

SUPREME COURT OF NIGERIA
14TH DAY OF JULY, 2006. SC. 159/2000
CORAM:- U. A. KALGO, S. A. AKINTAN, M. MOHAMMED,
I. F. OGBUAGU, F. F. TABAI, JJSC

SAMUEL IFEMENA MBACHU APPELLANT
AND
ANAMBRA-IMO RIVER BASIN
DEVELOPMENT AUTHORITY OWERRI RESPONDENT

CONTRACTS - Breach - Contract of employment - Of appellant was never static - But subject to continued variation in its terms - Allegation of breach - Was therefore a misconception (H1)

DAMAGES - Award of - Where breach of contract is not proved - Once it is found by a trial court - That there was no breach of contract - There is no ground for an award of damages - Of whatever quantum (H2)

FACTS

The Plaintiff/Appellant, an employee of the Defendant/Respondent, sued the Respondent at the High Court of Imo State, sitting at Owerri, for breach of his contract of employment. Appellant's claim was for Declarations, Injunction and Damages. The facts are that prior to Appellant's employment with the respondent, Respondent had advertised for interested persons for some vacant positions. One of the positions was the post of secretary which, according to the advert, came under the department of Administration and finance. Its duties were stated to include administrative, legal and secretarial services, and attending Board meetings. On the Strength of that advertisement, Appellant applied for the post of Secretary and was offered appointment after being duly interviewed. His appointment letter, exhibit "A", spelt out the terms and conditions of employment. By his letter of acceptance, Exhibit "D", Appellant formally accepted the offer with a specific agreement to perform any duty in the establishment which the general Manager may require

from time to time.

Within sometime in the employ of the Respondent, Appellant was repeatedly warned/admonished by the General Manager to improve in the performance of his duties. Eventually, at a board meeting, it was decided that the job of the secretary would be too heavy if he is to also be head of the administration department. As such that there should be an Assistant General Manager to take charge of Administration but that the General Manager should take charge of it in the interim pending appointment of an Assistant. This decision piqued the Appellant. More so with what he considered to be an arbitrary manipulation of the schedule of his duties as secretary, by the management. So while still in the employ of Respondent, he brought this action challenging both the readjustment in the schedule of duties and this decision of the Board. Appellant contends that they amount to a breach of his contract of employment. At the close of trial, the learned trial judge dismissed all the claims of the appellant. His appeal to the Court of Appeal was equally dismissed. Hence he has brought this further appeal to the Supreme Court.

ISSUES FOR DETERMINATION

1. *Whether the respondent's decision of the 11th January, 1978 together with its implementations which removed the appellant as Head of Administration Department, stripped the appellant of all his administrative duties, abolished the office of the secretary making it non-existent in the subsequent Decree establishing the authority, reducing his work to mere secretarial duties thereby placing him on a lower staff cadre namely secretarial staff cadre, amounted to breach of contract of service between the appellant and the respondent.*

2. *Whether the appellant is entitled to rely on his amended pleading duly granted by the trial court in regard to the conduct of the respondent authority in throwing the appellant out of office with aid of police and stopping of his salaries though acts that took place after the filing of the suit, in proving respondent's breach of contract of service.*

3. *Whether the appellant is entitled to have the damages awarded by Court of Appeal revised upwards?"*

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

CONTRACTS - Breach - Contract of employment

1. The appellant contends that the respondent was in breach of its contract of employment with him. With respect, this contention and all the arguments proffered in respect thereof under issues Nos. 3 and 5 of the appellant's brief, are grossly misconceived. The plain fact, is that the appellant was employed by the respondent as a Secretary and at the pleasure of the respondent. The contract of employment between the appellant and the respondent and the terms and conditions of the said employment, are contained in Exhibit "A".

In Exhibit "D", the appellant accented the offer of appointment wherein the contents read as follows:

"I, S. I. Mbachu of Enugwu-Ukwu in consideration of my appointment to the office of Secretary to the Authority in the Anambra/Imo River Basin Authority do hereby agree that I will at no time demand my discharge from nor, without the permission of the Authority, leave the service until a full month has elapsed from the date of my giving written notice to the General Manager of this Authority of my desire to leave, and I agree to perform any duties in the Authority which the General Manager may require me to perform" (the Underlining mine)

It could be seen firstly, that from the said two (2) exhibits, that the duties of the appellant as Secretary to the respondent, was not in a "straight jacket" so to speak or static. Secondly, that he was never appointed the Head of the Department of Administration. Even at the time he sued, he was still the Secretary of the respondent. (p. 3062 D)

DAMAGES - Award of

2. As regards Issue No. 6 of the appellant and Issue (b) of the respondent, I hold with respect, that the court below, had no business awarding any damages whatsoever, to the appellant to talk about "revising upwards" the damages awarded by the trial court. In fact and in truth, it did not make any award.

This again, is because, in the attachment to Exhibit A - i.e. The conditions of employment, also signed by the said General Manager, the

offer of employment which the appellant accepted, was/is:

“I am directed to offer you appointment on probation as Secretary to Anambra Imo River Basin Development Authority”.

Another stipulation therein, is,

B *“5. You will be eligible, subject to satisfactory service, for confirmation in your appointment on the completion of two years service, or for such longer period as may be deemed advisable, dating from your first appointment”.* (The Underlining mine)

C So, it could be seen that the appellant’s employment, was still on probation and not confirmed, when he sued the respondent and at the time he was placed on “compulsory leave”. (p. 3067 C)

NOTABLE POINT OF INTEREST

D TABAIJSC

1. Pruning out of certain functions did not make appellant any less a secretary

In his judgment the learned trial Judge at page 192 of the record E said this of the action:-

“The evidence before me is that the plaintiff who was employed as secretary to the defendant Authority remained so employed. A revision of his schedule of duties as secretary by pruning out some of his administrative functions does not in my own view make him any less secretary. Even if it does by virtue of exhibit “A” the defendant Authority cannot be precluded from doing so”

(see page 192 lines 23-29 of the record)

G This reasoning was endorsed by the court below and I think I shall endorse same. (p. 3072 B)

REPRESENTATION

Appellant appears in person.

H N. A. Nnawuchi, Esq., for the Respondent.

CASES REFERRED TO

Ollivant (G.B.) (Nigeria) Ltd. v. Agbabiaka (1972) 2 S.C. (Reprint) 127;

(1972) 2 S.C. 137

Electricity Corporation of Nigeria v. George Nichol (1969) 1 NMLR 265

Madam Amadi v. Orisakwe & 2 Ors. (2005) 1 S.C. (Pt. I) 35; (2005) 1 SCNJ 20 at 27

Samson Owie v. Solomon E. Ighiwi (2005) 1 S.C. (Pt. 11)16; (2005) 1 B SCNJ 181

LEAD JUDGMENT BY OGBUAGU JSC

This is an appeal against the decision of the Court of Appeal, Port-Harcourt Division (hereinafter called “the court below”) delivered on 7th July, 1992, dismissing the appeal to it by the appellant against the judgment of the High Court of Imo State, sitting at Owerri delivered on 28th March, 1983, by Oyudo, J. C

On 9th July, 1977, the respondent, inserted/published in the Daily Times Newspaper – exhibit “B”, an advertisement calling on interested persons, to apply for some vacant positions in its establishment. One of the vacant positions, was the post of the secretary which according to the advertisement. Came under the department of Administration and Finance. In the said advertisement, it was stated that the duties of the secretary included, administrative, legal and secretarial services and attending Board Meetings. The post attracted a salary of Grade Level 13. D E

The appellant, who at the time, in the employment of the State Ministry of Justice and later became an Acting Senior State Counsel when he was posted to the Anambra State School Management Board, applied for the post of secretary. After attending an interview in the Respondent Authority, he was offered appointment vide Exhibit “A” as Secretary with effect from the date he assumed duty. Exhibit “A”, spelt out the terms and conditions of employment. After assuming duty on 17th October 1977, the appellant, formally accepted the offer of employment in writing in a document dated 19th October, 1977, Exhibit “D” and therein gave an Undertaking in these terms: F G H

“..... and I agree to perform any duties in the Authority which the general Manager may require me to perform”.

The performance of the appellant in the assignments given to

him, were not satisfactory to the respondent and as a result, the General Manager, in his letter Exhibit “R” dated 4th July, 1988, called the appellant’s attention to his lapses and in fact, advised him to improve. By Exhibit “P”, the appellant was warned to show marked improvement in the performance of his duties. It is noted that the General Manager made a number of re-adjustments in the schedule of duties which apparently, the appellant did not like. While the appellant was still in the employment of the respondent as Secretary, he commenced an action claiming therein, two (2) Declarations, injunction and N50,000.00 Special and General Damages in the said High Court.

Pleadings were ordered, filed and exchanged. Both parties with the leave of the trial court, amended their respective pleadings. At the conclusion of hearing and addresses by the learned counsel for the parties, the learned trial Judge, in a meticulous, painstaking and well considered judgment, dismissed the appellant appealed to the court below which unanimously, dismissed the appeal hence the instant appeal to this court. There are eleven (11) grounds of appeal. In accordance with the Rules of this court, the parties have filed and exchanged their respective Briefs of Argument. The Appellant also filed a Reply Brief.

The appellant has formulated six (6) issues for determination. They read as follows:-

Issues for Determination by the Supreme Court

“ 1. On interpretation of Exhibits A, B, C & D, what obligations were offered to the appellant and what obligations were accepted by him upon assumption of office.

2. At what level of responsibility was appellant appointed to carry out his obligations under the contract.

3. Whether the respondent’s decision of the 11th January, 1978 together with its implementations which removed the appellant as Head of Administration Department, stripped the appellant of all his administrative duties, abolished the office of the secretary making it non-existent in the subsequent Decree establishing the authority, reducing his work to mere secretarial duties thereby placing him on a lower staff cadre namely secretarial staff cadre, amounted to breach of contract of service

between the appellant and the respondent.

4. *Granted that Exhibit M was issued in order to effect reorganization in the authority acting under the provisions of the Decree creating the authority, is it not a breach of contract when the respondent refused to redeploy the appellant and further refused to retire the appellant under the provisions of Section 7 of the Pensions Act, 1979.*

5. *Whether the appellant is entitled to rely on his amended pleading duly granted by the trial court in regard to the conduct of the respondent authority in throwing the appellant out of office with aid of police and stopping of his salaries though acts that took place after the filing of the suit, in proving respondent's breach of contract of service.*

6. *Whether the appellant is entitled to have the damages awarded by Court of Appeal revised upwards?"*

The respondent, on its part, has formulated two issues for determination, namely,

"(a) Whether the respondent was in breach of its contract of service with the appellant.

(b) Whether the award of damages made by the Court of Appeal could be revised upwards by this Honourable Court?"

I note that the appellant, in his Brief, has abandoned Ground 3.6 of the Grounds of Appeal which read as follows:

"The lower court erred in law in holding that the respondent Authority was entitled to re-schedule appellant's duty by withdrawing administrative duties from him, by virtue of the undertaking by the appellant in Exhibit D to perform any duties in the Authority which the General Manager may "require me to perform thereby placing a wrong interpretation on the content of Exhibit D".

The said Ground 3.6 of the Grounds of Appeal, is accordingly struck out.

In spite of the lengthy appellant's Brief and the Reply, this case very amusing to me, is indeed unique actually strange and one without a known precedent to me. The learned trial Judge (of blessed memory), stated inter alia, at page 192 of the records as follows:

"What has happened in this case has apparently no precedent in

judicial decisions, consequently, I have not been able to find a decided case which can fit into the facts now before me. In an Australian case of *Patton v. A.G. of State of Victoria* (1947) VLR 257, it was held that a public officer who has been placed in too low a category can seek a declaration to that effect.....”

The claims of the appellant in the Writ of Summons that appear at pages 2 and 3 of the records, read as follows:

CLAIM

“The plaintiff claims against the defendant as follows (sic):
 (1) A declaration that the decision of the Authority’s Board to create another Administration Department of the Authority to be headed by an officer howsoever designated other than the Secretary to the Authority is wrong in law and against breach of the terms of the appointment of the plaintiff as Secretary to the Authority. That decision is therefore null and void and of no effect.

(2) A declaration that by appointment and in law, the plaintiff is the appointed Secretary to the Authority and holds the office by virtue of Section 12 (a) of the schedule annexed to the Decree No. 25 of 1976 and by virtue of his appointment. That by terms of his appointment, the plaintiff’s officer is clearly the head of the department of Administration and the plaintiff is the officer there under specified as being directly responsible to the General Manager for duties which include administrative, legal, secretarial services and attending Board meetings. In law, he is the Chief Administrative Officer of the Authority, he gives effect to the decision of the Board of the Authority by arranging, processing, drafting and signing contracts; makes representation on behalf of the authority and enters into contracts on its behalf which come within the day-to-day running of the Authority’s business. He should sign contracts connected with administration side of the Authority’s affairs such as employing staff, making acquisitions of office equipment, stationeries, transport, etc. Most of the documents of the Authority should be authenticated by the Secretary. So far as matters concerned with administration, he has ostensible and usual authority to make representations and sign contracts on behalf of the Authority.

(The Underlining mine)

(3) *An injunction restraining the defendant, his agents and servants from:*

(a) *Creating another Administration Department of the Authority to be headed by an officer howsoever designated other than the Secretary to the Authority;*

(b) *making any of the sections, units or Division/s of the Administration Department of the Authority directly responsible to the General Manager of the Authority;*

(c) *seeking to create or creating another office or post howsoever designated carrying out any of the administrative functions similar to those of the Secretary to the Authority or in competition with the office of the Secretary to the Authority.*

(4) *An order against the defendant for payment of the sum of N50,000 (Fifty Thousand Naira) special and general damages to the plaintiff. (5) Any other order as the court may deem fit to make. Dated in Owerri this 19th October, 1979."*

Now, the appellant, was never suspended, his appointment was never terminated nor was he ever dismissed at the time he sued. He was still getting his salary, until he voluntarily stopped going to work. The learned trial Judge at page 192 of the records stated inter alia, as follows:

"..... The evidence before me is that the plaintiff who was employed as Secretary to the defendant Authority remained so employed. A revision of his schedule of duty as Secretary by pruning out some of his administrative functions does not in my view make him any less secretary. Even if it does by virtue of Exhibit "A", the defendant Authority cannot be precluded from doing so. Besides, the plaintiff is not seeking a declaratory relief as a substantive remedy rather his claim is purely executory resulting in a coercive order for damages. In the circumstances, I cannot make a declaration here because the fact on which the court's coercive order is sought to act disclose a cause of action....."

It need to be observed that neither in Exhibit "B", nor at the interview of the appellant, not/nor even in Exhibit "A", did the respon-

dent, convey to the appellant, that he was being appointed Secretary and Head of Administration. From the records, when the appellant assumed duty, he performed certain secretarial and administrative duties. These, did not make him the Head of the Administration Department of the respondent by virtue of the said appointment.

Now, as noted at page 180 of the records, in Exhibit A, one of the terms and conditions of the appellant's employment, appears as follows:

"2. Your appointment is at the pleasure of Anambra/ Imo River Basin Development Authority and subject to the terms and conditions which will be laid down from time to time by the Management of the Anambra/Imo River Basin Development Authority. The conditions of service are, however similar to those obtaining in the Federal Public Service as laid down in the Civil Service Regulations and Federal Government Circular". (The Underlining mine)

At page 181 of the Record, the trial court, noted that at a crucial meeting of the Establishment and General Purposes Committee of the respondent held on 11th January, 1978, barely three (3) months after the appellant had assumed duty with the respondent, the Board members decided "that the job of the Secretary would be "too heavy if he is also to head the administration department". Accordingly, in keeping with their earlier decision that there should be an Assistant General Manager (Administration), the Board Members resolved that the General Manager, should take charge of the Administration Department until an AGM (Assistant General Manager) (Administration) was appointed. The minutes of the Board in this regard, is Exhibit "G" and the appellant, under cross-examination at page 115 of the records admitted that he took or recorded the said minutes.

On 25th January, 1978, the General Manager, constituted an Establishment Committee composed of certain designated officers. The appellant, kicked against the decision of the Board to reshuffle the then existing structure in the respondent's establishment. See Exhibit "J".

It is pertinent to refer to Exhibit "R", a letter of "advice" dated 4th July, 1978, by the said General Manager, Mr. G.T. Okonkwo. It reads as follows:

"I wish to call your attention to various and serious observations on general performance of your duties. It appears that you lack experience for the responsible post of a Secretary to the A.I.R.B.D.A. I have on several occasions called your attention to certain of these observations but you appear to be full of yourself and resistant to corrections. I need not remind you that apart from official duties, one has to ensure cordial relationship not only with his colleagues but also with the public. I regret to observe that your relationship with some of your more senior colleagues is not what it should be.

As for the performance of your duties, I will very seriously recommend that you do everything possible and quickly too by approaching some more experienced secretaries to enable you improve the quality of your out-put. The practice of always reminding people that you are a lawyer is not enough. What matters is your ability to cope with your office. You should not express your opinions openly during Board meetings except through me. You have to ensure with the assistance of the E.O. (Public Relations) and the Confidential Secretary 1 that each time Board members are meeting, favourable conditions such as clerical, transport and accommodation facilities are provided for them.

Finally and I think most importantly, you should try to minimize the habit of excessive drinking and smoking. Humility is a virtue. You should be prepared to listen and learn. This letter of advice has been written in good faith and I hope that if you adhere to the guidelines shown, the Board members will be favourably disposed to appreciate your difficulties in the understanding that you are making rash efforts to be equal to the demanding task of your post".

On 15th August, 1979, the plaintiff was warned in writing in the following words:

"At the meeting of Board's Establishment and General Purposes Committee held on 8th August, 1979, at Enugu, members of the Committee noted the low quality of your performance so far and directed me to issue you with a letter of warning specifically mentioning the general level of your performance as reflected in the:

(a) Low quality of the minutes of the Board and its Committee;

(b) *Careless manner in which Board papers are sent to members of the Board some of which are incomplete, late or both; and*

(c) *The untidy manner in which the meetings of the Board at the Secretariat are being serviced.*

B *You are hereby warned that unless there is marked improvement, appropriate disciplinary measures will be taken against you.” See Exhibit “P.” (The Underlining mine)*

C Copies of this warning letter, were circulated to all the members of the Board’s Establishment and General Purposes Committee. This letter which by no stretch of imagination, constitutes a disciplinary measure, but rather, in my respectful view, was meant to guide the appellant’s course of conduct in future in relation to his job. Regrettably, the appellant, failed to understand its import. Even Exhibit “P” which the appellant D stated in his evidence in-chief at page 109 of the record as “warning letter”, in my view, is/was not a disciplinary measure.

Now, coming to the crux of this matter, **the appellant contends that the respondent was in breach of its contract of employment with him. With respect, this contention and all the arguments proffered in respect thereof under issues Nos. 3 and 5 of the appellant’s brief, are grossly misconceived. The plain fact, is that the appellant was employed by the respondent as a Secretary and at the pleasure of the respondent. The contract of employment between the appellant and the respondent and the terms and conditions of the said employment, are contained in Exhibit “A”.**

F In Exhibit “D”, the appellant accented the offer of appointment wherein the contents read as follows:

G *“I, S. I. Mbachu of Enugwu-Ukwu in consideration of my appointment to the office of Secretary to the Authority in the Anambra/Imo River Basin Authority do hereby agree that I will at no time demand my discharge from nor, without the permission of the Authority, H leave the service until a full month has elapsed from the date of my giving written notice to the General Manager of this Authority of my desire to leave, and I agree to perform any duties in the Authority which the General Manager may require me to perform” (The Underlining*

mine)

It could be seen firstly, that from the said two (2) exhibits, that the duties of the appellant as Secretary to the respondent, was not in a “straight jacket” so to speak or static. Secondly, that he was never appointed the Head of the Department of Administration. Even at the time he sued, he was still the Secretary of the respondent. Indeed, at page 189, lines 13 to 25, the learned trial Judge, stated as follows:

“The second question was whether the plaintiff was dismissed from his employment by the defendant Authority or was he forced to retire compulsorily. The plaintiff in his evidence before me said that on 19th December, 1979, he became convinced that his services were no longer required by the defendant authority. There is no evidence that the plaintiff was ever dismissed or suspended by the defendant nor was he retired or interdicted. In fact, the plaintiff was still working with the Authority when he filed the present action on 19/12/79, and continued to do so until February, 1980, when he was sent on compulsory leave. In fact, the plaintiff continued to earn his monthly 35 salary until May, 1980, when the authority became surfeit with the embarrassing behaviour of the plaintiff and stopped paying him his monthly salary”. (The Underlining mine)

The learned trial Judge, rightly held in my humble but firm view, at page 189 lines 1-8 of the records, when he stated inter alia, as follows: “In the case before me, I hold that the defendant’s board or even its Chief Executive- the General Manager, could lawfully decide to remove from the plaintiff certain administrative duties, confine him to purely secretarial and legal duties and that the decision of the Board reached on 11th day of January, 1978, to the effect that the General Manager should perform the duties of the AGM (Admin) until the office is filled was quite proper”.

I note that the appellant filed his action at the trial court, on 19th December, 1979. But surprisingly, in his evidence at page 111 of the records on 8th May, 1981, he stated that:

“I consider myself retired compulsorily on the date I filed present

suit”.

Yet, he admitted in his evidence in-chief at page 112 of the records, that he was receiving his monthly salary up to May, 1980.

He thereafter, testified inter alia, thus:

B *“By reasons of the termination of my appointment, I have lost the car basic allowance of N50,000.00 a month till I am 60 years of age.....”*

C So, the appellant in one breath, stated that he considered himself retired compulsorily and in another breath, he swore that his appointment was terminated. In spite of either his “compulsory retirement or termination” by 19th December, 1979, he continued receiving his monthly salary up to May, 1980! Wonderful! At the time he testified he told the trial court, that he was:

D *“now a private legal practitioner. I now make less than N200.00 a month.....”*

E The letter from the respondent to the effect that he was on compulsory leave, according to the appellant under cross-examination at page 115 of the records, was: “followed up by the stoppage of my salary. This was after I had instituted this action”. (the Underlining mine)

F The only witness for the respondent, one Friday Obiakaraije Omeronye, a Principal Assistant Secretary with the respondent, testified unchallenged and uncontroverted at pages 119 and 120 of the records, inter alia, as follows:

“..... I know the plaintiff. He is the Secretary of the Authority but he has not been on duty since 25th February. 1980.....

G *I am in charge of Personnel matters, establishment matters, welfare matters and security matters. The plaintiff’s appointment with the defendant Authority has not been terminated.....”*

(The Underlining mine)

H Frankly speaking, the above, is why I have stated earlier in this judgment, that this case is a unique one. The appellant’s contention or grouse, to me, looks or seems strange and unprecedented having regard to the reliefs sought by him in his writ. - (See the Re-Amended Statement of Claim). At page 192 lines 12-17 and 25-27, the learned trial Judge,

stated as follows:

“..... *He was not reduced in rank; he was not dismissed; he was not suspended; he was not interdicted nor was he retired. He instituted this action while still under the employment of the defendant Authority which continued to pay him his monthly salary until it was discovered that the plaintiff had abandoned his post*”.

(The Underlining mine)

At page 195, of the records, the learned trial Judge, concluded as follows:

“*From the foregoing, I hold that the defendant Authority was never in breach of its contract of service with the plaintiff and the suit is frivolous, vexatious and amounts to abuse of the court’s process and it is accordingly hereby (sic) dismissed*”, (The Underlining mine)

I agree.

Yet, on the unaccepted ground that it is the practice that where a court dismissed an action in which damages are claimed, that the court generally, expresses its opinion as to the amount of damages it would have awarded had the action succeeded. Relying on the case of Ollivant (G.B.) (Nigeria) Ltd. v. Agbabiaka (1972) 2 S.C. (Reprint) 127; (1972) 2 S.C. 137, the learned trial Judge, awarded in favour of the appellant, one month’s salary. But remarkably and significantly, His Lordship, did not say that it was in lieu of notice or something else. He also stated that “His gratuity would also have to be calculated as at the date of such wrongful determination”. Again, which date, it is not stated. But he cited the case of Electricity Corporation of Nigeria v. George Nichol (1969) 1 NMLR 265. Wonders shall never end!

Now, the court below, at page 379 of the records, per Edozie, JCA., (as he then was), stated inter alia, as follows:

“*In this case, although by paragraph 2 of the conditions of service of appellant’s appointment with the Authority, it is stated that it is at the pleasure of the Authority, this case was not contested on that footing. It appears that the learned trial Judge regarded the appellant as being on permanent and pensionable employment in the public service of the Federation of Nigeria. That being so, if his employment is wrongfully deter-*

mined, he is entitled to pension and gratuity calculated from the time of the wrongful termination. Guided by the principle distilled in the authorities referred to above and bearing in mind that the appellant may not live up to the retiring age of 60 and that he is expected to mitigate his loss and has in fact started to do so by engaging in private legal practice since 1980,

I make a lump sum award of N50,000.00 (Fifty thousand Naira) in respect of all the items of his claims. To this extent only, the appeal succeeds. The next issue for determination which is respondent's issue No. 3.3 and appellant's issue No. 6 is whether on the pleadings and evidence, the appellant is entitled to judgment.

Having regard to the views expressed in respect of the other issues considered above, the answer is in the negative.

Although the appeal lifts partially succeeded in the question of quantum of damages, since it has failed on the principal issue of liability, the appeal is dismissed in its entirety. I make no order as to costs".

In my respectful view, the appeal succeeding to the extent of the said award of N50,000.00 (Fifty Thousand Naira) in respect of all the items of his claims, will be a contradiction in terms, if and where in the final decision of the court below, the appellant "failed on the principal issue of liability" and the appeal being "dismissed in its entirety". I so hold.

With profound humility and respect, the said award, was based on assumptions, conjectures or speculations. There was no proof of any perceived or imagined "wrongful determination" of the appellant's appointment. It is "if but there is no such fact or evidence in the records in support of any wrongful determination of his appointment.

With respect, the court below having held that the appellant failed in the principal issue of liability and dismissed the appeal in its entirety, I will, with profound humility, ignore the said purported award of the said lump sum of N50,000.00 as that award was not justified and in any case, if the appeal was dismissed in its entirety, the decision became a concurrent judgment of the court below. That being the case, the attitude of this court in such a situation or circumstances, has been stated and re-stated

in many decisions of this court. See recently, the cases of Madam Amadi v. Orisakwe & 2 Ors. (2005) 1 S.C. (Pt. I) 35; (2005) 1 SCNJ 20 at 27; and Samson Owie v. Solomon E. Ighiwi (2005) 1 S.C. (Pt. 11)16; (2005) 1 SCNJ 181.

I will pause here to state that the real issues perhaps, worthy of consideration and determination in this appeal, are Issues No. 3 and 5 of the appellant. But certainly, Issue (a) of the respondent and Issue No. 6 of the appellant which is similar or is the same with Issue (b) of the respondent, are deserving issues for determination. I have found as a fact and held in this judgment that the respondent, was never in breach of its contract of service with the appellant. **As regards Issue No. 6 of the appellant and Issue (b) of the respondent, I hold with respect, that the court below, had no business awarding any damages whatsoever, to the appellant to talk about “revising upwards” the damages awarded by the trial court. In fact and in truth, it did not make any award.**

This again, is because, in the attachment to Exhibit A - i.e. The conditions of employment, also signed by the said General Manager, the offer of employment which the appellant accepted, was/is:

“I am directed to offer you appointment on probation as Secretary to Anambra Imo River Basin Development Authority”.

Another stipulation therein, is,

“5. You will be eligible, subject to satisfactory service, for confirmation in your appointment on the completion of two years service, or for such longer period as may be deemed advisable, dating from your first appointment”. (the Underlining mine)

So, it could be seen that the appellant’s employment, was still on probation and not confirmed, when he sued the respondent and at the time he was placed on “compulsory leave”.

The trial court, in line with the decisions of this court in the case he cited and relied on, made the said award. There are other decided authorities in this regard, but it is not necessary for me to refer to them or

any of them in the judgment as they are of no significance in the circumstances. The court below, perhaps, out of “sentiment”, which has no place in our courts, is purported to have made the award of N50,000.00, as I have already stated, if ever it made such an award, (which is not
B conceded by me), it was not justified at all.

All the other issues of the appellant with respect, are most irrelevant to the crux of the instant appeal. They amount to “story telling” or academic exercise. Issues 1 and 2, have no Question Marks (?). I therefore, ignore/discountenance them as non-issues in all the circumstances
C of the case.

It is surprising to me that the respondent in its Brief, justified the said award and in its summary stated as follows:

(b) *“The award of damages made by the court below cannot be
D disturbed by this court because same was made based on a right principle of law”.*

I hereby set aside the said purported award.

In the end result or final analysis, this appeal certainly, lacks substance and merit. It fails and it is accordingly dismissed with ignominy.
E

Although, costs follow the events, there will be no order as to costs.

F

KALGO JSC

Having read in draft, the leading judgment of my learned brother, Ogbuagu, JSC., in this appeal, I find myself in full agreement with him that there is no merit in the appeal. I therefore also dismiss it with
G N10,000.00 costs in favour of the respondent.

AKINTAN JSC

H I had a preview of the lead judgment just delivered by my learned brother, Ogbuagu, JSC. The facts of the case and all the issues raised in the appeal are fully set out and discussed therein. I therefore consider it unnecessary to repeat them.

I will, however, like to say that the appellant had, in reaction to an advertisement published in a national newspaper by which the respondent wanted to fill some vacancies in its establishment, applied for the post of secretary which was one of the advertised positions. He was employed after attending an interview. But his trouble with his employer B started shortly after he assumed office. This was when he complained that the respondent gave part of the functions he believed was part of his duties to another officer. He then decided to commence this action by which he claimed an injunctive relief and damages.

The trial High Court found that there was totally no merit in the C appellant's claim and therefore dismissed it. The learned trial Judge held, inter alia, as follows in the concluding portion of his judgment:

"From the foregoing, I hold that the defendant Authority was D never in breach of its contract of service with the plaintiff and the suit is frivolous vexatious and amounts to abuse of the court's process and it is accordingly hereby dismissed."

The appellant was dissatisfied with the judgment and he appealed to the court below. His appeal there also failed. The appellant again ap- E pealed to this court against that decision. The appellant was still in the employment of the respondent as at the time he instituted this action. He continued to earn his income from that employment until he decided to abandon his said employment. I entirely agree with the conclusion of the F learned trial Judge that the appellant's claim totally lacked any merit and should be dismissed.

For the above reasons and the fuller reasons given in the lead judgment which I hereby adopt, I also dismiss the appeal and make simi- G lar consequential orders as are made in the lead judgment.

MOHAMMED JSC

I have had the privilege before today of reading in draft the judg- H ment just delivered by my learned brother, Ogbuagu, JSC. I am in full agreement with him that there is no merit at all in this appeal, which ought to be dismissed.

At the Owerri High Court of Justice of Imo State, the appellant as plaintiff sued the respondent and claimed against it as defendant, declaratory and injunctive reliefs for an alleged breach of contract of service. The appellant in response to an advertisement put up by the respondent for a vacancy for the post of secretary in the office of the respondent, applied to fill the vacancy and was accordingly interviewed. The appellant was successful. He was subsequently employed as the Secretary of the respondent. The offer of employment was accepted by the appellant in writing and he accepted to serve the respondent as its Secretary.

However, after the appellant had assumed duty, the respondent decided to appoint an officer as the Acting Head of Department of Administration. The appellant was not happy and asserted that as the Secretary of the respondent, he ought to also be regarded and function as the Head of Administration of the respondent. When the respondent insisted on having a separate officer to occupy the position of the Head of Department of Administration, the appellant went to court for redress alleging breach of contract of service against the respondent. As the appellant failed to adduce enough evidence to support his claims, his action was dismissed by the trial court. For the same reason, the appellant's appeal to the Court of Appeal was also dismissed, hence his further and final appeal to this court.

Although 6 issues were distilled in the appellant's brief of argument from the grounds of appeal filed by the appellant, all the issues were framed at large because only issue 6 really complained against the judgment of the Court of Appeal. The appellant's struggle to pursue this appeal in the absence of any evidence to support his perceived claims for declaratory and injunctive reliefs for breach of contract of service, is indeed an uphill task which the appellant cannot achieve because the appeal lacks merit and the same is also hereby dismissed by me. I abide by the order on costs in the lead judgment.

TABAI JSC

I had a preview of the judgment just delivered by my learned brother, Ogbuagu, JSC. I agree entirely with his conclusion that the appeal be dismissed for lack of substance.

This, regrettably, is another instance of a frivolous action that has found its way to this court lasting about 27 years. The plaintiff/appellant who is a qualified lawyer ought to have appreciated from the plain facts and the well considered and sound judgment of G. O. Oyudo, J., on the 28/3/83 that it was not worth all the trouble after all.

Following an advertisement in the Daily Times Newspaper, the plaintiff/appellant applied for employment in the defendant/respondent, Anambra-Imo River Basin Development Authority. The post advertised in the paper Exhibit B was for the Secretary to the Authority G.L. 13. It was stated therein that the Secretary would be directly responsible to the General Manager. And the duties were stated therein to be Administrative, legal and secretarial services. He was interviewed on the 8/9/77. He was eventually sent a letter headed "Offer of Appointment" dated the 29/9/77, Exhibit A. Attached thereto was a memorandum spelling out the terms and conditions of service. The appellant accepted the appointment and resumed on the 17/10/77. His letter of acceptance is Exhibit C. He went further to sign an undertaking in Exhibit D. In it he agreed "to work as the Secretary to the Authority and perform any duties in the Authority which the General Manager may require him to perform."

On the 11/1/78, the Board of the Authority reached a decision to the effect that the General Manager should perform the duties of the AGM (Admin) until the office is filled. This appears to be the main problem of the appellant. He was apparently so eager to head the administration unit of the authority that the decision became a sour pill for him to swallow. He protested and it is clear that thereafter he showed poor attitude to work. That warranted two letters to him from the General Manager dated 14/7/79 and 15/8/79. The substance of the letter was to advise him to change for better. But he would not change.

On the 19/12/79, he filed this motion but continued to attend his official duties until 25/2/80 when he was asked to go on compulsory

leave. And he continued to draw his salary from the respondent Authority until May, 1980 when it was stopped. Up till the time of the judgment, he had not been dismissed nor retired by the defendant/ respondent.

In his voluminous Brief of Argument, he relied heavily on Exhibit B B, the Newspaper advertisement to contend that he would be or ought to be the head of the Administrative Department of the respondent Authority.

In his judgment the learned trial Judge at page 192 of the record said this of the action:-

“The evidence before me is that the plaintiff who was employed as secretary to the defendant Authority remained so employed. A revision of his schedule of duties as secretary by pruning out some of his administrative functions does not in my own view make him any less secretary Even if it does by virtue of exhibit “A” the defendant Authority cannot be precluded from doing so”
(see page 192 lines 23-29 of the record)

This reasoning was endorsed by the court below and I think I shall endorse same. The terms and conditions of appointment are contained in Exhibit “A” and the memorandum attached thereto and the appellant’s undertaking is Exhibit “D”.

For this foregoing and the fuller reasons contained in the judgment of Ogbuagu, JSC., I shall also dismiss the appeal.

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