

**SUPREME COURT OF NIGERIA**

7TH OCTOBER, 2005. SC. 66/2000

**CORAM:- U. A. KALGO, A. O. EJIWUNMI, G. A. OGUNTADE,  
M. MOHAMMED, W. S. N. ONNOGHEN, JJSC**

AUGUSTINE F. I. IBAMA ..... APPELLANT  
AND

SHELL PETROLEUM DEVELOPMENT  
COMPANY OF NIGERIA LIMITED ..... RESPONDENT

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MASTER & SERVANT - Contract of Service - Termination of - Where contract is reduced into writing - Court will not look into any matter - Outside the terms stipulated (H1)

COURTS - Documents - Construction of - Contract of service - Where plain and unambiguous - Court must confine itself to its provisions - In determining the rights and obligations of the parties (H2)

MASTER & SERVANT - Contract of service - Termination of - Where an employee has been notified - Of his pending retirement - It does not per se - Constitute a bar to subsequent termination of his employment (H3)

LEGAL PRACTITIONERS - Actions - Master & servant - Duty of Counsel - Is to exercise caution in not pursuing matters that have no merit - Which even the parties seem not to support - Thereby wasting time of the courts (H4)

MASTER & SERVANT - Wrongful termination - Appeals - Issues - Where the main issue is resolved against appellant - In holding that he was lawfully terminated - It is not necessary to wade into other issues as to damages (H5)

**FACTS**

Before the High Court of Rivers State, Port Harcourt, the plaintiff/

appellant instituted an action against the defendant/respondent, his employer. The plaintiff after serving the required number of years, was confirmed as an officer and attained the rank of a Senior Staff. On reaching retiring age, he was communicated by the defendant and he attended a pre-retirement Seminar arranged by the defendant at Benin-City. The plaintiff who served the defendant diligently for 22 years was expecting to retire on the 25-9-1992 at the age of 55. A month after attending the pre-retirement seminar, by a letter dated 13-11-1991, the defendant terminated the plaintiff's employment with an offer of 3 months basic salary in lieu of Notice. The defendant paid into the plaintiff's account the sum of N105,385.30 being total terminal benefits due to him from the defendant.

Plaintiff made unsuccessful efforts through his Solicitor to have the steps taken against him on the termination of his employment reversed. Plaintiff therefore instituted this action seeking inter alia, a declaration that his purported termination without proof of any misconduct is void and of no effect. The trial court held that the plaintiff's employment was wrongfully terminated, awarded him three months' salary and other usual monthly allowances. All his other claims were however dismissed. Dissatisfied with the decision of the trial court, the plaintiff appealed to the Court of Appeal but the appeal was dismissed. He has further appealed to the Supreme Court.

**ISSUES FOR DETERMINATION**

1. Whether the action of the respondent in terminating the employment of the appellant was wrongful.
2. If the termination of the appellant's employment was wrongful what is the measure of damages that may accrue to him.

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

***Contract of Service - Termination of***

1. In the present case, the claim of the appellant that he had become a life employee of the respondent who can not be retired until he attained the retiring age of 55 years in the service of the respondent was neither pleaded by the appellant as plaintiff nor proved by him in evidence. Furthermore this claim of the appellant of being a life employee of the respondent entitled

to pension for life, is not contained in the contract of service governing the employment of the appellant as pleaded and produced by him in evidence as Exhibit V at the trial court in support of his case. The contract of service is indeed the pivot or foundation upon which an aggrieved employee must found his case. He succeeds or fails upon the terms thereof. Therefore in a contract of service reduced into writing by the parties as the Contract of Service Nigeria Senior Staff of the respondent Exhibit V in the instant case, the court will not look into any matter outside the terms stipulated and agreed therein between the parties to the contract, in determining the respective rights and obligations of the parties. In *Western Nigeria Development Corporation v. Abimbola* (1966) 4 NSCC 172, this court held that the provisions of a written contract of service binds the parties thereto and that it was outside the province of the learned trial judge to look anywhere for terms of termination of the contract other than in the Agreement Exhibit A. (p. 2605 F)

### ***COURTS - Documents - Construction of***

2. In the instant case, the appellant has a contract of service with the respondent in Exhibit V. This contract of service between the parties is quite clear and unambiguous. It is also quite unequivocal in its terms regarding the provision for its determination. It is trite that the court must, in construing the relationship of the parties in any contract, confine itself to the plain words and meaning which can be derived from the provisions containing the rights and obligations of the parties provided therein. See *Adegbite v. College of Medicine University of Lagos* (1973) 5 SC 149. (p. 2606 C)

### ***Where employee has been notified - Of his pending retirement***

3. Applying this decisions to the present case, I have no difficulty at all in coming to the conclusion that the respondent was perfectly justified in determining the appellant's contract of service in exhibit V by its letter exhibit K notwithstanding the fact that the appellant had attended the pre-retirement seminar and was waiting to retire on 25-9-1992 on attaining the age of 55 years. In other words the fact that an employee has been notified

of his pending retirement does not, on its own, constitute a bar to subsequent termination of his employment before retirement by the employer in the absence of any specific provision to the contrary in the contract of service binding between the parties. See *Abologu v. Shell B Petroleum Development Company of Nigeria Ltd.* (supra).

It is significant to note that from the evidence of the appellant under cross-examination at pages 44-45 of the record of this appeal, the appellant himself appears to have no serious quarrel with the manner by which his employment was terminated and with his final entitlements paid into his bank account by the respondent after the termination of the employment. (p. 2611 B)

***Master & servant - Duty of Counsel***

D 4. Indeed if the appellant himself right at the trial High Court even before the conclusion of the hearing of his action against the respondent, was satisfied that the termination of his employment by the respondent, was in accordance with the terms of his contract of service, coupled with the E fact that his final entitlement less his indebtedness with the respondent paid into his Bank Account was still in his custody with no attempt to return it to the respondent, I am completely at a loss to see the necessity of prosecuting this case right from the trial High Court through to the Court F of Appeal and ultimately to this court ending in abysmal failure at each stage: The question then is whether it was not a really futile exercise for the learned counsel to the appellant to have saddled the trial court, the Court of Appeal and lastly this court with a case which the appellant himself seemed to have agreed that there was no real dispute between him and the G respondent. For this reason, it is necessary to observe that learned counsel exercising their professional responsibilities in pursuing matters in our courts of law on behalf of their clients, must exercise caution and due diligence in not wasting their energies and valuable time leading to the H precious time and energies of the Courts also being wasted in pursuing matters which are not only clearly without merit but which even the parties themselves as in the present case, do not seem to support. I say no more. (p. 2612 B)

***Wrongful termination - Appeals - Issues***

5. Having effectively resolved the main issue on the determination of the appellant's contract of service against him, it is now unnecessary to wade into the second issue of the determination of the amount of damages accruing to him if the contract of service remained in force up to the time of his retirement on 25-9-1992. Consequently, the question of whether such accrued claim of the appellant could attract interest has equally been swept away by the determination of the main and central issue in this appeal that the appellant's contract of employment was lawfully terminated in accordance with the provisions contained therein.

In the result, this appeal has failed and the same is hereby dismissed.  
(p. 2612 G)

**NOTABLE POINT OF INTEREST**

**ONNOGHENJSC**

*1. Court cannot make contract for the parties*

It is trite law that the court can only interpret or enforce the agreement entered into by the parties and is incapable of making any contract between them. From the documents tendered as exhibits in the proceedings, it is no where stated by the parties that the employment of the appellant is for life and cannot be terminated because he is a pensionable staff without the respondent showing good cause or proving misconduct. The lower court was therefore very right when it refused to be persuaded to import implied terms into the contract between the parties or in effect create a new contract between the parties. Since appellant did not plead any implied terms he cannot claim that clause or paragraph 9 of exhibit V which provides for termination of appointment by either party at any time provided the requisite notice or payment in lieu thereof is made, could not apply to him particularly when he was approaching his retirement age, unless he was shown to have misconducted himself as argued by learned H counsel for the appellant.

In conclusion I too dismiss the appeal for lacking in merit.  
(p. 2618 C)

**REPRESENTATION**

E. B. Peter Kio with him P. D. Peter Kio for the Appellant  
O. C. J. Okocha SAN with him C. I. Nwako for the respondent.

**B**

**CASES REFERRED TO**

Adegbite v. College of Medicine University of Lagos (1973) 5 SC 149  
Nigerian Produce Marketing Board v. Adewunmi (1972) 1 All NLR (pt.2) 433

**C**

Sule v. Nigerian Cotton Board (1985) 6 SC 62 (1985) 2 NWLR (pt.9) 17  
Katto v. C.B.N. (1999) 6 NWLR (pt.607) 390  
Chukwumah v. Shell Petroleum Development Company of Nigeria Limited (1993) 4 NWLR (pt.289) 512

**D**

Amodu v. Amode (1990) 5 NWLR (pt.150) 356 at 370  
Iwuchukwu v. Nwizu (1994) 7 NWLR (pt. 357) 379 at 412  
Board v. Adewumi (1972) 11 SC 111  
Imoloame v. West African Examination Council (1992) 9 NWLR (pt.265)

**E** 303

Fakuade v. O.A.U.T.H. (1993) 5 NWLR (pt.291) 47  
R.S.C.E. v. Omubo (1992) 8 NWLR (pt.260) 456  
C.C.B. (Nig.) Ltd. v. Nwankwo (1993) 4 NWLR (pt.286) 156  
McClelland v. N. Ireland Health Board (1957) 2 All E.R. 129 at 132

**F**

N.P.A. v. Ephraim A. Banjo (1972) 3 SC 168 at 170-171  
Salt v. Power Plant Company Ltd. (1936) 3 All E.R. 322 at 323-324

**LEAD JUDGMENT BY MOHAMMED JSC**

**G**

The plaintiff, now the appellant in this court was employed by the defendant now respondent on 22-11-1969. After serving the required number of years, his appointment was confirmed. As a confirmed officer, he continued to earn regular promotions until he attained the rank of a Senior Staff on 1-2-1980. Being a senior pensionable staff of the defendant's company, the plaintiff was due to retire on 25-9-1992 on reaching the retiring age of 55 years as was duly communicated to him by the defendants' letter dated 27-11-1990. As part of the preparation for the

**H**

retirement, the plaintiff attended a pre-retirement seminar arranged by the defendant for its retiring officers between 22-9-1991 to 27-9-1991 at Benin City. The plaintiff who served the defendant for over 22 years diligently was expecting to retire on 25-9-1992 on attaining the age of 55 years. B

However, barely just over a month after attending the pre-retirement seminar, by a letter dated 13-11-1991, the defendant terminated the plaintiffs employment with an offer of 3 months basic salary in lieu of Notice. In pursuance of the termination of employment, the defendant paid C into the plaintiffs bank account the sum of N105,385.30 being his total terminal benefits due from the defendant. The plaintiffs efforts to have the action taken against him on the termination of his employment reversed by the defendant through his learned counsel having failed, he headed to the High Court of Justice of Rivers State at Port-Harcourt for redress. D

In his amended statement of claim dated 10-6-1992, the plaintiff claimed against the defendant in paragraph 19 thereof, the following reliefs -

*“19. (i) A declaration that the purported termination or release of E the plaintiff from the defendant’s service without proof of any misconduct against the plaintiff is null and void and of no effect.*

*(ii) A declaration that the plaintiff is entitled to continue his employment in the defendant’s service until he attains the retirement age F of 55 years on 25<sup>th</sup> September, 1992, and to all retirement benefits and pension for life.*

*(iii) An injunction restraining the defendant or any person acting on its behalf from annulling the employment of the plaintiff with the G defendant until he retires on 25-9-1992.*

*(iv) Alternatively the plaintiff claim from the defendant the sum of 142,135,545.27 (two million, one hundred and thirty-five thousand, five hundred and forty five naira twenty seven kobo) being the balance of the plaintiffs claim against the defendant as summarized in paragraph 17 H herein after deducting of plaintiffs indebtedness to the defendant in the sum of N18,653.30 (Eighteen thousand six hundred and fifty three naira thirty kobo) for wrongful termination of employment.*

(v) *The defendant pays between 20% and 23% interest on plaintiffs money in its keeping. The plaintiff claims interest on N2,135,545.27 (two million one hundred and thirty-five thousand, five hundred and forty-five naira, twenty seven kobo) at the rate of 20% until the said amount or any part found due to plaintiff is paid.*"

In its defence, the defendant filed a statement of defence in which it maintained that the termination of the defendant's appointment was in order. The case proceeded to trial before Akere J. where the plaintiff alone testified in support of his claims while the defendant also called only one witness who testified in support of its case. At the end of the hearing, the learned trial judge in his judgment delivered on 11-10-1993, found that the plaintiffs employment was wrongfully terminated and awarded him three months' salary and other usual monthly allowances for three months including bonus and leave allowance. All other claims of the plaintiff were however dismissed.

Dissatisfied with this decision of the trial High Court, the plaintiff, who I shall now continue to refer to as the appellant in this judgment, appealed against the decision to the Court of Appeal, Port-Harcourt Division which after hearing the appeal, in its judgment delivered on 19-2-1998, dismissed the appeal.

Aggrieved by this decision of the Court of Appeal, the appellant has further appealed to this court upon 5 grounds of appeal contained in his Notice of Appeal dated 11-5-1998 and filed on 14-5-1998. Pursuant to the rules of this court, the parties through their respective learned counsel duly filed and exchanged briefs of argument comprising the appellant's brief, the respondent's brief and the appellant's reply brief respectively. In the appellant's brief of argument, 3 issues for determination were formulated from the 5 grounds of appeal filed by the appellant. The issues are -

*"(i) Whether the learned justices of the Court of Appeal were right in holding that the appellant is not a life employee having not pleaded any implied terms which entitled him to the status of life employee.*

*(ii) Whether the appellant's contract with the respondent is one of personal service.*



*(iii) Whether on the evidence before the court the appellant is not entitled to the damages claimed with interest thereon.”*

The defendant at the trial High Court, which is now the respondent in this court, in its respondent’s brief of argument, only raised 2 issues for the determination of the appeal as follows:-

*“1. Whether the Court of Appeal erred in law when it held that the relationship between the parties was that of ordinary Master and Servant and governed by the contract of service Exhibit V.*

*2. Whether the Court of Appeal erred in law in dismissing the Appellant’s appeal.”*

It appears to me from the issues raised by the parties in their respective briefs of argument, that the parties have abandoned the real issues for determination in this appeal. The main and real dispute between the parties right from the trial High Court is the determination of the appellant’s employment by the respondent. The real issue therefore, is whether the action of the respondent in bringing to an end the appellant’s services with it at the time it did, was wrongful having regard to the contract of service between the parties. It is only when this issue is resolved in the positive in favour of the appellant that the need to resolve a second issue on the quantum of damages that may become due to the appellant for wrongful or unlawful termination of his employment, may arise for determination. In other words the only issues for determination in this appeal are -

1. Whether the action of the respondent in terminating the employment of the appellant was wrongful.

2. If the termination of the appellant’s employment was wrongful what is the measure of damages that may accrue to him.

To me, the questions of whether the appellant was a life employee of the respondent, or the contract between the parties was that of personal service or whether the claims of the appellant should attract interest are all side issues that could be considered and determined on the resolution of these 2 issues identified.

However, before proceeding to resolve these issues, it will be of assistance to examine the facts of the case from the two angles as

perceived by the two parties respectively. The appellant was employed by the respondent on 22-11-1969 and was promoted to the rank of Senior Staff by a letter dated 21-4-1980 which also contains the terms and conditions of service of Senior Staff of the respondent. The appellant signed on the copy of this letter accepting the terms and conditions of service including a provision giving either the appellant or the respondent the right to terminate the contract of service by giving the appropriate notice or payment of a specified sum of money in lieu of such notice. The appellant who served the respondent for more than 22 years diligently and without any query, was invited and duly attended a seminar between 22<sup>nd</sup> and 27<sup>th</sup> September, 1991 organized by the respondent for its Senior Staff preparatory to their retirement. The appellant was due to retire on 25-9-1992 on attaining the age of 55 years.

However on 13-11-1991, the respondent terminated the appellant's employment with immediate effect after keeping him on suspension with full pay for some months. Aggrieved by this sudden and unexpected action of the respondent, the appellant filed an action at the trial High Court challenging the right of the respondent to terminate his employment as a pensionable officer without accusing him of any misconduct whatsoever particularly after allowing him to attend the respondent's seminar which prepared him for his retirement. The respondent on its part saw the termination of the appellant's employment even though just a few months before his retirement, as a lawful exercise of its right under the contract of service between the parties. Both the trial court and the court below had resolved the dispute between the parties in favour of the respondent hence the appellant's appeal to this court.

As I have earlier stated in this judgment, the main issue calling for determination in this appeal is whether the action of the respondent in terminating the appointment of the appellant was wrongful as claimed by the appellant. The main contention of the learned leading counsel of the appellant on the question of the termination of the appellant's appointment by the respondent was that there was no misconduct whatsoever on the part of the appellant to justify the termination of his employment before attaining the retiring age of 55 years. Learned counsel rightly observed that

there was no allegation of any misconduct levelled against the appellant in the respondent's letter of termination of the employment. That taking into consideration of the conduct of the respondent in various correspondence with the appellant regarding the steps taken to prepare the appellant and groom him for the necessary conditions he was to face in life after retirement, it was inequitable for the respondent to take the action it took against the appellant to deny him his full retirement benefits in the absence of any proved misconduct on the part of the appellant. As for the terms of the contract of service contained in the respondent's letter Exhibit V, learned counsel argued that the terms had been varied by the respondent's subsequent letter to the appellant Ex. 'A' intimating the appellant to prepare for his retirement. He called in aid the case of *Ekwunife v. Wayne (W.A.) Ltd.* (1989) 5 NWLR (pt.122) 422 to support his argument that the terms of the agreement in Exhibit V are no longer enforceable between the parties. Learned counsel emphatically maintained that the respondent cannot deprive the appellant of his accrued benefits under the contract of employment without proof of misconduct against him. Halsburys Laws of England 3<sup>rd</sup> Edition, vol. 8 paragraph 212 page 121 footnote (n) where the case of *Morgan v. Ravey* (1861) 6 H & N 265 which decided that wherever a relation exists between two parties which involves the performance of certain duties by one of them and the payment of reward to him by the other, the law will imply or a jury may infer, a promise by each party to do what is to be done by him, was relied upon by learned counsel who urged this court to infer in the present case that there was a promise by the respondent that if the appellant would work for 15 years in its service and attain the age of 55 years, he would be entitled to pension for life. This is because, according to the learned counsel, under the common law, which he asserts applies in the present case, the appellant having worked for the minimum period qualifying him for pension, he had to be allowed to continue in service until he attained the retirement age. That having become a life employee of the respondent, he could only have been prevented from attaining the retirement age in the service, if he was found guilty of misconduct. A number of decisions were cited in support of this argument. These cases are *Salt v. Power Plant Company Ltd.*

**2604** Ibama v. Shell Petroleum (2005) 10 KLR Mohammed JSC  
(1936) 3 All E.R. 322 at 323-324, McClelland v. N. Ireland Health Board  
(1957) 2 All E.R. 129 at 132 and N.P.A. v. Ephraim A. Banjo (1972) 3 SC  
168 at 170-171.

Turning to the cases of Western Nigeria Development Corporation  
B v. Abimbola (1966) NMLR 38; Nigerian Produce Marketing Board v.  
Adewumi (1972) 11 SC 111; Imoloame v. West African Examination  
Council (1992) 9 NWLR (pt.265) 303; Chukwuma v. Shell Petroleum  
Development Company of Nigeria Ltd. (1993) 4 NWLR (pt.289) 512;  
C Fakuade v. O.A.U.T.H. (1993) 5 NWLR (pt.291) 47; R.S.C.E. v. Omubo  
(1992) 8 NWLR (pt.260) 456 and C.C.B. (Nig.) Ltd. v. Nwankwo (1993)  
4 NWLR (pt.286) 156, on which the lower court and the trial court relied  
in justifying the termination of the employment of the appellant, learned  
D counsel pointed out that all these cases are not germane to the appellant's  
case and urged this court to distinguish them with the present case and  
intervene on the side of the appellant in allowing the appeal as it was  
inequitable for the respondent to have terminated the appellant's  
employment.

E Learned Senior Counsel for the respondent O. C. J. Okocha SAN  
however stressed that the employment of the appellant was lawfully  
terminated by the respondent in accordance with the terms of the  
agreement of service in Exhibit V which does not contain any provision  
F allowing the appellant to remain in service until retirement: that the  
appellant himself having admitted that the termination of the employment  
was in accordance with Exhibit V and that all his entitlements have been  
paid into his bank account, the appeal lacks merit and ought to be  
dismissed. This is because, according to the learned senior counsel, the  
G terms of the contract of service between the parties is the bedrock of the  
case of the appellant: that since clause 9 of Exhibit V gave either party the  
right to terminate the contract of service, the action taken by the  
respondent in terminating it before the appellant reached his retirement age,  
H was quite valid. Some of the cases relied upon by the learned senior counsel  
in support of the argument include Katto v. C.B.N. (1999) 6 NWLR  
(pt.607) 390 and Chukwumah v. Shell Petroleum Development Company  
of Nigeria Limited (1993) 4 NWLR (pt.289) 512

In resolving the main issue in this appeal on whether or not the appellant's employment with the respondent was wrongfully or lawfully terminated, there is no doubt at all that the appellant as the plaintiff at the trial court in line with several decisions of this court particularly *Katto v. C.B.N.* (1999) 6 NWLR (pt.607) 390, had taken the required steps to plead relevant facts in line with the written contract of service and other documents containing the terms of his employment. This is because it is the law that when an employee complains that his employment has been wrongfully terminated, he has the onus of placing before the court the terms of the contract of employment before proceeding to prove the manner the said terms were breached by the employer. It is not the duty of the employer who is a defendant to an action brought by the employee to prove any such breach as laid down by this court in many cases particularly in *Amodu v. Amode* (1990) 5 NWLR (pt.150) 356 at 370 where *Agbaje JSC* said -

*"It appears clear to me that since it is the plaintiffs case that his dismissal by the defendant is not in accordance with the terms and conditions of the contract of service between them it is for the plaintiff to plead and prove the conditions of service regulating the contract of service in question."*

See also *Iwuchukwu v. Nwizu* (1994) 7 NWLR (pt. 357) 379 at 412.

**In the present case, the claim of the appellant that he had become a life employee of the respondent who can not be retired until he attained the retiring age of 55 years in the service of the respondent was neither pleaded by the appellant as plaintiff nor proved by him in evidence. Furthermore this claim of the appellant of being a life employee of the respondent entitled to pension for life, is not contained in the contract of service governing the employment of the appellant as pleaded and produced by him in evidence as Exhibit V at the trial court in support of his case. The contract of service is indeed the pivot or foundation upon which an aggrieved employee must found his case. He succeeds or fails upon the terms thereof. Therefore in a contract of service reduced into writing by**

the parties as the Contract of Service Nigeria Senior Staff of the respondent Exhibit V in the instant case, the court will not look into any matter outside the terms stipulated and agreed therein between the parties to the contract, in determining the respective rights and obligations of the parties. In *Western Nigeria Development Corporation v. Abimbola* (1966) 4 NSCC 172, this court held that the provisions of a written contract of service binds the parties thereto and that it was outside the province of the learned trial judge to look anywhere for terms of termination of the contract other than in the Agreement Exhibit A.

In the instant case, the appellant has a contract of service with the respondent in Exhibit V. This contract of service between the parties is quite clear and unambiguous. It is also quite unequivocal in its terms regarding the provision for its determination. It is trite that the court must, in construing the relationship of the parties in any contract, confine itself to the plain words and meaning which can be derived from the provisions containing the rights and obligations of the parties provided therein. See *Adegbite v. College of Medicine University of Lagos* (1973) 5 SC 149; *Nigerian Produce Marketing Board v. Adewunmi* (1972) 1 All NLR (pt.2) 433 and *Sule v. Nigerian Cotton Board* (1985) 6 SC 62 (1985) 2 NWLR (pt.9) 17. The provision for the determination of the contract of service as agreed between the parties in writing is contained in clause 9 of the Contract of Service Nigeria Senior Staff of the respondent Exhibit V - which is not a mere letter of promotion as claimed by the appellant. Exhibit V dated 21-4-1980 addressed to the appellant personally, the receipt of which he duly acknowledged in writing and agreed to be bound by the conditions contained therein reads -

*"We refer to your recent promotion to Nigerian Senior Staff as from 1<sup>ST</sup> FEBRUARY, 1980 and give below the terms of employment applicable to your new status. They are as follows:-*

1. Your date and place of engagement remain unchanged.
2. Your salary will be at the rate of N3,810.00 per year, subject to such increases as we may grant to you from time to time at our discretion.
3. We undertake during your service to grant you such allowances,

*privileges and benefits as we may decide from time to time.*

4. You agree during your employment to give your whole time service (including Sundays and holidays if the work so requires) to us or any of our Associated Companies in accordance with the orders and directions from time to time given to you by us, to work and reside in such places in the Federal Republic of Nigeria or elsewhere as we may from time to time require, and to obey all applicable rules, regulations and other practices to obey all applicable rules, regulations and other practices from time to time in operation for the guidance and conduct of staff employed by us, or by any of our Associated Companies.

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

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

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

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

9. You, or we, shall have the right at anytime to terminate your employment under this letter by giving to the other not less than one month's notice in writing, or by paying one month's salary in lieu of notice. On the confirmation of your appointment, the period of notice shall be two months, or two months' salary in lieu of notice and on the completion of five years of service, the period of notice shall be three months, or three months' salary in lieu of notice.

10. We shall have the right at anytime, summarily to dismiss you, for any cause which justifies summary dismissal, including but not limited to, serious misconduct, dishonesty, actions considered prejudicial to our interest, or actions conflicting with your obligations under Clauses 6 and

*11 of this letter. In case of such dismissal, you shall not be entitled to any notice or payment in lieu.*

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

*12. You agree that all rights and entitlements under this agreement shall arise as from 1<sup>ST</sup> FEBRUARY, 1980 and that notwithstanding anything contained in the Provident and Pension previous employment, if any, with the Company or any of our Associated Companies shall not be taken into consideration or regarded for any purpose whatsoever.*

*Please confirm your agreement and acceptance to the above terms and conditions by completing, dating and signing over a fifteen kobo stamp, the declaration of the attached duplicate of this letter.*

*Yours faithfully,*

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

*D. O. IKPOKI HEAD PERSONNEL ADMINISTRATION (EAST)  
To: The Shell-Petroleum Development Company of Nigeria Limited*

*I, AUGUSTINE FREDERICK IYIBO IBAMA having read the foregoing letter and the rules concerning confidential information and inventions, accept employment with you on the terms and conditions set out therein and I agree to be bound by these terms and conditions in all respects. Date: 24<sup>th</sup> April 1980 Signature: ..... ”*

*It is not at all in dispute that the appellant and the respondent have agreed in writing to be bound by the contract of service Exhibit V. Not only that, the parties have also agreed to be bound by the provisions of clause 9 of the contract of service which made provisions for its determination. By this provision, the appellant’s employment could be terminated by the respondent by giving the appellants 3 months notice in writing of the termination or paying the appellant 3 months salary in lieu of the notice. Equally, the clause also gave the appellant the right to terminate his employment by giving 3 months notice of the termination to*



the respondent or by paying the respondent 3 months salary in lieu of such notice. Clause 9 of the contract of service does not contain any restriction to the exercise of the right contained therein by either party. It is not difficult therefore to see that the contention of the appellant that his employment with the respondent was a contract for life which can not be terminated without good cause shown or on proof of misconduct against the appellant in the discharge of his obligation under the contract of service, has no connection whatsoever with the contract of service Exhibit V which is binding on the parties.

Turning to the claim of the appellant that the respondent's letter to him Exhibit A had introduced new terms in the conditions of service other than those in Exhibit V, allowing him to remain in service until retirement, the contents of Exhibit A speaks for itself. It reads -

*"PERE/1.58/90/067 27<sup>th</sup> November, 1990 Mr. A. F. I. IBAMA (35105) Private/confidential Dear Mr. Ibama,*

**RETIREMENT**

*According to our records, you will attain the age of 55 years on 25<sup>th</sup> September, 1992. This letter therefore serves to confirm that you will be retired from our service with effect from same date, leave cleared.*

*We shall send you another letter stating your accrued/terminal leave entitlement and the date you should commence same.*

*Meanwhile, please sign and return to us the two attached copies of this letter in acknowledgment of its receipt.*

*Yours faithfully,*

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

*Signature*

*P. G. Okpetu*

*HEAD, PERSONNEL SERVICES EAST."*

Exhibit A is quite plain and does not contain any new conditions of service as claimed by the appellant. As clearly stated, the letter merely served to confirm that the appellant was to retire from the services of the respondent with effect from 25<sup>th</sup> September, 1992. In other words, Exhibit A does not contain any undertaking on the part of the respondent to

abandon its right to terminate the employment of the appellant at any time in compliance with paragraph 9 of Exhibit V.

Learned counsel to the appellant appears to have relied heavily on the conduct of the respondent particularly in Exhibit A, as factors which  
B had altered the position of the parties under the contract of service Exhibit V. I however entirely agree with the court below that there is nothing in exhibit A which raised the status of the appellant to that of a life employee who ought to have been allowed to retire on attaining the age of 55 years  
C on 25-9-1992. This is because what the learned counsel to the appellant is trying to imply from the contents of exhibit A and the conduct of the respondent towards the appellant, cannot in my view, be interpreted or construed in any manner to override the expressed contractual stipulation relating to the determination of the contract of service by either party in  
D exhibit V as provided in clause 9 thereof.

The instant case appears to be on all fours with the recent case of Abalogu v. Shell Petroleum Development Company of Nigeria Ltd (2003) 13 NWLR (pt.837) 308 in which Iguh JSC was faced with the task of  
E interpretation of similar or identical contract of service and documents as in exhibits V and A in the present case. His observation on the state of the law at page 333 is also relevant and valid in the present case where he said -

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

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

**Applying this decisions to the present case, I have no difficulty at all in coming to the conclusion that the respondent was perfectly justified in determining the appellant's contract of service in exhibit V by its letter exhibit K not withstanding the fact that the appellant had attended the pre-retirement seminar and was waiting to retire on 25-9-1992 on attaining the age of 55 years. In other words the fact that an employee has been notified of his pending retirement does not, on its own, constitute a bar to subsequent termination of his employment before retirement by the employer in the absence of any specific provision to the contrary in the contract of service binding between the parties. See Abologu v. Shell Petroleum Development Company of Nigeria Ltd (supra).**

**It is significant to note that from the evidence of the appellant under cross-examination at pages 44-45 of the record of this appeal, the appellant himself appears to have no serious quarrel with the manner by which his employment was terminated and with his final entitlements paid into his bank account by the respondent after the termination of the employment. This is what the appellant said -**

**"It is true that all senior members of Shell of the defendant have a contract of service. I was a senior staff until my termination. I had a contract with them which is Exhibit V. I signed Exhibit V. I am aware of the contents of Exhibit V either party can terminate the contract of service at any time upon giving due notice to the other party. In lieu of notice salaries are paid. I had served the defendant for more than ten years. Under exhibit V, the period of the notice to be given is 3 months. My appointment was terminated via exhibit K. In paragraph 2 of exhibit K,**

*defendant informed me that I would be paid three months salary in lieu of notice. In exhibit M, I was informed of my other entitlements. From exhibits K and M defendants indicated willingness to pay what I am entitled to. The defendant complied with the terms of the contract of service in respect of my termination.”*

**Indeed if the appellant himself right at the trial High Court even before the conclusion of the hearing of his action against the respondent, was satisfied that the termination of his employment by the respondent, was in accordance with the terms of his contract of service, coupled with the fact that his final entitlement less his indebtedness with the respondent paid into his Bank Account was still in his custody with no attempt to return it to the respondent, I am completely at a loss to see the necessity of prosecuting this case right from the trial High Court through to the Court of Appeal and ultimately to this court ending in abysmal failure at each stage: The question then is whether it was not a really futile exercise for the learned counsel to the appellant to have saddled the trial court, the Court of Appeal and lastly this court with a case which the appellant himself seemed to have agreed that there was no real dispute between him and the respondent. For this reason, it is necessary to observe that learned counsel exercising their professional responsibilities in pursuing matters in our courts of law on behalf of their clients, must exercise caution and due diligence in not wasting their energies and valuable time leading to the precious time and energies of the Courts also being wasted in pursuing matters which are not only clearly without merit but which even the parties themselves as in the present case, do not seem to support. I say no more.**

**Having effectively resolved the main issue on the determination of the appellant’s contract of service against him, it is now unnecessary to wade into the second issue of the determination of the amount of damages accruing to him if the contract of service remained in force up to the time of his retirement on 25-9-1992. Consequently, the question of whether such accrued claim of the appellant could attract interest has equally been swept away by the**

**determination of the main and central issue in this appeal that the appellant's contract of employment was lawfully terminated in accordance with the provisions contained therein.**

**In the result, this appeal has failed and the same is hereby dismissed with N10,000.00 costs to the respondent.**

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### **KALGO JSC**

I have had the advantage of reading in draft the judgment of my learned brother Mohammed JSC just delivered in this appeal. I entirely agree with his reasoning and conclusions. He has in my respectful view fully and painstakingly considered all the issues in controversy between the parties and I find that there is nothing useful for me to add. I therefore agree with him that there is no merit at all in the appeal and that it ought to be dismissed. I accordingly dismiss the appeal and abide by the order of costs made in the leading judgment.

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### **EJIWUNMI JSC**

I was opportune to read in advance the draft of the judgment just delivered by my learned brother, Mahmud Mohammed, JSC. And I agree with him for the reasons given in the said judgment that this appeal is bereft of any merit.

F

This appeal is concerned with the alleged termination of the appellant from his employment by the respondent. Briefly, it is the case of the appellant that by virtue of his contract of service with the respondent, he was entitled to remain in the services of the respondent until he attains the age of 55 years. And that on that date, 25<sup>th</sup> September 1992, he would then be entitled to all his retirement benefits and pension for life. Indeed pursuant thereto, the respondent had invited him to the pre-retirement programme of the respondent organized for those of its staff that were due to retire. The appellant duly attended this programme. However, it was soon after he attended this programme that his services were terminated and that before his due retirement date.

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H

As the appellant felt that the respondent wrongly terminated his services in the circumstances, he commenced this action, which culminated in this appeal. It is common ground between the parties that the contract of employment between the parties was expressly stipulated in the document Exhibit ‘V, which was duly admitted in evidence. It is patent from a careful reading of the said exhibit that either party could give notice of terminating the employment contract as per the relevant period of notice. In this connection it is germane to reproduce paragraphs 9 & 10 of Exhibit V which read:-

“9. *You, or we, shall have the right at anytime to terminate your employment under this letter by giving to the other not less than one month’s notice in writing, or by paying one month’s salary in lieu of notice. On the confirmation of your appointment, the period of notice shall be two months, or two month’s salary in lieu of notice and on the completion of five years of service, the period of notice shall be three months, or three month’s salary in lieu of notice.*

10. *We shall have the right at anytime, summarily to dismiss you, for any cause which justifies summary dismissal, including but not limited to, serious misconduct, dishonesty, actions considered prejudicial to our interest, or actions conflicting with your obligations under Clauses 6 and 11 of this letter. In case of such dismissal, you shall not be entitled to any notice or payment in lieu.”*

Now, it has been argued for the appellant that as the respondent had invited him and he had duly attended the pre-retirement programme of the respondent, the respondent had by that singular act acknowledged that the appellant would remain in its services until he attained the retirement age of 55 years. The question which the appellant has to therefore contend with is, whether there is anything to support that contention in the contract of Service, Exhibit V. Where as in this case, the appellant is contending that his employment was wrongfully terminated because the respondent acted in breach of the terms and conditions of his contract of employment the burden lies on the appellant to plead such facts as would support his contention and go on to prove them in the course of the trial. See *Amodu v. Amode* (1990) 5 N.W.L.R. (pt.150) 356 at 370. It is evident from the

proceedings that the only document that governed the contract of service of the appellant is Exhibit V and the case of the appellant must succeed or fail on the terms and conditions stipulated in Exhibit V regarding whether he was wrongfully terminated by the respondent or not. On this point, it is apposite to refer to the dictum of Iguh JSC, in *Abalogu v. Shell Petroleum Development Company of Nigeria Ltd* (2003) 13 N.W.L.R. (pt.837) 308 at 333: -

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

*In the present case, the only condition precedent for the determination of the appellant’s contract of employment is as stipulated in clause 9 of exhibit D. Apart from the giving of 3 month’s notice, no other condition precedent for the effective exercise of the power to terminate the contract of service by either party thereto was stipulated. I think the respondent was perfectly entitled” to determine the appellant’s contract of service, exhibit D by exhibit O as he did”.*

As the appellant has failed to establish that his contract of employment was varied as alleged, I do not see how he can successfully claim that his contract of employment was wrongfully terminated by the respondent.

In the result, I also dismiss this appeal for the above reasons and the fuller reasons in the judgment of my learned brother, Mahmud Mohammed JSC. The respondent is awarded costs in the sum of N10,000.00 only.

### OGUNTADEJSC

The appellant’s case highlights the well known principle that a court is without the power to write a new contract for parties in substitution for that to which they subscribed their signatures. In some cases of breach of contract of employment, the strict adherence terms agreed to by parties in their contract may produce harsh and oppressive results. But that is a matter outside the control of the court. Sympathy is not always the forerunner for justice.

In the instant case, the contract of parties had given either party the right to bring the employment to an end with notice or pay an agreed amount in lieu of such notice. At the time the respondent’s employment under it came to an end, the appellant had a few weeks more to serve before qualifying for retirement. Indeed, he had attended a pre-retirement seminar. If appellant had not been terminated at the time he was, he would have qualified for substantially more benefits. All these considerations however, ought not sway a court from its duty to adjudicate only in accordance with the ascertained rights of the parties to the dispute before it.

I have had the advantage of reading in draft the lead judgment just delivered by my learned brother Mohammed JSC. I entirely agree with him. I would also dismiss this appeal with costs as assessed in the lead judgment.

### ONNOGHENJSC

I have had the benefit of reading in draft, the lead judgment of my learned brother MAHMUD MOHAMMED, JSC just delivered and I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed.

It is clear that exhibit V forms the bedrock of the contract of employment between the parties particularly in relation to the provision governing termination of that relationship as contained in paragraph 9 thereof. In that provision, both parties agreed that either party can bring their relationship to an end “at anytime” provided he gives ‘the requisite



notice of termination or in the alternative pays the requisite salary in lieu thereof.

On exhibit V being the bedrock of the contract between the parties the appellant who testified as P'W 1' has these to say at pages 44 and 45 of the record to wit:

*".... I was a senior staff until my termination. I had a contract with them which is exhibit V. I signed exhibit V. I am aware of the contents of exhibit V either party can terminate the contract of service at anytime upon giving due notice to the other party, in lieu of notice salaries are paid. I had served the defendant for more than ten years. Under exhibit V, the period of notice to be given is 3 months.*

*My appointment was terminated vide exhibit K. In paragraph 2 of exhibit K, defendant informed me that I would be paid three months salary in lieu of notice. In exhibit M I was informed of my other entitlements.*

*From exhibits K and M defendants indicated willingness to pay what I am entitled to. The defendant complied with the terms of the contract of service in respect of my termination."* Emphasis supplied by me.

From the admissions of the appellant reproduced supra, it is clear that he has no cause of action against the respondent having admitted that the termination of his appointment was in accordance with the terms of the contract between the parties.

That apart, from the contents of exhibit V and the testimony of the appellant reproduced supra, it is very clear that the contract between the parties is simply that of master and servant as found by the lower court. In *UBN Ltd. Vs OGBOH* (1995) 2 NWLR (Pt. 380) 647 at 664 this court stated the law as regards employment governed my statute or employment with statutory flavour and an ordinary master servant relationship as follows:

*"Except in employment governed by statute, wherein the procedure for employment and discipline (including dismissal of an employee are clearly spelt out, any other employment outside the statute is governed by the terms under which the parties agreed to be master and servant.*

*Employment with statutory backing must be terminated in the way and manner prescribed by the relevant statute, and any other manner of termination inconsistent therewith is null and void and of no effect In other cases governed only by agreement of parties and not by statute, removal by way of termination of appointment or dismissal will be in the form agreed to; any other form connotes only wrongful termination or dismissal but not to declare such dismissal null and void, the remedy is claim for damages for that wrongful dismissal. This is based on the notion that no servant can be imposed by the court on an unwilling master even where the master's behaviour is wrong. For his wrongful act, he is only liable in damages and nothing more."*

It is trite law that the court can only interpret or enforce the agreement entered into by the parties and is incapable of making any contract between them. From the documents tendered as exhibits in the proceedings, it is nowhere stated by the parties that the employment of the appellant is for life and cannot be terminated because he is a pensionable staff without the respondent showing good cause or proving misconduct. The lower court was therefore very right when it refused to be persuaded to import implied terms into the contract between the parties or in effect create a new contract between the parties. Since appellant did not plead any implied terms he cannot claim that clause or paragraph 9 of exhibit V which provides for termination of appointment by either party at any time provided the requisite notice or payment in lieu thereof is made, could not apply to him particularly when he was approaching his retirement age, unless he was shown to have miscondacted himself as argued by learned counsel for the appellant.

In conclusion I too dismiss the appeal for lacking in merit and abide by the consequential orders contained in the judgment of MOHAMMED, JSC including the order as to costs.

Appeal dismissed.

H