

SUPREME COURT OF NIGERIA
28TH JANUARY, 2005. SC. 260/2000
CORAM:- S. M. A. BELGORE, U. A. KALGO, D. MUSDAPHER,
G. A. OGUNTADE, S. A. AKINTAN, JJSC

E. A. GARUBA APPELLANT
AND
1. KWARA INVESTMENT COMPANY LTD.
2. KWARA STATE INVESTMENT
CORPORATION RESPONDENTS
3. ATTORNEY-GENERAL KWARA STATE

APPEALS - Ground of appeal - Competence - A ground that alleges error of law and fact - Is not ipso facto incompetent (H1)

APPEALS - Fresh issue - Objection against raising it - Is misconceived - As that issue arose for the first time - Before the Court of Appeal (H2)

EVIDENCE - Documents - Admissibility - Where a document is unsigned - And of dubious origin - Trial court erred in relying on it (H3)

COMPANY LAW - Ratification - S. 72 of CAMA - That provides about succeeding company - Ratifying acts of the old company - Does not apply to this case (H4)

MASTER & SERVANT - Termination of employment - As a master cannot be compelled - To retain a servant he no longer wants - The servant can by a proper claim - Recover terminal benefits or damages (H5)

APPEALS - Reliefs - Power of Court of Appeal - Under s. 16 of the Act - Is limited to awarding only same reliefs - Trial court could have granted (H6)

COURTS - Relief not claimed - Termination of employment - Court can-

not grant a relief - Of one month salary in lieu of notice - That was due but not properly claimed (H7)

FACTS

Before the High Court of Kwara State, the plaintiff/appellant filed an action against the defendants/respondents. The plaintiff was employed by the 1st defendant on 5/9/1972. However, on 25/4/1984, he was dismissed from the services of the 1st defendant vide a letter written by a sole administrator for the 1st defendant. Plaintiff claimed inter alia, a declaration that his dismissal is null and void, an order that he be reinstated, and or that 2nd and 3rd defendants be ordered to pay his outstanding entitlements. The case made for the plaintiff was that since 2nd defendant took over the business previously run by the 1st defendant, he could bring the claim for his unlawful dismissal against the 2nd defendant. Plaintiff relied on an unsigned document of doubtful origin in seeking to establish that 2nd defendant had taken over the assets and liability of the 1st defendant.

The trial court relied on the said document, Exhibit 8, to find in favour of the plaintiff. It found only the 2nd defendant liable and ordered that it should pay to the plaintiff all his benefits and entitlements since his dismissal on 25/5/1984. The 2nd defendant's appeal to the Court of Appeal was successful. Being aggrieved, plaintiff has now appealed to the Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the court below was right on the view it took of Exhibit 8 tendered before the trial court and whether the 1st respondent will not by virtue of Section 72 of Companies and Allied Matters Act, 1990 inherit the liability including a wrongly dismissed staff like the appellant.

2. Whether the court below was right by its failure to construe clause 24 of Exhibit 6 to hold that the Appellant's dismissal was null and void and to have tampered with the right decision of the trial court in that regard.

3. Whether the court below having held that the dismissal of the appellant was wrongful was right to have refused to invoke the provi-

sions of Section 16 of the Court of Appeal Act to make appropriate order to give effect to the wrongfulness of the appellant's dismissal as held by it.

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

Ground of appeal - Competence

1. This court has in a number of cases taken the view that a ground of appeal which alleges a misdirection in law or an error of law and on the fact is not ipso facto incompetent. In *Akanbi v. Salawu* (2003) 6 S.C. (Pt. II) 144; (2003) 13 NWLR (Pt 838) 637 at pp. 648-649, this court, per Uwaifo, JSC, observed:

"I need not go into further discussion of the consequences of framing a ground of appeal as a misdirection in law or an error in law and on the facts other than to say that such framing does not ipso facto make the ground of appeal incompetent. That would normally raise a ground of mixed law and fact, which is not unusual in many appeals. But it ought to be carefully examined in order to determine its purport. So long as it is not capable of misleading the other party and the court is satisfied that its meaning can be reasonably elicited, it cannot be considered objectionable: See Thor Ltd. v. First City Merchant Bank Ltd. (1997) 1 NWLR (Pt. 479) 35; Aderounmu v. Olowu (2000) NWLR (Pt. 652) 253; Odonigi v. Oyeleke (2000) 6 NWLR (Pt. 708) 12".

The respondents have not stated or shown that the appellant's 1st ground of appeal is capable of misleading or has misled them. That ground in my view clearly states its purport.

All that the appellant has complained of in the above ground is that the court below drew the wrong inference or came to the wrong conclusion from the evidence led before the trial court. It seems to me that the 1st ground of appeal is competent and permissible. (p. 63 D)

APPEALS - Fresh issue

2. There is also the complaint or objection against the appellant's 4th ground of appeal. It is contended that the appellant who had not complained before the court below of an alternative remedy could not raise

such an issue before this court. Counsel relies on *Obiolo v. Duru* (1994) 8 NWLR (Pt. 369) 631 at 646-647. I get the impression that the 1st respondent's counsel has overlooked the fact that the issue of alternative remedy only arose for the first time from the judgment of the court below. The issue could not therefore have been earlier raised for the consideration of the court below. The trial court on the evidence before it held that the dismissal of the plaintiff from the employment of 2nd defendant was void. The court below considered the same evidence and came to the conclusion that the dismissal of the plaintiff was only wrongful and not void. Appellant by his 4th ground of appeal was only complaining that the court below was in error not to have awarded to him (the plaintiff) the reliefs to which he was entitled and flowing from the conclusion reached by the court below that plaintiff's dismissal was wrongful and not void. The objection of the 1st respondent to the 4th ground of appeal is clearly misconceived. (p. 65 A)

Admissibility - Where a document is unsigned

E 3. On 27/7/93, without any further effort on the part of P.W.1 to explain the origin of the document, the document was admitted in evidence as Exhibit 8. It seems to me a strange occurrence that the document could have been allowed in evidence on the meagre evidence available to explain its origin. It is strange still that the trial court could rely on such a document, clearly of unexplained and dubious origin as a basis of the finding that the 2nd defendant had taken over the assets and liability of the 1st defendant. Such a document as Exhibit 8, unsigned as it was, is incapable of establishing the fact that the 2nd defendant took over the assets and liability of the 1st defendant. (p. 67 D)

COMPANY LAW - Ratification

H 4. Appellant's counsel submitted that the court below should have relied on Section 72 of the Companies and Allied Matters Act to hold that the 2nd defendant by taking over the business previously run by the 1st defendant has ratified the previous relationship between 1st defendant and the appellant. It was argued that the 2nd defendant had thereby taken

over the assets and liability of the 1st defendant. It seems to me that this submission is inappropriate having regard to the facts in this case.

Before the above provisions could apply, there must be evidence of a ratification by the new company of contracts made before its formation. In the case on hand, there was no such evidence. Nor was it shown who, if any body had ratified the contract between the plaintiff/appellant and the 1st defendant. (p. 67 F)

A master cannot be compelled - To retain a servant

5. It seems to me that all that has happened here is that the same company which employed the plaintiff later dismissed him.

It is in recognition of the common law principle which recognizes that a master cannot be compelled to retain in his employment a servant he no longer wants that it must be accepted that the letter, Exhibit 3, fully and finally brought the employment of the plaintiff by the 1st defendant to an end leaving the plaintiff/appellant with the option to pursue by an action the payment of the terminal benefits or damages. To be able to recover these however, there must be a proper claim brought and against the employer. (p. 70 D)

APPEALS - Reliefs - Power of Court of Appeal

6. Finally, is the 3rd issue for determination which is as to whether or not the court below ought to have exercised its powers under Section 16 of the Court of Appeal Act, to grant the plaintiff the relief he deserved having regard to the finding by the court below that the plaintiff's dismissal was wrongful and not void. The 1st respondent's counsel in its brief rightly in my view submitted that the power of the Court of Appeal under Section 16 of the Court of Appeal Act was not at large or unlimited. Counsel submitted that in the exercise of its powers under Section 16, the court below could only have awarded the same remedies or reliefs which was open or available to the trial court to grant to a party. (p. 71 D)

COURTS - Relief not claimed

7. It is the law generally that a court not being a charitable institution would not grant to a party reliefs not claimed from court.

Even if the trial court had been minded to grant the plaintiff an award, there was no claim before it upon which to hinge such an award. It is trite that an appellate court cannot grant a party a relief which that party had not sought from the court of trial. Under Exhibit 6, the plaintiff would have been entitled to an award of one month's salary in lieu of notice but as the plaintiff made no such claim, he could not get that award. On the whole, one gets the impression that the plaintiff's case could have been better presented before the trial court. (p. 71 H)

NOTABLE POINT OF INTEREST

BELGORE JSC

1. Mixture of complaint in a ground of appeal

When a ground complains of error in law and at the same time of misdirection, the mixture will not necessarily vitiate the ground in all cases. Once the complaint is clear in such a ground of appeal, and the respondent is not in any way misled or confused and the court can grasp unambiguously the purport of the ground, the ground will stand. Indeed once the ground is not misleading or incomprehensible, it is in the interest of overall justice to the parties to the appeal to allow it as a valid ground of appeal; otherwise the court will find itself unnecessarily adhering to technicality, the principle this court has always frowned upon. (p. 72 F)

REPRESENTATION

K. K. Eleja, Esq., (with him, Mr. S. A. Oke), for the Appellant.
Duro Adeyele, (with him, Toyin Aladegbami (Miss) & Tosin Oyeyipo (Miss)), for the 1st Respondent.
Saka A. Isau, Esq., Attorney-General, Kwara State, (with him, Mr. H. A. Gegele), for the 2nd and 3rd respondents.

CASES REFERRED TO

Ordia v. Piedmont Nig. Ltd. (1995) 2 NWLR (Pt. 379) 516 at 528

Ifaleye v. Otapo (1995) 5 NWLR (Pt. 381) 1 at 33

Elumeze v. Elumeze (1969) 1 All NLR 311

Chief Registrar, High Court, Lagos and Anor. v. Vamos (1976) 1 S.C (Reprint) 18; (1976) 1 S.C. 33

Thor Ltd. v. First City Merchant Bank Ltd. (1997) 1 NWLR (Pt. 479) 35 B

Aderounmu v. Olowu (2000) NWLR (Pt. 608) 253

Odonigi v Oyeleke (2001) 2 S.C. 194; (2000) 6 NWLR (Pt. 708) 12

Akanbi v. Salawu (2003) 6 S.C. (Pt. II) 144; 13 NWLR (Pt. 838) 637, 648, 649

Obiolo v. Duru (1994) 8 NWLR (Pt. 369) 631 at 646-647

Chukwumah v. Shell Petroleum (1993) 4 NWLR (Pt. 289) 512 at 560

STATUTES REFERRED TO

Companies and Allied Matters Act, LFN, 1990 S. 72

Court of Appeal Act S. 16

LEAD JUDGMENT BY OGUNTADE JSC

The appellant (hereinafter referred to as the plaintiff) commenced his suit against the respondents (hereinafter referred to as the defendants) at the Omuaran High Court of Kwara State. In paragraph 7 of his Statement of Claim, the plaintiff expressed the reliefs which he sought by his action in these words:

“7. Wherefore the plaintiff claims against the defendants both jointly and/or severally or in the alternative:

(i) a declaration that the dismissal order is null and void;

(ii) a declaration that the 2nd defendant ought to have reversed the dismissal order;

(iii) an order reinstating the plaintiff into 2nd defendant's service or that of the Kwara State Government as represented by the 3rd defendant; and

(iv) an order directing the 2nd and/or 3rd defendant to cause to be paid jointly and/or severally all the outstanding entitlements of the plaintiff.”

The plaintiff filed a Statement of Claim. However, only the 2nd

defendant filed a Statement of Defence. Only the plaintiff testified in support of his case whilst the 2nd defendant called one witness. On 13-10-94, the trial Judge, Ajayi, J., found only the 2nd defendant liable and ordered that it should pay to the plaintiff “*all his benefits and entitlements since his dismissal on 25-5-84.*”

The 2nd defendant was dissatisfied with the judgment. It brought an appeal against it at the Ilorin Division of the Court of Appeal (hereinafter called ‘the court below’)- The court below in its judgment on 29-3-2000 allowed the appeal and set aside the judgment of the trial court. The plaintiff has brought this further appeal before this court. In his appellant’s brief, the issues identified as arising for determination in the appeal are:

1. Whether the court below was right on the view it took of Exhibit 8 tendered before the trial court and whether the 1st respondent will not by virtue of Section 72 of Companies and Allied Matters Act, 1990 inherit the liability including a wrongly dismissed staff like the appellant.

2. Whether the court below was right by its failure to construe clause 24 of Exhibit 6 to hold that the Appellant’s dismissal was null and void and to have tampered with the right decision of the trial court in that regard.

3. Whether the court below having held that the dismissal of the appellant was wrongful was right to have refused to invoke the provisions of Section 16 of the Court of Appeal Act to make appropriate order to give effect to the wrongfulness of the appellant’s dismissal as held by it.

The 1st respondent in its brief took objection to the appellant’s first and fourth grounds of appeal. It then formulated three alternative issues for determination in the appeal. As the issues so formulated fall within the ambit of the appellant’s issues, it is unnecessary to set them out here. The 2nd and 3rd respondents filed a joint brief wherein they raised a preliminary objection to grounds 1,2,3 and 4 of the appellant’s amended grounds of appeal. Alternatively, the 2nd and 3rd respondents responded to issues as formulated and argued by the appellant in his brief.

It is apparent from the records of this court that the appellant on

21-3-2002 filed an application seeking the leave of this court to file his amended grounds of appeal. Leave was granted to him on 16-10-2002. The preliminary objection of the 2nd and 3rd respondents to appellant's four amended grounds of appeal which is to the effect that the appellant did not seek nor obtain leave to raise those grounds must be discounted and struck out. I therefore, strike out the preliminary objection by 2nd and 3rd respondents. This leaves surviving the preliminary objection by the 1st respondent.

In its preliminary objection against the 1st ground of appeal, the 1st respondent has contended that the 1st ground alleges at the same time that there was an error of law and also a misdirection. It was contended that the same ground could not complain of an error of law and also a misdirection. Counsel relied on Labiyi v. Anretiola (1992) 8 NWLR (Pt. 258) 139 at 169 and Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 67) 718 at 744. The appellant did not react to the preliminary objection.

This court has in a number of cases taken the view that a ground of appeal which alleges a misdirection in law or an error of law and on the fact is not ipso facto incompetent. In Akanbi v. Salawu (2003) 6 S.C. (Pt. II) 144; (2003) 13 NWLR (Pt 838) 637 at pp. 648-649, this court, per Uwaifo, JSC, observed:

"I need not go into further discussion of the consequences of framing a ground of appeal as a misdirection in law or an error in law and on the facts other than to say that such framing does not ipso facto make the ground of appeal incompetent. That would normally raise a ground of mixed law and fact, which is not unusual in many appeals. But it ought to be carefully examined in order to determine its purport. So long as it is not capable of misleading the other party and the court is satisfied that its meaning can be reasonably elicited, it cannot be considered objectionable: See Thor Ltd. v. First City Merchant Bank Ltd. (1997) 1 NWLR (Pt. 479) 35; Aderounmu v. Olowu (2000) NWLR (Pt. 652) 253; Odonigi v. Oyeleke (2000) 6 NWLR (Pt. 708) 12".

The respondents have not stated or shown that the appellant's 1st ground of appeal is capable of misleading or has misled them. That ground in my view clearly states its purport. It reads -

“1. The learned Justices of the Court of Appeal erred in law and misdirected themselves when their Lordships held as follows:

‘DW1, the administrative officer in the appellant company denied that Exhibit 8 was a publication of the appellant company. It does seem to me that with that evidence the learned trial Judge should have been wary in receiving the document in evidence. This is more so as the document did not bear the signature of the appellant company’s Director, Secretary or any Principal officer of the appellant company. Be that as it may, the contents of Exhibit 8 without more does not show that the appellant company inherited the assets and liabilities of the 2nd respondent.

On the other hand, assuming that it can be read into Exhibit 8 that the appellant company inherited the staff of the 2nd respondent what it inherited should be limited to, serving officers of the 2nd respondent and not, dismissed officers. And, this will only arise if there is evidence that the provisions of Section 72 of the Companies and Allied Matters Act, Cap. 59 Laws of Nigeria 1990, have been complied with’.

PARTICULARS

1. A court is entitled to rely on an admissible document tendered and admitted in the proceeding.

2. The alleged failure to sign Exhibit 8 which was not raised by the respondents did not derogate from its importance.

3. The court is not entitled to make a new case for either party.

4. The provision of Section 72 of Companies and Allied Matters Act Cap. 59 Laws of Nigeria 1990 are irrelevant in the circumstances of this case.

5. In the circumstances it could not be doubted that the 1st respondent was the successor of the 3rd Respondent.

6. Parties and the court are bound by the case put forward by the parties in their pleading.

7. The 1st respondent inherited all the assets and liability of the 2nd respondent.”

All that the appellant has complained of in the above ground is that the court below drew the wrong inference or came to the wrong conclusion from the evidence led before the trial court. It

seems to me that the 1st ground of appeal is competent and permissible.

There is also the complaint or objection against the appellant's 4th ground of appeal. It is contended that the appellant who had not complained before the court below of an alternative remedy could not raise such an issue before this court. Counsel relies on *Obiolo v. Duru* (1994) 8 NWLR (Pt. 369) 631 at 646-647.1 get the impression that the 1st respondent's counsel has overlooked the fact that the issue of alternative remedy only arose for the first time from the judgment of the court below. The issue could not therefore have been earlier raised for the consideration of the court below. The trial court on the evidence before it held that the dismissal of the plaintiff from the employment of 2nd defendant was void. The court below considered the same evidence and came to the conclusion that the dismissal of the plaintiff was only wrongful and not void. Appellant by his 4th ground of appeal was only complaining that the court below was in error not to have awarded to him (the plaintiff) the reliefs to which he was entitled and flowing from the conclusion reached by the court below that plaintiff's dismissal was wrongful and not void. The objection of the 1st respondent to the 4th ground of appeal is clearly misconceived.

Having disposed of the 1st respondent's preliminary objection, I now consider the issues serially. On issue 1, the evidence before the trial court is that the plaintiff was employed by the 1st defendant on 5/9/72. However, on 25/4/84, the plaintiff was dismissed from the services of the 1st defendant vide a letter written by Alhaji B. A. Ndaman, a sole administrator for the 1st defendant. The case made by the plaintiff was that since the 2nd defendant took over the business previously run by 1st defendant, he could bring the claim for his unlawful dismissal against the 2nd defendant. It was contended on behalf of the plaintiff that the 2nd defendant having taken over the assets of the business also had the responsibility to meet the liability incurred to the plaintiff by the 1st defendant.

The trial court in its judgment at page 125 of the record of pro-

ceedings reasoned:

“Exhibit 8 has stated that Kwara Investment Co. Ltd., metamorphosed from the defunct State owned Kwara State Investment Corporation as a holding company. With this in view would it be wrong to hold that the assets and liabilities of the 1st defendant was taken over by the 2nd defendant? would it be right to say that because the 2nd defendant is now a limited liability company set up under the Company’s Decree, should take over the assets of the 1st defendant, which is no longer in existence without also inheriting its liability which I believe this case before me now is one of the liabilities of the 1st defendant? I am of the strong belief, having been reinforced by the opening paragraph of Exhibit 8 that the 2nd defendant is the rightful person to be sued by the plaintiff and I declare that the 2nd defendant’s refusal to reverse the decision of the dismissal letter dated 22/3/88 is unjustified and it is hereby set aside.”

The court below in its judgment had cause to make comments on the document tendered by the plaintiff as Exhibit 8. It is to be borne in mind that in the above passage from the judgment of the trial court, the only piece of evidence which the trial Judge relied upon in coming to the conclusion that the 2nd defendant took over the assets and liability of the 1st defendant was Exhibit 8. The court below said concerning Exhibit 8:

“I observe also that the learned trial Judge relied solely on Exhibit 8, a document he described as a Hand Book which contains the appellant’s General Policies, in coming to the conclusion that the appellant inherited the assets and liabilities of the 2nd respondent. The introductory note, paragraph 1 of Exhibit 8 reads –

‘The Kwara Investment Company (Kinco) is a State owned development Finance Institution. It metamorphosed from the defunct State owned Kwara State Investment Corporation (KK) as a holding company on March 1985.’

D.W. 1, the Administrative Officer of the appellant company denied that Exhibit 8 was a publication of the appellant company. It does seem to me that with that evidence the learned trial Judge should have been wary in receiving the document in evidence. This is more so as the document did not bear the signature of the appellant company’s director,

secretary or any principal officer of the appellant company. Be that as it may, the contents of Exhibit 8 without more do not show that the appellant company inherited the assets and liabilities of the 2nd respondent.”

The above observation by the court below cannot be faulted when one bears in mind the oral evidence from P.W. 1, which sought to show the origin of Exhibit 8. At page 106 of the record of proceedings on 6/7/92, P.W.I said:

“I have a copy of the policy statement made by the 2nd defendant.”

Mr. Ijaodola, of counsel for the plaintiff immediately after the above piece of evidence was recorded as saying:

“I ask for an adjournment to enable us plead the document which we got after we had filed our pleadings.”

On 27/7/93, without any further effort on the part of P.W.1 to explain the origin of the document, the document was admitted in evidence as Exhibit 8. It seems to me a strange occurrence that the document could have been allowed in evidence on the meagre evidence available to explain its origin. It is strange still that the trial court could rely on such a document, clearly of unexplained and dubious origin as a basis of the finding that the 2nd defendant had taken over the assets and liability of the 1st defendant. Such a document as Exhibit 8, unsigned as it was, is incapable of establishing the fact that the 2nd defendant took over the assets and liability of the 1st defendant.

Appellant’s counsel submitted that the court below should have relied on Section 72 of the Companies and Allied Matters Act to hold that the 2nd defendant by taking over the business previously run by the 1st defendant has ratified the previous relationship between 1st defendant and the appellant. It was argued that the 2nd defendant had thereby taken over the assets and liability of the 1st defendant. It seems to me that this submission is inappropriate having regard to the facts in this case. Section 72 of the Companies and Allied Matters Act provides:

“72. (1) Any contract or other transaction purporting to be en-

tered into by the company or by any person on behalf of the company prior to its formation may be ratified by the company after its formation and thereupon the company shall become bound and entitled to the benefit thereof as if it has been in existence at the date of such contract or other transaction and had been a party thereto.

(2) Prior to ratification by the company the person who purported to act in the name of or on behalf of the company, shall, in the absence of express agreement to the contrary, be personally bound by the contract or other transaction and entitled to the benefit thereof.”

Before the above provisions could apply, there must be evidence of a ratification by the new company of contracts made before its formation. In the case on hand, there was no such evidence. Nor was it shown who, if any body had ratified the contract between the plaintiff/appellant and the 1st defendant.

Issue 2 raises a challenge to the conclusion of the court below that the dismissal of the plaintiff was not void but unlawful. The plaintiff in paragraphs 1,2 and 3 of his Statement of Claim had pleaded thus:

“1. The plaintiff was appointed by the 1st defendant as an Assistant Executive Officer as per letter Ref. No. SEC/PER/22 of 5th September, 1972 which the plaintiff pleads.

2. The plaintiff was promoted by the 1st defendant to Position of Executive Officer as per letter Ref. No. SEC/PER/C22/77 of 17th November, 1979 which the plaintiff hereby pleads.

3. The plaintiff was served a letter Ref. No. GRI/C.24/122 of 25th April, 1984, which reads:

‘Dear Sir,

Dismissal from service

I write to inform you that as from the date of this letter you are dismissed from the services of Kwara State Investment Corporation.

You will please hand over all corporation property in your possession to your head of Division.

Yours faithfully,

Sgd.

Alhaji B. A. Ndaman

Sole Administrator
25-4-84

Mr. I. E. A. Garuba
Higher Executive Officer,
K. I. C., Ilorin.

B

The plaintiff pleads the said letter.”

It was not part of the plaintiff’s case that neither the parties to the contract of employment, which he had with 1st defendant, could bring the relationship to an end. Although the suggestion was made that the 2nd defendant took over the assets and liability of the 1st defendant, the plaintiff never denied that it was the same company that had employed him that later dismissed him albeit by its sole administrator. At pages 194-195 of the record, the court below in its judgment said:

C

“*The next question is how was the 1st respondent dismissed? I have already observed that the 2nd respondent was established by the Kwara State Investment Corporation Edict No. 4 of 1971. The 2nd respondent is a corporate body with perpetual succession, and a common seal and has power to sue and be sued. By Edict No.2 of 1979, a Sole Administrator was appointed for the 2nd respondent. The Administrator was to exercise all the functions formerly exercised by the governing body of the 2nd respondent. The said Administrator wrote the 1st respondent on 25th of April, 1984, Exhibit 3 thus -*

F

*‘Dear Sir,
Dismissal from service*

I write to inform you that as from the date of this letter you are dismissed from the services of Kwara State Investment Corporation.

You will please hand over all corporation property in your possession to your head of Division.

G

*Yours faithfully,
Sgd.*

Alhaji B. A. Ndaman
Sole Administrator
25-4-84

H

Mr. I. E. A. Garuba

*Higher Executive, (sic),
K. I. C., Ilorin.*

From the above facts, it is clear that the above letter of dismissal came from a competent body. In other words, the 1st respondent was dismissed by the 2nd respondent. It follows that the dismissal of the 1st respondent cannot be void as submitted by Prince Ijaodola of counsel. By and large an employer can terminate the contract with his employee at any time and for any reason or no reason at all. If however the termination is carried out in a manner which is contrary to the terms of the agreement between the parties, the employer must pay damages for the breach of the agreement between the parties. The employee however is not entitled to general damages as in a claim in tort. He is only entitled to what he would have earned over a period required to lawfully terminate his employment. In the present case the 1st respondent is entitled to a month's salary in lieu of notice as per Exhibit 6. The termination of the 1st respondent's employment is unlawful and not void."

It seems to me that all that has happened here is that the same company which employed the plaintiff later dismissed him. In *Chukwumah v. Shell Petroleum* (1993) 4 NWLR (Pt. 289) 512 at 560, this court per Karibi-Whyte, JSC., said:

"It is a well established principle of the common law, and of Nigerian law, that ordinarily a master is entitled to dismiss his servant from his employment for good or for bad reasons or for no reason at all. The common law recognizes and respects the sanctity of contracts. The Latin maxim pacta sunt servanda is a sacred doctrine for the preservation of contracts which is entitled to the greatest respect. Hence where parties have reduced the terms and conditions of service into an agreement, the conditions must be observed.

Ordinarily and consistent with the common law principle, the court will not impose an employee on an employer. - See Webb v. England (1860) 29 Bear. 44; Lumley v. Wagner (1852) 1be G & M 604. Hence an order for specific performance of contract of employment is an aberration which will rarely be made - See Francis v. Municipal Council of Kuala Lumpur (1962) 3 All ER 633.

In the ordinary case and following the common law principle, termination of a contract of service even if unlawful brings to an end the relationship of master and servant, employer and employee. This rule is based on the principle of the confidential relationship between master and servant which cannot continue in the absence of mutuality.”

It is in recognition of the common law principle which recognizes that a master cannot be compelled to retain in his employment a servant he no longer wants that it must be accepted that the letter, Exhibit 3, fully and finally brought the employment of the plaintiff by the 1st defendant to an end leaving the plaintiff/appellant with the option to pursue by an action the payment of the terminal benefits or damages. To be able to recover these however, there must be a proper claim brought and against the employer.

Finally, is the 3rd issue for determination which is as to whether or not the court below ought to have exercised its powers under Section 16 of the Court of Appeal Act, to grant the plaintiff the relief he deserved having regard to the finding by the court below that the plaintiff's dismissal was wrongful and not void. The 1st respondent's counsel in its brief rightly in my view submitted that the power of the Court of Appeal under Section 16 of the Court of Appeal Act was not at large or unlimited. Counsel submitted that in the exercise of its powers under Section 16, the court below could only have awarded the same remedies or reliefs which was open or available to the trial court to grant to a party. Counsel relied on *Ordia v. Piedmout Nig. Ltd.* (1995) 2 NWLR (Pt. 379) 516 at 528 and *Ifaleye v. Otapo* (1995) 5 NWLR (Pt. 381) 1 at 33.

Earlier In this judgment I reproduced paragraph 7 of the plaintiff's Statement of Claim wherein the plaintiff set out the reliefs which he sought from the trial court. Although the plaintiff expressed therein that he was claiming jointly and severally from the defendants, yet in the details of his claim set out thereunder no relief was sought from the trial court against the 1st defendant. The plaintiff instead made claims against the 2nd and 3rd defendants. **It is the law generally that a court not being a charitable institution would not grant to a party reliefs not claimed from**

court: See Elumeze v. Elumeze (1969) 1 All NLR 311 and Chief Registrar, High Court, Lagos and Anor. v. Vamos (1976) 1 S.C (Reprint) 18; (1976) 1 S.C. 33.

Even if the trial court had been minded to grant the plaintiff an award, there was no claim before it upon which to hinge such an award. It is trite that an appellate court cannot grant a party a relief which that party had not sought from the court of trial. Under Exhibit 6, the plaintiff would have been entitled to an award of one month's salary in lieu of notice but as the plaintiff made no such claim, he could not get that award. On the whole, one gets the impression that the plaintiff's case could have been better presented before the trial court.

In the final conclusion, all the issues raised having been decided against the plaintiff/appellant, this appeal fails and is accordingly dismissed with N5,000.00 costs in favour of 1st respondent and N5,000.00 to 2nd/3rd respondents.

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BELGORE JSC

I read in advance the judgment of my learned brother, Oguntade JSC., written after the conference and I am in full agreement that this appeal totally lacks any merit. The purport of any ground of appeal is to allow the court and the respondent the opportunity of knowing what the appellant is averse to in the judgment being appealed. When a ground complains of error in law and at the same time of misdirection, the mixture will not necessarily vitiate the ground in all cases. Once the complaint is clear in such a ground of appeal, and the respondent is not in any way misled or confused and the court can grasp unambiguously the purport of the ground, the ground will stand. Indeed once the ground is not misleading or incomprehensible, it is in the interest of overall justice to the parties to the appeal to allow it as a valid ground of appeal; otherwise the court will find itself unnecessarily adhering to technicality, the principle this court has always frowned upon. Aderounmu v. Olowu (2000) NWLR (Pt. 608) 253; Odonigi v Oyeleke (2001) 2 S.C. 194; (2000) 6

NWLR (Pt. 708) 12; Akanbi v. Salawu (2003) 6 S.C. (Pt. II) 144; 13 NWLR (Pt. 838) 637, 648, 649.

Exhibit 8 is a document belonging entirely to defunct Kwara State Investment Corporation. There is no evidence legally that the respondent, Kwara Investment Company Limited, is a successor to assets and liabilities of the Kwara State Investment Corporation or in any way vicariously liable for its liabilities. B

For the foregoing reasons and the fuller reasons in the judgment of Oguntade, JSC., which I adopt as mine, I dismiss this appeal with N 10,000.00 costs to the respondent. C

KALGO JSC

I have read before today the judgment of my learned brother, Oguntade, JSC., in this appeal. I entirely agree with his reasoning and conclusions. The issues which arose in this appeal have been painstakingly considered by him in the leading judgment and I have nothing useful to add thereon. I agree with him that there is no merit in the appeal and it ought to be dismissed. Accordingly, I dismiss the appeal and adopt as mine all the orders made in the leading judgment including that of costs. D E

MUSDAPHER JSC

I have had the honour to read before now, the judgment just read by my Lord Oguntade; JSC., with which I entirely agree. For the same reasons contained therein, which I respectively adopt as mine, I too dismiss the appeal and affirm the decision of the court below. I abide by the order for costs contained in the aforesaid judgment. F G

AKINTAN JSC

I had the privilege of reading the draft of the leading judgment just delivered by my learned brother, Oguntade, JSC. I entirely agree with the views he expressed therein and his conclusion that the appeal lacks merit. H

It is clear from the facts of the case that the appellant was employed by the 2nd respondent who also dismissed him. It seems, however, that the 2nd respondent ceased to exist as at the time the appellant commenced his action at the High Court. This could be inferred from the fact that the
B 1st respondent was incorporated as a limited liability company and was carrying on the same or similar duties previously being carried on by the 2nd respondent. The appellant failed to plead and lead evidence to show that the 1st respondent in fact took over the assets and liabilities of the
C 2nd respondent. The appellant could have done this probably by pleading and tendering the articles of association of the 1st respondent company, a certified copy of which he could have obtained from the Companies Registry. Rather than doing that, he relied on a document (Exhibit 8) which he failed to link with the 1st respondent. His failure to prove that
D the 1st respondent took over the liabilities of the 2nd respondent is very vital to his claim. For the above reasons and the fuller reasons given in the leading judgment, which I also adopt, I also dismiss the appeal with costs as assessed in the leading judgment.

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