

**SUPREME COURT OF NIGERIA**  
30TH JANUARY, 2004. SC. 262/2000  
**CORAM:- I. L. KUTIGI, A. I. KATSINA-ALU, U. A.**  
**KALGO, S. O. UWAIFO, D. O. EDOZIE, JJSC**

GRACE JACK ..... APPELLANT  
AND  
UNIVERSITY OF AGRICULTURE ..... RESPONDENT  
MAKURDI

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FUNDAMENTAL RIGHTS - Court with jurisdiction - The Federal High Court and the high court of a state have concurrent Jurisdiction (H1)

FUNDAMENTAL RIGHTS - Jurisdiction of High Court - Has not been taken away by Decree No. 107 of 1993 - Even where the claim is against a Federal Government Agency - It can be handled by the High Court of a state where the breach occurred (H2)

FUNDAMENTAL RIGHTS - Procedure for its enforcement - Includes inter alia, securing leave of court first and foremost (H3)

PRACTICE & PROCEDURE - Actions - Commencement - An action for breach of contract of employment - Should be commenced by writ of summons - Not by fundamental right enforcement application (H4)

**FACTS**

The appellant was employed by the respondent on 4th. June, 1990 as a clinic attendant. On 7th. May, 1991 she was transferred to the Bur-sary Department of the University. The appellant remained in that De-partment until 23rd. September, 1993 when she was served with a letter of suspension. An internal inquiry was then set up by respondent to determine the involvement of the appellant in some misconduct in rela-tion to the collection and issuance of receipts for fees and other dues from students. The panel of inquiry found the appellant guilty of miscon-

duct and accordingly dismissed her from service on 17th. February, 1994.

The appellant was aggrieved and consequently by an ex parte application brought under the Fundamental Rights (Enforcement Procedure) Rules, 1979, she was granted leave by the High Court of Benue State, holden at Makurdi to file a notice of motion against the respondent claiming, inter alia (a) An order quashing the letters of suspension and dismissal as the said letters were issued in breach of the rule of natural Justice, the Federal University of Agriculture, Decree No. 48 of 1992 and the conditions of service of junior staff of the respondent (b) An order reinstating the applicant to her appointment with the respondent prior to the purported suspension/dismissal.

At the hearing of the case counsel for the parties addressed the court. In his judgment, the learned trial judge granted all the reliefs with the exception of the alternative relief which was abandoned. The University being dissatisfied appealed to the Court of Appeal. The appeal was allowed and the decision of the trial court was set aside. The appellant has now appealed to the Supreme Court.

**ISSUE FOR DETERMINATION**

*"Whether the trial court is a High Court in Benue State as envisaged by Section 42(1) of the 1979 (Constitution) as to confer it jurisdiction over the appellant's application for breach of her Fundamental Right to fair hearing against her employers, University of Agriculture, an agency of the Federal Government."*

**HELD** (Unanimously allowing the appeal but striking out the plaintiff's claim per lead judgment of **KATSINA-ALU JSC**)

***Fundamental rights - Court with jurisdiction***

1. In the resolution of this issue, I would like to point out that section 42 (1) of the Constitution of the Federal Republic of Nigeria which I have reproduced above has provided the court for the enforcement of the fundamental rights as enshrined in chapter IV. A person whose fundamental right is breached, being breached or about to be breached may therefore apply to a High Court in that State for redress. Order 1 rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 1979 which

came into force on 1 January, 1980 defines "court" as meaning "the Federal High Court or the High Court of a State." What this means is this. Both the Federal High Court and the High Court of a State have concurrent jurisdiction. An application may therefore be made either to the Judicial Division of the Federal High Court in the State or the High Court of the State in which the breach occurred, is occurring or about to occur. (p. 357 F)

### ***Fundamental rights - Jurisdiction of High Court***

2. Now, be that as it may, it has been contended for the Respondent that Decree No. 107 of 1993 has taken away the jurisdiction of the State High Court. I am unable to agree with this contention. I have closely read Decree No. 107 of 1993 and I find nothing even remotely which has repealed or abrogated the provisions of section 42 of the 1979 Constitution. Rather a careful reading of the Decree reveals that the provisions of section 42 of the 1979 Constitution were preserved by Decree 107 of 1993. I would like to add that section 230(1) of Decree No. 107 of 1993 is a general provision relating to the jurisdiction of the Federal High Court while section 42 of the 1979 Constitution relates to special jurisdiction for the enforcement of the fundamental rights provided for in chapter IV of the 1979 Constitution. As I have already stated, the High Court of Benue State has concurrent jurisdiction with the Federal High Court in matters of the enforcement of a person's fundamental rights provided for in chapter IV of the 1979 Constitution. I therefore answer this issue in the positive. (p. 358 E)

### ***Procedure for enforcement of fundamental rights***

3. The next question is one of procedure. For the enforcement of fundamental rights a special procedure has been established by law as prescribed by the Fundamental Rights (Enforcement Procedure) Rules, 1979. The process of enforcement of Fundamental Rights is commenced by an application made to the court; first, for leave; and upon leave being granted, by notice of motion or by originating summons for redress. No oral evidence is called. The application is heard on the affidavit in support of

the application and the affidavits which every party to the application proposes to use at the hearing. The affidavits constitute the evidence.  
(p. 359 D)

**B Actions - Commencement**

4. On the other hand an action for breach of contract is commenced by a writ of summons. This is the normal procedure in actions tried on the pleadings and to which rules of pleadings apply. View, conceded that the plaintiff's action was for breach of contract of employment. That being so, the present action should have been commenced by a writ of summons. In the light of the foregoing reasons, I allow the appeal but strike out the Plaintiff's claim on the ground that it was wrongly commenced under the Fundamental Rights (Enforcement Procedure) Rules 1979.  
(p. 359 G)

**REPRESENTATION**

M. K. Aondoakaa Esq. For the appellant

E Respondent not represented

**CASES REFERRED TO**

Ali vs. CBN (1997) 4 NWLR (pt.498) 192 at 203

F Tukur v. Government of Gongola State (1989) 4 NWLR (pt.117) 617  
EGBUONU V. BORNO RADIO TELEVISION CORP. (1987) 12 N.W.L. R. (PT.531) 29

Wema bank Ltd. (1983) 1 SCNLR 296

G Federal Mortgage Bank of Nigeria v, Olloh (2002) 9 NWLR (pt. 773) 475  
at 489

Tukur v. Government of Taraba State (1997) 6 NWLR (pt. 510) 549,  
(1997) 6 KLR (pt 52) 1238

SEA Trucks Nigeria Ltd. (2001) 2 NWLR (pt.696) 159,

H Madukolu & ors v Nkemdilim (1962) A. N. L. R. 581

**STATUTES REFERRED TO**

Constitution of the Federal Republic of Nigeria s. 42

Constitution (Suspension & Modification) Decree No. 107 of 1993, ss. 42, 230

Fundamental Rights (Enforcement Procedure) Rules 1979, O. 1 r. 2

**LEAD JUDGMENT BY KATSINA-ALU JSC**

This appeal is from a decision of the Court of Appeal, Jos Division delivered on 8 May, 2000 in Appeal No. CA/J/47/2000 allowing the appeal of the Respondent to it against the decision of Ogbole J. of the High Court of Benue State in suit No. MHC/749M/94 given on 22 September, 1995.

The facts giving rise to this case are largely undisputed. The Appellant was employed by the Respondent on 4 June, 1990 as a Clinic Attendant. On 7 May 1991 she was transferred to the Bursary Department of the University. The appellant remained in that Department until 23 September 1993 when she was served with a letter of suspension. An internal inquiry was then set up by the respondent to determine the involvement of the Appellant in some misconduct in relation to the collection and issuance of receipts for fees and other dues from students. The panel of inquiry found the Appellant guilty of misconduct and accordingly dismissed her from service on 17 February, 1994.

The Appellant was aggrieved and consequently by an ex parte application brought under Order 1 rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 1979 she was granted leave by the High Court of Benue State, holden at Makurdi to file a notice of motion against the respondent claiming as follows :-

"2. (a) *An order quashing letters of suspension and dismissal with Ref. Nos. R/UAM/JP/1315/VOL.1/41 of 23/9/93 and R/UAM/JP/1314/VOL.1/52 of 17/2/94 as the said letters were issued to the applicant in breach of the rule of natural justice the Federal Universities of Agriculture, Decree No. 48 of 1992 and the conditions of Service of junior staff of the respondent.*

(b) *An order reinstating the applicant to her appointment with the respondent prior to her purported suspension/dismissal.*

(c) *An order that all the benefits accrued and accruing to the*

*applicant including salary and other allowances of the applicant be computed and paid to her within two weeks from the date this Hon. court may deem fit to make its final order.*

(d) *An order that the respondent or any of its agents/ servants shall not harass or otherwise render the applicant incapable of performing her duties and or securing her salary, allowances and benefits accrued and or accruing to her.*

(e) *=N=50,000.00 General damages for breach of contract of employment.*

ALTERNATIVELY

*An order that the applicant be paid =N=450,359.58k representing what the applicant could have earned in the next 33 years at =N=13,647.20 per annum.*

3. GROUND S UPON WHICH RELIEFS ARE SOUGHT

(i ) *Applicant was never accused of any wrong doings or confronted with any case of misconduct and afforded an opportunity of defending herself before she was purportedly suspended/ dismissed from the employment of the respondent.*

(ii) *The procedure to be followed in removing any staff for misconduct as provided in Decree No. 48 of 1992, was not attempted let alone followed before applicant was removed.*

(iii) *Throughout the period that the applicant appeared before the panel investigating irregular payments on 16/8/93 and 1/9/93, she appeared as witness.*

(iv) *Applicant is entitled to remain in the employment of the respondent until she reaches the retiring of 65 years.*

*Dated this 1st day November, 1994."*

At the hearing of the case counsel for the parties addressed the court. In his judgment, the learned trial Judge (Ogbole J.) granted all the reliefs with the exception of the alternative relief which was abandoned. As I have already indicated, the appeal by the University to the Court of Appeal was allowed and the decision of Ogbole J. was set aside. This appeal is against the decision of the Court of Appeal.

The Appellant raised a lone issue in her brief of argument. It reads:

*"Whether the trial court is a High Court in Benue State as envisaged by Section 42(1) of the 1979 (Constitution) as to confer it jurisdiction over the appellant's application for breach of her Fundamental Right to fair hearing against her employers, University of Agriculture, an agency of the Federal Government."*

For its part, the Respondent formulated four issues for determination which read:

1. *Whether or not the Benue State High Court was competent to entertain the matter especially the issue respecting the letter of dismissal dated 17/2/94 having regard to the provisions of section 42 and 230 of Decree 10 7 of 1993 which came into effect on 17th November, 1993.*

2. *Whether or not the applicable law in respect of the letter of suspension dated 22/9/93 on the issue of jurisdiction was the law when the cause of action arose or the law in force when the appellant filed the motion ex-parte on 1/11/94.*

3. *Whether or not the issue with respect to the letter of suspension dated 22/9/93 was competent on 1/11/94 the date on which applicant filed an application for the enforcement of her Fundamental Human Right.*

4. *Whether or not the action was statute barred having regard to the provision of section 2 (a) Public Officers Protection Act."*

I shall deal with the Appellant's lone issue which is similar to the Respondent's first issue.

In the course of its judgment, the Court of Appeal per Mangaji JCA Stated thus:

*"The first relief sought by the Respondent was, 'an order quashing letters of suspension and dismissal with Ref. Nos. R/UAM/JP/1315/Vol.1/41 of 23/9/93 and R/UAM/JP/1314/Vol.1/52 of 17/2/94.....' The facts upon which the Respondent based her action only became complete on 17/2/94 when she served with the letter of dismissal. That prompted her to apply under the fundamental rights enforcement procedure rules, 1979 for redress. Obviously, since the Respondent's action challenged her dismissal by the letter dated 17/2/94, the facts upon which she relied to justify the reliefs she sought could not*

have completely accrued before that date. And by that date Decree 109 of 1993 had come into operation effectively ousting the jurisdiction of State High Courts as specified in section 230(1) thereof. Evidently the Respondent questioned the act of the Appellant before the High Court of Benue State which said act was carried out after Decree No. 107 of 1993 had come into force. Withal the said Decree had effectively amended sections 42(1) and 236(1) of the 1979 Constitution vesting the Federal High Court with exclusive jurisdiction to entertain actions and proceedings of the nature instituted by the respondent. My clear position is that the Respondent was wrong in instituting her action at the High Court of Benue State and the said court was in error in assuming jurisdiction because it lacked any. The effect of S-230(1)(S) of Decree No. 107 of 1993 is to oust the jurisdiction of the States High Courts and to vest jurisdiction in the Federal High Courts in actions and proceedings which the reliefs sought are for declaration or injunction affecting the validity of any executive or administrative action or decision of the Federal Government or any of its agencies. See *Ali vs. CBN* (1997)4 NWLR (pt.498) 192 at 203."

In conclusion, Mangaji JC declared thus:

"The jurisdiction of the Benue State High Court was clearly ousted by S - 230 (1) (S) of the Constitution (Suspension and Modification) Decree No. 107 of 1993. That being so the proceedings conducted by the learned trial judge are absolutely null and void and of no effect whatsoever. For the above reason therefore, this appeal must succeed. It is accordingly allowed. Suit No. MHC/749M/94 filed before the court below and the proceedings thereto including the ruling of the Hon. Justice Ogbole dated 22nd September, 1995 are hereby set aside."

The main issue therefore in this appeal is the question of the jurisdiction of the trial Benue State High Court.

The enforcement of fundamental rights under which this action was brought is provided for in Chapter IV of the 1979 Constitution. Section 42 thereof confers special jurisdiction on the High Court. It is appropriate at this stage to read section 42(1)(2) and (3):

"42-(1) Any person who alleges that any of the provisions of this



*Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.*

*(2) Subject to provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within that state of any rights to which the person who makes the application may be entitled under this chapter.*

*(3) The Chief Justice of Nigeria may make rules with respect to the practice and procedure of a High Court for the purposes of this section."*

By virtue and in the light of the above provisions, learned counsel for the Appellant submitted that the application under these rules should be brought in a High Court in a State where the violation occurred or is likely to occur. For this submission learned counsel for the Respondent submitted that section 42(1) reproduced above has been amended by (section 42) of the Constitution (Suspension and Modification) Decree No. 107 of 1993. It was further submitted that section 230(1) (5) has also been amended and the combined effect of these amendments is to oust the jurisdiction of the State High Courts from entertaining matters coming before it including matters under section 42 of chapter IV of the Constitution of the Federal Republic of Nigeria 1979. Learned counsel, for this submission, cited the case of Ali v. C.B.N. (1987) 4 NWLR (pt. 498) 192 at 203.

**In the resolution of this issue, I would like to point out that section 42 (1) of the Constitution of the Federal Republic of Nigeria which I have reproduced above has provided the court for the enforcement of the fundamental rights as enshrined in chapter IV. A person whose fundamental right is breached, being breached or about to be breached may therefore apply to a High Court in that State for redress. Order 1 rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 1979 which came into force on 1 January, 1980 defines "court" as meaning "the Federal High Court or the**

**High Court of a State." What this means is this. Both the Federal High Court and the High Court of a State have concurrent jurisdiction. An application may therefore be made either to the Judicial Division of the Federal High Court in the State or the High Court of the State in which the breach occurred, is occurring or about to occur.** In Tukur v. Government of Gongola State (1989) 4 NWLR (pt.117) 617 this court observed as follows:

*"In this case, Alhaji Umaru Abba Tukur is complaining that there has been a breach of one or the other of his fundamental rights to his liberty or his freedom of movement. This contravention allegedly took place in Gongola State. From section 42(1) above, he has apply to a High Court in that state, that is the High Court where the contravention or breach occurred. The Federal High Court Kano cannot be a High Court in that State which was envisaged by section 42(1) above. Even if the jurisdiction of the Kano Judicial Division of the Federal High Court extends to and includes Gongola State, the Kano Federal High Court cannot without undue violence to the plain meaning of the words be described as a high court in that state namely a High court in Gongola State where his fundamental rights were breached, the Appellant in this case did not apply to a High Court in that State as required by section 42(1) of the 1979 Constitution."*

**Now, be that as it may, it has been contended for the Respondent that Decree No. 107 of 1993 has taken away the jurisdiction of the State High Court. I am unable to agree with this contention. I have closely read Decree No. 107 of 1993 and I find nothing even remotely which has repealed or abrogated the provisions of section 42 of the 1979 Constitution. Rather a careful reading of the Decree reveals that the provisions of section 42 of the 1979 Constitution were preserved by Decree 107 of 1993. I would like to add that section 230(1) of Decree No. 107 of 1993 is a general provision relating to the jurisdiction of the Federal High Court while section 42 of the 1979 Constitution relates to special jurisdiction for the enforcement of the fundamental rights provided for in chapter IV of the 1979 Constitution. As I have already stated, the High Court**

**of Benue State has concurrent jurisdiction with the Federal High Court in matters of the enforcement of a person's fundamental rights provided for in chapter IV of the 1979 Constitution. I therefore answer this issue in the positive.**

This matter however does not end there. This court, suo motu raised the question as to whether the claim of the plaintiff was a claim for the enforcement of her fundamental right or a claim for breach of contract. We called on the learned counsel to address us on this point. Counsel conceded that the claim as it stands was one for breach of contract.

I set out earlier on in this judgment the claim of the plaintiff. The claim calls for (1) the quashing of letters of suspension and dismissal (2) an order reinstating the plaintiff (3) payment of accrued salaries and allowances and (4) general damages for breach of contract of employment. In the alternative, the plaintiff seeks an order that she be paid ₦450,359.58 representing what she could have earned in the next 33 years at ₦13,647.20 per annum. Looking at the claim it will be seen clearly that it is a claim for breach of contract.

**The next question is one of procedure. For the enforcement of fundamental rights a special procedure has been established by law as prescribed by the Fundamental Rights (Enforcement Procedure) Rules, 1979. The process of enforcement of Fundamental Rights is commenced by an application made to the court; first, for leave; and upon leave being granted, by notice of motion or by originating summons for redress. No oral evidence is called. The application is heard on the affidavit in support of the application and the affidavits which every party to the application proposes to use at the hearing. The affidavits constitute the evidence.**

**On the other hand an action for breach of contract is commenced by a writ of summons. This is the normal procedure in actions tried on the pleadings and to which rules of pleadings apply, since counsel conceded that the plaintiff's action was for breach of contract of employment. That being so, the present action should have been commenced by a writ of summons.**

**In the light of the foregoing reasons, I allow the appeal but**

**strike out the Plaintiff's claim on the ground that it was wrongly commenced under the Fundamental Rights (Enforcement Procedure) Rules 1979.** It should have been commenced by the normal procedure in actions tried on the pleadings, id est, writ of summons.

B The plaintiff/appellant is entitled to costs of ₦10,000.00 against the defendant/ Respondent.

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### KUTIGI JSC

C I read in advance the judgment just delivered by my learned brother Katsina-Alu JSC. I agree with his reasoning and conclusion. An action for breach of contract, as in this case, cannot be prosecuted under the Fundamental Rights (Enforcement Procedure) Rules, 1979. Such an action must be commenced by a writ of summons which she failed to do  
D (see EGBUONU V. BORNO RADIO TELEVISION CORP. (1987) 12 N. W. L. R. (PT.531) 29, TUKUR v. GONGOLA STATE (1983) 4 N. W. L. R. (PT. 117) 517. I will therefore allow the appeal and strike out the Plaintiff/Appellant's claims before the trial High Court. I endorse the order for costs.  
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### KALGO JSC

F I have read before now the judgment of my learned brother Katsina-Alu JSC just delivered in this appeal. I entirely agree with his treatment of the only one issue which arose for consideration in the appeal. I adopt the reasoning and conclusions reached in the said judgment as mine. I find that there is merit in the appeal and I accordingly allow it. I abide by the consequential orders made therein including the order as to costs.  
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### UWAIFO JSC

There are twists in this matter. The appellant's cause of action is wrongful dismissal but she sued for a contravention of her fundamental  
H right. The action was brought in the Benue State High Court. It was against a Federal University. The action was allowed.

On appeal, the Court of Appeal, Jos Division held that by section 230(1)(s) of the 1979 Constitution as amended by the Constitution

(Suspension and Modification) Decree No. 107 of 1993 (Decree No. 107 of 1993), any action affecting the Federal Government or any of its agencies shall be brought in the Federal High Court. It held that the University of Agriculture Makurdi being a Federal government agency could not be sued in a State High Court. It was on the basis that the jurisdiction of the Benue State High Court had been ousted under section 23(1)(s) of the 1979 Constitution (as amended) that the appeal was allowed and the judgment of the trial court was set aside. B

The first twist is, did the Court of Appeal wrongly assume that the appellant was entitled to sue upon an alleged breach of fundamental right? The second twist is, if the court had made the right assumption, was it wrong in holding that because, as alleged, the University of Agriculture Makurdi is a Federal Government agency, an action complaining of a contravention of a fundamental right cannot be brought against it in a State High Court? C D

The said section 23(1)(s) of the 1979 Constitution, now section 251(1)(r) of the 1999 Constitution provides inter alia:

*“[T]he Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from- (s) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies.”* E F

However, section 42(1) of the 1979 Constitution now section 46(1) of the 1999 Constitution, provides that:

*“42.- (1) Any person who alleges that any of the provisions of this Chapter [Chapter IV Fundamental Rights] has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.”* G

*[Parenthesis In Square Brackets Mine]*

This provision was interpreted by this court in *Bronik motors Ltd. v. Wema bank Ltd.* (1983) 1 SCNLR 296 and *Tukur v. Government of H Gongola State* (1989) 4 NWLR (pt. 117) 517 to the effect that where both the State High Court and the Federal High Court exist in a State, they have concurrent jurisdiction in matters pertaining to fundamental right.

This is borne out of the wording of section 42(1) of the 1979 Constitution.

Section 42(1) is a special provision which deals with matters of fundamental rights. It confers jurisdiction on any High Court in a State in matters of fundamental rights irrespective of who is affected by an action founded on such rights. On the other hand, section 230(1)(s) of the 1979 Constitution (as amended) is a general provision. The law is that where there is a special provision in a Statute, a later general provision in the same statute capable of covering the same subject-matter is not to be interpreted as derogating from what has been specially provided for individually unless an intention to do so is unambiguously declared: see *Federal Mortgage Bank of Nigeria v. Olloh* (2002) 9 NWLR (pt. 773) 475 at 489.

In my view, section 42(1) is intended to give access to an aggrieved party to any High Court in a State where an alleged contravention of his fundamental right has taken place or is about to take place. It is, therefore, a section which should itself be regarded as special and fundamental. The court below was in error to hold that when a suit in respect of matters of fundamental right was brought against the Federal Government or any of its agencies, section 230(1)(s) of the 1979 Constitution (as amended) *prevailed over section 42(1)*.

However, in the present case, the real cause of action is wrongful dismissal from employment. It has been established by a number of decided cases by this court that an action for wrongful dismissal from employment cannot be brought under the fundamental rights procedure rules. Wrongful dismissal belongs to common law class of actions; whereas action for contravention or threatened contravention of a fundamental right belongs to a constitutional class of actions which is specially provided for. It follows that the appropriate procedure must be adopted in each class of actions. Where the main or principal claim is not the enforcement or protection of a fundamental right, the fundamental rights procedure rules are inappropriate: see *Tukur v. Government of Taraba State* (1997) 6 NWLR (pt. 510) 549; *Egbuonu V. Bornu Radio Television Corporation* (1997) 12 NWLR (pt. 531) 29; *SEA Trucks Nigeria*

The appellant approached the court by a wrong procedure in view of the nature of her claim. This leads me to the third twist in this matter. If the appellant had brought her action under the appropriate procedure rules, she would have been faced with the question whether the University of Agriculture Makurdi was a Federal Government agency for the purpose of section 230(1)(s) of the 1979 Constitution (as amended) so as to limit her bringing her action in the Federal High Court. I do not find it necessary to express any view as to the status of that University in this judgment.

Having regard to what I have said in this judgment and the reasons given by my learned brother Katsina-Alu JSC in his judgment which I had the opportunity to read in advance, I come to the conclusion he reached. I too allow this appeal but strike out the claim. I award N10,000.00 costs to the appellant in this court.

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#### EDOZIE JSC

The draft of the lead judgment of my brother Katsina-Alu, JSC was made available to me before now. I agree with him that the appeal be allowed and the Plaintiff's claim be struck out.

It is obvious that the Plaintiff's cause of action is the breach of a contract of employment redressible by a writ of summons and not an infraction or threatened breach of a fundamental human right as provided by the Constitution for which a special procedure under the Fundamental Rights (Enforcement Procedure) Rules, Cap 62, Laws of the Federation, 1990 is provided. An action for breach of contract cannot be initiated under the Fundamental Rights (Enforcement Procedure) Rules 1979 as was erroneously done by learned counsel to the Plaintiff/Appellant. This is the outcome of the decision of this Court in the of Egbuonu v Borno Radio Television Corporation (1987) 12 N. W. L. R. (Pt. 531) 29 where at p.40, this court as per the lead judgment of Kutigi J.S.C. stated the legal position thus:-

*"In this appeal the claims are partly for wrongful dismissal or termination of appointment and partly for breach of fundamental right.*

*But here as in Tukur, the principal claim being wrongful termination of appointment which ought to have been commenced by a writ of summons, which was not, then all the claims, principal and subsidiary which flow directly from it are incompetent and ought to be struck out."*

B In his concurring judgment, Uwais C.J.N. expressed the same opinion thus:-

*The procedure for instituting an action based on the infringement of a fundamental right under the Constitution is prescribed by Fundamental Rights (Enforcement Procedure) Rules, Cap 62 of the Laws of the Federation, 1990. An action for wrongful dismissal from employment cannot be brought under the Rules since it belongs to a different class of action from actions on contravention or threatened contravention of a fundamental right. The Borno State High Court (Civil Procedure) Rule, 1979 provides in Order 2 thereof, that such action must be commenced by a writ of summons.*

*In this case, the appellant's main claim based on wrongful dismissal from employment is founded on contract, For him to enforce the claim, he was bound take out a writ of summons against the respondent. This he failed to do. The Court of Appeal was, therefore, right to strike out the case on the authority of the decisions of this court in Alhaji Umaru Tukur v Government of Gongola State (1983) 4 N. W. L. R. (Pt. 117) 517 at and Alhaji Umaru Abba Tukur v Government of Taraba State & ors (1997) 6 N. W. L. R. (Pt. 510) 549."*

By wrongly initiating his claim under the Fundamental Rights (Enforcement Procedure) Rules supra, the Plaintiff/Appellant's claim was not initiated b due process of law as laid down in the Rules. The proceeding before the High Court were a nullity: See Madukolu & ors v Nkemdilim (1962) A. N. L.R. 581.

It is for the foregoing and the more detailed reasons stated in the leading judgment that I, also allow the appeal and strike out the claim of H the Plaintiff/Appellant. I abide by the order as to costs.