

SUPREME COURT OF NIGERIA

1ST JULY, 2005. SC. 18/2001

**CORAM:- S. M. A. BELGORE, A. I. KATSINA-ALU, I. C. PATS-
ACHOLONU, G. A. OGUNTADE, S. A. AKINTAN, JJSC**

MR. A. S. JOMBO (J.P) APPELLANT
AND

1. PETROLEUMEQUALISATION FUND
(MANAGEMENT BOARD)

2. THE HONOURABLE MINISTER OF RESPONDENTS
PETROLEUM RESOURCES

3. THE HONOURABLE ATTORNEY
GENERAL OF THE FEDERATION

MASTER & SERVANT - Appointment - Termination of - Where letter of termination is issued to a person - The employer has no other intention - Than to put an end to the job (H1)

COURTS - Jurisdiction - Interpretation of Statutes - Where a law has the feature of being punitive - Court should launch out into its jurisprudential knowledge - To ensure that its jurisdiction is not taken away (H2)

COURTS - Jurisdiction - Competence of court - Where statute ousts the jurisdiction of court - Court should examine all the circumstances of the case - With a view of discovering whether it fits into the orbit of the intendment of the statute (H3)

COURTS - Jurisdiction - Competence of court to adjudicate on a matter - Where jurisdiction of court is being thrown away - Court should not readily lend its hand to forces - That seek to take away its jurisdiction (H4)

FACTS

Before the High Court, the plaintiff/appellant filed a suit against the defendant/1st respondent, his employer, for terminating and dismissing his appointment. The appellant filed an action seeking the following reliefs - (a) declaration that his termination was illegal (b) an order directing his reinstatement to the position he had held in the 1st respondent's cooperative body, and (c) directing that all his cumulative entitlements be paid to him. The appellant was a former General Manager of the 1st respondent. On the 16th of February, 1998, he received an internal memo which was described as a dereliction of duty. On the 22nd of February, he responded to the memo. On the 2nd of March, 1998, a query was issued to him and this was promptly followed two days later by a suspension. On the 19th of March, 1998, he was summoned to appear before the disciplinary committee which was approved by the 2nd respondent. On the 20th of March 1998, he appeared before the committee and by a letter on the 28th of July, 1998, his appointment was terminated.

The appellant, therefore, filed an action before the Federal High Court challenging his termination. The Court held that it lacked jurisdiction to entertain the case and accordingly, the action was struck out. The appellant appealed to the Court of Appeal where his appeal was dismissed for lack of jurisdiction. The appellant has further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

(i) Whether the Federal High Court was right to have declined jurisdiction in Suit No. FHC/ABJ/CS/60/98 as held by the Court of Appeal.

(ii) Whether as in this case an employer can lawfully dismiss an employee during the pendency of an action by the employee filed in challenge of an earlier termination of his employment by the employer.

HELD (Unanimously allowing the appeal per **PATS-ACHOLONU JSC**)
Appointment - Termination of

1. The argument of the appellant is that even a mere bird's eye view of the letter of termination issued to him does not show that it emanated from the

appropriate authority. There are two points to be discerned from the argument proffered in issue No. I: (i) Was the person who issued the letter of termination the appropriate authority, (ii) Of what relevance was the letter of dismissal? In other words can termination of appointment and dismissal co-exist at the same time. Termination of appointment is intended always to put paid to any job or assignment one is holding/ or for the time doing. The issue of whether the person whose service is terminated accepts it or not does not arise. Even if the person whose appointment has been brought to an end by a letter of termination challenges it in court, that does not mean that the employer had any other intention other than to put an end to the job description held by the subject of the termination letter. The letter of termination did not state from whom the directive emanated. The appropriate authority as reflected in the statute was not named. Nothing prevents someone who does not like the face of an employee to hide under the ubiquitous ouster clause and the expression of “appropriate authority” to terminate the employment of someone. (p. 2450 B)

COURTS - Jurisdiction - Interpretation of Statutes

2. Where a law which has the feature of being punitive is a subject of interpretation the court should launch out deeply (due in altum) into the forest of its jurisprudential knowledge and wisdom to give the matter a worthy and merciless scrutiny to ensure that in stricto sensu, its jurisdiction was taken away. It does not and should not merely wring its hands in desperation. In *Okoroafor v. The Miscellaneous Offences Tribunal* (1995) 4 NWLR 59, 67, 70, I said in respect of ouster clauses which were then clustering the Military Government’s statute books.

“Courts are not frightened of an ouster clause. They respect it but when an ouster clause seeks to make it impossible for the courts to protect the common man, and make laws which cannot stand the test of reason or that is an affront to decency and intelligence, then a court should be careful not to lend its weight to a law that would make it enemy of the common man and not the last hope of the common man.”

..... *“It is the eternal credit of the courts that it is the*

peculiar function of the Independent Judiciary comprising of highly qualified legal experts burning and imbued with zeal to give final and authoritative interpretations to our Constitution and our laws, that we must as far as possible, given the frame work and circumstances of our times, help to nurture a society that is governed by just laws”.
(p. 2450 F)

Competence of court

3. On the 2nd issue, the respondents have argued in this vein. “It is submitted that the court can not assume jurisdiction over an executive act when the law under which the executive acted clearly ousts the jurisdiction of the court as was rightly held in the case of Attorney-General of the Federation & A nor, v. Sode & Anor. (1990) 21 NSCC Pt. 1.” Their stand is that once the statute ousts the jurisdiction of the court, it has a tone of finality and the court has no business to encircle round it. I respectfully disagree, if that means that the court cannot try to find out whether its competence has been taken away. Since the right of an individual is affected the court seised of the matter ought to carefully examine all the circumstances of the case with a view to discovering whether it fits into the orbit of the intendment of the statute. To close its eyes to the sinister tenor of ouster provision of the statute would amount in my view to abrogation of its constitutional responsibilities. The court should always see itself as knight errant in a shining armour brandishing its sword to help the hopeless and evenly seen not to collaborate with forces that choke and asphyxiate the rights of people thereby forcing them into the limbo of disillusionment and frustration. (p. 2451 G)

Competence of court to adjudicate on a matter

4. The two lower courts were obviously carried away by the imperial language of the statute and washed their hands clean of competence to adjudicate on the matter. In a case of this nature, as I said earlier, the court whose jurisdiction is being thrown away should not readily lend its hand to forces that seek to emasculate and render it toothless.

In the final analysis the appeal succeeds and I set aside the decision

of the lower courts. The case should therefore be remitted to another judge for proper trial. (p. 2452 F)

NOTABLE POINTS OF INTEREST

OGUNTADEJSC

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1. Difference between Termination or dismissal of an employee

With respect to the two courts below. I think that they missed essential point in the dispute. “Termination” or “Dismissal” of an employee by the employer translates into bringing the employment to an end. Under a termination of appointment, the employee is enabled to receive the terminal benefits under the contract of employment. The right to terminate or bring an employment to an end is mutual in that either party may exercise it. “Dismissal” on the other hand is punitive and depending on the contract of employment very often entails a loss of terminal benefits. It also carries an unflattering opprobrium to the employee. What then can be the meaning of dismissing an employee from a relationship, which no longer exists arising from the earlier termination? The two courts below should have seen that the latter dismissal of plaintiff/appellant is irrelevant and diversionary following his earlier termination. (p. 2459 E)

2. Court should not allow a litigant to manipulate the adjudicatory process

It needs be said that it was an act of disrespect to the Federal High Court, Abuja, for the 1st defendant/respondent to attempt to interfere with the proceedings in the case of unlawful termination brought by the plaintiff/appellant. There is no doubt that the intention of the 1st defendant/respondent was to take the case out of the jurisdiction of the trial court by getting the plaintiff/appellant dismissed during the pendency of his suit challenging his termination. This course was obviously resorted to so that the 1st defendant/respondent could take umbrage under the ouster provisions under Section 3(3) of Decree No. 17 of 1984. The behaviour of the 1st defendant/respondent shows bad faith and bad taste. What is however more worrying is the lame manner in which the courts below threw up their hands in surrender thus allowing a litigant manipulate to its advantage the adjudicatory process. (p. 2459 H)

AKINTANJSC

3. Laws that remove court's jurisdiction - Should be constructed very strictly

B The main question raised in this appeal is whether the ouster of
jurisdiction provisions in Section 3(3) of the Public Officers (Special
Provisions) Act is applicable to this case. In resolving that question, it is
necessary to look into the plaintiff's claim before the trial court since the
law is settled that jurisdiction is determined by the claim before the court.
C Similarly, it is trite law that the courts jealously guard their jurisdiction. It
follows therefore that any legislation seeking to restrict or oust the
jurisdiction of the court is construed strictly and narrowly. This is because
ouster of court's jurisdiction is not a matter off course. It is a very serious
D matter which the courts do not take lightly. It follows therefore that for
the court's jurisdiction to be ousted, it must be clearly shown that a
particular action falls within the ouster clause. The court must therefore,
in order to protect its jurisdiction, construe very strictly such laws that
E tend to deny or whittle its jurisdiction. (p. 2464 B)

REPRESENTATION

Prince A. A. Kayode SAN., (with him, S. O. Adesina (Mrs.) and B. Bulama
Esq.), for the Appellant.
F Musa Yamita Biu, Esq., (with him, Messrs. M.T. China and M. I. Joshua)
for the Respondents.

CASES REFERRED TO

G Garba v. F.C.S.C. & Anor. (1988) 1 NWLR (Pt 71) p. 449 at 621
Okoroafor v. the Miscellaneous Offences Tribunal (1995) 4 NWLR 59,
67, 70
Anya v. Iyayi (1993) 7 NWLR (Pt. 305) p. 290 at 312
H Attorney-General of the Federation & A nor, v. Sode & Anor. (1990) 21
NSCC Pt.1
Abacha v. Fawehinmi (2000) 4 S.C. (Pt. II) 1; (2000) 6 NWLR (Pt. 660)
228

STATUTE REFERRED TO

Public Officers (Special Provisions) Decree No. 17 of 1984 ss. 1(1), 3(3) & 4(2)

LEAD JUDGMENT BY PATS-ACHOLONU JSC

The synopsis of the case that gave rise to this appeal is that the appellant who was at one time a staff of the 1st respondent, had his appointment first terminated and later dismissed. He filed an action in the High Court seeking the reliefs of (a) declaration that his termination was illegal, unconstitutional and therefore void, (b) an order directing his reinstatement to the position he had hitherto held in the 1st respondent's corporate body and, (c) and directing that all his cumulative entitlements, salaries, and allowances be paid to him.

The appellant, a former General Manager of the 1st respondent, received an internal memo on the 16th February, 1998, in what was described as a dereliction of duty. On the 22nd February, 1998, he responded to the memo pointing out the latent problems assailing due performance in the institutional body and dutifully proffered possible solutions. On the 2nd of March, 1998, a query was issued to him and this was promptly followed two days later by a suspension, and a committee was set up to investigate the allegations against him. In the same month, indeed, to be factual, on the 19th of March, 1998, he was summoned to appear before the disciplinary committee set up by the 1st respondent on the authority and approval of the 2nd respondent. He appeared before the Committee on the 20th March, 1998, to answer to the summons. On the 28th of July, 1998, his appointment was terminated by a letter. Technically he ceased to be an employee of the 1st respondent after the termination. Three days after receiving the letter of termination, he filed an action in the Federal High Court challenging his termination. The 2nd respondent, interestingly, as though not to be beaten, by a letter of 21st April, 1999, purported to dismiss him from the service of the 1st respondent. The effect of this no doubt is that the 2nd respondent under whom the appellant was not working was issued with the letter of dismissal from the service

of the 1st respondent who had earlier terminated the service of the appellant who was its servant.

In the High Court, the issue of the jurisdiction having regard to the tenor and intendment of Special Provisions Decree No. 17 of 1984 (now rendered moribund by the Constitution of 1999), was raised. In that court, the learned trial Judge held that it lacked jurisdiction to entertain the case and accordingly the action was struck out. The appellant thereupon appealed to the lower court and the action was dismissed on the issue of lack of jurisdiction. The appellant therefore appealed to this court and framed two issues for consideration. The issues are as follows:-

(i) Whether the Federal High Court was right to have declined jurisdiction in Suit No. FHC/ABJ/CS/60/98 as held by the Court of Appeal.

(ii) Whether as in this case an employer can lawfully dismiss an employee during the pendency of an action by the employee filed in challenge of an earlier termination of his employment by the employer.

The respondents on their own framed 2 issues more or less identical but in different words. Dealing with issue 1 the learned counsel for the appellant submitted that generally the courts have settled an important issue relating to a statutory provision that purports to or actually ousts the jurisdiction of the court. He referred to *Anya v. Iyayi* (1993) 7 NWLR (Pt. 305) p. 290 at 312 and argued that courts faced with the issue of interpreting ouster clauses tend to be strict as they invariably would affect a person's fundamental right. During the Military Regime this court took judicial notice of the fact that the Military Governments by their very nature of dictatorism, and the use of imperial language in their numerous enactments, brooked no challenge and tended to remove the competence of the courts to examine their decrees. They frowned at attempts by courts to side-track or circumvent the operationality of the dictates of their numerous laws which had ouster clauses. But the courts, imbued with the conscience to mete out justice that is in tune with civilized adjudication, and could stand the test of a living law in a modern society, tried to tamper with the rigours of the ouster clauses by a resort to an interpretation that would be utilitarian.

Now Section 1(1) Public Officers (Special Provisions) Act states:

“Notwithstanding anything to the contrary in any law, the appropriate authority if satisfied that:-

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“the general conduct of a public officer in relation to the performance of his duties has been such that his further or continued employment in the relevant service would not be in the public interest.

(i) may dismiss or remove the public officer summarily from his office, or

(ii) retire or require the public officer to compulsorily retire from the relevant public service.”

Section 3(3) states:-

D

“No civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done by any person under this Act and if any such proceedings have been or are instituted before, on or after the making of this Act, the proceedings shall abate, be discharged and made void.”

Who is the appropriate authority? The term appropriate authority is defined in Section 4(2) of the Act as follows:-

(a) “in respect of any office which was held for the purpose of any State shall be the Military Governor of that State or any person authorized by him and

(b) in any other case shall be the President or any person authorized by him or the Armed Forces Ruling Council”.

Was the letter of termination being complained against issued by the appropriate authority within the contemplation of the statute? Let me reproduce the letter of termination issued to the appellant on 28th July, 1998:-

“I have been directed to convey to you this Ministry’s rejection of your withdrawal of resignation dated 22nd June, 1998.

2. In view of the above, I have been instructed to convey to you the earlier decision of the Honourable Minister of Petroleum Resources of 6th

May. 1998, to terminate your appointment from the services of the Petroleum Equalization Fund with immediate effect.

3. *This decision is based on the outcome of the report of the Investigation Committee which found you guilty of cross misconduct.*

B 4. *You are to hand-over all Government properties in your possession to the Executive Secretary of the Fund."*

The argument of the appellant is that even a mere bird's eye view of the letter of termination issued to him does not show that it emanated from the appropriate authority. There are two points to be

C **discerned from the argument proffered in issue No. I: (i) Was the person who issued the letter of termination the appropriate authority, (ii) Of what relevance was the letter of dismissal? In other words can termination of appointment and dismissal co-exist at the same**

D **time. Termination of appointment is intended always to put paid to any job or assignment one is holding/or for the time doing. The issue of whether the person whose service is terminated accepts it or not does not arise. Even if the person whose appointment has been**

E **brought to an end by a letter of termination challenges it in court, that does not mean that the employer had any other intention other than to put an end to the job description held by the subject of the termination letter. The letter of termination did not state from whom the directive emanated. The appropriate authority as re-**

F **flected in the statute was not named. Nothing prevents someone who does not like the face of an employee to hide under the ubiquitous ouster clause and the expression of "*appropriate authority*" to terminate the employment of someone. Where a law which has the**

G **feature of being punitive is a subject of interpretation the court should launch out deeply (due in altum) into the forest of its jurisprudential knowledge and wisdom to give the matter a worthy and merciless scrutiny to ensure that in stricto sensu, its jurisdiction**

H **was taken away. It does not and should not merely wring its hands in desperation. In *Okoroafor v. the Miscellaneous Offences Tribunal* (1995) 4 NWLR 59, 67, 70, I said in respect of ouster clauses which were then clustering the Military Government's statute books;**

“Courts are not frightened of an ouster clause. They respect it but when an ouster clause seeks to make it impossible for the courts to protect the common man, and make laws which cannot stand the test of reason or that is an affront to decency and intelligence, then a court should be careful not to lend its weight to a law that would make it enemy of the common man and not the last hope of the common man.” B

..... “It is the eternal credit of the courts that it is the peculiar function of the Independent Judiciary comprising of highly qualified legal experts burning and imbued with zeal to give final and authoritative interpretations to our Constitution and our laws, that we must as far as possible, given the frame work and circumstances of our times, help to nurture a society that is governed by just laws”. C

Indeed, the strange anomaly that is the feature of the termination and then dismissal of the appellant is that both were done by two bodies, D to wit, the Ministry of Petroleum Resources through a Director on behalf of the Permanent Secretary, and another one on dismissal purported to have been done on behalf of the Head of State. The letter of dismissal plays no part in this matter. It may perhaps feature in the trial of the main case E hereafter.

I observe that the respondents have really nothing worthwhile to canvass on their stand beyond what is contained in the judgment of the Court of Appeal that the decision is in order. I am not satisfied that the court below could not exercise its jurisdiction in this matter because of the F nebulously worded ouster clause and the fact that the letter of termination purporting to reflect the tenor and intendment of the Decree afore-said was writ her.

On the 2nd issue, the respondents have argued in this vein. “It is submitted that the court can not assume jurisdiction over an executive act when the law under which the executive acted clearly ousts the jurisdiction of the court as was rightly held in the case of Attorney-General of the Federation & Anor, v. Sode & Anor. (1990) 21 NSCC Pt. 1.” Their stand is that once the statute ousts the jurisdiction of the court, it has a tone of finality and the court has no business to encircle round it. I respectfully disagree, if that means that the court G H

cannot try to find out whether its competence has been taken away. Since the right of an individual is affected the court seized of the matter ought to carefully examine all the circumstances of the case with a view to discovering whether it fits into the orbit of the
 B intendment of the statute. To close its eyes to the sinister tenor of ouster provision of the statute would amount in my view to abrogation of its constitutional responsibilities. The court should always see itself as knight errant in a shinning armour brandishing its sword to
 C help the hopeless and evenly seen not to collaborate with forces that choke and asphyxiate the rights of people thereby forcing them into the limbo of disillusionment and frustration. For this I find myself utterly in agreement with Eso, JSC, in *Garba v. F.C.S.C. & Anor.* (1988) 1 NWLR (Pt 71) p. 449 at 621 when he said:

D “What remains now is an examination of the act of the respondents in dismissing the appellant from office during the pendency of the action. Such action, I think, is contemptuous of the judiciary which has been seized
 E with the determination of Civil Right under the Constitution and which has been left unscathed by all Military Coups. For the judiciary, a powerful arm of Government to operate under the Rule of Law, full confidence and trust this must be unadulterated, must exist in that institution. It must indeed be demonstrably shown especially if it is the other arms of
 F Government that are involved..... The Rule of Law knows no fear, it is never cowed down, it can only be silenced. But once it is not silenced by the only arm that can silence, it must be accepted in full confidence to be able to justify its existence”.

G The two lower courts were obviously carried away by the imperial language of the statute and washed their hands clean of competence to adjudicate on the matter. In a case of this nature, as I said earlier, the court whose jurisdiction is being thrown away should not readily lend its hand to forces that seek to emasculate and
 H render it toothless.

In the final analysis the appeal succeeds and I set aside the decision of the lower courts. The case should therefore be remitted to another judge for proper trial. There shall be costs for the appellant

in the High Court for N2,000.00. in the Court of Appeal for N5,000.00 and in this court for N10,000.00.

BELGORE JSC

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I agree with the lead judgment of Pats-Acholonu, JSC, and for the reasons contained therein.

I allow this appeal and order trial on its merits before another judge of Federal High Court.

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KATSINA-ALU, JSC

The appellant, Mr. A. S. Jombo, was an employee of the 1st respondent. On 28th, July, 1998, his appointment was terminated. He D went to court. His claim was for:

“1. A declaration that the purported termination of plaintiff’s appointment from the service of the Petroleum Equalization Fund (Mgt.) Board is illegal, unconstitutional, null and void for non-compliance with E the Federal Government Guideline and or circulars on discipline and Section 33 of the Constitution of the Federal Republic of Nigeria (as amended) which guarantees the plaintiff’s right to fair hearing.

2. An order re-instating the plaintiff back to the position as General F Manager (Operations) as the Petroleum Equalization Fund (Mgt.) Board.

3. An order directing the first defendant to pay the plaintiff all his salaries, allowances and emoluments due from the dates of his suspension and termination to the date of re-instatement.”

The plaintiff then proceeded to file his Statement of Claim. G Meanwhile on or about 21st April, 1999, the plaintiff was served with a letter dismissing him from the Federal Civil Service under the Public Officers (Special Provisions) Decree No. 17 of 1984. Thereafter, the 1st defendant filed a motion praying that the plaintiff’s suit be struck out on H the ground (hat the trial court had no jurisdiction to entertain the suit.

The trial court heard the motion. It declined jurisdiction and struck out the plaintiff’s suit. On appeal to the Court of Appeal, that court

dismissed the appeal and affirmed the ruling of the trial court.

By its letter of termination, the 1st defendant had brought the employment/services of the plaintiff to an end. I think it is elementary that the plaintiff could not thereafter be dismissed from an employment that had
B ceased to exist. In my judgment, the plaintiff's dismissal coming after the termination of his appointment, was a futile exercise.

I entirely agree with the judgment of my learned brother. Pats-Acholonu. JSC., that this appeal has merit. I also allow it and set aside the
C decisions of the two courts below I direct that the plaintiff's suit be re-listed and heard on the merit before another judge of the Federal High Court, Abuja. I also abide by the order for costs.

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OGUNTADEJSC

The appellant was an employee of the 1st respondent. On 28/7/98, he was terminated. He considered his termination unlawful. He therefore, brought a suit at the Federal High Court. Abuja, claiming for:

E "1. A declaration that the purported termination of plaintiff's appointment from the service of the Petroleum Equalization Fund (Mgt.) Board is illegal, unconstitutional, null and void for non-compliance with the Federal Government Guideline and or circulars on discipline and
F Section 33 of the Constitution of the Federal Republic of Nigeria (as amended) which guarantees the plaintiff's right to fair hearing.

2. An order re-instating the plaintiff back to the position as General Manager (Operations) as the Petroleum Equalization Fund (Mgt.) Board.

G 3. An order directing the first defendant to pay the plaintiff all his salaries, allowances and emoluments due from the dates of his suspension and termination to the date of re-instatement."

The plaintiff filed a Statement of Claim, rather than file a statement of defence, the 1st defendant filed a motion praying that the plaintiff's suit
H be struck out on the ground that the trial court had no jurisdiction to entertain it. In paragraphs 3 and 4 of the affidavit in support of the motion, 1st defendant's Deputy Manager (Admin & Personnel) deposed thus:

"That I was informed by S. Usman, Esq., of counsel handling this

case for the first defendant/applicant and I verily believe him as follows:

(a) That the appointment of the plaintiff/respondent with the first defendant was terminated pursuant to the approval of the Ministry of Petroleum Resources vide a letter Ref. No. PEF/S.22/T/18 dated 25th July, 1998. (A copy of the letter is annexed herewith and marked Exhibit B A).

(b) That the plaintiff/respondent has filed this suit challenging the above termination and the matter is fixed for hearing on 17th June, 1999, before this Honourable Court. C

(c) That on the 15th of April, the first defendant/applicant received a correspondence from the Ministry of Petroleum Resources (its supervising ministry) forwarding the following for implementation:

(i) A letter Ref. No. MPS/2218/1 of 14th April, 1999, signed by the Permanent Secretary, Ministry of Petroleum Resources (attached and marked Exhibit B). D

(ii) A circular Ref. No. TSR.02/197/T/140 dated 25th March, 1999, from the office of the Secretary to the Government of the Federation (attached and marked Exhibit C). E

(iii) Public Officers (Special Provisions) Decree 1984 (1984 No. 17) Instrument for dismissal, removal and retirement of certain officers under the Public Officers (Special Provisions) Decree, 1984, (attached and marked Exhibit D). F

(iv) A list of officers affected by Exhibit D in the service of the first defendant (attached and marked Exhibit E).

That pursuant to the directive contained in Exhibit B and the powers delegated by the Head of State and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria in Exhibit C, the first defendant/ applicant conveyed the dismissal of the plaintiff/respondent from the Public Service to him vide a letter Ref. No. PEF/ C/128/S61 dated 16th April 1999. (The copy of the dismissal letter is attached herewith and marked Exhibit F.)" G H

The plaintiff/appellant deposed to a counter-affidavit, paragraphs 1-10, of which read:

"1. That I am the plaintiff/respondent in this suit by virtue of which

I am conversant with the facts deposed hereto,

2. *That I have read the defendant/applicant's affidavit and that paragraphs (3) and (4) are false.*

3. *That my appointment with first defendant/applicant was wrongly terminated vide a letter dated 28/7/98 and with reference number PEF/S.22/T. 18. (A copy of the said letter is hereby annexed and marked Exhibit W).*

4. *That all events culminating my termination were masterminded by Alhaji A. S. Gurin - the Executive Secretary of the first applicant.*

5. *That I am presently contesting my termination before this Honourable Court by this suit which I filed since 31-7-98.*

6. *That the substantive suit in this case is fixed for hearing, issues having been joined.*

7. *That neither my statement of claim nor their statement of defence shows that there is still a tie between us or that I am still enjoying any form of benefit vide the employer-employee relationship.*

8. *That on or about 21-4-99, I was served with a letter dismissing me from the Federal Civil Service under the Public Officers (Special Provisions) Decree No. 17 of 1984 and that the said letter was signed by Alhaji A. S. Gurin - the Executive Secretary of the first respondent purportedly on behalf of the Head of State. (A copy of the said letter is hereby annexed and marked Exhibit 'B').*

9. *That Alhaji A. S. Gurin again masterminded this dismissal, knowing as a lawyer by training, it is contemptuous of this Honourable Court.*

10. *That Alhaji A. S Gurin says he is untouchable and above the law"*

The trial Judge. Auta. J., heard arguments on the application. On 28/7/99, the trial Judge in his ruling acceded to 1st respondent's application and struck out plaintiff's suit on the ground that his court had no jurisdiction to hear it. Dissatisfied, the plaintiff brought an appeal against the ruling before the Court of Appeal. Abuja Division (hereinafter referred to as 'the court below'). The court below in its judgment on 2-10-2000

dismissed plaintiff's appeal and affirmed the ruling of the trial court. Still dissatisfied, the plaintiff has brought this appeal before this Court. In his appellant's brief, the issues for determination in the appeal were identified as the following:

"1. Whether the Federal High Court was right to have declined B
jurisdiction in suit No: FHC/ABJ/CS/60/98 as held by the Court of Appeal.

2. Whether as in this case an employer can lawfully dismiss an
employee during the pendency of an action by the employee filed in
challenge of an earlier termination of his employment by the employer." C

I intend to consider together these two issues. I stated earlier in this
judgment that the plaintiff/appellant was terminated by letter dated 28/7/
98. The letter of termination reads:

"MINISTRY OF PETROLEUM RESOURCES FEDERAL SEC- D
RETARIAT, SHEHU SHAGARI WAY,

P.M.B. 449, ABUJA

PERSONNEL MANAGEMENT DIVISION/ DEPARTMENT

Telegrams "PERMPETROL" Ref. No. PEF/S.22/T/18

Telephone 09/5232463 Date: 28th July, 1998. E

Mr. A. S. Jombo,

General Manager (Operations)

u.f.s

Executive Secretary F

Petroleum Equalization Fund (PEF)

Ussurna Street,

Maitarna,

Abuja.

TERMINATION OF APPOINTMENT G

I have been directed to convey to you this Ministry's rejection of
your withdrawal of resignation dated 22nd June, 1998.

2. In view of the above, I have been instructed to convey to you the
earlier decision of the Honourable Minister of Petroleum Resources of 6th H
May, 1998, to terminate your appointment from the services of the
Petroleum Equalization Found with immediate effect.

3. This decision is based on the outcome of the report of the

Investigation Committee which found you guilty of gross misconduct.

4. You are to hand over all Government properties in your possession to the Executive Secretary of the Fund.

(Sgd)

B

A. A. Bin

Director (PM)

For: Permanent Secretary”

On 25/3/99, a letter emanated from the office of the Secretary to the Government of the Federation dismissing five public servants of whom the plaintiff/appellant was one. The first question that arises is - What is the status of the plaintiff’s relationship with the 1st defendant following his termination vide the letter dated 28/7/98? It seems to me that when an employer brings the contract of employment to an end by terminating it, the employee effectively ceases to be in the employment and his subsisting rights, if any, are to make a claim for the terminal benefits as provided in the contract of employment. See *Chukwumah v. Shell Petroleum* (1993) 4 NWLR (Pt. 287) 512. The employee could not at his option keep alive a contract of employment, which has been determined by the employer.

The trial Judge in his ruling at pages 47-48 of the record discussing the effect of the dismissal of the plaintiff/appellant after he had previously been terminated said:

“The effect of the provisions of Section 3(3) of the Act, is to prohibit any action or it ousted the jurisdiction of the court to entertain any complain or cases of dismissal or termination of appointment if it is done pursuant to this Act. It covers cases where even if the termination or dismissal is purportedly done under the provisions of this Act. The provisions of this act also has retrospective effect, unfortunately, the case of the plaintiff is therefore caught within the provision of this Act. It went further to make proceedings as this case, which is challenging the termination or dismissal of the appointment of the plaintiff to abate. It is to be discharged and made void.

I therefore find that this court has no jurisdiction to entertain this case and it is accordingly struck out.”

The court below in considering the same issue said at pp 83-84 of

the record:

“The dismissal in the peculiar situation of this matter took effect on 28/7/98 the date the termination of the appointment of the appellant was made by the Appropriate Authority. The appellant by his termination cannot say that his relationship as servant has come to an end vis-a-vis his master. Their relationship between master and servant is still intact. The case of Chukwumah v. Shell (1993) 9 SSCNJ 270 cited by the appellant cannot be of any help to him.

I have closely gone through the exhibits and the facts of this case coupled with the submissions of both counsel in their briefs and hold that the dismissal of the appellant by the appropriate authority to take effect from 28/7/98 the date he was terminated was properly done and in accordance with the provisions of Sections 1, 3(3) and 4(1) of the Decree No. 17 of 1984. The dismissal with immediate effect means that the dismissal is done ‘summarily.’ I hold that the dismissal even if done retrospectively is still in order it does not go against the provisions of the Act”

With respect to the two courts below. I think that they missed essential point in the dispute. “Termination” or “Dismissal” of an employee by the employer translates into bringing the employment to an end. Under a termination of appointment, the employee is enabled to receive the terminal benefits under the contract of employment. The right to terminate or bring an employment to an end is mutual in that either party may exercise it. “Dismissal” on the other hand is punitive and depending on the contract of employment very often entails a loss of terminal benefits. It also carries an unflattering opprobrium to the employee. What then can be the meaning of dismissing an employee from a relationship, which no longer exists arising from the earlier termination? The two courts below should have seen that the latter dismissal of plaintiff/appellant is irrelevant and diversionary following his earlier termination.

It needs be said that it was an act of disrespect to the Federal High Court, Abuja, for the 1st defendant/respondent to attempt to interfere with the proceedings in the case of unlawful termination brought by the plaintiff/appellant. There is no doubt that the intention of the 1st defendant/

respondent was to take the case out of the jurisdiction of the trial court by getting the plaintiff/appellant dismissed during the pendency of his suit challenging his termination. This course was obviously resorted to so that the 1st defendant/respondent could take umbrage under the ouster provisions under Section 3(3) of Decree No. 17 of 1984. The behaviour of the 1st defendant/respondent shows bad faith and bad taste. What is however more worrying is the lame manner in which the courts below threw up their hands in surrender thus allowing a litigant manipulate to its advantage the adjudicatory process.

I would agree with the lead judgment of my learned brother, pats-Acholonu, JSC., that this appeal is meritorious and should be allowed. I would also set aside the decisions of the two courts below. I direct that the plaintiff/appellant's suit be heard on the merit before another Judge of the Federal High Court. Abuja. I subscribe to the order on costs made in the lead judgment.

E **AKINTANJSC**

The appellant, as plaintiff, commenced this action at the Federal High Court, Abuja, against the respondents as defendants. His claim was for:

F *"1. A declaration that the purported termination of plaintiff's appointment from the service of the Petroleum Equalization Fund (Mgt) Board is illegal, unconstitutional, null and void for non-compliance with the Federal Government Guideline and or circulars on discipline and Section 33 of the Constitution of the Federal Republic of Nigeria (as*
 G *Amended) which guarantees the plaintiff's right to fair hearing.*

2. An order re-instating the plaintiff back to his position as General Manager (Operations) in the Petroleum Equalization Fund (Mgt) Board.

H *3. An Order directing the 1st defendant to pay the plaintiff all his salaries, allowances and emoluments due from the dates of his suspension and termination to the date of re-instatement."*

The appellant was a General Manager (Operations) in the 1st respondent's employment. By a letter dated 28th July, 1998, from the

Ministry of Petroleum Resources, the appellant's appointment was terminated. The letter reads, inter alia, as follows:

"TERMINATION OF APPOINTMENT

I have been directed to convey to you this Ministry's rejection of your withdrawal of resignation dated 22nd June, 1998.

2. *In view of the above, I have been instructed to convey to you the earlier decision of the Honourable Minister of Petroleum Resources of 6th May, 1998, to terminate your appointment from the services of the Petroleum Equalization Fund with immediate effect.*

3. *This decision is based on the outcome of the report of the Investigation Committee which found you guilty of gross misconduct.*

4. *You are to hand-over all Government properties in your possession to the Executive Secretary of the Fund.*

Ali A. Biu

Director (PM)

For: Permanent Secretary."

The appellant filed the action to challenge his termination conveyed to him in the above letter. But while the action was pending in court, yet another letter dated 16th April, 1999, issued by the Petroleum Equalization Fund (Management) Board (1st respondent) was written to the appellant. He was informed in the letter of his dismissal from service of his employers. The letter reads, inter alia, thus

"DISMISSAL FROM THE FEDERAL SERVICE PURSUANT TO THE PROVISIONS OF PUBLIC OFFICERS (SPECIAL PROVISIONS) DECREE NO. 17 OF 1984.

I am directed by the Head of State, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria to inform you that, in exercise of the powers conferred on him by the Public Officers (Special Provisions) Act and of all other power enabling him in that behalf, he has dismissed you from the Federal Service with effect from 28th July. 1998, without benefits.

2. *As is customary on occasions like this, you are kindly reminded to hand over all Government property in your possession to the Executive Secretary, Petroleum Equalization Fund (Management) Board.*

3. *Please acknowledge receipt of this letter.*

Yours faithfully.

*For: Head of State, Commander-in-Chief
of the Armed Forces of the
Federal Republic of Nigeria”*

B

The respondents, thereafter on 14th June, 1999, filed a motion in which they prayed the court for an order striking out the appellant’s suit before the court on the ground that the court had no jurisdiction to entertain the claim. The motion was supported by an affidavit deposed to by Ahmed Babboi, Deputy Manager. Administration and Personnel, in the 1st respondent Board. The man deposed as follows in paragraphs 3 (c) and 4 of the affidavit:

C

“3(c) *That on the 15th April, the first defendant/applicant received a correspondence from the Ministry of Petroleum Resources (its supervising ministry) forwarding the following for implementation:*

D

(i) A letter Ref. No. MPS/2218/1 of 14th April, 1999, signed by the Permanent Secretary Ministry of Petroleum Resources (attached and marked Exhibit B).

E

(ii) A circular Ref. No. TRS 02/197/T/140 dated 25th March, 1999, from the office of the Secretary to the Government of the Federation (attached and marked Exhibit C).

F

(iii) Public Officers (Special Provisions) Decree 1984 (1984 No. 17) Instrument for dismissal, removal and retirement of certain officers under the Public Officers (Special Provisions) Decree 1984 (attached and marked Exhibit D).

G

(iv) A list of officers affected by Exhibit D in the service of the first defendant (attached and marked Exhibit D).

H

That pursuant to the directive contained in Exhibit B and the powers delegated by the Head of State and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria in Exhibit C, the first defendant/ applicant conveyed the dismissal to the plaintiff/respondent from the public service to him vide a letter Ref. No. PEF/ C/128/S6/1 dated 16th April, 1999. (The copy of the dismissal letter is attached herewith and marked Exhibit F.”

The application thereafter came up for hearing before Auta. J. After taking submissions from counsel for the parties, he delivered his reserved ruling on 28/4/99. He upheld the objection and held that his court had no jurisdiction to entertain the claim. He accordingly struck out the case. The appellant was dissatisfied with the ruling and he appealed to the court B below. His appeal to that court was dismissed. The present appeal is from the judgment of the lower court delivered on 26th October, 2000. Briefs of argument were filed by the parties in this court. The appellant formulated the following two issues as arising for determination in the C appeal:

“(i) Whether the Federal High Court was right to have declined jurisdiction in the Suit No. FHC/ABJ/CS/60/98 as held by the Court of Appeal.

(ii) Whether, as in this case, an employer can lawfully dismiss an D employee during the pendency of an action by the employee filed in challenge of an earlier termination of his employment by the employer.”

Two similar issues are also formulated in the respondents’ brief and as such I consider it unnecessary to reproduce them. E

In arguing issue 1, reference is made to the appellant’s claim before the trial court. It is then submitted that since the claim was based on the letter dated 28th July. 1998, by which the appellant’s appointment was terminated, it was therefore wrong for both the trial court and the court F below to hold that the trial court lacked jurisdiction to entertain the claim. It is further submitted that since the law is settled that any statute or law-seeking to oust the jurisdiction of the court is to be construed strictly and narrowly and thus guiding jealously the judicial powers conferred on them G by the Constitution, it was wrong of the two lower courts to hold that the trial court lacked jurisdiction in the case.

In the appellant’s Issue 2, it is submitted that it was inappropriate of the respondents to write the second letter dated 16th April, 1999, by which the appellant was dismissed from the same service. It is argued that H once a dispute had arisen and the dispute had been brought before the court thereby invoking the judicial powers of the State, it is the duty of the government to allow the law to take its course or allow the legal and judicial

process to run its full course.

In reply, in the respondents' brief on Issue 1, it is submitted that the appellant's claim before the trial High Court was caught by the provisions of the Public Officers (Special Provisions) Decree No. 17 of 1984 and as such the action was rightly struck out.

On Issue 2, no submission was made in reply to the submission made by the appellant in respect of that issue.

The main question raised in this appeal is whether the ouster of jurisdiction provisions in Section 3(3) of the Public Officers (Special Provisions) Act is applicable to this case. In resolving that question, it is necessary to look into the plaintiff's claim before the trial court since the law is settled that jurisdiction is determined by the claim before the court. Similarly, it is trite law that the courts jealously guard their jurisdiction. It follows therefore that any legislation seeking to restrict or oust the jurisdiction of the court is construed strictly and narrowly. This is because ouster of court's jurisdiction is not a matter off course. It is a very serious matter which the courts do not take lightly. It follows therefore that for the court's jurisdiction to be ousted, it must be clearly shown that a particular action falls within the ouster clause. The court must therefore, in order to protect its jurisdiction, construe very strictly such laws that tend to deny or whittle its jurisdiction: See *Abacha v. Fawehinmi* (2000) 4 S.C. (Pt. II) 1; (2000) 6 NWLR (Pt. 660) 228; and *Anya v. Iyayi* (1993) 7 NWLR (Pt. 305) 290.

Thus, in the instant case, the appellant's claim was based on the contents of the letter dated 28th July, 1998, by which the appellant's appointment was terminated. There is nothing on the face of that letter by which the trial court and the court below could infer that the ouster provisions in the aforementioned Public Officers (Special Provisions) Act are applicable. It was therefore wrong of the trial court and the court below to hold that the jurisdiction of the trial court was ousted. Similarly, the court below was wrong in taking into consideration the second letter written after the claim before the trial court had been filed in deciding whether the jurisdiction of the court had been ousted. There is therefore merit in the appeal as it relates to the appellant's issue one.

The question whether it is proper for the 1st and 2nd respondents to write the second letter dismissing the appellant after he had filed the present action in court raised in the appellant's Issue 2, cannot be sustained. This is because as there was no court order restraining the respondents from writing such letter or an application for such order pending before the court, there was totally no law preventing the writing of the said letter. There is therefore no merit in the appeal as it relates to that issue 2. B

In conclusion, I agree with the conclusion reached in the leading judgment written by my learned brother, Pats-Acholonu, JSC., which I was privileged to have read before now, that the appeal should be allowed. I allow the appeal and I hold that the order of the trial court striking out the appellant's claim for want of jurisdiction and the order of the court below dismissing the appellant's appeal against that order are set aside. In their place, I hold that the trial court has jurisdiction to entertain the claim as presently framed. I therefore order that the appellant's claim struck out should be restored on to the cause list and be heard on its merit by another judge in the same jurisdiction. The appellant is entitled to his costs in this court which I assess at N10.000. C D E

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