

**SUPREME COURT NIGERIA**  
21ST MAY, 2004. SC.82/2000  
**CORAM:- S.A. BELGORE, U. MOHAMMED, S.U. ONU,**  
**U.A. KALGO, D.O. EDOZIE, JJSC**

FRANCIS C. ARINZE	.....	APPELLANT
AND		
FIRST BANK OF NIGERIA	.....	RESPONDENT

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MASTER & SERVANT - Irresponsibility - Concurrent findings - Of acts of irresponsibility against appellant - Is the case here (H1)

MASTER & SERVANT - Judicial precedent - Garba's case - Has been misconstrued by many - The employer can dismiss - In all cases of gross misconduct (H2)

**FACTS**

The plaintiff/appellant filed an action against the defendant /respondent before the Anambra State High Court sitting at Onitsha. He claimed the sum of N250,000 as special and general damages for wrongful dismissal. Various cases of insubordination, absenteeism and fraudulent claim for overtime while he was not even on duty were some of the reasons for his dismissal. Some letters sent to appellant concerning his misbehaviour were not replied by him as he claimed not to have received them. At the end of the trial, the trial court found that the appellant failed to prove his case and dismissed the suit.

His appeal to the Court of Appeal was dismissed. He has further appealed to the Supreme Court. He filed ten grounds of appeal which respondent objected to for being of mixed law and facts as no leave of court was obtained. Appellant had no valid reply except to accept that only ground 2 out of the ten grounds was valid.

**HELD** (Unanimously dismissing the appeal per **BELGORE JSC**)  
***MASTER & SERVANT - Irresponsibility***

1. The appellant was proved to habitually close his cubicle, abandoning cash therein without balancing his account. Between 19<sup>th</sup> December, 1981 and 2<sup>nd</sup> January, 1982 appellant who was not on duty as was common with him, claimed he was at medical clinic and forged a doctor's certificate to that effect. All these acts of irresponsibility were clearly in evidence before trial court which believed them and as a result led to plaintiff's case being dismissed. Court of Appeal had no reasons to interfere with this decision. I find no merit in this appeal. This is an appeal essentially based on complaint against concurrent findings of fact. This court, has, in several decisions, expressed its attitude to concurrent findings of fact by lower courts. There are so many decisions over several decades and it seems parties will never stop asking the court to reverse concurrent findings of fact. (p. 1323 E)

***MASTER & SERVANT - Judicial precedent***

2. Certainly the appellant was greatly indulged with several warnings on his misconduct. This is a simple case of employee and employer not covered by statutory rules as in Federal Civil Service Commission & Ors. V. J.O. Laoye (1989) 4 S.C. (Pt.1) 1 (1989) 2 NWLR (Pt.106) 652 or Garba v. University of Maiduguri (1986) 1 NWLR (P.18) 550. This latter case has had many irrelevant references as holding that once a crime is detected the employer cannot dismiss an employee unless he is tried and convicted first. This is unfortunately an erroneous interpretation of that judgment. In statutory employment, as in private employment, the employer can dismiss in all cases of gross misconduct. In this case, the appellant was found guilty of insubordination and fraudulent claim of money; he claimed overtime allowance when he in fact was never on duty to work during the normal office hours. He claimed refund for a treatment in hospital which never took place; he, in this instance, forged a doctor's certificate. (p. 1323 H)

**REPRESENTATION**

M.U. Ikem Esq., for the Appellant.

Chief L.M.E. Ezeofor, for the Respondent.

**CASES REFERRED TO**

Federal Civil Service Commission And 2 Ors. V. J.O. Laoye (1999) 2 NWLR (Pt. 106) Page 652

Yusuf v. Union Bank Of Nigeria Ltd. (1996) 6 SCNJ 203

Federal Civil Service Commission & Ors. V. J.O. Laoye (1989) 4 S.C. (Pt.1) 1 (1989) 2 NWLR (Pt.106) 652

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

Ojengbede v. Esan (2001) 12 S.C. (Pt.II) 1 (2001) 18 NWLR (Pt. 746) 771

**LEAD JUDGMENT BY BELGORE JSC**

The appellant, was the plaintiff at the High Court of former Anambra State sitting at Onitsha. He lost his action against the respondent bank that employed him, claiming wrongful dismissal. He claimed N250,000 as special and general damages. Among the reasons given at the trial for his dismissal were the various cases of insubordination, absenteeism and fraudulent claim for overtime while he was not even on duty. Various letters were sent to him on his misbehaviour and he chose not to reply to them and during trial he claimed not to have received any of the letters which are Exhibits U, V., W, X and Y. At the end of the trial, trial Judge, Ononiba, J. (as he then was) found the appellant failed to prove his case and thereby dismissed the suit. He therefore appealed to Court of Appeal which dismissed the appeal in upholding trial court's judgment.

The appellant filed ten grounds of appeal and wrote a brief of argument to cover all the grounds. However, at the hearing in this court, the respondent bank raised preliminary objection that all the grounds were of mixed law and facts with no leave having been sought and granted to file them. The appellant had no valid reply except to accept that only Ground 2 out of the ten grounds was valid. Grounds 1,3,4,5,6,7,8,9, and 10 were therefore struck out as incompetent. Therefore the only valid ground sustaining the appeal is Ground 2 covered by Issue number 3 in the appellant's brief.

Ground 2 reads:

“The learned justices of Court of Appeal erred in law when they held that in the particular circumstances of the appellant (who did not admit the allegation made against him) and who denied receiving Exhibits U,V,W,X,Y,Z, A1 it was enough without prosecuting him that the respondent did afford the appellant the opportunity of defending himself through written answers to the queries before dismissing him and as such the case of the appellant came within the exception in the cases of:

*Federal Civil Service Commission And 2 Ors. V. J.O. Laoye* (1999) 2 NWLR (Pt. 106) Page 652 *And Yusuf v. Union Bank Of Nigeria Ltd.* (1996) 6 SCNJ 203, when the case of the appellant did not fall within the said exception and he ought to have been prosecuted.

**PARTICULARS OF ERROR**

(a) By the said Supreme Court authorities where an employee admits the allegation leveled against him, he need not be prosecuted and the employer could exercise disciplinary action against him.

(b) Where as in this case he denies the allegations of which allegations are of very serious criminal nature as per Exhibits E, F, G, H, J, K, he must be prosecuted to establish his guilt in an appropriate forum.

(c) The employer cannot validly adjudge the serious issues of which had been denied and have the employee dismissed as was done in the instant case.

(d) The employer cannot prove by himself the offences as enumerated in paragraph 1 of Act 5 (c)

(e) Such disciplinary action as may be taken without observance of the above principle is invalid, incompetent and void.

(f) The evidence was also that the appellant did not receive the Exhibits U, V, W, X, V, Z, A1 tendered through DW1.

(g) Appellant's denial ought to be applied in his favour.

(h) The offences listed under paragraph (1) of Article 5(c) of the Appendix ‘C’ of Exhibit C cannot be said to have been proven unless admitted or successfully prosecuted in court.”

The issue covering this Ground of Appeal is Issue No. 3 reading:

“Whether the appellant's constitutional right to fair hearing was not breached by the respondent who on its own found the appellant guilty/

*liable and proceeded to summarily dismiss him, without more, when the appellant has not admitted the alleged acts of gross-misconduct against him which acts bordered on criminal offences and whether the court below was correct have held that the dismissal met the requirement of fair hearing.”*

It is clear therefore that this court is only to consider the narrow issue of whether the appellant had fair hearing leading to his dismissal by the respondent. This was the culmination of several warnings to appellant in letters dated 5<sup>th</sup> February, 1981, 15<sup>th</sup> May, 1981, 15<sup>th</sup> July, 1981 and 4<sup>th</sup> August 1981, respectively. The plaintiff (appellant) replied to some of these letters on 6<sup>th</sup> February, 1981, and 24<sup>th</sup> July, 1981. It seemed the appellant would not change his attitude to work – habitual absence from work, not attending adequately to cash and ledgers, willful disobedience to order, serious negligence and habitual penchant to insulting colleagues and superiors. By 1982, the appellant's general attitude never changed and this led to several queries to him in letters dated 6<sup>th</sup> January, 1982, and 23<sup>rd</sup> December, 1982 which were pleaded and tendered at the trial. The appellant replied to some of these letters and denied receiving some. But the full weight of evidence indicated the appellant as an indifferent employee, who was a perpetual absentee and made claims for overtime on days he was even not on duty due to absenteeism. He even submitted a forged medical certificate. **The appellant was proved to habitually close his cubicle, abandoning cash therein without balancing his account. Between 19<sup>th</sup> December, 1981 and 2<sup>nd</sup> January, 1982 appellant who was not on duty as was common with him, claimed he was at medical clinic and forged a doctor's certificate to that effect. All these acts of irresponsibility were clearly in evidence before trial court which believed them and as a result led to plaintiff's case being dismissed. Court of Appeal had no reasons to interfere with this decision.**

**Certainly the appellant was greatly indulged with several warnings on his misconduct. This is a simple case of employee and employer not covered by statutory rules as in Federal Civil Service Commission & Ors. V. J.O. Laoye (1989) 4 S.C. (Pt.1) 1 (1989) 2**

NWLR (Pt.106) 652 or Garba v. University of Maiduguri (1986) 1 NWLR (P.18) 550. This latter case has had many irrelevant references as holding that once a crime is detected the employer cannot dismiss an employee unless he is tried and convicted first. This is unfortunately an erroneous interpretation of that judgment. In statutory employment, as in private employment, the employer can dismiss in all cases of gross misconduct. In this case, the appellant was found guilty of insubordination and fraudulent claim of money; he claimed overtime allowance when he in fact was never on duty to work during the normal office hours. He claimed refund for a treatment in hospital which never took place; he, in this instance, forged a doctor's certificate.

I find no merit in this appeal. This is an appeal essentially based on complaint against concurrent findings of fact. This court, has, in several decisions, expressed its attitude to concurrent findings of fact by lower courts. There are so many decisions over several decades and it seems parties will never stop asking the court to reverse concurrent findings of fact. (See Ojengbede v. Esan (2001) 12 S.C. (Pt.II) 1 (2001) 18 NWLR (Pt. 746) 771; Abidoye v. Alawode (2001) 3 S.C. 1(2001) 6 NWLR (Pt. 709) 463; Nigerian Engineering Works Ltd. v. Denap Ltd. (2001) 12 S.C. (Pt.II) 136 (2001) 18 NWLR (Pt. 729) 206). These are the latest in this line of decisions. The present appeal is not opening any new ground. This appeal is therefore dismissed with N10,000.00 costs to respondent.

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**MOHAMMED JSC**

I have had the privilege of reading the judgment of my learned brother, Belgore, JSC., and I agree with him that this appeal is without merit. I accordingly dismiss it. I also award N10,000.00 costs in favour of the respondent.

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**ONU JSC**

I read before now the judgment of my learned brother, Belgore, JSC., just delivered. I am in full agreement with him that the appeal lacks

substance and ought therefore to fail.

I wish to add a word or two of mine to the leading judgment in expatiation of Issue No. 3, the purport of which is: Whether the appellant's constitutional right to fair hearing was not breached by the respondent who on its own found the appellant guilty/liable and proceeded to summarily dismiss him without more, when the appellant has not admitted the alleged acts of gross misconduct against him, which acts bordered on criminality and whether the Court of Appeal was correct to have held that the dismissal met the requirement of fair hearing.

This issue, it is intended, is formulated from ground 2 of the Grounds of Appeal, adding that at the court below, the appellant had in his brief under issue No. 4 asked as follows:-

*“Whether the learned trial Judge was right in holding that proven cases enumerated under paragraph (1) of Article 5(c) of Exhibit ‘C’ means that the accusation must have been proven by the Employer or through the Employee’s acceptance.”*

After pointing out that the argument and submission in respect of the said issue No. 4 at the court below are appropriate and relevant to the issue No.3 under consideration in this appeal, repeated and adopted the argument/submissions as well as legal authorities cited therein in furtherance of the appellant's argument. It is further submitted that the tripod on which the argument of the appellant at the court below rested was that the act of gross misconduct listed in paragraph (i)(v) of Article 5(c) of the Collective Agreement (Exhibit ‘C’) in the proceedings could not ground dismissal or disciplinary action without first prosecuting the employee in court of law, the reason being that those acts of misconduct are essentially of criminal nature. The following cases of

1. Sofekun v. Akinyemi (1980) 5-7 SC1
2. Denloye v. Medical and Dental Practitioners Disciplinary Committee (1968) 1 ALL NLR 306
3. Garba v. University of Maiduguri (1986) 1 NWLR (Pt.18) 550.
4. Eperokun v. University of Lagos (1986) 3 NWLR (Pt.34) 162.
5. Olatubosun v. NISER (1988) 3 NWLR (Pt.80) 25.

6. Federal Civil Service Commission & Ors. V. Laoye (1989) 4 S.C. (Pt.1) 1 (1989) 2 NWLR (Pt. 106) 652 were relied on.

The Court of Appeal in rejecting this proposition of law cited the Supreme Court in the master and servant case of Yusuf v. Union Bank of Nigeria Ltd (1996) 6 SCNJ 203 for the view that the prosecution of an employee before the law court is not a sine qua non to the exercise of the power of summary dismissal by an employer for gross misconduct. As Wali, JSC., pointed out at pages 214-215 in the latter case:

C “It is not necessary, nor is it a requirement under Section 33 of the 1979 Constitution that before an employer summarily dismisses his employee under the common law, the employee must be tried before a court of law where the accusation against the employee is of gross misconduct involving dishonest bordering on criminality.... To satisfy the rule of D natural justice and fair hearing a person likely to be affected directly by disciplinary proceeding must be given adequate notice of the allegation against him to afford him opportunity for representation in his own defence. The complaint against him must not necessarily be drafted in the E form of a formal charge.

*It is sufficient if the complaint as formulated conveys to him the nature of the accusation against him.”*

F The respondent has been able to demonstrate in its defence, among other things, that the appellant claimed overtime for work not done when he was admitted at CEO Clinics between 26/3/82 and 3/4/82. When he was later confronted by a query on this claim vide Exhibit F and he replied in Exhibit F1, the learned trial Judge before whom these were proffered in evidence could not be faulted when he held inter alia:

G “Even if I concede, as submitted by the learned counsel for the plaintiff that an excuse duty from the doctor does not strictly speaking debar a person from working, I understand counsel to mean that even if H Mr. Azinge had an excuse duty for 1/2/82 and 2/2/82 and also 4/4/82, he could still have attended duty and worked extra hours as reflected in the over-time sheet- Exhibits P&L. This is a plausible argument particularly when the attendance register for these days is said to be missing and therefore not tendered. But what explanation can the plaintiff make for

*over-time claim on the days the plaintiff was definitely admitted in the hospital. I have no doubt in my mind, that Mr. Arinze was admitted in CEO Clinics from 26/3/82 to 3/4/82. I also have no doubt in my mind that plaintiff claimed overtime payments for 26/3/82 and 3/4/82. Mr. Arinze had no right to those claims. Indeed, D.W. I described the claim as fraudulent and dishonest. The act of the plaintiff in this respect is definitely not honest and it is an irregular practice in respect of cash and records. Exhibit P, the overtime record could not be regular with the claims made for work not done."*

The accusation against the appellant is for gross misconduct involving dishonesty bordering on criminality. See paragraphs 6,7,8,9,10,11,12 and 13 of the Statement of Defence. Since the appellant had been confronted with the accusations and he was given opportunity to explain and the explanation showed that he had no satisfactory answer to the accusation on the authority of Yusuf v. Union Bank of Nigeria Ltd. (supra) and Nwobosi v. A.C.B. Ltd (1995) 6 NWLR (Pt. 404) 668 at 686, it was not necessary for the respondent to initiate criminal prosecution before taking disciplinary measures against him by summarily dismissing him where the appellant's misconduct undermined the relationship of confidence, which should exist between the appellant and his employer. Clear proof of this is confirmed that the appellant was on admission in his clinic on 26<sup>th</sup> March, 1982 to April 3<sup>rd</sup>, 1982. The appellant could therefore not have worked overtime in the bank as shown in Exhibit O and at the same time on admission at the C.E.O clinic.

I agree with respondent's submission that the provisions in Art 5(c) (1) of the collective agreement, Exhibit C., under which an employee can be summarily dismissed for "*proven cases of theft, fraud, dishonesty, defalcations and irregular practices in respect of cash, vouchers, records, returns on customer's accounts*", would not deprive the employer (in this case the respondent) of his common law right to dismiss the appellant for obvious gross misconduct. In Garba v. University of Maiduguri (1986) 1 NWLR (Pt. 18) 550 at 612 paragraph 11 and 613 A-H, Oputa, JSC., dealing with Section 17 of the University of Maiduguri Act, No. 83 of 1979 on discipline of students, had the following to say:

“S.17(1) of University of Maiduguri Act stipulates:

“S.17(1) Subject to the provision of this section, where it appears to the Vice-Chancellor that any student of the University has been guilty of misconduct, the Vice-Chancellor may without prejudice to any other disciplinary powers conferred on him by statute or regulation, direct;

(a).....

(b) .....

(c) .....

(d) that the student be expelled from the University.

The question now is- when and how will it appear to the Vice-Chancellor that a student is guilty of misconduct? My answer to the above question is that:

It can appear to the Vice-Chancellor from his own personal knowledge. Let us take the example given by Chief Williams, SAN., of a student slapping a Vice-Chancellor there it would be obviously apparent to any reasonable person that such a student is guilty of misconduct. There again, it will appear to the Vice-chancellor from his own personal knowledge and experience of what the student did. Here the courts may not intervene and here also Section 33 of the 1979 Constitution may not successfully be invoked.”

In this wise, I am in full agreement with the submission of the respondent that a fact can be proven from an employer’s personal knowledge arising from his evaluation and assessment of events. Where, for instance, as in the instant case, a person who was definitely admitted in a hospital, turns round to claim overtime for the period he was in hospital, and in support of which there is clear evidence of the admission and the claim for overtime, what useful purpose would it serve to prosecute him in a court simply because he concocts one story or the other and denies an obvious fact? How else could an employee engage in making such claim and getting paid thereon escape the liability of being found guilty of gross misconduct bordering on criminality? If the words “proven case” were to be interpreted as urged by the appellant to mean “proven in courts of law” to satisfy the requirements of Section 33(4) of the Constitution,

before disciplinary measures are taken against the employee, then the questions posed by Coker, JSC., in Garba v. University of Maiduguri & Ors. (supra) at page 611 paragraphs D-H become relevant and germane. Asked Coker, JSC.:

“What of if the misconduct committed by the student is of a criminal nature and for which after due prosecution in a court of law the student is acquitted on some technical ground? What if the conduct of the student besides the apparent criminal nature constitute insubordination or willful disobedience to some regulation of the University or some lawful order or instruction? Would the Vice –Chancellor be inhibited from taking disciplinary action against such a student? What if for instance, the prosecution failed because the prosecutor refused to summon necessary witnesses to testify at the trial or if a vital witness was deliberately not called or could not be found or refused to attend even though summoned? Yet the Vice-Chancellor has before him credible evidence, which seems to him to justify disciplinary action against the erring student? These are areas in which the present decisions of this court one day may call for reconsideration. I can envisage such independent tribunal duly constituted by the Vice-Chancellor, in such manner that all the essentials of the principles of justice are present to investigate and determine alleged serious misconduct of students and which for good reasons, the Vice-Chancellor, considers it expedient should not be criminally prosecuted. What will be the position of a student who is alleged to have committed serious criminal misconduct which case was reported to the police and no prosecution taken against the student for some reasons best known to the police or to the Attorney-General himself or officers of his department? Should the Vice-chancellor undertake criminal prosecution himself or should he fold his arms and allow the student to remain in the University undisciplined?”

The views of Oputa and Coker, JJSC., (supra) which completely support and overlap the decision in Yusuf v. UBN (supra) is to the effect that in cases of misconduct bordering on criminality, all that is required of an employer before summarily dismissing an employee is to give him fair hearing by confronting him with the accusation made against him

and requiring him to defend himself. See *Olatunbosun v. NISER* (1988) 3 NWLR (Pt. 80) 25 at 56-57 and 59.

In sum, I entirely agree with the respondent that in the context of Article 5(c) (1) of exhibit C, the words “proven cases” do not necessarily mean proven in court of law. It admits of its ordinary meaning which in common parlance means ‘clear’, obvious or ‘incontrovertible.’ In that regard Section 33(4) of the 1979 Constitution will not successfully be invoked and I so hold.

It is for the above reasons and the fuller ones contained in the leading judgment of my learned brother, Belgore, JSC., that I too dismiss this appeal and affirm the decision of the court below.

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### KALGO JSC

I have had the advantage of reading in draft the judgment just delivered by my learned brother, Belgore, JSC. He has fully dealt with the facts and the issues raised in this appeal and I entirely agree with the reasoning and conclusions reached by him which I adopt as mine. From the accepted facts of the case and the submissions of learned counsel in the appeal, the concurrent findings of the trial court and the Court of Appeal cannot be disturbed or interfered with. I therefore, find no merit in the appeal and I dismiss it with N10,000.00 costs in favour the respondent.

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### EDOZIE JSC

I had a preview of the leading judgment just read by my brother, Belgore, JSC., and I agree with him that the appeal lacks merit. There is a concurrent finding of the two lower courts that the appellant was guilty of gross misconduct, in consequence of which the respondent bank, his employer, dismissed him. A dismissal in those circumstances is justified even though the misconduct bordered on criminal offences in respect of which the appellant has not been tried before the dismissal: See the case of *Yusuf v. Union Bank of Nigeria Ltd.* (1996) 1 NWLR (Pt. 456) 632 at 644.

I, also, dismiss the appeal with N10,000 costs to the respondent.