

SUPREME COURT OF NIGERIA
4TH MAY, 2007. SC. 83/2002
CORAM:- S. U. ONU, D. MUSDAPHER, S.A. AKINTAN,
M. MOHAMMED, I. F. OGBUAGU, JJSC

1. CENTRAL BANK OF NIGERIA

2. ALHAJI SAIDU MOHAMMED APPELLANTS
AND

MRS. AGNES M. IGWILLO (SUBSTITUTED RESPONDENT
FOR DR. VICTOR IGWILLO, DECEASED)

MASTER & SERVANT - Employment - Three categories of - Includes one with statutory flavour - Which is the type protected by statute - Or laid down regulations (H1)

MASTER & SERVANT - Wrongful termination - Of service protected by statute - Entitles the employee to reinstatement and damages (H2)

MASTER & SERVANT - Public servants - Established Federal Government Service - Basis of appointments - Demands that 1st appellant acts under relevant statute - Or its action will be ultra vires (H3)

MASTER & SERVANT - Transfer of service - Probation - Where letter of appointment provided for probationary period - Correspondence that shows parties agreed on transfer of service - Varies that probationary condition (H4)

MASTER & SERVANT - Wrongful termination - Appointment with statutory flavour - That was suspended and terminated - Without complying with specified regulations - Was wrongfully terminated (H5)

MASTER & SERVANT - Appeals - Statutory flavour - Uncontroverted evidence - As a case of wrongful termination is made out - Order of reinstatement is proper - But for death of the employee (H6)

FACTS

Before the High Court Lagos, plaintiff/respondent (now deceased and substituted by his widow) filed an action against the defendants/appellants. He claimed a declaration that the termination of his appointment with 1st appellant is wrongful, illegal and unconstitutional and N14.5 million being special, aggravated and or general damages suffered for the wrongful termination of his appointment. In the alternative, he claimed reinstatement to his job and payment of his accrued salaries/allowances. The plaintiff gave evidence and tendered some documents. The defendants denied the claim, and counter claimed N450,000 per annum being the value for the occupation of the 1st defendant's premises from 4th February, 1993, till plaintiff's vacation of same. Plaintiff was a holder of Ph.D. in Library and Information Sciences. The post of Deputy Librarian was advertised by 1st appellant, respondent applied, was interviewed and offered the appointment. It was agreed that respondent would be accepted on transfer of service having served 18 years with his previous employers, vide exhibit C. Within about 3 months of joining 1st appellant, respondent was alleged to have committed a grave misconduct pursuant to an unsigned anonymous petition. The allegation was that he purchased old useless books worth N684,000. Respondent was suspended and made to appear before an Investigation Panel which cleared him. 1st appellant did not comply with the relevant rules in setting up the Panel.

While expecting a formal apology and invitation to resume duties, respondent was served with a letter terminating his appointment, with about 9 months backdated effect. At the trial of the case, he gave a pathetic uncontroverted evidence against the 2nd appellant as the brain behind his ordeal. The trial court found against the respondent and dismissed his claim. His appeal to the Court of Appeal was allowed as his reinstatement to office was ordered. Being dissatisfied, appellants have appealed to the Supreme Court. Respondent died while the appeal was pending.

ISSUES FOR DETERMINATION

"1. Whether the court below was right when it looked beyond the

terms of the contract of employment and the evidence on record in deciding the issue whether the termination of the respondent's contract of employment with the 1st appellant was wrongful.

(2) Whether the respondent was entitled to reinstatement to his former post in the circumstance of this case."

HELD (Unanimously dismissing the appeal, but varying the order of reinstatement to one of cash entitlements, per **AKINTAN JSC**)

Employment - Three categories of

1. The law is settled that there are now roughly three categories of contracts of employment, viz: (a) those regarded as purely master and servant; (b) those where a servant is said to hold an office at the pleasure of the employer; and (c) those where the employment is regulated or governed by statute, often referred to as having statutory flavour. See *Olaniyan v. University of Lagos* (1985) 2 NWLR (Pt. 9) 599. An employment is said to have a statutory flavour when the appointment is protected by statute or laid down regulations made to govern the procedure for employment and discipline of an employee. Any other employment outside that category is governed by the terms under which the parties agreed to be master and servant. (p. 2291 B)

Wrongful termination - Of service protected by statute

2. Where an employee's service is protected by statute and his employment is wrongfully terminated, he would be entitled to re-instatement in his office and in addition, damages representing his salaries during the period of his purported dismissal: See *Shitta-Bay v. Public Service Commission*, *supra*; *Olaniyan v. University of Lagos*, *supra*; and *Udo v. Cross River State Newspaper Corporation*, *supra*. (p. 2291 F)

Established Federal Government Service

3. This court clearly stated the legal position of public servants in Nigeria in the *Olaniyan v. University of Lagos* case, *supra*. It is that public servants in the established and pensionable cadre of the Federal Government Service do not hold their offices at the pleasure of the Federal Govern-

ment. Rather, their appointments are based upon rules and regulations, statutes or memoranda of appointment. It was also clearly stated in the same case that the University of Lagos and the University Council, both being creatures of statute, cannot act except within and under the powers conferred on them by the relevant statute.

The facts in the instant case, as already set out above, are that the 1st appellant is a Federal financial institution created by statute. It follows, therefore, that both the Bank and officials acting on its behalf cannot act except within and under the powers conferred on them by the relevant statute. Any action taken outside the powers conferred by the statute or regulations made thereof will be ultra vires, null and void. (p. 2291 H)

D *Transfer of service - Probation*

4. The respondent in the instant case applied for the post in response to the advertisement published in the newspapers by the 1st appellant. He was interviewed and offered the job as per the letter of appointment, dated 5th November, 1991 (Exhibit A). A copy of his letter of appointment was sent to his then employer, ASUTECH, where the respondent had served for 18 years. ASUTECH wrote to the 1st appellant that it would release the respondent only if the appellant agreed to accept the respondent on transfer of service. The letter dated 4th December, 1991 is Exhibit 1. The 1st appellant's reply dated 13th December, 1991 (Exhibit 2A) was that it was willing to accept the respondent on transfer of service. The contention of the appellants, therefore, that the respondent was to be on probation for a period of two years as contained in the letter of offer (Exhibit A) can definitely not stand. I believe and hold that that condition had been varied by the afore-mentioned exchange of letters. (p. 2292 D/G)

H *Wrongful termination - Appointment with statutory flavour*

5. Again, as I already stated above, the 1st appellant is a Federal institution created by statute. It follows therefore that it must carry out its activities in line with its governing laws. The laws regulating the appoint-

ment and discipline of its workers must be complied with strictly as their employments are with statutory flavour. Every action taken on behalf of the 1st appellant is therefore expected to be done in good faith, free of bias, or nepotism. Similarly, every provision of the Banks Staff Manual (Exhibit U) must be strictly complied with by the Bank when dealing with every member of its staff. B

Thus, in the instant case, section 5 of Chapter 5 of the said Staff Manual (Exhibit U) provides that the 1st appellant is required to suspend a staff member only where a prima facie case of a serious nature has been established against the staff member by a court or by an Investigation Committee. C

The effect of the breaches of the afore-mentioned provisions of the Staff Manual is that the suspension order imposed on the respondent was null and void and of no effect. Similarly, the decision to terminate the respondent's appointment and treat his case as that of a new recruit was made in bad faith and in utmost disregard of the evidence proved in the respondent's case. (p. 2293 A) D

Case of wrongful termination - Order of reinstatement is proper E

6. The respondent pleaded and led evidence to the effect that the 2nd appellant was the master-mind against the mischief against him. The man did not testify at the hearing. The serious allegation was therefore not controverted. It must be made abundantly clear that the 1st appellant is a Federal institution constituted and regulated by statute. Every member of staff is expected to carry out his function in accordance with the law that set up the Institution. F

In the result, I hold that there is no merit in the appeal. As I have stated above, the respondent's employment is one with statutory flavour. Where, therefore a case of wrongful termination of such appointment is made out, as in this case, the correct order to be made is one reinstating him. But the man is now dead. He died while this appeal was pending in this court and his widow was substituted to continue with the defence of the appeal. An order reinstating him to his post can therefore not be made. (p. 2294 D) G H

NOTABLE POINT OF INTEREST

OGBUAGU JSC

1. Construction of a written contract involving several documents

B It must always be borne in mind and this is also settled firstly, that where a contract (which includes contract of employment), involves several documents, the trial court, can only determine the issues before it, on the basis of the documents including letters relating to the contract and the conduct of the parties.

C Secondly, where a contract is in writing, any agreement which seeks to vary the original agreement, must itself, be in writing. This is exactly what happened in the circumstances of this case where the condition of releasing of the Respondent to the 1st Appellant was that the 1st Appellant, shall accept the Respondent as employed and, transferring his service from one body to another body. Again, a contract which must in law be in writing, can only be varied by an agreement in writing. Also settled, is that in the interpretation of a contract involving several documents, the documents, must be read together. (p. 2305 D)

REPRESENTATION

Mr. Rotimi Oguneso (with Miss E. O. Oduah) for Appellants
F Counsel for respondent was absent.

CASES REFERRED TO

Ogunke v. National Steel Development Authority (1974) NWLR 128
Fakuade v. O. A. U. T. H (1993) 5 NWLR (Pt. 291) 47
G Ideh v. University of Ilorin (1994) 3 NWLR (Pt. 330) 81
Shitta-Bay v. Public Service Commission (1981) 1 S.C. 40
Imoloame v. WAEC (1992) 9 NWLR (Pt. 265) 303
Udo v. Cross River State Newspaper Corporation (2001) 14 NWLR
H (Pt.732) 116
The Attorney-General of Kaduna State v. Atta (1986) 4 NWLR (Pt.38) 785 C.A
Layland Nig. Ltd v. Dezengolf W.A. (1990)1 NWLR (Pt.14) 610 (a), 620

John Holt Co. Ltd v Stephen Lafe (1938) 15 NLR 14

Bijou (Nig.) Ltd. v. Osidarohwo (1992) 6 NWLR (Pt. 249) 463 @ 649

STATUTE REFERRED TO

Evidence Act s. 149

B

LEAD JUDGMENT BY AKINTAN JSC

This action was instituted at Lagos High Court by Dr. Victor Igwilllo, now deceased, in Suit No. LD/1227/93. His claim, as set out in paragraph 32 of his amended statement of claim was for a declaration that the termination of his appointment with the 1st appellant is wrongful, illegal and unconstitutional; and the sum of N14.5 million being special, aggravated and/or general damages suffered for the wrongful and unlawful termination of appointment or, in the alternative, a reinstatement to his job and payment of his accrued salaries and allowances from the date of suspension till the date of reinstatement. Pleadings were filed and exchanged and the trial took place before Ope-Agbe, J.

The plaintiff gave evidence at the hearing and tendered a number of documents. The defendants, now appellants, denied the claim and in paragraph 10 of their reply to the further amended statement, of claim, counter claimed for “the sum of N450,000 per annum being the value for the occupation of the 1st defendant’s premises from 4th February, 1993 till plaintiff’s vacation of same.” At the conclusion of the trial, the learned trial Judge held that there was no merit in the plaintiffs claim and the Suit was dismissed. The counter-claim was also dismissed.

The plaintiff was dissatisfied with the judgment of the trial High Court. He filed an appeal against it to the Court of Appeal (hereinafter referred to as the court below). The court below found that there was merit in the appeal and allowed it. The court held, inter alia, as follows in the concluding paragraph of the lead judgment of Akaahs JCA delivered on 15th May, 2000 to which Ige and Aderemi JJ.CA agreed:

“In conclusion, I find that there is merit in the appeal and I accordingly allow it.

“I declare the purported termination of the appointment as ille-

gal, unconstitutional, ultra vires, null and void and of no effect. The appellant is accordingly reinstated to his post as Deputy Librarian of the Central Bank in the Cadre of Assistant Director without loss of status and years of services and the payment of the arrears of his salary and allowances from the date of his suspension, i.e. 8th May, 1992.”

The appellants were not satisfied with the judgment of the court below and the present appeal was filed against the said verdict. The parties filed their respective brief of argument in this court. The appellants formulated the following two issues in their joint brief as arising for determination in the appeal:

“1. Whether the court below was right when it looked beyond the terms of the contract of employment and the evidence on record in deciding the issue whether the termination of the respondent’s contract of employment with the 1st appellant was wrongful.

(2) Whether the respondent was entitled to reinstatement to his former post in the circumstance of this case.”

The respondent also formulated two similar issues in the respondent’s brief. I therefore do not consider it necessary to reproduce them. I will therefore consider the appeal based on the two issues formulated in the appellants’ brief.

The plaintiff/respondent at the court below died on July 20th, 2002 and the present appellant, Mrs. Agnes M. Igwilllo, his wife, was, with leave of this court, substituted for her late husband.

The brief facts of the case, as set out in the pleadings and evidence led at the trial, are that the plaintiff, Dr. Victor Igwilllo, was a holder of Ph.D. in Library and Information Sciences. He started his working career at the Ahmadu Bello University Library. From there he joined the Anambra State University of Technology (ASUTECH) before joining the 1st appellant as Deputy Librarian. His case was that the post was advertised and he applied, was interviewed and offered the appointment by the 1st appellant, the Central Bank of Nigeria. The plaintiff/respondent contended that before joining the 1st appellant, it was agreed that he would be accepted on transfer of service, having served 18 years with his previous employers. This is said to be evidenced by a letter to that extent

admitted at the trial as Exhibit C.

But within three months of joining the 1st appellant, the respondent said he was alleged to have committed a grave misconduct. He was then suspended and his matter was referred to the Disciplinary Committee of the 1st appellant Bank. The respondent said he appeared before the committee and there he denied the allegation made against him in an unsigned anonymous petition written against him. The allegation was that he acquired for the library used and mutilated books, many of which were of no use for the Bank's library. He said the Committee found no merit in the allegation made against him in the said anonymous petition. But while he was waiting for apologies, he received a letter of termination of his employment. The letter, dated 4th February, 1993 made the termination of the appointment to take effect from 8th May, 1992 the date on which his suspension took effect. No reason was given and no reference was made as to the out come of the Disciplinary Committee which looked into the allegations made against the respondent and on which the suspension order imposed on the man was based. The letter of termination of appointment, admitted as Exhibit R, reads, inter alia, as follows:

"Dear Sir,

Termination of Appointment

I am directed to inform you that your services are no longer required by the Bank. In the circumstance, your appointment with the Bank is hereby, terminated with effect from 8th May, 1992.

A Central Bank of Nigeria cheque No. 25516 dated 4th February, 1993 for N57226.66 being one month salary in lieu of notice of termination of your appointment is attached herewith.

Your final entitlement from or your indebtedness to the Bank is being determined and will be communicated to you in due course. Meanwhile, you are required to hand over all the Bank's property in your possession including the laminated identity and clinic cards to the Director of Research Department before you leave.

Please note that as a result of the termination of your appointment you will no longer be allowed to enter the Bank's premises without official permission.

Please acknowledge receipt on the copy of this letter ———”

As already mentioned earlier above, the respondent had earlier been suspended from duty through a letter dated 8th May, 1992. The letter reads, inter alia, as follows:

B “Dear Sir,
Suspension from Duty without Pay

I am directed to inform you of the Bank’s decision to suspend you from duty with immediate effect. You are feeling suspended for your grave misconduct. However, Management’s decision on the matter will be communicated to you in due course. During the period of your suspension, you will not be allowed to enter the Bank’s premises unless you are officially permitted to do so. Meanwhile, you are required to surrender your identity and clinic cards to your Director and also leave your current address with him should there be need to contact you.

Please acknowledge the receipt of this letter on the attached dispute ———”

While on suspension, the respondent was invited in a letter dated E 22nd May, 1992 (Exhibit. E) to send a written statement to the Investigation Panel set up by the 1st appellant on the allegation of purchase of old books worth N684,000. The respondent sent his defence to the allegation as requested in the letter, Exhibit E. After sending his written defence, he received another letter dated 3rd June 1992 (Exhibit E2). The respondent was invited in the said letter (Exhibit E2) to appear before the Investigation Panel set up to investigate the said allegation of purchasing old books worth N684,000 on Thursday 4th June, 1992 at 11.00 am.

G The respondent appeared before the panel as requested and he was cleared by the panel. But while he was expecting a formal letter of apology and invitation to resume his duties, he was served with the aforementioned letter of termination of his appointment (Exhibit R) dated 4th February, 1993 and the termination was back dated and made to take H effect from 8th May, 1992, the date the suspension order imposed on him took place.

As already mentioned earlier above, the respondents case was that he applied for the job which was advertised by the 1st appellant. He was

interviewed and was offered the job in a letter dated 5th November, 1991 (Exhibit A). The letter reads thus:-

“November 5, 1991

Dr. Victor Igwillo,
ASUTECH Library,
Enugu.

B

Dear Sir;

OFFER OF APPOINTMENT

With reference to your interview for employment, I am pleased to inform you that the Central Bank of Nigeria has offered you appointment as a Deputy Librarian (Asst. Director) subject to the following conditions:-

C

(i) Police finger print clearance

(ii) Satisfactory reference

D

(iii) Successful medical report

(iv) Readiness to serve in any part of the Federation:

In order to get yourself medically examined, you should report at Royal Hospital 3, Aria Road, G.R.A Enugu as early as possible with the enclosed letter of introduction (in duplicate). Your appointment with the Bank will be at the commencing salary of N..... (CBS 03 step 03) per annum. You will be entitled to 30 working days annual leave with leave allowance. You will also be paid housing allowance (where official accommodation is not provided), transport and utility allowance appropriate to your grade. The Bank has a medical scheme under which a member of staff, his wife and dependent children are treated. Your appointment will be for a probationary period of two (2) years after which, subject to satisfactory service, you will be confirmed in your appointment. The appointment is pensionable and, may be terminated upon the giving of one month's notice in writing by either side or the payment of a month's salary in lieu. Your service will be governed by the Bank's regulations in force from time to time. You should in particular note the following points:-

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(i) The Bank will not entertain any petition in respect of post or salary offered once accepted.

(ii) *Prospective employee should, please note that the exigency of the service dictates their postings and as such no requests for posting of spouses to stations where their husbands/wives reside would be entertained.*

B *If after a careful consideration of our; terms, you are satisfied, you will please signify your acceptance by signing the enclosed duplicate copy of this letter and returning same to the, undersigned. As the next stage of screening, you are to report to the Manager, Recruitment officer, for a letter of introduction to police C.I.D Officer for your finger print exercise. You will be asked to start work once you submit all required documents.*

If you do not assume duty within one (1) month from the date of this letter, the offer will be regard as lapsed.

D *Yours faithfully,
For: Director of personnel.”*

The respondent eventually accepted the offer of appointment. Although it is provided in the letter that the appointment would be for a probationary period of two years after which, subject to satisfactory service his appointment would be confirmed, the respondent contended that the position was that the 1st appellant agreed to the transfer of his service from his former employer. The respondent’s contention in this respect is premised on an exchange of correspondence between ASUTECH, his former employer; and the 1st respondent, copies of which were endorsed to the respondent.

The letter, from ASUTECH dated 4th December, 1991 reads as follows:-

4th December, 1991

“Our Ref: NAU/NC/P/63

PERSONNEL SERVICE

The Director of Personnel

Central Bank of Nigeria,

Tinubu Square, Lagos.

*TRANSFER OF SERVICE IN RESPECT OF DR. V. C. IGWILLO,
DEPUTY UNIVERSITY LIBRARIAN*

We are in receipt of a copy of your letter of appointment of the above named Senior Officer of this College as Deputy Librarian (Asst. Director). We are willing to release him if you can accept him on transfer of service.

We look forward to an early reply, please.

B

S. A. C. Obi, PAR. (Personnel)

cc: The Provost Dr. V. C, Igwilllo”

The reply from the 1st appellant to the above letter dated 13th December, 1991 reads as follows:

13th December, 1991

C

“The Registrar

College of Health Sciences

Anambra State University of Technology,

Nnewi Campus,

D

Nigeria.

Attention: S. A. C. Obi, BAR (Personnel)

Dear Sir

TRANSFER OF SERVICE IN RESPECT OF DR. V. C. IGWILLO- DEPUTY UNIVERSITY LIBRARIAN

E

I write to acknowledge receipt of your reference NAC/NC/P/63 of 4th December, 1991 on the above subject matter, and to confirm to you that the Central Bank of Nigeria, Lagos is willing to accept Dr. V. C. Igwilllo on transfer of service.

F

Yours faithfully,

A. K. Asbra Senior Manager Recruitment Office

For: Director of Personnel.”

It is submitted in the appellants’ brief on Issue 1 that since it is clearly stated in the letter of appointment written to the respondent (Exhibit A), that the appointment was for a probationary period of two years and that the appointment may be terminated upon the giving of one month’s notice or the payment of a month’s salary in lieu of notice, the 1st appellant complied with the terms of the contract with the respondent. Reference as also made to the portion of the same letter of appointment (Exhibit A) which provides that the respondent’s service will be governed by

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the Bank's regulations in force from time to time and particularly to Clause 2 of Chapter 3 of the Regulation (Exhibit-U) which provides that:

"Appointment of Permanent staff members can be terminated either by the staff or the Bank on the giving of a month's salary in lieu thereof."

The step taken in the respondent's case and communicated to him in the letter (Exhibit R) to which a cheque for a month's salary in lieu of notice was attached, is said to be quite appropriate and in line with both the contract of appointment with the respondent and the provisions of the afore-mentioned Bank's staff manual. It is submitted that in construing the validity or otherwise of the termination of an employment, what the court should consider are the terms of the employment vis-à-vis the letter of termination. The decision in *Katto v. CBN* (1999) 6 NWLR (Pt. 607) 390 is cited in support of this submission. The court below is therefore said to have erroneously looked beyond the clear and unambiguous terms of the contract of service of the respondent in arriving at its decision now on appeal.

In the appellants' Issue 2, it is submitted that since the respondent's appointment was terminated during the period of his two year probation period, it was wrong for the court below to order that he should be reinstated.

In reply to the appellants' Issue 1, it is argued in the respondent's brief of argument that although no reason was given by the 1st appellant in its letter of termination of appointment; (Exhibit R), the court can in proper circumstances look beyond the letter by drawing inferences from the surrounding circumstances of the case to reach a conclusion. This is said to be what the court below did in this case and that that court was right in doing so by virtue of the provisions of Section 149 of the Evidence Act.

Reference is made to the findings of fact made by the trial court to the effect that: "the termination cannot be divorced from the allegation of N680,000 for the purchase of books for the library." The court below is said to have held the same view. The appellant is however said to have failed to appeal against that concurrent findings of fact by the two lower

courts. That finding of fact is therefore said not to be in disputed by the parties. It is submitted that this court should assume that the respondent's termination was because of the allegation, of fraud made against the respondent. It is also submitted that from the proved facts in this case, it is important that a person who served in a previous pensionable employment, for 18 years without blemish and who because of his outstanding and distinguished service, was persuaded to join what he thought was a higher calling, should not be allowed to be disengaged so causally, especially when it is obvious that what influenced the termination was an allegation of fraud which was never proved.

The reliance by the appellants in their brief on the decisions in *Katto v. CBN* (1999) 6 NWLR (Pt. 607) 390 and *Agbo v. CBN* (1996) 10 NWLR (Pt. 478) 360 in support of their submission that the court below should not have gone outside the terms of the contract to find the reason for the termination of the respondent's appointment is said to be wrong in that the two cases are distinguishable and as such they do not apply to the present case. This is said to be because no allegation of grave misconduct was made against *Katto* and *Agbo* in both cases and as such no reason for the court to make such inference under section 149 of the Evidence Act. The reasons for the termination in those two cases are said to be strictly based on the terms of the contract, unlike in the present case.'

The fact that the 1st appellant initiated a disciplinary proceedings against the respondent but later abandoned the result and went on to terminate the respondent's appointment is said to be a violation of the respondent's constitutional right to fair hearing.

Reference is made to specific provisions of the Staff Manual (Exhibit U) which the 1st appellant is required to follow when taking disciplinary action against a member of staff of the Bank. Thus, under section 5 of Chapter 5 of the document (Exhibit U), the 1st appellant is required to suspend a staff member where a *prima facie* case of serious nature has been established against him by a court or by an Investigation Committee. Also under section 6 of Chapter 5 of the same document (Exhibit U), it is provided that once the 1st appellant satisfies the conditions set

out in section 5 above, a Governor of the 1st appellant would then sign a suspension letter in the case of a staff member on Grade Level 12 and above, and that such suspension must not exceed one month. It is submitted that the above provisions of the Staff manual (Exhibit U) were
 B breached by the 1st appellant in that the respondent, being an officer on Grade Level 14, the letter suspending him should have been signed by a Governor and not by an officer on the same Grade Level 14 as the respondent. Similarly, the suspension lasted for about 8 months instead of
 C one month prescribed in the Manual and the suspension was imposed without any reference to a court or Investigation Committee. The entire exercise is therefore, said to be a nullity since the steps taken by the 1st appellant were in total breach of the said provisions of the Staff Manual. The decision in *Edet v. Chief of Army Staff* (1994) 2 NWLR (Pt.324) 41
 D at 45 is relied on in support of this submission.

It is also argued that although the trial court held that the Assistant Personnel was directed by the Governor to sign the letter of suspension, the court below is said to have over ruled that view of the trial court and
 E there is said to be no appeal against that point. The appellants are therefore said to have accepted the said over-ruling made by the court below and as such that cannot now be reopened.

The contention of the 1st appellant that the respondent's service
 F with his previous employer had not been transferred to the 1st appellant is the one taken up in the respondent's Issue 2. Reference is made to the exchange of letters between the respondent's former employer, ASUTECH, and the 1st appellant already reproduced above (Exhibits 1 and 2A respectively). This was followed by the fact that, the respondent's former
 G employer had also sent to the 1st appellant under a covering letter dated 15th January, 1992 (Exhibit 2) the Record of Service of the respondent. It is then submitted that the court below was right in holding that there had been an effective transfer of the respondent's services from the
 H ASUTECH to the 1st appellant. The contention that the respondent was under probation is therefore said to be totally erroneous and inapplicable to the respondent whose 18 years service with his former employer had been transferred to the 1st appellant.

The facts of this case, as summarized above seem not to be disputed by the parties. What is in dispute is whether the court below was right in taking into consideration other evidence led by the respondent to show that the motives behind the termination of his appointment were in fact based on the unsigned anonymous petition written against him and whether the court below was right in ordering the respondent's reinstatement.

The law is settled that there are now roughly three categories of contracts of employment, viz: (a) those regarded as purely master and servant; (b) those where a servant is said to hold an office at the pleasure of the employer; and (c) those where the employment is regulated or governed by statute, often referred to as having statutory flavour. See *Olaniyan v. University of Lagos* (1985) 2 NWLR (Pt. 9) 599. An employment is said to have a statutory flavour when the appointment is protected by statute or laid down regulations made to govern the procedure for employment and discipline of an employee. Any other employment outside that category is governed by the terms under which the parties agreed to be master and servant. See *Olaniyan v. University of Lagos*, supra; *Ogunke v. National Steel Development Authority* (1974) NWLR 128; *Fakuade v. O. A. U. T. H* (1993) 5 NWLR (Pt. 291) 47; *Ideh v. University of Ilorin* (1994) 3 NWLR (Pt. 330) 81; *Shitta-Bay v. Public Service Commission* (1981) 1 S.C. 40; *Imoloame v. WAEC* (1992) 9 NWLR (Pt. 265) 303; and *Udo v. Cross River State Newspaper Corporation* (2001) 14 NWLR (Pt. 732) 116.

Where an employee's service is protected by statute and his employment is wrongfully terminated, he would be entitled to reinstatement in his office and in addition, damages representing his salaries during the period of his purported dismissal: See *Shitta-Bay v. Public Service Commission*, supra; *Olaniyan v. University of Lagos*, supra; and *Udo v. Cross River State Newspaper Corporation*, supra. This court clearly stated the legal position of public servants in Nigeria in the *Olaniyan v. University of Lagos* case, supra. It is that public servants in the established and pensionable cadre of the

Federal Government Service do not hold their offices at the pleasure of the Federal Government. Rather, their appointments are based upon rules and regulations, statutes or memoranda of appointment. It was also clearly stated in the same case that the University of Lagos and the University Council, both being creatures of statute, cannot act except within and under the powers conferred on them by the relevant statute.

The facts in the instant case, as already set out above, are that the 1st appellant is a Federal financial institution created by statute. It follows, therefore, that both the Bank and officials acting on its behalf cannot act except within and under the powers conferred on them by the relevant statute. Any action taken outside the powers conferred by the statute or regulations made thereof will be ultra vires, null and void.

The respondent in the instant case applied for the post in response to the advertisement published in the newspapers by the 1st appellant. He was interviewed and offered the job as per the letter of appointment, dated 5th November, 1991 (Exhibit A). A copy of his letter of appointment was sent to his then employer, ASUTECH, where the respondent had served for 18 years. ASUTECH wrote to the 1st appellant that it would release the respondent only if the appellant agreed to accept the respondent on transfer of service. The letter dated 4th December, 1991 is Exhibit 1. The 1st appellant's reply dated 13th December, 1991 (Exhibit 2A) was that it was willing to accept the respondent on transfer of service. It can be assumed that the respondent was released by ASUTECH to report for duty at the 1st appellant on receipt of the 1st appellant's letter, Exhibit 2A. He in fact assumed duty on 16th January, 1992. The record of service was sent by ASUTECH to the 1st respondent under a covering letter, dated 15th January, 1992. The contention of the appellants, therefore, that the respondent was to be on probation for a period of two years as contained in the letter of offer (Exhibit A) can definitely not stand. I believe and hold that that condition had been varied by the afore-mentioned exchange of letters.

Again, as I already stated above, the 1st appellant is a Federal institution created by statute. It follows therefore that it must carry out its activities in line with its governing laws. The laws regulating the appointment and discipline of its workers must be complied with strictly as their employments are with statutory flavour. Every action taken on behalf of the 1st appellant is therefore expected to be done in good faith, free of bias, or nepotism. Similarly, every provision of the Banks Staff Manual (Exhibit U) must be strictly complied with by the Bank when dealing with every member of its staff.

Thus, in the instant case, section 5 of Chapter 5 of the said Staff Manual (Exhibit U) provides that the 1st appellant is required to suspend a staff member only where a prima facie case of a serious nature has been established against the staff member by a court or by an Investigation Committee. This provision was breached in the respondent's case. The letter suspending him without pay dated 8th May, 1992 was issued when it was not shown that a prima facie case of a serious nature was established against the respondent by a court or an Investigation Committee. It was after he had been suspended that the 1st appellant decided to refer the matter to the investigation Committee. The said Investigation Committee's first contact with, the respondent was through a letter dated 22nd May, 1992 in which the respondent was invited to send a written defence to the allegations made against him in the unsigned anonymous petition. The respondent sent his reply as requested. Another letter (Exhibit E2) was again written to him. He was in that letter dated 3rd June, 1992 invited to appear before the Investigation Committee on 4th June, 1992. The respondent appeared before the said Committee on that day as required in the letter. He was on that day cleared by the Committee of the allegations made in the said petition against him.

It was after the above scenario that the 1st appellant now turned round to write its letter of termination of the respondent's appointment which was back-dated to the date that his suspension took, effect and to which a cheque for one month's salary said to be in lieu of notice was attached.

It may also be mentioned that section 6 of Chapter 5 of the Staff Manual provides that the letter of suspension in cases of officers on Grade Level 12 and above must be issued and signed by the Governor and that such suspension should not last for more than one month. That provision was also breached in that the letter in question was signed by an officer on Grade Level 14 as the respondent and not by the Governor and the suspension lasted for eight months instead of the maximum of one month prescribed in the Staff Manual.

The effect of the breaches of the afore-mentioned provisions of the Staff Manual is that the suspension order imposed on the respondent was null and void and of no effect. Similarly, the decision to terminate the respondent's appointment and treat his case as that of a new recruit was made in bad faith and in utmost disregard of the evidence proved in the respondent's case.

The respondent pleaded and led evidence to the effect that the 2nd appellant was the master-mind against the mischief against him. The man did not testify at the hearing. The serious allegation was therefore not controverted. It must be made abundantly clear that the 1st appellant is a Federal institution constituted and regulated by statute. Every member of staff is expected to carry out his function in accordance with the law that set up the Institution.

In the result, I hold that there is no merit in the appeal. As I have stated above, the respondent's employment is one with statutory flavour. Where, therefore a case of wrongful termination of such appointment is made out, as in this case, the correct order to be made is one reinstating him. But the man is now dead. He died while this appeal was pending in this court and his widow was substituted to continue with the defence of the appeal. An order reinstating him to his post can therefore not be made. In that case, the order of reinstatement made by the lower court will have to be varied. I therefore make the following orders in place of those made by the court below: (1) the order for reinstatement of the respondent made by the court below is affirmed and remained effective till the respondent's death

on 18th July, 2002. (2) The sum of N20,112,400 shall be paid to the respondent being arrears of salary and allowances from the date of his suspension on 8th May, 1992 up to September, 2000 based on the calculations set out in paragraph 14 of the counter affidavit deposed to and filed in respect of the appellants' motion for stay of execution filed at the court below on 21st September, 2000 and which the said court ordered to be deposited in an interest yielding separate account in the 1st appellant's bank in its ruling on the motion for stay dated 22nd May, 2001 together with the interest that has accrued on the said amount. (3) Arrears of salary and allowances from September, 2000 up to 18th July, 2002 when the respondent died based on the same principle adopted in arriving at the amount specified in the said paragraph 14 of the same counter-affidavit is also to be paid to the respondent. (4) Also to be paid to the respondent is all entitlements due to an officer of the respondent's rank who dies in office. The respondent is entitled to costs at the High Court assessed at N8000; costs in the Court of Appeal assessed at N8,000 and N10,000 in this court.

E

ONU JSC

I have had the privilege of reading before now the judgment of my learned brother, Akintan, JSC just delivered. I agree with him that the appeal lacks merit and it accordingly fails in its entirety and is dismissed. I make similar award as to costs as contained in the leading judgment.

F

MUSDAPHER JSC

G

I was privileged to read the judgment of my learned brother Akintan, JSC just delivered in this matter and I entirely agree. For the same reasons therein contained which I respectfully adopt as mine, I too do hereby allow the appeal and I abide by all the consequential orders including the orders, on costs proposed in the foresaid judgment.

H

MOHAMMED JSC

This is an appeal against the judgment of the Court of Appeal Lagos Division delivered on 15th May, 2000, in which that Court allowed the appeal of the Plaintiff now Respondent, set aside the decision of the trial Lagos State High Court of Justice dismissing the Plaintiff/Respondent's action against the Defendants now Appellants for the wrongful and unlawful termination of his appointment. The concluding part of that judgment at page 310 of the record of this appeal reads-

"In conclusion I find that there is merit in the appeal and I accordingly allow it. I declare the purported termination of the (sic) appeal (appointment) as illegal, unconstitutional, ultra vires, null and void and of no effect. The Appellant is accordingly reinstated to his post as Deputy Librarian of the Central Bank in the cadre of Assistant Director without loss of status and years of service and the payment of the arrears of his salary and allowances from the date of his suspension i.e. 18th May, 1992."

Aggrieved by this judgment against them, the Defendants/Appellants have now appealed to this Court upon their Notice of Appeal containing four grounds of appeal from which two issues for the determination of the appeal were formulated by their learner Counsel in the Appellants' brief of argument. The two issues read-

"Whether the Court below was right when it looked beyond the terms of the contract of employment and the evidence on record in deciding the issue whether the termination of the Respondent's contract of employment with the 1st Appellant was wrongful (Grounds 1 and 2).

2. Whether the Respondent was entitled to reinstatement to his former post in the circumstances of this case (Grounds 3 and 4)."

From the evidence on record in this case, it is not at all in dispute that the Respondent was employed on transfer of service from his former employer to the services of the 1st Appellant. The Respondent was appointed to a permanent and pensionable post in the public service on Grade Level 14. In terminating the appointment of the Respondent therefore, the 1st Appellant being a body created by statute, was bound to

observe the provision of the Staff Manual Exhibit U. Thus, the termination of the Respondent's appointment not having been made in compliance with the Staff Manual Exhibit U, cannot be said to have been in order. I therefore entirely agree with my learned brother Akintan, JSC, in his leading judgment in this appeal that the appointment of the Respondent being one which carries statutory favour, was wrongly terminated by the 1st Appellant, justifying the Court below setting aside the judgment of the trial Court and making an order granting the reliefs sought by the Respondent in his action against the Appellants.

The law is indeed well settled that where an employee's service is protected by statute and his employment is wrongly terminated, he would be entitled to reinstatement to his office and in addition, damages representing his salaries during the period of his purported removal. See *Shittab-Bay v. Public Service Commission* (1991) 1 S.C. 40 and *Olaniyan v. University of Lagos* (1985) 2 N.W.L.R. (PT. 9) 599.

This appeal therefore has no merit and accordingly I also hereby dismiss it. I abide by all the orders made in the lead judgment including the orders on costs.

OGBUAGU JSC

This is an appeal against the decision of the Court of Appeal, Lagos Division (hereinafter called the court below) delivered on 15th May, 2000 allowing the appeal of the Respondent and setting aside, the judgment of the High Court of Lagos sitting in Lagos - per Ope Agbe, J. delivered on 25th April, 1997 dismissing the Respondent's case as well as the Counter-Claim of the Appellants.

Dissatisfied with the said decision of the court below, the Appellants, have appealed to this Court on three (3) grounds of appeal which without their particulars, read as follows:

"1. The court below erred in law when it failed to give effect to the terms of the contract of employment between the parties.

2. The court below erred in law when after stating the trite principle of law that no court is allowed to speculate on facts, it went ahead

to do just exactly that.

3. The court below erred in law when after finding that the Respondent's appointment with the Appellant had not been confirmed it nonetheless went ahead to order his reinstatement on his former post without loss of status and further that the arrears of his salaries and allowance's be paid to him.

4. The judgment is against the weight of evidence".

I note from the Notice of Appeal dated 6th June, 2000 and filed on 7th June, 2000, this appeal is stated to be,

"That part wherein the court below held that the termination of the appointment of the Respondent was unlawful and ordered his reinstatement to his former post".

In other words and in effect, there is no appeal against:

(a) the finding of fact at page 119/132 of the Records by the trial court and affirmed/accepted by the court below at page 254 thereof inter alia, (as regards the trial court) thus:

"..... The letter of termination did not give any reason or reasons for the termination but from the facts before this court the reasons cannot be divorced from the issue of the N680,000.00 for the purchase of books for the library".

(as regards the court below) thus:

"Although no reason was given in Exhibit 'R' for the termination of the Appellant, it is safe to conclude as found by the learned trial judge that the reasons for the Termination cannot be divorced from the issue of N680,000.00 for the purchase of books for the Library....."

(b) the finding and holding by the court below at pages 255 to 257 of the Records, that the Respondent's employment, was not an ordinary master and servant relationship for which the master could dispense with the services of the servant at will. That the Respondent's employment into the Central Bank, was no doubt a public employment and should not be terminated merely because the Respondent was not yet confirmed but should be based on proven misconduct or other specified reasons. The cases of Olaniyan v. University of Lagos (1985) 2 NWLR (Pt.599) @ 677 and Agbo v. Central Bank of Nigeria (1996) 10 NWLR (Pt.478) 360

were cited and relied on.

[c] the finding of fact by the court below at page 256 of the Records, that the Respondent's employment is also governed by the Staff Manual Exhibit "U".

I will come to some of the above facts later in this Judgment. I only want to state that since there is no appeal against the above findings, it is settled that they subsist. If they subsist, the Appellants have no answer or answers to any or all of them. This is because, and it is settled, that such a judgment or order or findings of fact, is effective, conclusive and binding on the parties and their privies and can only be upset on appeal. See the case of Chief Arubo v. Aiyeleru & 5 ors. (1993) 2 SCNJ 90 @ 106. C

Now, on 6th February, 2007, when this appeal came up for hearing, leading learned counsel Oguneso, Esq. adopted the Brief prepared and settled by Adetunji Oyeyipo, Esq. which was filed on 27th June, 2007. He told the Court that there was an attempt to settle the matter as to the question of damages payable to the widow of the deceased Respondent. I note that the Appellants, have formulated two (2) Issues for E determination, namely.

"1. Whether the court below was right when it looked beyond the terms of the contract of employment and the evidence on record in deciding the issue whether the termination of the Respondent's contract of employment with the 1st Appellant was wrongful (Grounds 1 and 2)." F

2. Whether the Respondent was entitled to reinstatement to his former post in the circumstances of this case (Grounds 3 and 4)"

On its part, the Respondent, formulated also two (2) issues for G determination, namely,

"(1) Was the Court of Appeal right in holding that the termination of appointment of the Respondent by the 1st Appellant was unlawful under the circumstances of the case?"

(2) Was the Cowl of Appeal right in holding that the Respondent's H services had been transferred to the 1st Appellant's establishment?"

I note that Dr. Victor Igwillo - the plaintiff/Appellant/Respondent, died on 20th July, 2002 about two (2) years after the Judgment of the

court below and his widow - the present Respondent, was substituted for her dead husband with the leave of this Court. In effect, the decision of the court below in his favour subsisted at the time of his death.

I will deal with Issue 1 of the Appellant and Issue 2 of the Respondent because, the learned trial Judge at page 115/128 of the Records, identified the issue of transfer of the services of the Respondent as crucial. In his own words,

“A crucial issue that has to be determined before other issues is whether there was effective transfer of the service of the Plaintiff from his former employment at ASUTECH, Awka to the CBN. It is after this issue has been determined that one can place the Plaintiff in a proper compartment of a confirmed employee who can take advantage of the procedure for terminating the appointment of a confirmed employee. If not a confirmed employee but one on probation can he take advantage of the procedure for terminating a confirmed employee.”

It can be seen that from the last two sentences from the above quoted excerpt, the problem or with respect, ‘the complete misconception of the reasoning and the conclusion of the learned trial Judge in respect of the general issue, were unfortunately, anchored. Yes, the letter of appointment of the Respondent dated 5th November, 1991 Exhibit “A”, contained inter alia, the following:

“..... Your appointment will be for a probationary period of two (2) years after which, subject to satisfactory service, you will be confirmed in your appointment.....”

But there was this fact which was in evidence i.e. the exchange of correspondences between the former employers of the Respondent ASUTECH and the 1st Appellant which unequivocally, shows that the 1st Appellant, agreed to the transfer of the service of the Respondent, from his former employers to that of the 1st Appellant. For the avoidance of any doubt,

I will reproduce herein, the relevant correspondences some of which were also reproduced by the learned trial Judge and the court below.

There is a letter Ref. NAU/NC/P/63 dated 4th December, 1991

from the ASUTECH to the 1st Appellant, wherein, the following appear:

*“TRANSFER OF SERVICE IN RESPECT OF DR. V.C. IGWILLO
DEPUTY UNIVERSITY LIBRARIAN.*

*We are in receipt of a copy of your letter of appointment of the above
named Senior Officer of this College as Deputy Librarian (Asst. Direc- B
tor). We are willing to release him if you can accept him on transfer of
service.*

[the underlining mine]

We look forward to an early reply, please.

Signed S.A.C. Obi PAR (Personnel)

CC: The Provost

CC: Dr. V. C. Igwillo”.

The above letter-appears at page 34/20 of the Records.

In its reply by the 1st Appellant dated 13th December, 1991, and which D
appears at pages 27/14 and 35/21 of the Records, the following appear:

“Attention of S.A.C. Obi, PAR (Personnel)

Dear Sir,

*TRANSFER OF SERVICE IN RESPECT OF DR. V. C. IGWILO E
DEPUTY UNIVERSITY LIBRARIAN*

*I write to acknowledge receipt of your reference NAC/NC/P/63 of
4th December, 1991 on the above subject matter, and to confirm to you
that the Central Bank, of Nigeria, Lagos is willing, to accept Dr. V.C. F
Igwillo on transfer of service.*

[the underlining mine] .

Yours faithfully,

Signed: A. F. Tsbra

Senior Manager

Recruitment Office

For: Director of Personnel”

Note: At page 116/105, the name is A. M. Tabra.

There is a letter dated 15th May, 1992 from the 1st Appellant to H
ASUTECH and the reply which were reproduced in the Judgment of the
trial court which were also reproduced at pages 124/111 and 125/112 and
the reply by the court below at page 261 of the Records. It reads, as

follows:

“Dear Sir/Madam
TRANSFER OF SERVICE
DR. V. C. IGWILLO

B Further to your letter Ref. NAU/SC/P/63 dated 15th January, 1992 on the above subject, you are please requested to confirm the prepared-
ness or otherwise of your University to bear the proportionate liability of
Dr. Igwilllo’s pension for the period 31st August, 1974 to 16th January,
1992.

C [the underlining mine]

Yours faithfully,

[Sgd]

Senior Manager

D Personnel Records Office
For: Director of Personnel.

The reply which is dated 2nd July, 1992 with Ref. NAU/CR/70/33
reads as follows:

E “NNAMDI AZIKIWE UNIVERSITY
Office of the Registrar
The Director of Personnel
Central Bank of Nigeria

F *Tinubu Square*
P.M.B. 12194
Lagos.

TRANSFER OF SERVICE OF DR. V.C. IGWILLO

G *I write with reference to your letter Pers/Rec/Tran/PF/16300 dated
15th May 1992, on the above subject matter.*

*Dr. V. C. Igwilllo assumed duty with the defunct Anambra State
University of Technology (Part of whose assets and liabilities has been
inherited by this University) on 11th June, 1982. This University is there-
fore, prepared to bear the proportionate liability of Dr. Igwilllo’s pension
for the period 11th June, 1982, to 16th January, 1992.*

*Dr. Igwilllo may therefore, have served elsewhere for the period
31st August, 1974 to June, 1982, for which his employer during that*

period will bear the responsibilities”.

(Sgd)

Ngozi Anyakora

REGISTRAR”.

I note that these two letters, are Exhibits “Z” and “I” respectively. Exhibit “Z” was later tendered and admitted in evidence as Exhibits 2 -2a. I also note that at page 126/113 of the Records, (i.e. part of the Judgment of the trial court); the following appear, inter alia:

“Cross-examined by Learned Counsel for the Plaintiff DW1 agreed that Exhibit “C” on transfer of service was written before the Plaintiff left his former employment and in Exhibit “B” ASUTECH his former employer, gave a condition for releasing the Plaintiff... ...”

[the underlining mine]

The learned trial Judge at the same page, reproduced the contents of Exhibits 2-2a. Part of the reproduction, reads as follows:

“Prof. B. C. Umerah

NNAMDI AZIKIWE UNIVERSITY

15th January, 1992.

Our Ref. NAU/NC/P/63 PERSONNEL SERVICES

The Director of personnel

Central Bank of Nigeria

Tinubu Square

Lagos.

Dear Sir,

TRANSFER OF SERVICE: DR. VICTOR C. IGWILLO

With reference to your letter of 13th December, 1991 on the above named officer, I am directed to send herewith Dr. Igwilllo’s Record of Service for your retention.

Yours faithfully,

(Sgd.)

S.A.C. OBI

A.G. DEPUTY REGISTRAR (PERSONNEL)”.

I note that the comprehensive Personnel RECORD OF SERVICE of the Respondent, were reproduced in the Judgment of the trial court at

the same page and 127/114 of the Records numbering from Nos. 1 to 19 and it was certified by the above-named officer - Obi as “a true statement of the Respondent’s service with ASUTECH” now Nnamdi Azikiwe University. The 1st Appellant, in its letter Ref. No. Pers/RecATran/PF/B 16300 dated 15th May, 1992, acknowledged its receipt of the Respondent’s said Record of Service and that was a day before the Respondent resumed work.

Regrettably and significantly, in spite of these documentary evidence that were never denied or challenged by the Appellants and the said admission by the DW1 under cross-examination, the learned trial Judge in his said Judgment at page 133/120 of the Records, stated and held as follows:

“The question I earlier posed in this judgment was whether there was effective transfer of Plaintiffs service. I hold that as at the time the Plaintiff’s appointment was terminated there had not been an effective transfer of his service from ASUTECH Awka to the CBN, he could not therefore be regarded as a confirmed staff of CBN but even if he were so regarded on the authority of Olatunbosun’s case (supra) the transfer of service will be subject to Exhibit “X” i.e. subject to satisfactory service”.

[the underlining mine]

With respect, the above holdings, are not only unjustified but erroneous in the extreme and palpably perverse. Indeed, at page 262 of the Records, the court below effectively faulted the holding and stated inter alia, as follows:

“The learned trial Judge mistakenly equated the appellant’s transfer of service with his confirmation of appointment with the Central Bank and reasoned that if there was an effective transfer of service from his former employment at ASUTECH (now Nnamdi Azikiwe University) Awka to the Central Bank of Nigeria, that would place him in the category of a confirmed officer and he could then take advantage of the procedure for the termination of appointment of a confirmed employee.....”.

Now, in my respectful view, the acceptance by the 1st Appellant of the Respondent on transfer of service and having custody of his Record

of service, the inevitable inference or conclusion by me, is that the 1st Appellant, will take into consideration the Respondent's eighteen (18) years service before he was employed by the 1st Appellant and thus, the Respondent, will certainly not be a fresh employee of the 1st Appellant under probation. I so hold. To treat him or regard him as a newly recruited employee, will be a very wicked thing to do and of course, such contention by the Appellants, will be unjust, unconscionable, made in very bad faith and unacceptable to me in view of or in the face of all the available concrete evidence and documents before the trial court, speaking for myself. The said letters/correspondences; actually and eventually, varied Exhibit "A" - The letter of appointment which included that of probation, I believe, may be the general format in offers for employment to new/fresh employees.

It must always be borne in mind and this is also settled firstly, that where a contract (which includes contract of employment), involves several documents, the trial court, can only determine the issues before it, on the basis of the documents including letters relating to the contract and the conduct of the parties. See the cases of the, The Attorney-General of Kaduna State v. Atta (1986) 4 NWLR (Pt.38) 785 C.A. and Layland Nig. Ltd v. Dezengolf W.A. (1990)1 NWLR (Pt.14) 610 (a), 620.

Secondly, where a contract is in writing, any agreement which seeks to vary the original agreement, must itself, be in writing. This is exactly what happened in the circumstances of this case where the condition of releasing of the Respondent to the 1st Appellant was that the 1st Appellant, shall accept the Respondent as employed and, transferring his service from one body to another body. See the cases of John Holt Co. Ltd v Stephen Lafe (1938) 15 NLR 14 and Bijou (Nig.) Ltd. v. Osidarohwo (1992) 6 NWLR (Pt. 249) 463 @ 649. Again, a contract which must in law be in writing, can only be varied by an agreement in writing. See the case of Morris v. Baron & Co. (1918) A.C. 1 @ 39. Also settled, is that in the interpretation of a contract involving several documents, the documents, must be read together. See the cases of Royal Exchange Assurance Nig, Ltd. & 4 ors. v. Aswani Textile Industries Ltd. (1991) 2 NWLR (Pt.176) 639 @ 669 C.A.

At page 308 of the Records, the court below stated inter alia, as follows:

“Apart from writing Exhibit 1, one Mr. S.A.C. Obi the Ag. Deputy Registrar (Personnel) of Nnamdi Azikiwe University prepared Exhibit 2A (the record of service of Dr. V.C. Igwilllo) which he sent to the Respondents under a covering letter Exhibit 2) dated 15th January, 1992. This was a day before the Appellant resumed work with the Central Bank on 16th January, 1992. Thus all conditions for the effective transfer of the Appellant’s service had been concluded before the Appellant resumed work with the Respondents.....”

[the underlining mine]

I agree. I have already said so in this Judgment: Therefore, my answers to Issue 1 of the Appellants and Issue 2 of the Respondent, are in the Affirmative

In respect of Issue 2 of the Appellants and Issue (1) of the Respondent, I note that it was after the 1st Appellant had suspended the Respondent, that it set up the Investigation Committee that cleaned the Respondent from any purported or alleged misconduct contained in an unsigned/anonymous petition. I have already noted that the, two lower courts, found as a fact that from the facts before the trial court, the reason or reasons for the termination, cannot or could not be divorced from the allegation of N680,000.00 (six hundred and eighty thousand naira) for the purchase of books for the 1st Appellant’s Library. As I noted and now hold, the Appellants have not appealed against this weighty finding by the two lower courts.

I observe/note that in particulars ii of Ground 2 of the Grounds of Appeal, it reads as follows:

“The court below went on speculation that from the surrounding circumstances, the reasons for the termination of the Respondent’s appointment cannot be divorced from the allegation of misconduct levied against him”.

With respect, this was unfair to the court below. This is because, at pages 254 and 255 of the Records, the court below, stated copiously and unequivocally, the surrounding circumstances, that led to the trial

court making that statement in a, b and c. It did state that “No court is allowed to speculate on the facts”, but that what it can do, is to draw conclusions from the surrounding circumstances. It stated the circumstances, thus:-

“a. An anonymous letter was written in which certain criminal B allegations were leveled against the appellant.

b. On 5th May, 1992 the appellant received a letter of suspension without pay from the Central Bank of Nigeria through the office of the 2nd Respondent. The letter which was received is evidenced as Exhibit C ‘D’ informed the Appellant of the Bank’s decision to suspend him from duty with immediate effect because of his grave misconduct’.

c. After the preliminary investigation the Central Disciplinary Committee was set up which took representations from the appellant and all that the Appellant could know of the outcome of the findings of the Central Disciplinary Committee was the query he received which eventually led to the termination of his appointment and the date the appellant’s appointment was terminated coincided with the date he was suspended i.e. 8th May, 1992. The inevitable conclusion to be reached is that the appellant’s termination was as a result of the anonymous letter which contained allegations of impropriety against the appellant”. D E

[the underlining mine]

Oyeyipo, Esq. in the Appellant’s Brief, conveniently, only picked F the words “No court is allowed to speculate”. But it failed to state the reasons and facts for the court below/coming to the conclusion agreeing with learned trial Judge that the reasons for the termination, could not be divorced from the issue of the N680,000.00 for the purchase of books G for the 1st Appellant’s Library. To say the least, with respect, that was dishonest and unprofessional of the learned counsel to accuse the court below, of speculating which on the contrary, was not the case. The findings of the court below for so agreeing with that of the trial court, are H unassailable. I so hold.

I have a hunch that there must be something or some one responsible for all the rush to sack the Respondent who had barely been in the service of 1st Appellant, for less than four (4) months. Indeed, the Re-

spondent, fingered the 2nd Appellant in his pleadings and evidence as the architect of the ordeal he went through. He was not challenged in this regard under cross-examination of the said evidence. The effect in law, is now settled. The trial court is obliged to accept it as the truth. What is more, the 2nd Appellant, did not testify in order to rebut/or controvert this fact. The evidence of the Respondent in-chief as reproduced by the trial court at pages 115/102 to 120/107, is very pathetic.

Now, Exhibit U the Staff Manual, is very relevant to the determination of these issues. The court below, painstakingly and meticulously, dealt with it at pages 303 to 305 of the Records. For purposes of emphasis and avoidance of doubt that the 1st Appellant, clearly breached the provisions of that Manual, I deliberately, note that the 1st Appellant, is a body established or created by Statute. Its relationship with its staff including the Respondent, has statutory favour and therefore, it is bound to observe and comply strictly, with the said Manual. See the case of Olaniyan v. University of Lagos (supra) and Shitta-Bay v. Public Service Commission (1981) 1 &C 40 just to mention but a few.

Section 5 of Chapter 5 of Exhibit U, provides as follows:

"The Bank may suspend a staff member where a prima facie case of a serious nature has been established against him by a court or by an investigating committee and it is considered expedient in the Bank's interest to restrain him forthwith from carrying on his usual duties".

[the underlining mine]

Now, it is beyond controversy, that the Respondent was suspended without pay by the letter dated 8th May, 1992 even before the setting up of the Investigation Committee. In other words, he had been punished before the allegation against him in an anonymous petition, was investigated. That is to say, that no prima facie case of a serious nature, was ever established against him either by a court or an Investigating Committee. It was after his suspension, that the matter was referred to the Investigating Committee which of course, cleared him. In other words, that Committee found as a fact, that the said allegation, was not proved, or established against him. Wickedly and inhumanly, the 1st Appellant, not only terminated the appointment of the Respondent, but back-dated

his termination, from the date of his said suspension and sent him a cheque of one month's salary in lieu of notice.

Learned counsel for the Appellants, with respect, stood on a quick sand so to speak when he justified the termination on the porous and erroneous flimsy grounds that the Respondent was on probation and that a court, cannot order specific performance such as reinstatement or that if a court finds and holds that an employee's employment was wrongly terminated, the remedy is one for award of damages. These are general propositions of the law. Let me emphasize that each case, must be decided on the peculiar facts of the case. There is no need, relying on general propositions of the law. In the instant case, the entire exercise by the Appellants, was definitely and clearly, a nullity.

I say so, because there again, is the provision of Section 6 of Chapter 5 of Exhibit U. It provides as follows:

"A staff member on Grade Level 12 and above may be summarily suspended by the Governors for a period not exceeding one month Such suspension takes immediate effect without reference to a disciplinary committee".

The suspension letter was never signed by any Governor. The submission or contention that the person who signed it, was directed by a Governor, with respect, is a mere gimmick and not supported by any evidence in the Records. The Assistant Director, Staff Relations Officer who signed for Director of Personnel, in the said, letter of Suspension, stated in his first paragraph, thus:

"I am directed to inform you of the Bank's decision to suspend you from duty with immediate effect. You are being suspended for your grave misconduct".

The wordings are clear and unambiguous. At no where, is it stated that he was directed by any Governor. As a matter of fact, since it was not the Director of Personnel who signed the letter, the obvious inference and conclusion by me, is that the writer, having signed for the said Director of Personnel, was directed by his. Boss since he is/was an Assistant Director who was not even in the Personnel Office/Department, but in the Staff Relations Office.

Again, the letter of suspension to be signed by the Governor, must relate to an Officer on Grade Level, 12 and above and such suspension, must not exceed one (1) month. The Respondent, was an officer under Grade Level 14 and there is evidence by the Respondent unchallenged B and uncontroverted, that the person who signed the letter, is/was of the same Grade Level 14 as himself. What is worse, instead of the suspension lasting for one (1) month, it lasted for about eight (8) months. I believe that no fair minded person, can defend this travesty of justice or this inhumanity meted against the Respondent by a human being or body. C The case of FLT, LT. Edet v. Chief of Air Staff & anor. (1994) 3 NWLR (Pt.324) 41@ 65 & 67 C.A. (cited incorrectly in the Respondent's Brief as (Edet v. Chief of Army Staff) (1994) 2 NWLR (Pt.324) 4 at 45 - p.45 is where the ratios, were, stated by the Editor) where the termination of D the officer was declared null and void and of no effect as the person who signed the letter of his termination, was not the proper person to sign, supports my view and my said findings of fact.

The court below - per Akaahs, JCA, at page 258 of the Records, E had this to say, inter alia.

"The provisions of Exhibit "U" reproduced above regarding Staff Discipline were not complied with before the Appellant's (meaning the Respondent) appointment was purportedly terminated. Even though he F was adjudged to be guilty of gross misconduct prior to the setting up of the Investigating Panel and the findings and recommendations of the Central Disciplinary Committee was not made known to anybody including the appellant. His suspension letter which should have been signed by one of the Governors was signed by an officer of the Appellant's Grade. G Although the Bank has a discretion either to re-instate the Appellant sent on suspension, this discretion cannot be exercised in an arbitrary manner. If the allegations contained in the anonymous letter had been substantiated, the Appellant ought to have been dismissed from service. As it H turned out the allegations were allegations which lacked any substance. The evil machinations of the originator of the wild allegations should not be given legal cover by allowing the termination to stand".

[the underlining mine]

I agree. I have in this Judgment, made some of the above observations and findings. His Lordship continued inter alia, as follows.

“This will certainly not accord with justice; instead it will be a travesty of justice. The appellant’s protest letter dated 11th December, 1992 addressed to the Director of Personnel admitted as Exhibit “N” showed that there was a desperate effort by vicious and desperate persons to tarnish the Appellant’s reputation. If this was not the case, the Respondents (meaning the Appellants) would not have acted on the anonymous letter the way they, did despite the written explanations which the appellant made.....”

I also agree. These are all borne out from the Records.

At page 259 of, the Records; His Lordship, poured out his understandable feelings on fair hearing as really settled in a number of decided authorities. He thereafter, had these to say inter alia:

“..... In the instant case, apart from pronouncing the appellant guilty of misconduct in the Notice of Suspension without first investigating the contents of the anonymous letter..... The Appellant stood condemned the moment the anonymous letter was received by the Respondents..... A mere allegation without evidence to support it cannot stand. The Appellant was made to prove his innocence - instead of the accuser proving his guilt”

I cannot fault the above.

As regards Exhibit D, His Lordship stated as follows:

“I find that there is no evidence upon which the learned trial judge arrived at his finding that Exhibit “D” (the letter of suspension) was written on the instruction of the Governor. There ought to have been evidence from the Assistant Director, Staff Relations that he wrote Exhibit “D” on the instructions of the Governor. The answer to the issue raised by the Respondents in their Brief is that the termination of the appointment of the Appellant by the 1st Respondent was unlawful in the circumstances of the case”.

I also agree. I have said so in this Judgment except to add and stress that both the said suspension and the termination letters, were/are nullities and of no effect whatsoever and were actuated by very bad

faith. It is unfortunate although condemnable in very strong terms. Instead of learned counsel showing sympathy to the deplorable plight of the Respondent who has not lived to see his vindication by the two Appellate Courts “encouraged” the Appellants by filing a motion in the court below, for stay of execution. The court “below granted the application conditionally by ordering the Appellants to deposit/pay the Judgment money amounting to N20,112.400 within twenty one (21) days. The Appellants refused to obey the said court order and insisted on the Respondent, producing a Bank guarantee. I say no more on this matter except to say that my answers to the said Issue 2 of the Appellants and Issue (1) of the Respondent, are also in Affirmative. For the avoidance of doubt, I hold, that both the suspension and the purported termination of the deceased Respondent, were/are invalid and ineffective. For the distinction between this and termination or dismissal of an employee being wrongful, See the cases of Ewerami v. A.C.B. Ltd. (1978) 4 S.C. 99 and Imoloame, v. WAEC (1992) 9 NWLR (Pt.265) 303 @ 313; (1992) 11-12 SCNJ 21 - per karibi-Whyte, JSC. In other words, if the termination or dismissal, is illegal, or unconstitutional, or null and void or of no effect whatsoever, then, a court, is entitled to order reinstatement as has happened in the instant case.

In the final result or analysis, I find no merit in this appeal which fails. I too, dismiss it. I hereby affirm the decision of the court below. Now that the Respondent, is dead during the pendency of this, appeal in this Court and therefore, cannot, reap the fruit of the judgments in his favour, I abide by the orders contained in the lead Judgment of my learned brother, Akintan, JSC, whose reasoning and conclusion therein, I agree with.

H