

SUPREME COURT OF NIGERIA
9TH FEBRUARY, 2007 SC. 135/2001
CORAM:- A. I. KATSINA-ALU, G. A. OGUNTADE, M. A.
MUKHTAR, M. MOHAMMED, I. F. OGBUAGU, JJSC

MR. KUNLE OSISANYA APPELLANT
AND
AFRIBANK NIGERIA PLC RESPONDENT

MASTER & SERVANT - Dismissal - Where found to be wrongful - Remedy due to servant - Is payment for the period he served - And damages he would have earned - If his appointment has been properly determined (H1)

MASTER & SERVANT - Dismissal - Statutory protection - Where defendant's employment is not statutorily protected - Trial court's order of partial reinstatement is in error (H2)

MASTER & SERVANT - Issues - Relevance - Shares and dividends - Owned by plaintiff in defendant company - Issue related thereto - Was rightly ignored by lower court - For being irrelevant (H3)

FACTS

The plaintiff/appellant was an employee of the defendant/respondent. He was employed on 4-7-1983. In September, 1987, two officers of the National Union of Banks, Insurance & Financial Institution Employees jointly sent a petition against the plaintiff. It was alleged that he committed some dishonest acts in the course of his duties under the defendant. As a result, defendant suspended plaintiff from work. Later, those who wrote the petition withdrew it. Plaintiff expected he would be recalled from suspension. But by a letter dated 12-10-1987, he was summarily dismissed from defendant's employment.

In reaction plaintiff filed this suit before the High Court, Ilorin. He claimed inter alia, a declaration that his dismissal is wrongful and of no

effect whatsoever. An order that he be reinstated and paid his full salaries/benefits from the date of his suspension/dismissal up to the date of judgment. The trial judge granted a substantial part of the reliefs claimed by plaintiff. Defendant's appeal to the Court of Appeal was allowed. Being dissatisfied, plaintiff has now appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“(i) Having regard to the lower court’s decision that the dismissal office appellant by the Respondent was wrongful, was the court right in awarding him one month’s salary in lieu of notice and his salaries and entitlements up to the date of his wrongful dismissal.

(ii) Could the dismissal or termination of the appellant from the employment of the Respondent affect his privileges, rights, benefits and status as a shareholder in the respondent’s company in view of the provisions of the Companies and Allied Matters Act.”

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

Dismissal - Where found to be wrongful

1. It would appear from the above passage that the court below took the view that the defendant did not establish by evidence the assertion in Exhibit 24, the letter by which the plaintiff was dismissed from the defendant's employment, that the plaintiff had been guilty of any fraudulent malpractices. The court below at page 261 of the record in its judgment then said:

“In an ordinary relationship like in this one and following the common law principle, a termination of a contract of service, even if unlawful brings to an end the relationship of master and servant. Chuma v. Shell Petroleum (1993) 4 NWLR (Pt. 289) 512. The learned trial judge seems to appreciate this. This is evident from the following passage in his judgment –

However, I find the plaintiff’s prayer for reinstatement to the defendant’s employment a hard nut to crack for while I am aware of the prevailing judicial leaning against imposing an employee on an unwilling employer especially where, as in this case, the confidence between the two has sunk to a very low ebb with the allegation of dishonesty that has

brought the plaintiff under a cloud.....'

The court should not have proceeded to award the respondent his salary for over eight years. The law is that a servant would only be paid for the period he served his master and if he is dismissed as in this case, although wrongfully all he gets as damages is the amount he would have earned if his appointment has been properly determined."

There is, in my view, no doubt that the court below correctly stated and applied the applicable principle of law in a master and servant relationship. (p. 841 G)

Dismissal - Statutory protection

2. On the evidence before the trial court, the plaintiff was only entitled to all his salaries and entitlements up to 12th October, 1987 when he was dismissed and in addition a month's salary in lieu of notice.

The plaintiff's employment with the defendant was not shown to be one specially protected by statute. The trial court was clearly in error to have made a declaration the effect of which was to have kept plaintiff in the employment of the defendant from which the plaintiff had been removed albeit wrongfully. The court below was therefore right to have allowed the appeal. (p. 843 F/ 844 D)

Issues - Relevance

3. The only issue outstanding is whether the court below ought to have made orders in plaintiff's favour concerning the shares which the plaintiff claimed to own in the defendant's company and as to the dividends accruing from such shares. The question of share ownership of an employee in a company for which he works generally has nothing to do with the terms of the employee's employment under the company. Share ownership is a relationship governed by the Companies and Allied Matters Act Cap 59, 1990 Laws of the Federation. Outsiders who are not employees of a company buy shares in the company. I do not see therefore why the dismissal or termination of the plaintiff from the defendant's employment would have any effect whatsoever on the shares he owned in the plaintiff's company. This was simply an irrelevant matter. The

court below rightly in my view did not make any pronouncement in relation thereto. (p. 844 F)

REPRESENTATION

- B Mr. R. A. Lawal-Rabanah (Chuma Chukwudi with him) for Appellant.
Mr. Tawo E. Tawo for the Respondent.

CASES REFERRED TO

- C Chuma v. Shell Petroleum (1993) 4 NWLR (Pt. 289) 512
Kate Enterprises Ltd. v. Daewoo Nig. Ltd., (1980) 16 NSCC. (Part II) 942, 951
Olabanji v. Ajiboye (1992) 1 NWLR (Part 218) 473, 485-486
Katto v. C.B.N. [1999] 6 NWLR (Pt.607) page 390 at 414
D International Drilling Company (Nigeria) Limited v. Moses Eyeimofe Ajijala [1976] 2 S.C. 64 at 73-74
Western Nigeria Development Corporation v. Jimoh Abimbola (1966) NMLR 381 at 382
E Nigeria Produce Marketing Board v. A. I. Adewunmi Part 2 (1972) 1 All NLR 433 at 137
I.D.C. v. Ajijola (1976) 2 SC. 115 at 119-120
Mobil Oil Nigeria Limited v. Abraham Akinfosile (1969) NMLR 217
F Bamgboye v. University of Ilorin [1999] 10 NWLR (Part 622) 290 at 320
Shitta-Bey v. Federal Public Service Commission [1981] 1 SC. 40 at 56
Olaniyan v. University of Lagos (No. 2) [1985] 2 NWLR (Part 9) 599 at 613
Eperokun v. University of Lagos [1986] 4 NWLR (Part 34) 162 at 201
G Olatunbosun v. N.I.S.ER Council [1988] 3 NWLR (part 80) 25 at 41
OlaREWaju v. Afribank (Nig.) PLC 2001 13 NWLR part 731 page 691

LEAD JUDGMENT BY OGUNTADE JSC

- H The appellant was the plaintiff at the Ilorin High Court of Kwara State; and the respondent the defendant. The appellant (hereinafter referred to as ‘the plaintiff’) claimed against the defendant (hereinafter referred to as ‘the defendant’) multiple reliefs which read:

"i. A declaration that the dismissal of the plaintiff from the services of the defendants as contained in letter ref. No. OO/MEN/VOK/PERSONNEL/4835/87 of 12th October, 1987 is wrongful, unlawful, unconstitutional, null and void and of no effect whatsoever.

ii. A declaration that the decision of the defendants' senior staff disciplinary committee, which culminated in the dismissal of the plaintiff is contrary to the principles of natural justice and a deliberate and calculated infraction of the plaintiffs right of fair hearing as contained in and preserved by Section 33(1) & (2) of the Constitution of the Federal Republic of Nigeria, 1979 AND therefore null and void and of no effect whatsoever.

iii. A declaration that the employment of the plaintiff with the defendants still subsisting notwithstanding the said purported dismissal.

iv. An order commanding the defendants to reinstate the plaintiff to its services and to pay to the plaintiff his full salaries, entitlements, allowances and/or benefits from the date of his suspension and subsequently dismissal up to the date of judgment.

v. An ORDER that the plaintiff is still entitled to receive all the accrued dividends, bonuses on script issue or that will accrue dividends 1,332 ordinary shares bought by the plaintiff herein at the rate of N1.00 per share being the plaintiffs equity share participation in the defendant's bank. Letter dated 31-8-87 to the plaintiff by the defendant and the plaintiffs share warrant will be founded upon at the trial of this suit.

vi. ALTERNATIVELY, the plaintiff claims from the defendants the sum of N176,602.00 (One hundred and seventy-six thousand, six hundred and two Naira only being special damages for his wrongful dismissal from the services of the defendant.

PARTILCULARS OF SPECIAL DAMAGES

i. Plaintiff's remaining half salary for the months of September, 1987 to October, 1987

of N275.00 each = N550.00.

ii. Transport allowance for the months of September and October, 1987

of N200.00 each = N400.00.

	iii. Housing Allowance for the months of September and October, 1987 of N300.00 each	= N600.00.
B	iv. Lunch Voucher allowance for the months of September and October, 1987 of N5.00 per day	= N240.00.
	v. 12% of the plaintiff's basic salary of N6,600.00 per annum being his contribution to the National Provident Fund	= N792.00
C	vi. 20% of the plaintiff's basic salary of N6,600.00 per annum being his contribution to the Senior Provident Fund	= N1,320.00
	vii. The plaintiff's 13th month basic salary of N550.00 for the year 1987	= N550.00
D	viii. One month salary in lieu of notice unpaid to the plaintiff before his appointment was wrongfully terminated by the defendant	= N550.00
E	ix. Salary for the unexpired period of service i.e. between 12.10.87 when plaintiff was 34 years old to 10.10.2013 when he will attain the retirement age of 60 years	= <u>N171,600.00</u>
F	TOTAL	= <u>N176,602.00</u>

The parties filed and exchanged pleadings after which the suit was heard by Olagunju J. (as he then was). On 14-10-96, the trial judge, in his judgment spanning 34 foolscap pages granted a substantial part of the reliefs sought by the plaintiff. At pages 207-208 of the judgment, the trial judge concluded thus:

“The plaintiff also claims as items of special damages on which he led evidence (a) 12% of his basic salary of N6,600.00 as his contribution to the National provident Fund totalling N792.00 and (b) 20% of his basic salary of N6,600.00 which he contributed to the ‘Senior Provident Fund’ amounting to N1,320.00. The defendant led no evidence in

support of her averments in the statement of defence on the two heads of claim.

Thus the claims are un rebutted: See Kate Enterprises Ltd. v. Daewoo Nig. Ltd., (1980) 16 NSCC. (Part II) 942, 951; and Olabanji v. Ajiboye (1992) 1 NWLR (Part 218) 473, 485-486. Therefore, he is entitled to the amount on each head and as he is deemed, by virtue of the declarations and order hereinbefore made, to be in the defendant's employment till today he is entitled to have the claims adjusted mutatis mutandis to be payable up to today and I so order and I direct that he be paid the revised amounts.

The plaintiff succeeds. His dismissal from the employment of the defendant is declared null and void. He is deemed to still be in the defendant employment till today. Thereafter, his contract of employment will be determined from tomorrow, 23/1/96, by payment to him of a month's salary in lieu of notice. The consequential orders about payment to him of his entitlements as enumerated variously in this judgment shall be satisfied by the defendant without any further ado."

The defendant was dissatisfied with the said judgment. It brought an appeal before the Court of Appeal, Ilorin (hereinafter referred to as 'the court below'). On 22/11/99, the court below allowed the appeal. In the said judgment, the court below concluded in these words:

"In the circumstance, I find merit in this appeal. I allow the appeal and set aside the judgment of the lower court. In its place it is hereby ordered that respondent is to be paid all his salaries and entitlements up to 12th October, 1987, the date of his dismissal and thereafter a month's salary in lieu of notice. I make no order as to costs."

The plaintiff was dissatisfied with the judgment of the court below and has come on a final appeal before this Court. In his appellant's brief, plaintiff's counsel formulated for determination in this appeal the following issues:

"(i) Whether having regard to the withdrawal of the petition (exhibit 22) against the appellant by the authors thereon and the two lower courts having found that the dismissal of the appellant was null and void, the appellant can be entitled to all his accrued benefits and emolu-

ments.

(ii) *Assuming but not conceding that the lower court was right in holding that the applicant is only entitled to his benefits up to the date of his dismissal, whether the appellant can be deprived of his accrued dividends or his shares with the respondent.*

(iii) *Whether the decision of the Supreme Court in Katto v. C.B.N. [1999] 6 NWLR (Pt.607) page 390 at 414 can be relied upon by the lower court when all the circumstances of that case and this are materially different.”*

The respondent for its part, formulated for determination in the appeal two issues, namely:

“(i) *Having regard to the lower court’s decision that the dismissal of the appellant by the Respondent was wrongful, was the court right in awarding him one month’s salary in lieu of notice and his salaries and entitlements up to the date of his wrongful dismissal.*

(ii) *Could the dismissal or termination of the appellant from the employment of the Respondent affect his privileges, rights, benefits and status as a shareholder in the respondent’s company in view of the provisions of the Companies and Allied Matters Act.”*

The respondent’s issues are in my view suitable a basis upon which to consider this appeal. For an appreciation of the issues as discussed in this judgment, it is necessary that I examine briefly the facts leading to the dispute out of which this appeal arose. The facts are these: The plaintiff was an employee of the defendant at the Ilorin branch of the defendant. He was so employed on 4-7-83. In September, 1987, two individuals who were officers of the National Union of Banks, Insurance & Financial Institution employees jointly sent a petition against the plaintiff. It was alleged that the plaintiff had committed some dishonest acts in the course of his duties under the defendant. In consequence, the defendant suspended the plaintiff from work. Later, however, those who wrote the petition withdrew it. This would appear to convey that the petition had been motivated by malice. The plaintiff’s expectation that he would be recalled from suspension following the withdrawal of the petition did not materialize. Rather, the plaintiff, by a letter dated 12-10-87, was sum-

marily dismissed from the defendant's employment. In reaction, the plaintiff brought his suit raising the claims earlier act out in this judgment.

I now consider serially the two issues or determination earlier reproduced. The first issue in my humble view is rooted in an area of the law which is well-settled and must now be regarded as trite. At pages 259-260 of its judgment, the court below said:

"An employer though not bound to give reasons for terminating the appointment of his employee: where the employer gives reason for the termination, the onus lies on the employer to establish that cause of reason. Professor Dupe Olatunbosun v. Nigerian Institute of Social and Economic Research Council (1988) 1 NSCC pt. 1025.

In Ex. 24 which is the letter of Summary Dismissal the appellant stated the reason why the respondent was dismissed from its service. It reads-

'You are hereby Summarily Dismissed for your involvement in fraudulent malpractices.'

DW1 in her evidence testified in part as follows –

'It is not always that people who are accused of fraud are recommended for prosecution. I agree that it is only where the Bank has counter proof of allegation against an employee that the matter is referred to the police for criminal prosecution. No, the Committee did not recommend criminal prosecution against the plaintiff.'

My understanding of the evidence is that the appellant admitted that it was not proved that the respondent was involved in fraudulent malpractices. Having made the above observation, the question then is, is the learned trial judge right in reinstating the respondent and thereafter terminate the contract between him and the appellant? I answer the question in the negative. My reason will be given later."

It would appear from the above passage that the court below took the view that the defendant did not establish by evidence the assertion in Exhibit 24, the letter by which the plaintiff was dismissed from the defendant's employment, that the plaintiff had been guilty of any fraudulent malpractices. The court below at page 261 of the record in its judgment then said:

“In an ordinary relationship like in this one and following the common law principle, a termination of a contract of service, even if unlawful brings to an end the relationship of master and servant. Chuma v. Shell Petroleum (1993) 4 NWLR (Pt. 289) 512. The learned trial judge seems to appreciate this. This is evident from the following passage in his judgment –

However, I find the plaintiff’s prayer for reinstatement to the defendant’s employment a hard nut to crack for while I am aware of the prevailing judicial leaning against imposing an employee on an unwilling employer especially where, as in this case, the confidence between the two has sunk to a very low ebb with the allegation of dishonesty that has brought the plaintiff under a cloud.....’

The court should not have proceeded to award the respondent his salary for over eight years. The law is that a servant would only be paid for the period he served his master and if he is dismissed as in this case, although wrongfully all he gets as damages is the amount he would have earned if his appointment has been properly determined.”

There is, in my view, no doubt that the court below correctly stated and applied the applicable principle of law in a master and servant relationship. In *International Drilling Company (Nigeria) Limited v. Moses Eyeimofe Ajijala [1976] 2 S.C. 64 at 73-74*, this Court per Obaseki Ag. J.S.C. said on the point:

“The principles of law governing the award of damage were stated recently by this court in:-

(1) *Western Nigeria Development Corporation v. Jimoh Abimbola (1966) NMLR 381 at 382*; and

(2) *Nigeria Produce Marketing Board v. A. I. Adewunmi Part 2 (1972) 1 All NLR 433 at 137.*

In the latter case, we stated the law as follows at p. 437:-

‘In a claim for wrongful dismissal, the measure of damages is prima facie the amount that the plaintiff would have earned had the employment continued according to contract. (See Beckham v. Drake (1849) 2 H. L. Cas 579 at pages 607-608). Where, however, the defendant, on giving the prescribed notice, has a right to terminate the con-

tract before the end of the term, the damages awarded, apart from other entitlements, have been earned by the plaintiff over the period of notice, bearing in mind that it is the duty of the plaintiff to minimize the damage which he sustains by the wrongful dismissal.'

The application of this principle was vividly demonstrated by this Court in the case of Western Nigeria Development Corporation v. Jimoh Abimbola, supra, where Ajegbo, JSC., (delivering the judgment of the court) after stating the guiding principles said at page 382:-

'The plaintiff was given a letter of appointment (Exhibit A) and paragraph 5 of that letter reads as follows:-

'Your employment may be terminated by the Board or yourself by giving one month's notice in writing or by paying one month's salary in lieu of notice, except in the case of dismissal for an offence prejudicial to the interest of the Board.'

The plaintiff's appointment was governed by the contract to which he entered at the time of his appointment. If he had been given one month's notice before termination of his appointment, he would have had no claim whatever on the Corporation. But he was not given notice, and he is entitled to one month's salary in lieu of notice. That is all he can get as damages. Other matters that the Judge considered are irrelevant."

See also Francis Adesegun Katto v. C.B.N. [1999] 7 NWLR (Part 607) 390 at 406.

On the evidence before the trial court, the plaintiff was only entitled to all his salaries and entitlements up to 12th October, 1987 when he was dismissed and in addition a month's salary in lieu of notice. At pages 266-267 of the record, Obadina J.C.A. in his concurring judgment said:

"The law is well settled that where a contract of employment is terminable on notice, and the employee is not given the requisite notice, what the employee could have earned during the period of the notice is the damages that the employee can get. I.D.C. v. Ajijola (1976) 2 SC. H 115 at 119-120; Mobil Oil Nigeria Limited v. Abraham Akinfosile (1969) NMLR 217.

In the circumstances of this case, I think it was wrong of the learned

trial judge to have declared null and void the termination of appointment arising from the ordinary master and servant relationship. When an office or employment has a statutory flavour in the sense that its conditions of service are provided for and protected by statute or regulations thereunder, any person holding that office or in that employment enjoys a special status over and above the ordinary master and servant relationship. In the matter of disciplining of such a person, the procedure laid down by the applicable statute or regulations must be fully complied with. If materially contravened any decision affecting the right or tenure of office of that person may be declared null and void in an appropriate proceedings. See *Bamgboye v. University of Ilorin* [1999] 10 NWLR (Part 622) 290 at 320; *Shitta-Bey v. Federal Public Service Commission* [1981] 1 SC. 40 at 56; *Olaniyan v. University of Lagos (No. 2)* [1985] 2 NWLR (Part 9) 599 at 613; *Eperokun v. University of Lagos* [1986] 4 NWLR (Part 34) 162 at 201; *Olatunbosun v. N.I.S.ER Council* [1988] 3 NWLR (part 80) 25 at 41.”

The plaintiff’s employment with the defendant was not shown to be one specially protected by statute. The trial court was clearly in error to have made a declaration the effect of which was to have kept plaintiff in the employment of the defendant from which the plaintiff had been removed albeit wrongfully. The court below was therefore right to have allowed the appeal.

The only issue outstanding is whether the court below ought to have made orders in plaintiff’s favour concerning the shares which the plaintiff claimed to own in the defendant’s company and as to the dividends accruing from such shares. The question of share ownership of an employee in a company for which he works generally has nothing to do with the terms of the employee’s employment under the company. Share ownership is a relationship governed by the Companies and Allied Matters Act Cap 59, 1990 Laws of the Federation. Outsiders who are not employees of a company buy shares in the company. I do not see therefore why the dismissal or termination of the plaintiff from the defendant’s employment would have any effect whatsoever on the shares he owned in

the plaintiff's company. This was simply an irrelevant matter. The court below rightly in my view did not make any pronouncement in relation thereto.

This appeal has no merit. It is accordingly dismissed with N10,000.00 costs in the defendant/respondents favour against the plaintiff/appellant.

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment delivered by my learned brother Oguntade JSC in this appeal. I entirely agree that the appeal lacks merit.

In an action of this nature, certain settled principles must always be borne in mind. The first is that in a master and servant relationship, a dismissal of the employee by the employer, cannot be declared null and void and of no effect whatsoever. The employee's remedy is in damages where the termination of the appointment or dismissal is held to be wrongful. See *Bankole v. N.B.C* (1968) 2 All NLR 371; *Osakwe v. Nigerian Paper Mill Ltd.* (1998) 7 SCNJ 22; *Katto v. Central Bank of Nigeria* (1999) 6 NWLR (Pt. 607) 390.

It is also settled that the court cannot impose a servant on an unwilling master. See *Dr. Chukwumah v. Shell Petroleum Development Co. of Nigeria Ltd.* (1993) 4 NWLR (Pt. 289) 512 at 560; *Olarewaju v. Afribank Nig. Plc.* (2001) 13 NWLR (Pt. 731) 691 at 705.

In the present case, the appellant cannot seek a declaration that his employment is still subsisting. His remedy, as I have already stated is in damages as regards his salary and other accrued entitlements at the time of dismissal or termination of the employment. This indeed is what the Court of Appeal has decided. It was right.

In the result I also dismiss the appeal. I abide by the order as to costs.

MUKHTAR JSC

In his further amended statement of claim filed in the High Court of Kwara State, the plaintiff claimed the following reliefs:-

B “(i). A declaration that the dismissal of the plaintiff from the services of the defendants as contained in letter ref. No. OO/MEN/VOK/PERSONNEL/4835/87 of 12th October, 1987 is wrongful, unlawful, unconstitutional, null and void and of no effect whatsoever.

C (ii) A declaration that the decision of the defendants’ senior staff disciplinary committee, which culminated in the dismissal of the plaintiff is contrary to the principles of natural justice and a deliberate and calculated infraction of the plaintiffs right of fair hearing as contained in and preserved by section 33 (1) and (2) of the Constitution of the Federal Republic of Nigeria, 1979 and therefore null and void and of no effect D whatsoever.

(iii) A declaration that the employment of the plaintiff with the defendants is still subsisting notwithstanding the said purported dismissal.

E (iv) An order commanding the defendants to reinstate the plaintiff to its services and to pay to the plaintiff his full salaries, entitlements, allowances and/or benefits from the date of his suspension and subsequently dismissal up to the date of judgment.”

F The defendants denied the claims. At the close of pleadings parties adduced evidence which were evaluated by the learned trial judge. The learned trial judge at the end of the day found in favour of the plaintiff thus:-

G “The plaintiff succeeds. His dismissal from the employment of the defendant is declared null and void. He is deemed to still be in the defendant’s employment till today.”

H The defendants were not satisfied with the judgment, so they appealed to the Court of Appeal. The appeal was allowed at the Court of Appeal. The plaintiff was aggrieved by the decision, and he appealed to this court on eight grounds of appeal. Briefs of argument were exchanged in compliance with the rules of this court, and the briefs were adopted at the hearing of the appeal. Three issues for determination were formulated in the appellant’s brief of argument, which read:-

“(i) Whether having regard to the withdrawal of the petition (Exhibit 22) against the appellant by the authors thereon and the two Lower Courts having found that the dismissal of the appellant was null and void the appellant can be entitled to all his accrued benefits and emoluments.

B

Assuming but not conceding that the Lower Court was right in holding that the appellant is only entitled to his benefits up to the date of his dismissal, whether the appellant can be deprived of his accrued dividends to his shares with the respondent.

(iii) Whether the decision of the Supreme Court in KATTO v. CBN (1999) 6 NWLR (pt. 607) page 390 at 414 can be relied upon by the Lower Court when all the circumstances of that case and this are materially different.”

C

Two issues for determination were raised in the respondent’s brief of argument, and the issues are as follows:-

D

“(i) Having regard to the lower Court’s decision that the dismissal of the appellant by the Respondent was wrongful, was the Court right in awarding him One month’s Salary in lieu of notice and his salaries and entitlements up to the date of his wrongful dismissal.

E

(ii) Could the dismissal or termination of the appellant from the employment of the Respondent affect his privileges, rights, benefits and status as a Shareholder in the Respondent’s Company in view of the provisions of the Companies and Allied Matters Act.”

F

Learned counsel for the appellant has made heavy weather of the withdrawal of the petition of some staff of the respondent upon which the respondent’s dismissal of the appellant was premised. A pertinent paragraph of the letter (exhibit 22) reads as follows:-

G

“3. The allegations are just a case of personal vendetta against Mr. Osisanya and the signatories to the petition just append (sic) their signatures to it without actually reading the content of the said petition.

4. Mr. Osisanya happens to be one of the most hardworking members of staff of our branch, who is just being implicated for no just cause.”

H

It is the argument of the plaintiff/appellant that with the withdrawal

of the petition coupled with the content of the said Exhibit ‘22’ it is tantamount to the fact that the appellant had not been dismissed, and so the learned trial judge was right to have granted all the reliefs sought by the appellant. The fact that the petitioners withdrew their petition may not influence the respondent’s decision to terminate the appellant’s employment, once it had decided to do so and had done so. The employment and contract of employment did not have any statutory flavour, and it is well settled that such employment is liable to be terminated on the giving of a month’s pay in lieu of notice. The respondent was not bound by any law or obligation to retain the appellant in its Bank if it did not so wish, if what it wanted to do was to dispense with his services which was exactly what it did. See *Olarewaju v. Afribank (Nig.) PLC* 2001 13 NWLR part 731 page 691.

On the claim of shares of the defendant bank bought by the appellant, this should not have arisen at all because even if he was not an employee he could have bought the shares as an outsider. The appellant should have been properly advised on the position of the shares vis-à-vis his employment or services to the respondent. It was totally irrelevant, and the court below was right to have ignored it. The issue should not have arisen at all.

I have read in advance the lead judgment delivered by my learned brother Oguntade, JSC, and I am in complete agreement with the reasoning and conclusion that the appeal is totally devoid of merit and should be dismissed. I abide by the consequential orders made in the lead judgment.

G **MOHAMMED JSC**

Having had the privilege before today of reading in draft the judgment just delivered by my learned brother Oguntade JSC, in respect of this appeal, I share the views he expressed in the said judgment in dismissing the appeal.

The law is well settled that where a contract of employment or service is terminable on notice, and the employee whose employment is terminated has not been served with the requisite notice, what the em-

ployee could have earned during the period of notice is the requisite damages that the employee is entitled to. See *Mobil Oil Nigeria Limited v. Abraham Akinfosile* (1969) NMLR 217 and *International Drilling Company v. Ajijola* (1976) 2 SC 115 at 119-120. For this reason the judgment of the court below on the entitlements of the appellant is quite in order. B

I therefore entirely agree with my learned brother Oguntade JSC in his leading judgment that there is no merit at all in this appeal. Accordingly I also dismiss the appeal with N10,000.00 costs against the appellant in favour of the respondent. C

OGBUAGU JSC

The Appellant was an employee of the Respondent. Prior to his dismissal, he was queried and later suspended from work and placed on half salary. He was later dismissed and he challenged his dismissal at the High Court, Ilorin on the grounds that his dismissal, was wrongful, unlawful, unconstitutional, null and void and of no effect whatsoever. He also claimed in the Alternative, for the sum of N176,602.00 as special damages for his wrongful dismissal. The trial High Court, found in his favour and awarded to him, all his salaries and emoluments up to 22nd January, 1996. The Respondent appealed against the Judgment to the Court of Appeal, Ilorin Division, (hereinafter called “the court below”), which set aside the said judgment held that the Appellant, is entitled to one (1) month’s salary in lieu of notice and other entitlements due to him up till the date of his said termination - 12th October, 1987. Dissatisfied with the said decision, he has appealed to this Court on eight (8) grounds of Appeal. D E F G

I have had the advantage of reading before now, the Judgment of my learned brother, Oguntade, JSC, just delivered. I agree with his reasoning and conclusion that the appeal has no merit. However, for purposes of emphasis, I will make my own brief contribution. H

It need be stressed and this has long been settled, that in a Master and Servant relationship, a dismissal of an employee by the employer, cannot be declared null and void and of no effect whatsoever as claimed

by the Appellant in this case leading to instant appeal. The remedy as is also settled, is an award of damages, where the termination or dismissal, is held to be wrongful as in this case. See the cases of *Bankole v. N.B.C.* (1968) 2 ALL NLR 371/372; *Union Bank of Nigeria Ltd. v. Ogboh* (1995) B 2 NWLR (Pt. 380) 649 @ 664; (1995) 2 SCNJ. 1 @ 16; *Osakwe v. Nigerian Paper Mill Ltd.* (1998) 7 SCNJ. 222 and *Katto v. Central Bank of Nigeria* (1999) 6 NWLR (Pt.607) 390; (1999) 5 SCNJ. 1 just to mention but a few.

C It has long been firmly established in several decided authorities of the court below and this Court, that a court cannot impose or foist on an unwilling employer, his/its employee. See the cases of *Dr. Chukwumah v. Shell Petroleum Development Co. of Nigeria Ltd.* (1993) 4 NWLR (Pt.289) 512 @ 560; (1993) 5 SCNJ. 1 and *Olawajaju v. Afribank Nig.* D PLC. (2001) 13 WNLR (Pt. 731) 691 @ 705, 716; (2001) 7 SCNJ. 493 and many others.

In claim (iii) of the Appellant, he seeks a declaration that his employment with the Respondent, is still subsisting. This cannot be. This is E because, it is also firmly settled that if the termination or dismissal, is wrongful as found as a fact and held by the two lower courts, the remedy as I have already stated, is in damages as regards his salary and other entitlements at the time of the termination or dismissal. This is exactly F what the court below rightly awarded to the Appellant. Such an employee, cannot treat the contract of employment, as still subsisting. See the case of *Vidyodava University Council v. Silva* (1965) 1 WLR 77 @ 99. Thus, where there has been a wrongful termination or dismissal, a declaration by the court that the contract, is subsisting, will rarely be G made if at all. See the cases of *Francis v. Municipal Councillors of Kuala Lumpur* (1962) 1 WLR 1411 @ 1417; *Iwuchukwu v. Engr. Nwizu & anor.* (1994) 7 WVLR (Pt.357) 379 @ 412; (1994) 7-8 SCNJ. 328 @ 361 and *Ilodibia v. Nigerian Cement Co. Ltd.* (1997) 7 NWLR (Pt.512) 174; H (1997) 7 SCNJ. 77 @ 89, 90 just to mention but a few.

It ought to or should be borne in mind always especially by learned counsel who bring appeals as in the instant one and in most cases involving Master and Servant relationship, that in the payment of damages, it is

the salary and other entitlements already lawfully accruable and payable for the period for which the employee should have been given notice of termination. See the cases of *Mobil Oil Nig. Ltd. v. Akinfosile* (1969) NMLR 217; *G. B. Ollivant v. Agbabiaka* (1972) 2 S.C. 137 @ 144 cited and relied on in the Respondent's Brief. *Imoloame v. West African Examination Council* (1992) 9 NWLR (Pt.265) 303 @ 318 and *Ibama v. Shell B.P. Co. Ltd* (1998) 3 NWLR (Pt. 542) 493 @ 499 C.A. and many others.

On the decided authorities, my answer to Issue (1) of the Appellant, is that the Appellant cannot be entitled to all his alleged accrued benefits and emoluments. He is entitled to damages as regards his salary and other legitimate entitlements as at the time of the said dismissal as rightly or correctly held by the court below. The Petitions against the Appellant - Exhibits 4 and 22, having been withdrawn by the Petitioners - (i.e. some of the members of the National Union of Banks Insurance & Financial Institutions Employees) (NUBIFIE), is/was the reason for the two lower courts, finding that the dismissal was wrongful.

In respect of Issue (ii) of the Appellant, in my respectful view, E from the Records, there is no relationship between the Appellant's dismissal and his being a Shareholder in the Respondent's Company. If he was/is a Shareholder and dividend is declared by the said Company, just like the other Shareholders, the Appellant, will be entitled to any dividend F so declared having regard to the number of shares he is/was holding as would be evidenced by the Share Certificate issued to him by the Registrar. I so hold. The issue with respect, is grossly irrelevant in this appeal.

As regards the reference by the Appellant at paragraph 1.9 of his Brief of Exhibit 29 which he referred to as the Main Collective Agreement G between the Nigeria Employers' Association of Banks, Insurance and Allied Institutions And the Associations of Senior Staff, Bank, Insurance and Financial Institutions at pages 17 to 21 of Exhibit 29 and marked Exhibit 29A, the court below, held that there is no evidence that Exhibit H 29A, was adopted as forming part of the terms of the employment. That the failure of the Respondent, to act in strict compliance with Exhibit 29A, cannot be justiceable. That its enforcement lies, in negotiation be-

tween the Unions and the Appellant. I find nothing wrong with these findings and holdings. In the case of *Nwobosi v. African Continental Bank Ltd. (1995) 6 NWLR (Pt. 404) 656; (1995) 7 SCNJ. 92*, it was held that an employer, has a common law right, to dismiss his employee, without notice on grounds of misconduct or willful disobedience. So, the two lower courts having found as a fact, that the dismissal of the Appellant, was wrongful, the issue of collective agreement, with respect, becomes a non-issue and going into it by me, amounts to an exercise in futility and/or an academic exercise. I so hold.

I wish to say with the greatest respect and humility, that if in future, any learned counsel who is aware or ought to know about these firmly established law on Master and Servant, relationship (especially where the contract of employment is in writing) and who brings this type of frivolous appeal up to this Court, may, expose himself, to the Court, awarding costs personally against such counsel. I am by no stretch of imagination by this saying, inhibiting any learned counsel whose client is genuinely aggrieved in the conviction of such counsel, from bringing an appeal in respect of any breach of contract leading to either termination or dismissal rightly or wrongly to this Court. For the avoidance of any doubt, see other cases to the effect that an employee, would be entitled to damages and will only be paid for the period he served his Master, if he is either terminated or dismissed wrongfully. The damages, will be the amount he would have earned if his employment was properly and validly determined. - *Nigerian Produce Marketing Board v. Adewunmi (1972) 11 S.C. 111 @ 117 and International Drilling Co. v. Ajijola (1976) 2 S.C. 115 @ 119 - 120* decided by this Court decades ago.

In conclusion, it is from the foregoing and the fuller reasons and conclusion in the said lead Judgment of my learned brother, Oguntade, JSC, that I too, dismiss the appeal. I abide by the consequential order in respect of costs.