

**SUPREME COURT OF NIGERIA**  
15TH FEBRUARY, 2008 SC. 256/2002  
**CORAM:- N. TOBI, S. A. AKINTAN, W. S. N.**  
**ONNOGHEN, F. F. TABAI, I. T. MUHAMMAD, JJSC**

SAMUEL ISHENO	.....	APPELLANT
AND		
JULIUS BERGER NIG. PLC	.....	RESPONDENT

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TORTS - False imprisonment - Does not lie against a private individual - Who merely gave information - That led police to arrest or prosecute on their initiative (H1)

TORTS - Damages for - False imprisonment - Malicious prosecution - Defamation - Do not avail appellant - As a result of his prosecution by the police - For theft of respondent's lorries (H2)

MASTER & SERVANT - Termination of employment - Entitlements due - Such as redundant and repatriation allowances - Are sustained and reviewed upward by the Supreme court (H3)

MASTER & SERVANT - Entitlements - Due to employee declared redundant - And one retired are almost same in this case - Court will not interfere with employer's discretion in declaring appellant redundant - Without any justifiable cause (H4)

MASTER & SERVANT - Termination - Admission - Repatriation allowance - Though not provided for in respect of redundancy - Admission by respondent's only witness - Makes appellant entitled to repatriation allowance (H5)

**FACTS**

Before the Oleh High Court of Delta State, plaintiff/appellant filed an action against the defendant/respondent. Appellant was employed in 1979, by the respondent as an assistant patrolman in charge of its road project at Oleh site. In January 1991, respondent's two tipper lorries were stolen from its Oleh yard. Appellant as head of the

security men in charge of the station reported the theft to the police. The police intercepted the lorries at the Nigerian border as they were to be driven across to Benin Republic. Some arrests were made at Ibadan where the lorries were recovered. Appellant was arrested as a result of implicating statement made by one of the suspects. He was charged to court along with other suspects with conspiracy and stealing of the two lorries.

Appellant was, however, discharged and acquitted in a ruling upon a no case submission made on his behalf. Four of the co-accused persons were convicted. Appellant who thereafter reported for duty was prevented from resuming duty. Instead, he was issued with "Dismissal/Termination-Notice," stating that his services were no longer required on ground of redundancy. He was paid his arrears of salaries and allowances. He however refused to accept the calculated sum of N5,285 as total amount due to him as an officer disengaged on ground of redundancy. In the suit filed by appellant he claimed a total sum of N776, 281. 00 under various heads including malicious prosecution and defamation of his character. At the conclusion of hearing, the trial court dismissed the claim. Appellant's appeal to the Court of Appeal was dismissed as only the sum of N5, 285 redundancy benefits was granted to him. Still dissatisfied, appellant has further appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

*"1 Whether the learned Justices of the Court of Appeal properly evaluated the evidence before awarding the paltry sum of N5,285 only, as the entitlement of the appellant under the conditions of service which is Exhibit H.*

*2. Whether the learned Justices of the Court of Appeal were right in law in holding that the appellant was not entitled to repatriation allowance especially when this allowance was paid automatically to staff who suffers redundancy in accordance with the conditions of service (Exhibit H).*

*3. Whether the learned Justices of the Court of Appeal were right in law when they admitted that the parties relationship in this appeal were governed by Exhibit H, on the one hand, but held that the respondent had the option to either retire the appellant or declare his position redundant, and that they were right in choosing the*

latter."

**HELD** (Allowing the appeal in part per **AKINTAN JSC**, Tobi & Onnoghen JJSC dissenting on some issues)

***False imprisonment - Does not lie against private individual***

1. The main question raised in this appeal is whether, from the facts established in this case, the respondent could be held liable for acts of the police on the report made to the police in respect of a crime as was in this case. The position of the law is that an action for false imprisonment will not lie against a private individual who merely gave information which led the police on their initiative to arrest a suspect: See *Bank of West Africa v. Odiatu* (1956) LLR 48 and *Mandilas & Karaberis v. Apena* (1969) All NLR 390.

Similarly, where, on a report made by an appellant to the police about the theft of his goods, the appellant was asked whether he suspected anyone. He replied that he suspected the respondent who was consequently arrested and detained by the police for inquiry, such expression of opinion is said to be no more than putting the police on a trail upon which he can work instead of leaving him in the wilderness. Giving such information to the police cannot therefore form the basis for any action for false imprisonment or false prosecution by the police since it would be the duty of the police, after receiving such information, to make investigations themselves which may or may not lead to an arrest or to any action they take on the information given to them. Giving the police such information, therefore, cannot be said to have put the law in motion against the respondent. (p. 1071 G)

***TORTS - Damages for - False imprisonment***

2. Thus, in the instant case, the arrest, detention and subsequent prosecution of the appellant by the police for the theft of the respondent's stolen tipper lorries, could not form the basis for an action for damages for false imprisonment or malicious prosecution or defamation of character against the respondent as claimed by the appellant even if the appellant's name was given to the police as a person suspected. His claim in respect of those items was therefore without any merit. (p. 1072 D)

***Termination of employment - Entitlements due***

3. As already set out earlier above, the items of the appellant's claim are set out in paragraph 27 of his statement of claim. They include claims for loss of employment and retirement benefits. It is therefore not correct as submitted by the respondent that he was not entitled to repatriation allowance and that since the calculation of his redundancy allowance as set out in Exhibit K was not challenged, it was improper for the Court below to have granted it in its judgment. That submission is incorrect in view of the claims for loss of employment and retirement benefit.

I however hold that the award made by the Court below in respect of the entitlements due to the appellant as an employee who was declared redundant should be sustained subject to the variation that the calculation should be reviewed upward based on 5 weeks pay for each years of service put in by the appellant which should be 13 years since he served more than 12 years. He should also be paid the appropriate repatriation allowance. (pp. 1072 G/1075 C)

***Entitlements - Due to employee declared redundant***

4. There seems to be not much difference in the entitlements due to an employee declared redundant and one retired. The entitlement due to the employee who has served the company for 11-20 years, as the appellant, would be 5 weeks pay per year of service. The complaint of the appellant that he would prefer retirement to redundancy, therefore, would not mean much to him financially since his entitlement would still be 5 weeks pay per years of service he put in.

Secondly, as the discretion to make the choice is conferred on the employer, the court will not interfere with the exercise of such discretion without any justifiable cause. No evidence of any such justifiable cause was pleaded and adduced at the trial. The court below is therefore right in dismissing the appeal on that point. (p. 1074 D)

***MASTER & SERVANT - Termination - Admission***

5. Finally, the question whether the appellant was entitled to repatriation allowance after his appointment was declared redundant needs to be resolved. This is because the provision for repatriation appears

only as paragraph C of Article 9, which is headed "Termination of employment." No such provision is made in respect of Article 10, which deals with redundancy. But the payment of it to employees declared redundant is admitted by the only witness that testified for the defence at the trial. I believe that such benefit could not be denied to an official who had served for many years as the appellant and whose employment had to be abruptly brought to an end by means of the redundancy provision. I therefore hold that the provision of Article 9 (c), relating to payment of repatriation allowance is also applicable to employees declared redundant under Article 10. I therefore hold that the word "terminated" used in Article 9 (c), covers 'redundancy' used in Article 10. (p. 1074 G)

## **NOTABLE POINTS OF INTEREST**

### **TOBI JSC**

#### *1. Pleadings - Objects of*

It is the law that parties are bound by their pleadings and that matters not pleaded will go to no issue.

The object of pleadings is to enable the adverse party and the court know the case before the date of hearing. Accordingly, once the pleadings are settled, parties cannot move in or out of them, unless by the process of amendment. If parties have the liberty to give evidence on facts not pleaded in the pleadings, there will not only be a state of confusion, but litigation may not be completed on time. In view of the fact that the appellant did not make any case in the trial court for payment of repatriation allowance, the Court of Appeal correctly refused to award same. (p. 1077 C)

#### *2. Cross examination - Is limited by relevancy*

There is still one aspect. It is the evidence procured under cross-examination. The cliché or aphorism that the sky is the limit of cross-examination is not good law. This is not because, (to put it lightly) the lawyer is not an astronomist or astronomer, but because there is no such law. The discipline of law is one which is characterized by limitations here and there and cross-examination cannot occupy such a tall and enviable place in our law of procedure. And here I should say that relevancy is a limitation in all the three types of examination,

including cross-examination. After all, relevancy is the cynosure or heart beat of the Law of Evidence. See sections 6, 7 and 8 of the Evidence Act, 1990. (p. 1077 F)

**ONNOGHEN JSC**

**B** *3. Cross examination - Extracted evidence goes to no issue - For not being pleaded*

I am of the considered view that the appellant having not pleaded reparation allowance nor testified to that effect, no issue was joined between the parties thereto and as such the lower courts were right in not making any award in that respect as it is settled law that the court is not father Christmas and that parties and the court are bound by their pleadings and that evidence of facts not pleaded ground to no issue. It therefore does not matter that the witness for the respondent, Peter Enumah, admitted that the appellant was entitled to an award of reparation under cross examination as the fact was never pleaded neither did the appellant subsequently amend his pleading to include same; that fact therefore grounds to no issue and the lower court was right in ignoring same. (p. 1084 A)

**E**

*4. Need for leave to raise issue not decided by trial court*

It is also not in dispute that the appellant did not, in his pleadings, challenge the mode of termination of his employment and there was no relief challenging the calculation of appellant's benefits so the trial court never decided the issue as to whether appellant ought to have been retired, not declared redundant. That being the case, it is settled law that for the appellant to competently raise the matter on appeal, he needs the leave of either the trial court or the Court of Appeal or even of this Court, which leave from the record was neither sought nor granted by any court. This Court is therefore not competent to inquire under the circumstances, into the propriety or otherwise of the termination of the employment of the appellant. (p. 1084 D)

**H** *5. Parties are bound by their contract*

That apart, it is settled law that parties to an agreement or contract are bound by the terms and conditions of the contract they signed, in this case, exhibit H, and cannot operate outside its' terms and

conditions. It is not disputed that the relationship between the parties in this case is one of master and servant and as such an employer who hires an employee under the common law has the corresponding right to fire him at anytime even without assigning any reason for so doing. He must, however fire him within the four walls of the contract between them. Where the employer fires an employee in compliance with the terms and conditions of their contract of employment there is nothing the court can do as such termination is valid in the eyes of the law. It is only where the employer, in terminating or dispensing with the services of an employee does so without due regard to the terms and conditions of the contract of employment between the parties that problems arise as such a termination is usually not tolerated by the courts and are, without hesitation usually declared wrongful and appropriate measure of damages awarded to the plaintiff. (p. 1084 F)

### **REPRESENTATION**

Appellant absent and unrepresented  
Mr. L. O. Karim, for the Respondent

### **CASES REFERRED TO**

Mandilas & Karaberis v. Apena (1969) All NLR. 390  
Esther Adefunmilayo v. Omolara Oduntan (1958)  
Gbajor v. Ogunburegui (1961) All NLR 853  
Owoade v. Omitola (1988) 2 NWLR (Pt. 15) 134  
Ehimare v. Emhonyon (1985) 1 NWLR (Pt 2) 177  
Oredoyin v. Arowolo (1989) 4 NWLR (Pt. 114) 172  
Afrotec Technical Services (Nig.) Ltd, v. MIA and Sons Ltd. (2000) 15 NWLR (Pt. 692) 730  
Makinde v. Akinwale (2000) 2 NWLR (Pt. 645) 435  
Woluchem v. Gudi (1981) 5 S.C 291  
Salaudeen v. Mamman (2000) 14 NWLR (pt. 686) 63  
Slee Transport Ltd v. Oluwasegun (1973) ECLR (vol. 3)( pt 11) 1176

### **LEAD JUDGMENT BY AKINTAN JSC**

The appellant, Samuel Isheno, as plaintiff, instituted this action against the respondent as defendant at the Oleh High Court, in Oleh,

Delta State. His claim, as set out in paragraph 27 of his amended Statement of Claim is as follows:

*"Wherefore the plaintiff claims the following from the defendant:*

- B (1) *Malicious prosecution of the plaintiff* N250,000.00  
 (2) *Defamation of plaintiff's character* N200,000.00  
 (3) *Loss of employment for 15 years (made up of basic salaries, overtime pay, Sunday hour rate, rent and transport subsidy, ex-gratia payment, SAP deductions, annual leave allowance, annual bonus, Xmas bonus, leave pay etc.*  
 C N191,645.00  
 (4) *Retirement benefit* N32,636.00  
 (5) *General damages* N100,000.00  
 Total N776,281.00"

D Pleadings were filed and exchanged and the trial took place before Ogbodu, J. The plaintiff gave evidence in support of his claim at the trial while the case for the defence was presented by one Peter Enumah, s Security Manager with the defendant company.

E The plaintiffs case was that he was employed by the respondent company in Warri on 18th April, 1979 as an Assistant Patrolman in charge of Uzere Road project at the company's Oleh site. He was issued with an Identity Card (Exhibit A) when he was employed. His duty as an assistant patrolman involved posting guards working  
 F under him to their various beats for both day and night duties. He claimed that he served the respondent company without any blemish and was on 18th April, 1989 issued with a certificate of ten years long service award by the company (Exhibit B).

G But the trouble that led to his exit from the company's service and eventually to the institution of this case arose over the theft of the respondent's two Mercedes Benz Heavy Duty tipper Lorries with registration Nos. LA 6540 ML and LA2878MM valued N800,000 on 27th January 1991 at the company's yard at Oleh in Isoko area of Delta State. The appellant, as the head of the security men in charge  
 H of the station, immediately reported the theft to the police at Oleh police station. A search for the two missing lorries by the police eventually led to their recovery in Ibadan. The information about their recovery came from the Police who claimed that the two Lorries were

intercepted at the Nigerian border as they were to be driven across to Benin Republic. Some arrests were made in Ibadan where the Lorries were recovered. The appellant was implicated in the statements made to the police by one of the suspects. This led to the arrest of the appellant. He was first detained by the police after his arrest and was eventually charged to court along with the other suspects with conspiracy and stealing of the two Lorries. B

The appellant was, however, discharged and acquitted in a ruling on a no case submission at the close of the prosecution's case. The appellant was remanded in prison custody for some days before he was granted bail by the Isoko Area Customary Court, Oleh which tried the criminal charge preferred against the appellant and the other suspects. Four of the appellant's co-accused at the trial were, however, convicted and sentenced to various terms of imprisonment at the end of the trial. The court made the following observation on page 12 of its judgment in the criminal charge delivered on 29th October, 1991 (Exhibit 1): D

*"It is our observation that the police failed to properly interrogate the security officers attached to Julius Berger here at Oleh. If they had done so more facts would have emerged so as to determine how the vehicles got out of the yard,"* E

After the appellant had been discharged and acquitted of the criminal charge preferred against him, he reported for duty at his place of work with the respondent. He was however prevented from resuming duty. Instead, he was issued with a notice titled "Dismissal/Termination - Notice" (Exhibit J). The reason given in the notice for the termination of his appointment was that the appellant's services were no longer required on the ground of redundancy. He was however paid the arrears of his salaries and allowances for the entire period he was away from duty up to the time of his final discharge by the court. The respondent also prepared the entitlements due to the appellant as an official disengaged from the company's services on the ground of redundancy. The appellant, however, refused to accept the amount of N5,285 as the total amount due to him as an officer disengaged on the ground of redundancy. The appellant insisted that he ought to have been allowed to resume his normal duties or allowed to retire having regard to his long and unblemished H

service with the company. When all efforts to get the respondent to yield to any of his requests failed, the appellant commenced the action.

The respondent's case at the trial was presented by its only witness, Peter Enumah, the respondent's Security Manager. The witness denied the appellant's claims. He then went on to tell the trial court that as the arrest and trial of the appellant lasted for a fairly long term, the appellant could not be re-absorbed into the company because the project which the company was engaged in at the time was near completion and that meanwhile, his place had been filled by another person. The decision was therefore taken to pay the appellant all his outstanding arrears of salary from the time of his arrest right up to the time of his discharge by the trial court. The appellant was accordingly declared as redundant along with some other staff and his entitlement as a staff declared redundant was prepared (Exhibit K). The appellant is, however, said to have refused to collect it.

The witness admitted, under cross-examination, that in computing the appellant's redundancy entitlement (as set out in Exhibit K) the appellant's transport or repatriation allowance was not included. The man's evidence in respect of the redundancy entitlement is as follows:

*"I agree that in computing Exhibit K his transport or repatriation allowance was not included. At this stage, I am now in agreement that the plaintiff is entitled to the claim of N5,000. I do not lie to court when I stated that Exhibit K was prepared in strict compliance with Exhibit H.*

*It is true that redundancy pay in the case of plaintiff is 5 weeks pay for each year of service. It is correct that plaintiff did put in 12 years of service. It is also quite correct that Article 10 of Exhibit H did not specify whether or not the redundancy payment as already referred to is that of basic salary alone or including other payments, I do not agree that plaintiffs redundancy payment for 12 years of completed service should be N684 monthly nor N10,260 for that period of 12 years.*

*I disagree that an employee's retirement age with the company is 65 years. There is no scheme for retirement with the company. It is not correct that the plaintiff was prosecuted maliciously for*

*an allegation as having stolen tipper lorries."*

At the conclusion of the trial, the learned trial Judge in his reserved judgment delivered on 17th September, 1996 found that there was no merit in the plaintiff's claim. He accordingly dismissed the entire claim with N2,000 costs in favour of the defendant/respondent. The learned trial Judge said thus in the concluding paragraph of his said judgment:

*"Finally, I wish to point out again that the entire action is speculative and gold digging exercise which has been embarked upon by the plaintiff. There is no basis for instituting this action in the first place. The whole act of the plaintiff is provocation and sufficient to cause defendant annoyance and in view of all I have already stated, the entire action is dismissed on ground that it lacks merit."*

The appellant was dissatisfied with the verdict and he filed an appeal against it to the Court of Appeal (hereinafter referred to as the court below). The parties filed their briefs of argument in the court below and after hearing the submissions from learned Counsel for each of the parties, the court in its lead judgment delivered by Akaahs, JCA., with Rowland and Ibiyeye, JJCA concurring, dismissed the appeal. The learned Justice said thus in the concluding paragraph of the lead judgment:

*"This appeal fails in its entirety and it is accordingly dismissed except for the redundancy benefits totalling N5,285 which the plaintiff/appellant refused to accept. I award N2,000 costs against the appellant in favour of the respondent."*

Again the appellant was still dissatisfied with the judgment delivered by the court below and a further appeal was filed against it to this court. The parties filed their briefs in this court. The following three issues were formulated in the appellant's brief as arising for determination in the appeal:

*"1 Whether the learned Justices of the Court of Appeal properly evaluated the evidence before awarding the paltry sum of N5,285 only, as the entitlement of the appellant under the conditions of service which is Exhibit H.*

*2. Whether the learned Justices of the Court of Appeal were right in law in holding that the appellant was not entitled to repatria-*

*tion allowance especially when this allowance was paid automatically to staff who suffers redundancy in accordance with the conditions of service (Exhibit H).*

3. *Whether the learned Justices of the Court of Appeal were right in law when they admitted that the parties relationship in this appeal were governed by Exhibit H, on the one hand, but held that the respondent had the option to either retire the appellant or declare his position redundant, and that they were right in choosing the latter."*

Three similar issues were also formulated in the respondent's brief. I therefore do not consider it necessary to reproduce the three similar issues.

It is the contention of the appellant, as canvassed in Issue 1 of the appellant's brief, that the learned Justices of the Court below did not properly evaluate the available evidence on the record before them before awarding the sum of N5,285. It is submitted that going by the conditions of employment as contained in the National Joint Industrial Council Agreement, on terms and Conditions of Service for all Junior Employees in the Building and Civil Engineering Industry in Nigeria (tendered and admitted at the trial as Exhibit H), the proper decision which ought to have been taken in respect of the appellant's case would have been to retire him so that he could claim the retirement benefits as laid down in the said conditions of service. Such entitlement would have been more than the paltry sum of N5,285 awarded to him. It is further submitted that going by the terms of the said Exhibit H, which was binding on the parties, the correct position would have been to retire the appellant after attaining the age of 52 years and having served the respondent for more than 12 years.

On Issue 2, it is submitted that the appellant was entitled to the repatriation allowance not as a separate payment but as part of the computation of the appellant's entitlement. Failure of the respondent to do this is said to be erroneous.

Finally, it is submitted in the appellant's Issue 3 that the conclusion of the two lower courts to the effect that declaring the appellant as redundant instead of retiring him was appropriate is said to have been reached without a proper evaluation of the evidence led at the

trial and the provisions of the conditions of service as set out in Exhibit H. It is further argued that a situation warranting the declaration of any employee as redundant could only arise when the employer has ceased to or intend to stop carrying on business or where the employer is no longer interested in the particular job being done by the employee. None of the above situations existed in the instant case and, as such, declaring the appellant as redundant could not arise and was totally wrong. B

It is submitted in reply in the respondent's brief on Issues 1, 2 and 3 that from the appellant's claim and pleadings filed at the trial court, the plaintiff did not make any claim for repatriation allowance. Issues were therefore not joined thereon. It is also argued that there was no relief in the amended statement of claim challenging the mode of termination of his employment. The calculation of his redundancy benefits as shown on Exhibit K was also not challenged. What the appellant insisted on was a continuation of his employment with the respondent. It is then submitted that there was no reason for the Court below to have granted the claim to the plaintiff/appellant. C D

The same is also said in respect of the claim for repatriation allowance. It is argued that since that item was not claimed or pleaded, it was wrong of the Court below to grant such claim. The contention of the appellant has been that he ought to have been reinstated or retired under Article 9 of Exhibit H instead of being declared redundant under Article 10 of the same Exhibit H. It is argued that since it was within the powers of the respondent to take the decision to declare the appellant as redundant under Article 10 of Exhibit H, there is no ground for the Court to tamper with that decision since the respondent complied with the provisions of Article 10. E F

***The main question raised in this appeal is whether, from the facts established in this case, the respondent could be held liable for acts of the police on the report made to the police in respect of a crime as was in this case. The position of the law is that an action for false imprisonment will not lie against a private individual who merely gave information which led the police on their initiative to arrest a suspect: See Bank of West Africa v. Odiatu (1956) LLR 48 and Mandilas & Karaberis v. Apena (1969) All NLR 390.*** G H

**Similarly, where, on a report made by an appellant to the police about the theft of his goods, the appellant was asked whether he suspected anyone. He replied that he suspected the respondent who was consequently arrested and detained by the police for inquiry, such expression of opinion is said to be no more than putting the police on a trail upon which he can work instead of leaving him in the wilderness. Giving such information to the police cannot therefore form the basis for any action for false imprisonment or false prosecution by the police since it would be the duty of the police, after receiving such information, to make investigations themselves which may or may not lead to an arrest or to any action they take on the information given to them. Giving the police such information, therefore, cannot be said to have put the law in motion against the respondent:** See: *Esther Adefunmilayo v. Omolara Oduntan* (1958) WRNL.R. 31; and *Gbajor v. Ogunburegui* (1961) All NLR 853.

**Thus, in the instant case, the arrest, detention and subsequent prosecution of the appellant by the police for the theft of the respondent's stolen tipper lorries, could not form the basis for an action for damages for false imprisonment or malicious prosecution or defamation of character against the respondent as claimed by the appellant even if the appellant's name was given to the police as a person suspected. His claim in respect of those items was therefore without any merit.**

The next point to be resolved is in respect of the claim for loss of employment and retirement benefits. As it was agreed by both parties that their relationship is governed by Exhibit H, the relevant provisions of that document will have to be examined with a view to determining if there was a breach of any of the provisions of that document.

**As already set out earlier above, the items of the appellant's claim are set out in paragraph 27 of his statement of claim. They include claims for loss of employment and retirement benefits. It is therefore not correct as submitted by the respondent that he was not entitled to repatriation allow-**

**ance and that since the calculation of his redundancy allowance as set out in Exhibit K was not challenged, it was improper for the Court below to have granted it in its judgment. That submission is incorrect in view of the claims for loss of employment and retirement benefit.**

Article 9, of the National Joint Industrial Council Agreement (Exhibit H), sets out the provisions relating to termination of employment of daily rated employees and monthly rated employees. The part of the Article 9 relevant to the appellant are Article 9 (b) and (c) which provide thus:

*"Article 9*

*(b) Monthly Rated Employees:*

*Employment may be terminated upon giving one month's notice by either side or payment in lieu of such notice*

*(c) Repatriation*

*If an employee's service is terminated by the company, the employee shall be repatriated, along with his wife and a maximum of four children, to his original place of engagement at the company's expenses."*

Article 10, on the other hand, makes provision for redundancy. The article provides as follows:

*"Article 10-Redundancy*

*Redundancy Pay shall be given as compensation for loss of future prospect with one employer. Redundancy occurs when the service of a worker, having been in continuous employment of one employer for two years or more are no longer required by that employer due to no fault of the worker. Except those workers who are employed on a contract for a specific job or for a specific length of time.*

*The following scales of redundancy payment for the employee shall then be paid:-*

*2-5 years continuous employment - 3 weeks pay for each year of service*

*6-10 years continuous employment - 4 weeks pay for each year of service*

*11 years and above - 5 weeks pay for each year of service."*

Article 13 of the document, Exhibit H, deals with Gratuity and

Retirement Benefits. The Article reads as follows:

*"Article 13-Gratuity/Retirement Benefits*

*On attaining the age of 65 years, an employee's appointment will automatically terminate on ground of retirement, provided he has completed ten years of continuous service. An employee may retire or may be retired by an employer on or after attaining the age of 50 years; provided that he has completed ten years of continuous service. The following retirement benefit shall be paid:-*

*(a) 10 years of service - 4 weeks per year of service*

*(b) 11- 20 years of service - 5 weeks pay per year of service*

*(c) 21 years of service - 6 weeks pay per year of service."*

It is clear from the provisions of Article 10 relating to redundancy and Articles 13 which deals with gratuity/retirement benefits, that the employer has discretion to either declare an employee redundant or retire him in the appropriate case. In the instant case, the respondent chose to declare the appellant as redundant. But on a close look, ***there seems to be not much difference in the entitlements due to an employee declared redundant and one retired. The entitlement due to the employee who has served the company for 11-20 years, as the appellant, would be 5 weeks pay per year of service. The complaint of the appellant that he would prefer retirement to redundancy, therefore, would not mean much to him financially since his entitlement would still be 5 weeks pay per years of service he put in.***

***Secondly, as the discretion to make the choice is conferred on the employer, the court will not interfere with the exercise of such discretion without any justifiable cause. No evidence of any such justifiable cause was pleaded and adduced at the trial. The court below is therefore right in dismissing the appeal on that point.***

***Finally, the question whether the appellant was entitled to repatriation allowance after his appointment was declared redundant needs to be resolved. This is because the provision for repatriation appears only as paragraph C of Article 9, which is headed "Termination of employment." No such provision is made in respect of Article 10, which deals with redundancy. But the payment of it to employees declared redundant***

***is admitted by the only witness that testified for the defence at the trial. I believe that such benefit could not be denied to an official who had served for many years as the appellant and whose employment had to be abruptly brought to an end by means of the redundancy provision. I therefore hold that the provision of Article 9(c), relating to payment of repatriation allowance is also applicable to employees declared redundant under Article 10. I therefore hold that the word "terminated" used in Article 9 (c), covers 'redundancy' used in Article 10.***

In conclusion, I hold that the appeal as it relates to the claims for damages for malicious prosecution, defamation of character, loss of employment for 15 years and general damages, lack merit. I accordingly dismiss the appeal as it relates to those items of claim. ***I however hold that the award made by the Court below in respect of the entitlements due to the appellant as an employee who was declared redundant should be sustained subject to the variation that the calculation should be reviewed upward based on 5 weeks pay for each years of service put in by the appellant which should be 13 years since he served more than 12 years. He should also be paid the appropriate repatriation allowance.*** I make no order on costs.

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### **TOBI JSC**

The appellant, the plaintiff in the High Court, was an employee of the respondent/defendant. He was the Assistant Patrolman in charge of security at the site office, Oleh. Two of the respondent's Mercedes Benz tipper lorries were stolen. Appellant reported the theft to the Police. The vehicles were later recovered at Ibadan. Arrests were made. Appellant went to Ibadan to identify the vehicles. On his return from Ibadan, appellant was arrested by the Police as a suspect. He was later charged to court along with some others, including Jonathan Ekah. Appellant was discharged by the Isoko Area Customary Court on a no case submission. He was thereafter declared redundant by the respondent. Appellant refused to collect his redundancy benefits. He filed an action in the High Court claiming a total sum of

N776,281.00 as damages for malicious prosecution, defamation of character, loss of employment for fifteen years and retirement benefits. He also claimed general damages.

The learned trial Judge did not grant the claim of the appellant. He dismissed it. Ogbodu, J. described the entire action as speculative and gold digging, provocative and sufficient to cause the respondent annoyance. The Court of Appeal did not agree with the learned trial Judge. That court awarded the appellant redundancy benefits in the sum of N5.285.00.

The appellant has come to the Supreme Court. He is still aggrieved. In his brief of argument, the appellant formulated three issues on the evaluation of the evidence before the trial court in the award of the redundancy benefits; the refusal of the court to award repatriation allowance and the use of Exhibit H as the legal basis of the relationship of the parties. The respondent also formulated three issues along with same or similar lines.

It appears to me that both parties agree that Exhibit H governed the labour relationship between them. I entirely agree with them. They move apart and in their different ways on the construction or interpretation of Exhibit H in the light of the facts of the case. Exhibit H provides for the payment of repatriation allowance, so too the payment of redundancy benefits, While Article 9 provides for payment of repatriation allowance, Article 10 provides for payment of redundancy benefits.

Let me quickly read the two articles.

*"9(b) Employment may be terminated upon giving one month's notice by either side or payment in lieu of such notice.*

*(c) If an employee's service is terminated by the Company, the employee shall be repatriated along with his wife and a maximum of four (4) children, to his original place of engagement at the Company's expense.*

*10. Redundancy pay shall be given as compensation for loss of future prospect with one employer. Redundancy occurs when the service of a worker, having been in the continuous employment of one employer for two or more years are no longer required by that employer due to no fault of the worker, EXCEPT those workers who are employed on a contract for a specific job or for a specific length*

of time"

The Court of Appeal could not order the payment of repatriation allowance because the appellant did not plead it in his Amended Statement of Claim "The court said at page 140 of the Record.

*"I agree with the submission of learned counsel for the Respondent that the Plaintiff/Appellant's claim for Repatriation allowance was not pleaded as is not one in respect of which issues were joined and canvassed at the lower court There was therefore no reason for the lower court, notwithstanding the admission of Peter Enumah under cross-examination to hold that the repatriation allowance should have been included when Exhibit K was computed."*

It is the law that parties are bound by their pleadings and that matters not pleaded will go to no issue. See *Owoade v. Omitola* (1988) 2 NWLR (Pt. 15) 134; *Ehimare v. Emhonyon* (1985) 1 NWLR (Pt 2) 177; *Oredoyin v. Arowolo* (1989) 4 NWLR (Pt. 114) 172; *Afrotec Technical Services (Nig.) Ltd, v. MIA and Sons Ltd.* (2000) 15 NWLR (Pt. 692) 730; *Makinde v. Akinwale* (2000) 2 NWLR (Pt. 645) 435.

The object of pleadings is to enable the adverse party and the courts know the case before the date of hearing. Accordingly, once the pleadings are settled, parties cannot move in or out of them, unless by the process of amendment. If parties have the liberty to give evidence on facts not pleaded in the pleadings, there will not only be a state of confusion, but litigation may not be completed on time In view of the fact that the appellant did not make any case in the trial court for payment of repatriation allowance, the Court of Appeal correctly refused to award same.

There is still one aspect. It is the evidence procured under cross-examination. The cliché or aphorism that the sky is the limit of cross-examination is not good law. This is not because, (to put it lightly) the lawyer is not an astronomist or astronomer, but because there is no such law. The discipline of law is one which is characterized by limitations here and there and cross-examination cannot occupy such a tall and enviable place in our law of procedure. And here I should say that relevancy is a limitation in all the three types of examination, including cross-examination. After all, relevancy is the cynosure or heart beat of the Law of Evidence. See sections 6, 7 and 8 of the

Evidence Act, 1990.

Terms and conditions of service, in a labour agreement, are concise and precise and so stated in the agreement. A court of law will therefore not find it difficult to grant a relief based on the labour agreement, if the plaintiff pleads it. I have searched to no avail the relief of repatriation allowance.

Learned counsel for the appellant submitted that the Court of Appeal did not properly evaluate the available evidence on the Record before it in awarding the sum of N5,285.00. Although learned counsel did not go further to substantiate his argument, I shall take the issue further. Peter Enumah, DW1, in his evidence-in-chief, tendered the redundancy notice and voucher showing appellant's entitlements. The witness said under cross-examination at page 39 of the Record:

*"It is true that redundancy pay in the case of plaintiff is 5 weeks pay for each year of service. It is correct that plaintiff did not put in 12 years of service. It is also quite correct that Article 10 of Exhibit H did not specify whether or not the redundancy payment as already referred to is that basic salary alone or including other payments. I do not agree the plaintiff's redundancy payment for 12 years of completed service should be N684.00 monthly nor N10, 260.00 for that period of 12 years"*

In its judgment, the Court of Appeal said at pages 141 and 142 of the Record:

*"The following scale of Redundancy payment for the employees shall be paid: 2-5 years continuous employment - 3 weeks pay for each year of service. 6-10 years continuous employment - 4 weeks pay for each year of service, 11 years and above of service. Exhibit J shows that the Appellant was relieved of his appointment due to Redundancy. The computation of the Appellant's redundancy benefits in Exhibit K shows that he was paid ex-gratia basic salary and salary in lieu of notice, leave working allowance and the redundancy pay all totaling N5,285 00. The Ex-gratia payment according to Article 11 (a) of Exhibit H ought not to have been included because the proviso to the said article states that where such benefit is payable, the employee shall neither qualify for Redundancy benefit nor for retirement benefit. It seems that this provision was not strictly complied with. By the terms of the contract, the Respondent had an option to*

*either retire the Appellant or declare his post redundant and it chose the latter option. To my mind the Respondent did not breach the contract."*

What else did the appellant want the Court of Appeal to do by way of evaluation of the evidence? The court considered Exhibits H, J and K. The Court of Appeal did not rake up the redundancy benefit of N5.285 00. It was lifted from Exhibit K. And so why the heavy weather in Issue No 1?

In Issue No 3, counsel quarrels with the conclusion of the Court of Appeal that "by the terms of the contract, the Respondent had an option to either retire the Appellant or declare his post redundant and it chose the latter option." Learned counsel submitted that as the option of declaring appellant redundant was punitive and malicious and designed to cause hardship on him it was not available to the respondent.

If the appellant does not agree with the Court of Appeal on the choice between retirement and a declaration of redundancy, should I take him to mean or say that the two acts can happen simultaneously? That will be impossibility in labour relations. Unless a labour agreement specifically provides for which of the two should happen first, an employer of labour is at liberty to invoke any at his pleasure with the corresponding attendant benefits accrued to the employee. And that is what the Court of Appeal did. Although the appellant is not with the Court of Appeal, I am entirely with the Court. No employee is entitled to both retirement and redundancy benefits. That cannot be the legal position.

In the light of the above and the more detailed reasons given by my learned brother, Akintan, JSC, I dismiss the appeal I award N10,000.00 in costs to the respondent.

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### **ONNOGHEN JSC**

This is an appeal against the judgment of the Court of Appeal Holden at Benin City in appeal No CA/B/122/98 delivered on the 14th day of January, 2002 in which the court dismissed the appeal of the appellant against the judgment of the Delta State High Court Holden at Oleh in suit No HOC/11 792 dismissing the suit of the

appellant, then plaintiff.

By paragraph 27 of the Amended Statement of Claim, the appellant as plaintiff claimed against the respondent, then defendant as follows:-

"27. Wherefore the plaintiff claims the following from the defendant:

*Particulars of Special Damages*

	(1) Malicious prosecution of the plaintiff	N250,000.00
	(2) Defamation of plaintiff's character	200,000.00
C	(3) Loss of employment for 15 years (made up of basic salaries, overtime pay, Sunday hour rate, rent and transport subsidy, ex-gratia payment, SAP deductions, annual leave allowance, annual bonus, Xmas bonus, leave pay etc.	191,645.00
	(4) Retirement benefit	32,636.00
D	(5) General damages	100,000.00
	Total	776,281.00"

The facts of the case, as can be gathered from the record are that in 1990/91, the respondent was engaged in the construction of the Uzere Road project and maintained a site office at Oleh town, Delta State in which the appellant worked as Assistant Patrolman in charge of security. Two of the respondent's Mercedes Benz tipper lorries with registration Numbers LA 6540 ML and LA 2678 ML were stolen from the respondent's said site office which theft was reported to the police by the appellant. The lorries were eventually recovered at Ibadan and some persons were arrested by the police in connection with the theft. The appellant went to Ibadan to identify the lorries. It is the case of appellant that one Jonathan Ekah who was one of those arrested by the police in connection with the theft and had earlier worked for the respondent at Oleh but was sacked had vowed to put the appellant in trouble since it was appellant that was instrumental to his being sacked by the respondent. On 4/2/91 after the appellant's return from Ibadan to Oleh, he was arrested by the police as a suspect in connection with the theft of the lorries and was detained and charged along with others including Jonathan Ekah to the Isoko Area Customary Court, Oleh. The appellant was however discharged by that court on a no case submission. He was subsequently paid his arrears of salaries from January - October, 1991

after which the respondent declared him redundant and prepared his redundancy benefits which appellant refused to sign for and collect. Instead, appellant proceeded to institute an action at the High Court of Delta State, Holden at Oleh claiming damages for his arrest and alleged malicious prosecution at the instance of the respondent. The appellant testified at the trial while the respondent called one witness who testified on its behalf. The following exhibits were tendered and admitted in evidence, viz exhibits "I", "J" and "K" at the end of which trial the learned trial judge dismissed the suit of the appellant describing same as being speculative and held that the appellant was only entitled to the sum of N5,285.00 being his redundancy benefits as offered by the respondent. The appellant was not satisfied with that judgment hence his appeal to the Court of Appeal which appeal, as stated earlier in this judgment, was dismissed by that court resulting in the instant appeal to this Court.

The issues for determination, as identified by the learned counsel for the appellant in the appellant's brief of argument filed on 2/4/03 by Greg I. Uloko Esq. are as follows:-

*"1 Whether the learned Justices of the Court of Appeal properly evaluated the evidence before awarding the paltry sum of N5,285 only as the entitlement of the appellant under the conditions of service which is Exhibit H.*

*2. Whether the learned Justices of the Court of Appeal were right in law in holding that the appellant was not entitled to repatriation allowance especially when this allowance was paid automatically to staffs who suffers redundancy in accordance with the conditions of service (Exhibit H).*

*3. Whether the learned Justices of the Court of Appeal were right in law when they admitted that the parties relationship in this appeal were governed by Exhibit H on the one hand, but held that the respondent had the option to either retire the appellant or declare his position redundant, and that they were right in choosing the latter option."*

On the other hand, the learned counsel for the respondent, Abumere A. Osara Esq., in the respondent's brief of argument filed on 7/1/04 identified the following three issues for determination:

*(1) Whether the Court of Appeal was right in holding that the*

*appellant is entitled to redundancy benefits amounting to N5,285.00 only.*

*(2) Whether on the state of the pleadings the Court of Appeal was right in holding that the appellant was not entitled to reparation allowance.*

B *(3) Whether having regard to the conditions of service Exhibit "H" the respondent as the employer could choose the mode or method by which to dispense with the services of its employee the appellant."*

C It is very clear that the issues as identified by both counsel are the same in substance though issues 1 and 2 can conveniently be taken together as they deal, in essence with the weight of evidence adduced in the case based on the pleadings of the parties.

D It is the submission of learned Counsel for the appellant that the lower court was in error when it failed to properly evaluate the available evidence on record before awarding the sum of N5,285.00 and that the appellant ought not to be declared redundant by the respondent as the proper decision ought to have been retirement in accordance with the provisions of Exhibit "H" which would have enabled the appellant's claim retirement benefits under the conditions of service. However, appellant admits that at the time of his being declared redundant he had not attained the retirement age of 52 years and that he had, at that time, served the respondent for 12 years and had about 15 years more to serve before retiring at the age of 52 years and urged the court to take the above facts into consideration in making the appropriate award; that appellant was entitled to reparation allowance as part of the computation of his entitlements following his disengagement in accordance with Article 9C of exhibit "H"; that the exercise of the option by the respondent to declare the appellant redundant instead of retiring him was wrong as the same was malicious and punitive and designed to cause hardship to the appellant and urged the court to allow the appeal.

H On his part, learned Counsel for the respondent submitted that the appellant never pleaded any claim for reparation allowance and that the mode of termination of the employment was not challenged by the appellant in his pleadings neither did he contest the calculation of his redundancy benefits as contained in exhibit "K";

that the appellant's case was based on the continuation of his employment as he sued for breach of profit which he would have earned if the employment had continued; that parties are bound by their pleadings and that evidence given outside the pleadings ground to no issue; that there was no claim for repatriation allowance and as such no issue was joined on same by the parties and that the lower court was therefore right in not awarding same, the admission of the witness for the respondent under cross examination notwithstanding; that evidence extracted under cross examination but not pleaded goes to no issue; that since appellant was declared redundant under Article 10 and not retired under Article 9 of exhibit H, appellant was only entitled to the payment of redundancy benefits, not retirement benefits; that the payment of repatriation benefits exists under Article 9 only; that there is no evidence by the appellant that his employment was terminated under article 9; that parties are bound by the terms and conditions of their contract of employment and that exhibit H provides for four modes of dispensing with the services of an employee under articles 9, 10, 13 and 23 and that the option of dispensing with the services of the appellant under redundancy was validly exercised by the respondent and that the court can only inquire into whether the respondent in dispensing with the services of the appellant complied with the conditions of service relevant or relating to the chosen mode of dispensing of his services as contained in exhibit H; that in the instant case, the respondent duly complied with the requirements of exhibit H and urged the court to resolve the issues against the appellant and dismiss the appeal.

I have carefully gone through the pleadings of the parties and the evidence called/produced by the parties as contained in the record with special reference to the reliefs claimed by the appellant, and it is very clear that the appellant never pleaded or claimed for repatriation allowance as a result of which no issue was joined by the parties thereto. It is also clear from the record that the appellant never contested the mode of the bringing to an end his employment with the respondent which was by way of redundancy; in short, what I am trying to say is that the appellant did not challenge the redundancy by contesting that the respondent ought to have terminated his appointment by way of retirement instead of redundancy. There is also the fact that the appellant never contested the calculation of his re-

dundancy benefits rather the appellant, by his claim before the court is insisting on a continuation of the relationship of employer/employee and by suing for what he would have earned in the fifteen years to his retirement etc, he was suing for breach of profit for the period in issue. I am of the considered view that the appellant having not pleaded  
 B reparation allowance nor testified to that effect, no issue was joined between the parties thereto and as such the lower courts were right in not making any award in that respect as it is settled law that the court is not father Christmas and that parties and the court are bound  
 C by their pleadings and that evidence of facts not pleaded ground to no issue. It therefore does not matter that the witness for the respondent, Peter Enumah, admitted that the appellant was entitled to an award of reparation under cross examination as the fact was never pleaded neither did the appellant subsequently amend his pleading  
 D to include same; that fact therefore grounds to no issue and the lower court was right in ignoring same - see *Woluchem v. Gudi* (1981) 5 S.C 291; *Salaudeen v. Mamman* (2000) 14 NWLR (pt. 686) 63; *Slee Transport Ltd v. Oluwasegun* (1973) ECLR (vol. 3)( pt 11) 1176.

It is also not in dispute that the appellant did not, in his plead-  
 E ings, challenge the mode of termination of his employment and there was no relief challenging the calculation of appellant's benefits so the trial court never decided the issue as to whether appellant ought to have been retired, not declared redundant. That being the case, it is  
 F settled law that for the appellant to competently raise the matter on appeal, he needs the leave of either the trial court or the Court of Appeal or even of this Court, which leave from the record was neither sought nor granted by any court. This Court is therefore not competent to inquire under the circumstances, into the propriety or  
 G otherwise of the termination of the employment of the appellant.

That apart, it is settled law that parties to an agreement or contract are bound by the terms and conditions of the contract they signed, in this case, exhibit H, and cannot operate outside its' terms and conditions. It is not disputed that the relationship between the  
 H parties in this case is one of master and servant and as such an employer who hires an employee under the common law has the corresponding right to fire him at anytime even without assigning any reason for so doing. He must, however fire him within the four walls of

the contract between them. Where the employer fires an employee in compliance with the terms and conditions of their contract of employment there is nothing the court can do as such termination is valid in the eyes of the law. It is only where the employer, in terminating or dispensing with the services of an employee does so without due regard to the terms and conditions of the contract of employment between the parties that problems arise as such a termination is usually not tolerated by the courts and are, without hesitation usually declared wrongful and appropriate measure of damages awarded to the plaintiff. B

In the instant case, it is clear that though the respondent has the right to bring the relationship of master and servant to an end in either of four modes such as by termination, retirement, redundancy and summary dismissal, the respondent chose to do so under redundancy and duly calculated the redundancy benefits of the appellant but he refused to sign for and collect same choosing rather to go gold digging. C D

In short, other than the conclusion with respect to the issue of payment of repatriation which I hold a contrary view as stated herein, I agree with the reasoning and conclusion of my learned brother Akintan, JSC that the appeal is without merit and ought to be dismissed. I therefore order accordingly and abide by the order as to costs contained in the said lead judgment. E  
Appeal dismissed. F

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### ***TABAI JSC***

I had a preview of the leading judgment prepared by my learned brother Akintan JSC. The claim as set out in paragraph 27 of the Amended Statement of Claim is reproduced in the leading judgment. The facts leading to the institution of the action and the evidence at the trial were very ably recapitulated in the leading judgment. I agree entirely with the reasoning and conclusion that the appeal with respect to the claims for damages for malicious prosecution, defamation of character, loss of employment for 15 years and general damages lack substance and are accordingly also dismissed by me. I also adopt as mine the award in the leading judgment about G H

the Appellant's entitlement as an employee declared redundant by the employer, the Respondent. I also by make no orders as to costs.

**MUHAMMAD JSC**

B           My learned brother, Akintan, JSC, has graciously afforded me  
opportunity to read in draft his lead judgment just delivered. I am  
contented with my lord's reasoning process and the conclusion he  
arrived at. I do not intend to add anything. I adopt the reasoning and  
C conclusion as mine. I abide by all orders made in the lead judgment.

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