D which I had earlier reproduced above. Clause 9 of Exhibit D provides that an appointment can be terminated by giving to the other not less than two months' notice in writing or by paying two months' salary in lieu of notice; and on completion of five years of service, the period of notice shall be three months or three months' salary in lieu of notice. Exhibit O dated 31st January, 1995, written by the defendant to the plaintiff substantially complies with clause 9 of Exhibit D. I am in deep sympathy with the plaintiff whose appointment was terminated by the defendant barely less than two years before attaining retirement age after serving the defendant satisfactorily and meritoriously for over twenty-three years, but Exhibit D which governs his contract of service with the defendant and duly signed by him on*



*6/5/74 renders the court impotent as far as the reliefs claimed by him are concerned on the facts of this case.*

*From what I have said, I am of the clear and firm view that the defendant lawfully and properly terminated the appointment of the plaintiff and his claims must fail."*

The learned trial Judge next dealt with the quantum of damages claimed by the plaintiff and observed thus:-

*"Having held that the defendant lawfully and properly terminated the appointment of the plaintiff, the quantum of damages payable to him by the defendant is governed by Clause 9 of Exhibit D, i.e. three months salaries in lieu of notice and certainly not the amount he is claiming in paragraph 26 of his statement of claim. It is well settled law, that the measure of damages for wrongful dismissal is prima facie the amount the plaintiff would have earned had he continued with the employment, but where the defendant (as in this case in hand) has a right to terminate the contract of service before the end of the term, damages should only be awarded and limited to the end of the earliest period at which the defendant could have so lawfully terminated the said contract.*

*The plaintiff is therefore entitled to the sum of N130,101.70 (One Hundred and Thirty Thousand, One Hundred and One Naira, Seventy Kobo) being his three months' salary in lieu of notice. Apart from three months salary in lieu of notice, all the plaintiff's claims fail and they are hereby dismissed. I make no order as to costs."*

Dissatisfied with this decision of the trial court, the plaintiff lodged an appeal against the same to the Court of Appeal, Benin City Division, which court on the 18th day of May, 1999, dismissed the appeal and affirmed the judgment of the trial court.

Aggrieved by this decision of the Court of Appeal, the plaintiff has further appealed to this court. I shall hereinafter refer to the plaintiff and the defendant in this judgment as the appellant and the respondent respectively.

Six grounds of appeal were filed by the appellant against this decision of the Court of Appeal. It is unnecessary to reproduce them in this judgment. It suffices to state that the parties pursuant to the Rules of this Court filed and exchanged their written briefs of argument.

The five issues distilled from the appellant's grounds of appeal

set out on his behalf for the determination of this court are as follows:-

“1. *Whether the Court of Appeal was right in not stating fully and/or considering adequately the plea of estoppel by conduct raised by the appellant in this case.*

B 2. *Whether the Court of Appeal was right in completely failing to consider the case of Ude v. Osuji (1998) 9-10 S.C. 188; (1998) 13 NWLR (Pt. 580) 1; (1998) 10 SCNJ 1, which is the latest and binding authority of this honourable court on estoppel by conduct.*

C 3. *Whether the Court of Appeal was right in holding that the revised and/or collective agreements (Exhibits “E” and “F”) were not incorporated or embodied into the contract of service.*

D 4. *Whether the Court of Appeal was right in holding that the collective agreements (Exhibits “E” and “F”) are totally irrelevant to this appeal.*

5. *Whether the Court of Appeal was right in applying the decision in Chukwumah v. The Respondent herein (sic) (1993) 4 NWLR (Pt. 289) 512; (1993) 5 SCNJ 1 to this appeal.”*

E The respondent, for its own part, adopted the five issues proposed by the appellant for the resolution of this appeal.

I have, myself, given a close consideration to the above issues identified by the parties and it seems to me that they are amply covered by the first of the two under-mentioned issues, namely:-

F 1. *Whether the employment of the appellant was lawfully terminated by the respondent.*

2. *What is the measure of damages the appellant is entitled to if his employment was unlawfully terminated.*

G At the oral hearing of the appeal before us, both learned counsel for the parties adopted their respective briefs of argument and proffered additional submissions in amplification thereof.

H The main contention of learned leading counsel for the appellant, O. Mudiaga Odje, Esq., with regard to issue 1 is that the employment of the appellant was unlawfully terminated by the respondent. He submitted that Exhibit N was a letter by which the respondent guaranteed the employment of the appellant with the respondent up to the date of his retirement upon the attainment of 55 years of age on the 3rd August, 1996. He argued that the appellant’s letter of termination, Exhibit O, was in breach of Exhibit N. He conceded

that although Exhibit O is in line with the appellant's contract of employment, the respondent, by Exhibit N, was estopped in law from issuing Exhibit O which purported to terminate the appellant's employment before he attained the retirement age of 55 years. In this regard, learned counsel placed reliance on the provisions of Section 151 of the Evidence Act, Cap. 112, Laws of the Federation of Nigeria, 1990, and on the decisions of this court in *Joe Iga v. Ezekiel Amakiri* (1976) 11 S.C. 1 at 11-13. *Chief Oyeyemi v. Commissioner for Local Government & Ors.* (1992) 2 NWLR (Pt. 226) 661 and *Ude v. Osuji* (1998) 9 - 10 S.C. 188; (1998) 13 NWLR (Pt.580) 1. He argued that the Court of Appeal was in error by failing to apply the decision in *Ude v. Osuji* (supra) on what constitutes estoppel by conduct to the present case and that this occasioned a substantial miscarriage of justice. He further submitted that this failure on the part of the court below amounted to a breach of the appellant's right to fair hearing guaranteed under the Constitution.

Learned counsel next referred to the respondent's Information Hand Book and End of Service Benefits issued for the information of staff, otherwise also called the Collective Agreements, Exhibits E and F, and submitted that the court below was in error by holding that they were not incorporated or embodied in the appellant's contract of service, Exhibit D.

According to learned counsel, the respondent having admitted paragraph 7 of the appellant's Statement of Claim to the effect that the terms and conditions of the appellant's contract of service, Exhibit D were from time to time modified by Collective Agreements could not maintain that Exhibits E and F were not incorporated in Exhibit D, or that they did not supplement the said Exhibit D. He submitted that failure by both courts below to consider Exhibits E and F was tantamount to a failure of justice and/or failure of fair hearing at the trial. The Court of Appeal, in particular, was in error by holding that the said Agreements, Exhibits E and F, were totally irrelevant to the appeal. He conceded that although there is nothing in the Collective Agreements, Exhibits E and F, which deals with the mode of termination of the contract of employment between the parties, the relevance of those Agreements stemmed from the fact that they enhanced the appellant's retirement benefits and the terms of his pension. Learned counsel finally submitted that the Court of

Appeal was wrong in applying the decision of this court in *Chukwumah v. Shell Petroleum Development Company* (1993) 4 NWLR (Pt. 289) 512. He argued that whilst in *Chukwumah's* case, the Collective Agreement, Exhibit C was not relied upon, Exhibits E and F were relied upon by the appellant in the present case. He argued that the appellant's relationship with the respondent in the *Chukwumah* case was regulated strictly by the terms of their contract of employment unlike in the present case where, he claimed, that the appellant was guaranteed employment until his retirement with full benefits on the attainment of 55 years of age. Learned counsel urged the court to allow this appeal, set aside the judgments of the court below and the trial court and to enter judgment for the appellant in terms of the reliefs claimed in paragraph 26 of his Statement of Claim.

Learned counsel for the respondent, A. Mowoe, Esq., in his reply submitted that the appellant's employment was lawfully and properly terminated in accordance with the provisions of his contract of service with the respondent. He referred to Exhibit N and stressed that it did not in any way give any assurance or guarantee to the appellant that he would remain in the employment of the respondent until he attained the retirement age of 55 years. He therefore contended that the appellant's letter of termination, Exhibit O, could not constitute any breach of Exhibit N which was a mere statement of fact by the respondent to the appellant that from its records, appellant would attain the age of 55 years on the 3rd August, 1996 and that he would consequently be due for retirement on that date. He argued that Exhibit N is incapable of being construed as constituting a guarantee that the appellant must remain in the respondent's service until retirement. Consequently, he submitted that the issue of estoppel by virtue of Exhibit N as contended by the appellant pursuant to Section 151 of the Evidence Act was totally misconceived. Learned counsel added, at all events, that the plea of estoppel is only available to a defendant and not a plaintiff.

Continuing with his submissions, learned counsel for the respondent referred to Clause 9 of Exhibit D and submitted that it empowered either the appellant or the respondent to terminate the appellant's contract of service by three months notice or payment of three months salary in lieu thereof. He pointed out that it was this right that the respondent duly exercised. On the Collective Agree-

ments, Exhibits E and F, learned counsel submitted that the Court of Appeal was right in holding that they were not incorporated or embodied in the appellant's contract of service, Exhibit D. He referred to Clause 11 of Exhibit D and submitted that it knocked the bottom off the contention that Exhibits E and F were incorporated in the contract, Exhibit D. He therefore described these Collective Agreements which, at all events, dealt only with various benefits due to the respondent's employees on the attainment of retirement at the age of 55 years for men and 50 years for women as totally irrelevant to the main issue in this case. Learned counsel finally submitted that the Court of Appeal was right in applying the decision in *Chukwumah v. Shell Petroleum Development Company* (supra) to the facts of the present case in that the termination of both employees by the respondent was based entirely on their contract of employment. He therefore, urged the court to dismiss this appeal as unmeritorious. B  
C  
D

Mr. O. Mudiaga Odje in his reply drew attention to the fact that although estoppel is largely employed for the protection of a defendant, it may, in appropriate cases, be used as a sword by a plaintiff. In this regard he placed reliance on the decision in *Odjevwedje v. Echanokpe* (1987) 1 NWLR (Pt. 52) 633 at 644. E

I will now turn to the main issue for determination in this appeal which is whether the employment of the appellant was lawfully terminated by the respondent. For a better appreciation of this issue, I think it is desirable to set out the more important and relevant paragraphs of the pleadings of the parties. F

In paragraphs 3, 4, 6, 7, 14, 15, 19, 22 and 23 of his Statement of Claim, the appellant averred as follows:-

*"3. The plaintiff was employed initially as an Assistant Supervisor and member of the Senior Staff of the Defendant on 3rd May, 1971, following series of successful interviews he attended as indicated in the defendant's letter dated 16th March, 1971 in this regard. The said letter also contained some of the terms and conditions of the contract of employment between the parties herein.*

*4. In due course, and in view of his performance, the plaintiff's appointment was confirmed; and he thus became a permanent staff and also a member of the Shell-BP Staff Provident and Pension Fund as witness: Defendant's letter PERW/3/64.04 dated 3rd May, 1972.*

*6. Some of the basic terms of employment governing the*

plaintiff's contract of service in his new post were as agreed by the parties and as embodied in a document dated 1<sup>st</sup> May, 1974, headed "CONTRACT OF SERVICE NSS", meaning Contract of Service for Nigerian Senior Staff of the Defendant company.

B 7. The Plaintiff states that the terms and conditions embodied in the contract of service NSS were from time to time revised, modified and augmented through negotiation by Trade Unions and Collective Agreements relating to normal retirement on attainment of 55 years of age, gratuity, normal pension lump sum as well as monthly pension, etc.

C 14. Notwithstanding his satisfactory and praiseworthy record of performance and service as outlined above, the defendants by letter dated 31st January, 1995, purported to terminate the appointment of the plaintiff.

D 15. At all material times, the plaintiff was, and has been willing and able to serve, and did serve the defendant efficiently and satisfactorily; and was to so continue in his post and employment right to his retirement age now due and no longer in doubt as from 3rd August, 1996.

E 19. Indeed, the defendant actually reinforced the plaintiff's belief, expectation and the viability of his future plans as aforementioned by its letter Ref. HR/OW dated 25th January, 1995, addressed to the plaintiff unequivocally making "assurance doubly sure" (cf Macbeth IV i. 83) that the plaintiff "will be due for retirement from our service on that date" that is to say, 3rd August, 1996.

F 22. The Plaintiff will at the trial of this action rely on the defendants' letter Ref. HR/OW dated 25th January, 1995 as well as the defendant's entire position and conduct over the years as aforesaid, as amounting to estoppel in pais.

G 23. Further and/or in the alternative, the plaintiff will rely on the provisions of Section 151 of the Evidence Act, Cap. 112, Laws of the Federation of Nigeria, 1990, and contend that the defendant is estopped from terminating his appointment before he attains the compulsory age of retirement (55 years) in that the defendant having with knowledge irrevocably adopted the position and conduct pleaded in sundry paragraphs above, cannot afterwards be permitted to act to the contrary."

H The respondent, for its own part, replied to the above aver-

ments of the appellant in paragraphs 2, 3, 7, 8, 9, 10, 11, 12, 13 and 14 of its Statement of Defence as follows:-

*“2. The Defendant admits paragraphs 2, 3, 4, 5, 6, 7, 10, 11, 13, 14 and 25 of the Statement of Claim.*

*3. The Defendant specifically and vehemently denies all the several spurious averments contained in paragraphs 9, 15, 16, 17, 18, 20, 21, 22, 23, 24 and 26 of the statement of claim and shall at the trial put the plaintiff to the strictest proof of the several averments therein contained.*

*7. With reference to paragraphs 15, 16, 17 and 18 of the statement of claim, the defendant avers that when the plaintiff was employed by it on the 3rd day of May, 1971, as a supervisor/specialist staff (SG8), he entered into a contract of service with it: part of which permitted either of the parties to terminate the employment by giving a one month notice in writing to the other or by paying one month's salary in lieu of notice.*

*8. Plaintiff was subsequently promoted to a senior staff position (SG7) thus necessitating another contract of service on 1st day of May, 1974; part of which gave either plaintiff or the defendant the right to terminate the employment by giving to the other not less than two (2) months notice in writing or by paying two (2) months salary; and on the completion of five (5) years of service; the period of notice shall be three months or payment of three months' salary in lieu of notice.*

*9. The defendant will at the trial rely on the contract of service with plaintiff dated 3rd May, 1971, and 1st May, 1974, respectively.*

*10. With further reference to paragraphs 7, 8 and 9 above, the defendant avers that the plaintiff voluntarily signed the various contracts of service between him and the defendant accepting the terms therein contained.*

*11. The defendant admits paragraph 19 of the statement of claim only to the extent that it sent a letter to the plaintiff. Defendant shall at the trial put the plaintiff to the strictest proof of all the other averments therein contained.*

*12. With reference to paragraphs 20 and 21 of the statement of claim the defendant repeats paragraphs 7 and 8 above.*

*13. With reference to paragraphs 22 and 23, the defendant avers that it did not at any time make the plaintiff believe that he*

would compulsorily reach or attain the retirement age.

14. With reference to paragraph 26 of the statement of claim, the defendant avers that plaintiff's employment was properly terminated in accordance with the provisions of his contract of service with the Defendant. The defendant will at the trial rely on the letter of termination of plaintiff's employment dated 31st January, 1995, and the various contracts of service entered into between plaintiff and defendant."

With the above state of the pleadings, it is apparent that the three most vital documents which are relevant in the determination of this appeal are Exhibits D, N and O. I think it is necessary for a better appreciation of the issue under consideration to set these documentary exhibits out in extenso in this judgment.

Exhibit D, which is the appellant's contract of service with the respondent is comprehensively worded and reads as follows:-

*"THE SHELL-BP PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LIMITED POST OFFICE BOX 230, WARRI, NIGERIA.*

*Dated: 1/5/74*

*TO: F. U. Abalogu*

*Present.*

*Dear Mr. Abalogu,*

**CONTRACT OF SERVICE NSS**

*We are pleased to advise you that we hereby offer you employment as a member of the Senior Staff of our company.*

*So that there may be a clear understanding of the terms of your employment, we are setting them out in this letter. They are as follows:-*

1. *The date of your employment as NSS shall be 1/5/74 (the date of your promotion to NSS).*

2. *Your salary will be at the rate of N3102 per annum, subject to such increases as we may grant to you from time to time at our discretion.*

3. *We undertake during your service to grant you such allowances, privileges and benefits as we may decide from time to time.*

4. *You agree during your employment to give your whole time, service (including Sundays and holidays if the work so requires) to us or any of our Associated Companies in accordance with the orders and directions from time to time given to you by us; to work and*



*reside in such places in the Federal Republic of Nigeria or elsewhere as we may from time to time require, and to obey all applicable rules, regulations and other practices from time to time in operation for the guidance and conduct of staff employed by us, or by any of our Associated companies.*

5. *If it should be necessary, in pursuance of your employment, to travel by air, you hereby agree to be prepared to fly by fixed wing aircraft or helicopter of any recognized airline or owned or chartered by us.* B

6. *In cases of illness, duly certified by our Medical Officers, which prevents you from performing your normal duties, we undertake to pay your full salary to a maximum of 28 days absence per year. Should your illness extend beyond that maximum, your case shall be reviewed by us and our decision regarding further payments will be final. No payments whatsoever will be made if the illness is due to your negligence or misconduct.* C D

7. *You will be entitled to 36 consecutive days' leave after each year of service.*

8. *You will be required to make your own housing arrangements.* E

9. *You, or we, shall have the right at any time to terminate your employment under this letter by giving to the other not less than two months' notice in writing, or by paying two months' salary in lieu of notice; and on the completion of five years of service, the period of notice shall be three months, or three months' salary in lieu of notice.* F

10. *We shall have the right at any time summarily to dismiss you for any cause which justifies summary dismissal, including but not limited to, serious misconduct, dishonesty, or actions conflicting with your obligations under Clauses 4 and 11 of this letter. In case of such dismissal, you shall not be entitled to any notice or payment in lieu.* G

11. *You hereby acknowledge that you have read our rules relating to confidential information and inventions attached to this letter. You hereby agree to be bound by all the undertakings of the said rules which form part of this letter of agreement.* H

*Please confirm your agreement and acceptance to the above terms and conditions by completing, dating and signing over a 25k*

*stamp, the declaration on the attached duplicate of this letter.*

*Yours faithfully,*

*For: THE SHELL B.P. PETROLEUM DEV.*

*COMPANY OF NIGERIA LIMITED.*

*(SGD.)*

B *E. O. UGHOVWA*

*HEAD PERSONNEL SERVICES*

*TO: The Shell-BP Petroleum Development Company of Nigeria Limited.*

C *I, F. U. Abalogu, having read the foregoing letter and the rules concerning confidential information and inventions accept employment with you on the terms and conditions set out therein and I agree to be bound by these terms and conditions in all respects.*

*Dated: 6/5/74*

D *Signature: (SGD.)”*

There is next Exhibit N in respect of which the main question is whether the respondent by that letter assured or guaranteed the appellant that he would remain in respondent's service until his retirement on the attainment of the age of 55 years inspite of the respective rights of the parties under Exhibit D to terminate the contract of service by giving some months notice or payment of salary in lieu of such notice. Exhibit N reads thus:-

E *“The Shell Petroleum Development Company of Nigeria Limited (Incorporated in Nigeria) Reg. No. RC 892. P.O. Box 230, WARRI, NIGERIA.*

*Our Ref: HROW*

*25th January, 1995*

*Mr. F. U. Abalogu (11103)*

G *PLMW.*

*Dear Mr. Abalogu,*

*RETIREMENT FROM COMPANY SERVICE*

H *According to our records, you will attain the age of 55 years on 3rd August, 1996. We therefore write to confirm that you will be due for retirement from our service on that date. We shall send you a letter stating the provisional details of your entitlements nearer the date of your retirement.*

*Please note that you must be leave-cleared as at that date. To this end, you should in liaison with your Human Resources Adviser,*

*now make necessary arrangements to ensure that you take all your accrued leave such that your last day of leave is the date at which you reach the age stated above.*

*Meanwhile, we should be grateful if you would sign the attached duplicate copies of this letter as acknowledgment of its receipt.*

B

*Yours sincerely*

*For: THE SHELL PETROLEUM  
DEVELOPMENT COMPANY OF  
NIGERIA LIMITED.*

C

*(SGD.)*

*O. B.A. OSOSANWO*

*PROCUREMENT & LOGISTICS MANAGER  
(WEST)"*

There is finally Exhibit O by which the respondent terminated D  
the appointment of the appellant with effect from the 31st January,  
1995. It reads as follows:-

*"THE SHELL PETROLEUM DEVELOPMENT  
COMPANY OF NIGERIA LIMITED*

E

*(Incorporated in Nigeria) Reg. No. 892.*

*POST OFFICE BOX 230, WARRI, NIGERIA*

*31st January, 1995*

*Mr. F. U. Abalogu,*

*PLMW*

F

*Warri.*

*Dear Mr. Abalogu,*

*TERMINATION OF APPOINTMENT*

*We refer to our recent discussion with you and hereby confirm  
that with effect from 1st February, 1995, your services are no longer G  
required.*

*In accordance with Clause 6 of your Contract of Service dated  
1st May, 1974, we enclose herewith, an FBN (PLC.) -Warri cheque  
No. WA/SJ 049531 of 3rd February, 1995 for N130,101.76 (One  
Hundred and Thirty Thousand, One Hundred and One naira, Sev- H  
enty Six Kobo) only being three months salary in lieu of notice (net  
of tax).*

*The provisional separation benefits are as follows:*

*CASH BENEFITS:*

1. Pension Lumpsum as at 31/10/95 N1,524,535.70.

2. Gratuity as at 31/10/95 - N762,267.85

**DEDUCTIONS**

1. HOS Lumpsum Advance - N851,866.00

Your final date on payroll will therefore be 31st January, 1995,

B up to which date we shall pay your current salary and applicable standard allowances.

From the above entitlements, we shall make the usual standard monthly deduction for (PAYE) Income Tax and your subscriptions to the National Provident Fund. The exact details of the payments and deductions will be included in a confirmatory Statement of Account which will be forwarded to you separately in due course. For this purpose, we request you to advise us of your contact address.

D Meanwhile, please contact your HR Adviser in Human Resources (Operations) Department to clarify any point you may have on the above and to surrender your Company Identify Card and Driving Permit. You should also contact Payroll Section (FNCW/5) in connection with the payment of your final entitlements.

E We normally offer our employees leaving our services the opportunity of undergoing our routines, exit medical examination with our Medical Department. If you wish to avail yourself of this facility, please contact our Medical Department, Warn to make the appointment. This offer is valid for one month from the date of this letter after which it will lapse. However, if you are not interested in the offer, would you please sign and return to us the attached waiver form.

Yours certificate of service is attached herewith.

G Yours sincerely,  
For: THE SHELL PET. DEV. CO.  
NIGERIA LIMITED.  
(SGD.)

O.D. ADESANYA  
H HUMAN RESOURCES  
MANAGER- WESTERN DIVISION."

It is indisputable from Exhibit D, the appellant's contract of employment, that it's precise duration was not therein stipulated. Clause 9, however, does expressly spell out the manner of determin-

ing the contract. This provision which I have already set out above stipulates that either party shall have the “right at any time to terminate” the appellant’s employment under Exhibit D by giving to the other not less than two months notice in writing, or by payment of two months’ salary in lieu of notice; and on the completion of five years of service, the period of notice shall be three months, or three months’ salary in lieu of notice. Although the appellant averred in paragraphs 22 and 23 of his Statement of Claim that the respondent by its letter, Exhibit N guaranteed him that he would remain in his employment until his retirement on the attainment of 55 years of age and therefore, pleaded estoppel in pais, the respondent vigorously denied this assertion in paragraph 13 of its Statement of Defence. ***It seems to me clear that Exhibit N is a mere notice by the respondent to the appellant that from the respondent’s records, he would attain the age of 55 years on the 3rd of August, 1996, and would be due to retire from the respondent’s service on that date. The letter, therefore, advised the appellant of the necessary steps to be taken by him in the mean time. In my opinion, Exhibit N, cannot be construed as constituting an assurance or guarantee that the appellant would remain in respondent’s employment until he attained the retirement age of 55 years. I am also in agreement with both courts below that Exhibit N cannot be interpreted to override the express contractual stipulation relating to the determination of Exhibit D by either party to the contract as provided under Clause 9 thereof.***

Attention must be drawn in this regard to the appellant’s solemn acceptance of the entire terms and conditions of Exhibit D when on the 6th day of May, 1974, he declared as follows:-

*“I, F. U. ABALOGU having read the foregoing letter and the rules concerning confidential information and inventions accept employment with you on the terms and conditions set out therein and I agree to be bound by these terms and conditions in all respects.*

*Dated: 6/5/74*

*Signature: (SGD).”*

***Exhibit D, which the appellant duly accepted constitutes, without doubt, the full terms and conditions of the contract of employment between the parties and the same must be con-***

**strued accordingly.** See *Nigerian Produce Marketing Board v. Adewunmi* (1972) 1 All NLR (Pt. 2) 433 and *Sule v. Nigeria Coal Board* (1985) 6 S.C 62.

**The court in construing the relationship of the parties to a written agreement must confine itself to the plain words and meaning which are derivable from their rights and obligations thereunder.** See *Fakuade v. Obafemi Awolowo University Teaching Hospital Management Complex* (1993) 5 NWLR (Pt. 291) 47 at 63. **Where, as in the present case, a contract contains a provision that either party thereto may determine it by specified notice or payment of prescribed sum of money in lieu thereof, such notice or payment as the case may be must be complied with in strict accordance with the terms of the contract. Where, however, the right to determine the contract by notice depends upon the performance of a condition precedent, the party seeking to exercise his right of determining the contract must first establish that the prescribed condition precedent was fulfilled.**

**In the present case, the only condition precedent for the determination of the appellant's contract of employment is as stipulated in Clause 9 of Exhibit D. Apart from the giving of 3 months notice or payment of 3 months salary in lieu of such notice; no other condition precedent for the effective exercise of the power to terminate the contract of service by either party thereto was stipulated.** I think the respondent was perfectly entitled to determine the appellant's contract of service, Exhibit D, by Exhibit O as it did.

Learned counsel for the appellant also contended that by Exhibit N, the respondent was estopped from determining the employment of the appellant by Exhibit O in view of the fact that the appellant had rendered satisfactory services over the years to the respondent and for which he earned promotions and commendations. He therefore submitted that estoppel operated in law against the respondent by virtue of its letter to the appellant, Exhibit N. He argued that in the circumstance, the appellant could not be retired by the respondent before he attained the retirement age of 55 years. In this regard, he relied on the plea of estoppel in pais and the provisions of Section 151 of the Evidence Act, 1990 as well as the decision of this court in *Joe Iga v. Ezekiel Amakiri* (1976) 11 S.C. 1 at 11-13.

The learned trial Judge had cause to consider the above submission of learned appellant's counsel when he observed thus:-

*“Learned Senior Advocate also submitted that by Exhibit N, the defendant is estopped from writing Exhibit O to the plaintiff because of his satisfactory services over the years for which he earned promotions and commendations and as such he cannot be retired before he attained the age of fifty-five years and relied on Section 151 of the Evidence Act, Cap. 112, Laws of the Federation and the case of Joe Iga v. Ezekiel Amakiri (1976) 11 S.C. p.1 at 11-13. I have had a close look at Exhibit N and I am of the firm and clear view that it cannot by any stretch of the imagination or liberal interpretation constitute estoppel by conduct so as to bring into play the doctrine of estoppel including that as enshrined in Section 151 of the Evidence Act supra.”*

This observation of the trial court was endorsed by the Court of Appeal. I myself, have given a most careful consideration to the issue and I am in complete agreement with both courts below that Exhibit N does not constitute estoppel by conduct so as to prevent the respondent from terminating the employment of the appellant under Clause 9 of Exhibit D before he attained the retirement age of 55 years.

Learned counsel for the respondent, however, submitted in the alternative that the plea of estoppel, at all events, was not open to a plaintiff in a suit such as that of the appellant. All that needs be said in this regard is that although the plea of estoppel, generally, is a shield for the protection of a defendant, it has since been settled that it can never stand alone as giving a cause of action in itself to a plaintiff. Accordingly, the plea cannot do away with the necessity to prove consideration in law where that is an essential part of a plaintiff's cause of action. In that sense, it can validly be employed as a sword by a plaintiff, but this as above stated, must be confined to appropriate cases only. See *Odjevwedje & Anor. v. Echanokpe* (1987) 1 NSCC 313 at 370, *Mogo Chinwendu v. Nwanegbo Mbamali & Anor.* (1980) 3-4 S.C. 31 at 48 and *Ezewani v. Onwordi* (1986) 4 NWLR (Pt. 33) 27 at 55.

In the present case however, it is enough to state that ***there are no facts constituting estoppel in pais or estoppel under Section 151 of the Evidence Act for application in favour of***

**the appellant. No doubt, it is now well settled that where one party has, by his words or conduct, made to the other a promise or assurance which was intended to effect the legal relations between them and to be acted on accordingly, then, once the other party had taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance had been made by him. He must accept their legal relations as modified by himself, even though it is not supported in point of law by any consideration, but only by his word.** See *Combe v. Combe* (1951) 1 All ER 767 at 770 per Denning, L.J., as he then was. See too *Tika Tore Press Ltd. v. Ajibade Abina & Ors.* (1973) 1 All NLR (Pt.11) 244 at 253. **In this case, there is absolutely no where in Exhibit N that the respondent promised, assured or gave any guarantee to the appellant that he would remain in its employment until he reached the retirement age of 55 years.** It is plain to me that no estoppel applies against the respondent in the present case to stop it from exercising its rights under Clause 9 of Exhibit D.

In this regard, the Court of Appeal per Mahmud Mohammed, JCA., gave the issue of whether the appellant's appointment was properly terminated under Exhibit D due consideration and concluded as follows:-

*"I entirely agree with the learned trial Judge in the way and manner he resolved this same issue. In fact the appellant having signed the clear undertaking outlined in the last paragraph of the contract of service, Exhibit D to be bound by the terms thereof, has no reason at all to dispute the right of the respondent to terminate his appointment by paying him 3 months salary in lieu of notice in line with paragraph 9 of the same contract of service. The appellant must realise that the right to terminate the same contract of service under Clause 9 of Exhibit D was also available to him to exercise and terminate his services with the appellant if he had so desired to do so notwithstanding the existence of the respondent's letter to him, Exhibit N, intimating him of his approaching retirement in August, 1996. In view of the foregoing, therefore, I am also of the firm view that the respondent was not estopped by its letter of 25/1/95, its general conduct, facts and circumstances of this case from exercising its contractual rights*



*under Clause 9 of the contract of service Exhibit D to terminate the appointment of the appellant.....”*

I need only say that I fully endorse the above observation of the court below on the issue.

It was also argued on behalf of the appellant that he was at all material times a confirmed senior pensionable staff of the respondent, that he was a contributor to the respondent’s staff Provident and Pension Fund and that he served the respondent commendably with dedication and devotion that he could not have his appointment terminated.

With the greatest respect to learned appellant’s counsel, the above submission, in my view, undermines the obvious difference between Clauses 9 and 10 of the Contract of Service, Exhibit D. Whereas clause 9 confers a general and unqualified right to either party thereto to terminate the contract of service at any time by giving to the other the three months stipulated period of notice or payment of three months salary in lieu of such notice, clause 10, on the other hand, confers a qualified right on the respondent at any time to dismiss the appellant summarily for any cause which justifies such a severe action, including but not limited to serious misconduct, dishonesty or actions conflicting with the appellant’s obligations under clauses 4 and 11 of Exhibit D. Misconduct, therefore, has nothing to do with clause 9 of Exhibit D. Under clause 10, however, dismissal is permissible on ground of serious misconduct etc., as expressly provided thereunder. Appellant was not however, dismissed by Exhibit O but merely terminated pursuant to clause 9 of Exhibit D to which misconduct, whether serious or otherwise, is totally irrelevant. In my view, the termination of the appellant was patently lawful and in accordance with his contract of service with the respondent, Exhibit D.

Learned counsel for the appellant next dealt with the respondent’s Information Hand Book and End of Service Benefits otherwise also called the Collective Agreements, Exhibits E and F and contended that the court below was in error by holding that they were not incorporated into the Appellant’s Contract of Service, Exhibit D. The trial court, for its own part, ignored these Agreements and did not consider them in its judgment.

In this regard, the court below stated:

*“If the revised and/or collective agreements, Exhibits E and F;*

have been incorporated or embodied into the conditions or contract of service, Exhibit D and yet the lower court ignored or refused to consider them in its judgment, then the lower court was in error. However, if such revised and/or collective agreements, Exhibits E and F, were not incorporated or embodied into the conditions or contract of service, Exhibit D, then the lower court was perfectly justified in ignoring or refusing to consider them in its judgment as in that case the said collective agreements would be totally irrelevant as the parties are bound only by the contract of service dated 1/5/74 which is binding between the parties.”

There can be no doubt that where Collective Agreement is incorporated or embodied in the conditions of a contract of service whether expressly or by necessary implication, it will be binding on the parties but not otherwise. See *Chukwumah v. Shell Development Company of Nigeria Ltd.* (1993) 4 NWLR (Pt. 289) 512 at 543-544. In the present case however, **the Collective Agreements were in no way incorporated in the Appellant’s Contract of Service, Exhibit D. Clause 11 of Exhibit D provides thus:**

**“You hereby acknowledge that you have read our rules relating to confidential information and inventions attached to this letter. You hereby agree to be bound by all the undertakings of the said rules which form part of this letter of agreement.”**

**It is plain to me that had the Collective Agreements, Exhibits E and F, been intended to be binding on the parties, Clause 11 of Exhibit D would have incorporated them as forming part and parcel of the Appellant’s Conditions of Service just as the Respondent’s rules relating to “Confidential Information and Inventions” were expressly incorporated into Exhibit D as forming part and parcel thereof.**

I think the court below was perfectly right when upon a close consideration of the issue it held thus:-

**“Therefore in the present case, as the collective agreements, Exhibits E and F, were neither incorporated nor embodied in the original contract of service Exhibit A, the learned trial Judge was quite right in ignoring or refusing to consider them in his judgment, in spite of the fact that relevant facts justifying the admission of the documents have been duly pleaded in paragraphs 7 and 8 of the appellant’s**

*statement of claim. The admission of the documents in evidence in the course of the trial is one thing while the requirement of their consideration in the judgment depends entirely on their relevance to the issue before the court. Having regard to the contents of Exhibit D, the original contract of service, the collective agreements, are totally irrelevant. For this reason, the non-consideration of the documents in the judgment of the lower court did not have any effect on the appellant's right of fair hearing."* B

***I may add that even if Exhibits E and F had been incorporated expressly in Exhibit D, and I have clearly taken a decision to the contrary, they still would have remained immaterial and irrelevant to the central issue that arises for determination in this case which is whether the employment of the appellant was lawfully terminated under Clause 9 of Exhibit D about 2 years before he would have gone on retirement. This is because, Exhibits E and F, the Collective Agreements, deal exclusively with various benefits due to the respondent's employees if and when they attained the retirement age of 55 years for men and 50 years for women. But the central issue in these proceedings is whether the appellant's contract of service was lawfully terminated under Clause 9 of Exhibit D about 2 years before he would have gone on retirement. It is therefore, obvious that the Collective Agreements, Exhibits E and F, have no materiality or relevance whatsoever to the main issue for decision in this case as the appellant had not attained the retirement age of 55 years when his employment was terminated.*** C  
D  
E  
F  
 Besides, learned counsel for the appellant did quite rightly concede that there is nothing in the Collective Agreements in issue which deals with the mode of termination of the contract, Exhibit D, or modifies any of its terms. G

In my view, Exhibit D constitutes the relevant contract between the parties in the present case and may be construed in terms of its plain provisions. Issue 1 is accordingly resolved in favour of the respondent. In view of my decision on issue 1, issue 2 becomes otiose and does not now arise for consideration. H

The conclusion I therefore reach is that this appeal is without substance and it is hereby dismissed with N10,000.00 costs to the respondent.

**UWAIS CJN**

I have had the privilege of reading in draft the judgment read by my learned brother, Iguh, JSC. I entirely agree with him that this appeal lacks merit and that it should be dismissed.

B Accordingly, I hereby dismiss the appeal with N10,000.00 costs to the Respondent.

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**OGUNDARE JSC**

C I have had the privilege of reading in advance the judgment of my learned brother, Iguh, JSC., just delivered. For the reasons given by him in the said judgment which reasons I hereby adopt as mine, I too dismiss this appeal with N10,000.00 costs to the Respondent.

D

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**MOHAMMED JSC**

E I have had the preview of the opinion of my learned brother, Iguh, JSC., in the judgment just read. I have had the privilege of reading the judgment in draft before now. The appeal is without merit and for the reasons given in the lead judgment, the appeal is dismissed. I affirm the judgment of the court below and award N10,000.00 in favour of the respondent.

F

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**MUSDAPHER JSC**

I have had the honour to read in advance the draft of the judgment of my Lord, Iguh, JSC., just delivered.

G I agree with the reasonings and the conclusion arrived thereafter. For the same reasons, which I respectfully adopt as mine, I too dismiss the appeal as lacking in merit and affirm the decision of the court below. The respondent is entitled to costs which I assess at N10,000.00.

H