

SUPREME COURT OF NIGERIA

23RD MAY, 2008. S.C. 39/2001

**CORAM:- A. I. KATSINA-ALU, G. A. OGUNTADE, S. A.
AKINTAN, M. MOHAMMED, I. T. MUHAMMAD, JJSC**

DOMINIC E. NTIERO APPELLANT
AND
NIGERIAN PORTS AUTHORITY RESPONDENT

ACTIONS - Commencement - Pre-action notice - Nature of - Should be in writing setting out cause of action - Name and address of intending plaintiff & relief claimed - Should be served on prescribed person - Exhibit E does not qualify as such (H1)

CONTRACTS - Actions - Pre-action notice - Applicability of - Fact that plaintiff's claim is founded on contract - Does not preclude the application of the requirement - For service of pre-action notice (H2)

MASTER & SERVANT - Employment contract - Actions - Pre-action notice - Applicability of - Fact that plaintiff's claim is founded on contract - Does not preclude the application of the requirement - For service of pre-action notice (H2)

FACTS

Plaintiff/appellant had commenced this action against defendant/respondent for sundry reliefs the crux of which was a reinstatement of the appellant into the employment of the respondent by the nullification of the purported termination of his employment. Respondent raised a preliminary objection to the competence of the action on the ground that pre-action notice was not served on it by the appellant as provided for in section 97 of the Ports Act. Trial judge over-ruled the objection and hearing was done on the merits. Part of the evidence of the appellant was that he wrote a letter dated 18th June 1984 in purported compliance with s. 97 of the Ports Act.

Trial judge held that section 97 of the Act did not apply to the action as it was based on contract and gave judgment to the appellant. On appeal by the respondent to the Court of Appeal, the judgment was reversed as the court held that section 97 of the Act applied

and was not complied with by the appellant. The instant appeal is against the judgment of the Court of Appeal.

ISSUE FOR DETERMINATION

“Whether there was no absence of the pre-action notice which renders the appellant’s suit incompetent.”

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

ACTIONS - Commencement - Pre-action notice

1. The relevant provision is now Section 110(2) of the Ports Act, (Cap. 361, Laws of the Federation, 1990). It provides as follows:-

“110 (2) No suit shall be commenced against the Authority until one month at least after written notice of intention to commence the same shall have been served upon the Authority by the intending plaintiff or his agent. Such notice shall state the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims.”

The provisions as set out above are clear, direct, and mandatory. The required notice is expected to be given when the decision to commence an action has been taken and it must be given and served on the Chairman or Secretary of the Authority (as provided in Section 111 of the Act), latest one month before the commencement of the action. The notice is also required to be in writing. It follows therefore, that any purported notice which fails to meet any of the conditions specified in the section of the Act, will be null and void. Any action commenced in breach of the provisions will also have been commenced without complying with one of the required due process or pre-condition and such action would be incompetent. See Madukolu v. Nkemdilim (1962) a SCNLR 341.

As I have already mentioned earlier above, the letter relied on in the appellant’s Brief is one admitted as Exhibit E, at the trial. I however have no doubt in holding that neither the document, Exhibit 6 relied on at the court below nor the Exhibit E, now relied on in this court, could pass as the required pre-action notice prescribed in Section 110(2) of the Ports Act. I believe that a pre-action notice should be in the form of a letter usually written by a plaintiff or his solicitor to the prospective defendant giving him notice of intention to institute legal proceedings against him for specified reliefs. As the

appellant failed to comply with the legal requirement as stipulated in the aforementioned Section 110(2) of the Ports Act, his action was therefore incompetent. (pp. 2319 E/2322 E)

MASTER & SERVANT - Employment contract - Actions

2. The question whether the provisions of Section 110(2) of the Act, which prescribes for pre-action notice is inapplicable to the appellant because his claim is founded on contract does not arise. Section 110(1) of the act provides, inter alia, that “*when any suit is commenced against the Authority or any servant of the Authority for any act done in pursuance or execution, or intended execution of any Act or law, duty or Authority, such suit shall not lie or be instituted in any court unless it is commenced within 12 months next after the act, neglect, or default complained of..... etc.*” The provisions of Section 110(1) in my view, merely prescribed for a twelve month time limit within which any action against the Authority in respect of breaches of duties in relation to the items mentioned in the subsection. The provisions relating to pre-action notice contained in Section 110(2) of the Act, are independent of those in Section 110(1) of the same section. The question whether the appellant’s claim was founded on contract therefore could not prevent his action from being commenced without first complying with the pre-action notice. (p. 2322 H)

NOTABLE POINT OF INTEREST

MUHAMMAD JSC

1. Non-service of pre-action notice puts jurisdiction on hold

The effect of non-compliance with service of pre-action notice amounts to an irregularity. In a relatively recent case of this court, i.e. Nnoye v. Anyichie (supra) decided in 2005, my brother, Akintan, JSC., observed:-

“As has been shown earlier above, the objection of the jurisdiction was founded on non-compliance with the requirement of a pre-action notice which does not abrogate the right of a plaintiff to approach the court or defeat his cause of action. If, therefore the subject-matter is within the jurisdiction of the court, as in this case, failure of the plaintiff to serve the pre-action notice on the defendant

gives the defendant a right to insist on such notice before the plaintiff may approach the court. In other words, non-service of a pre-action notice merely puts the jurisdiction of a court on hold pending compliance with the pre-conditions. It may be mentioned that the effect of non-service of a pre-action notice, where it is statutorily required, as in this case is only an irregularity which, however, renders an action incompetent. It follows therefore that the irregularity can be waived by a defendant who fails to raise it either by motion or plead it in the Statement of Defence. If, therefore, a defendant refuses to waive it and he raises it, then the issue becomes a condition precedent which must be met, before the court could exercise its jurisdiction."

Thus, since it was found by the court below that there was no service of the pre-action notice, and there was no waiver by the defendant, a condition precedent was not fulfilled. This makes the action before the trial court incompetent and that court certainly lacked jurisdiction. (p. 2328 H)

REPRESENTATION

O. Opasanya, (with him; R. Adeoye), for the Appellant
D. O. Ezaga, for the Respondent.

CASES REFERRED TO

- N.B.C. v. Bankole (1972) 1 All NLR (Pt.1) 327
NNPC v. Amadi (2000) 6 S.C. (Pt.1) 66; (2000) 10 NWLR (Pt.674) 76
Madukolu v. Nkemdilim (1962) 2 SCNLR 341
Adegoke Motors Ltd, v. Adesanya (1989) 5 S.C. 113
S.P.D.C (Nig.) Ltd, v. F.B.I.R (1996) 8 NWLR (Pt.466) 256
Lawal v. G. B. Ollivant (1972) 3 S.C. 124
Toriola v. Williams (1982) 7 S.C. 27
Sunmola v. Oladokun (1996) 8 NWLR (Pt.467) 387
Nnoye v. Anyichie (2005) 2 NWLR (Pt.910) 623
Barclays Bank Ltd, v. Central Bank of Nigeria (1976) 6 S.C 175
Jadesimi v. Okotie-Eboh (1986) 1 NWLR (Pt.16) 264
Ijebu-Ode Local Govt. v. Adedeji Balogun & Co. Ltd. (1991) 1 NWLR (Pt.166) 136
Eze v. Ikechukwu (2002) 18 NWLR (Pt.799) 348

STATUTES REFERRED TO

Ports Act, Cap. 361, LFN, 1990, ss. 110 (1) & (2) and 111

Ports Act, Cap. 155, LFN, 1958, ss. 97 (1) & (2) and 98 (2)

LEAD JUDGMENT BY AKINTAN JSC

B

The appellant, Dominic Ntiero, was an employee of the respondent. He was the Senior Industrial Relations Officer. He had served the respondent for about 14 years before the dispute that led to this case arose between him and his employer. It was shortly after he was transferred to Warri that he received a letter on 6th June, 1984, by which he was interdicted without pay. The appellant's reaction was first to appeal to the appropriate officers of the respondent to rescind the letter of interdiction written to him. There was however, no favourable reply to his plea for reconsideration of his case. Rather than withdraw the interdiction letter, he received another letter by which he was dismissed from the services of the respondent.

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D

The appellant, as plaintiff, therefore commenced this action at Calabar High Court. His claim set out in his amended particulars of claim is as follows:-

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"1. A declaration that the order interdicting the plaintiff from service of the defendant is unlawful, null and void.

2. A declaration that the termination of the plaintiff's appointment is unlawful and is null and void.

3. A declaration that the purported retirement of the plaintiff from the service of the defendant is unlawful, null and void and of no effect.

F

4. A declaration that the plaintiff is still in the service of the defendant.

G

5. N50,000.00 damages for wrongful interdiction"

The respondent, as defendant, reacted by raising a Preliminary Objection to the competence of the action on the ground that pre-action notice was not served on it by the appellant as provided for in Section 97 of the Ports Act. The learned trial Judge overruled the objection. The respondent therefore filed its Statement of Defence and again raised the same objection therein and the trial then commenced. The plaintiff led evidence in support of his pleadings.

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But the defendant did not lead any evidence in defence. Part of the evidence lead by the plaintiff was that he wrote a letter dated 18th June, 1984, (Exhibit 6), which was written in compliance with the provisions of Section 97 (2) of the Ports Act.

B The learned trial Judge, in his reserved judgment held that the provisions of Section 97 of the Ports Act, did not apply to the plaintiff's case as his claim was based on contract. Judgment was accordingly entered for the plaintiff on three of his five heads of claim and granted the declaration sought.

C The respondent was dissatisfied with the judgment and it filed an appeal against it to the court below. The court below held that the appellant failed to comply with the provisions of the said Section 97(2) of the Ports Act and that the appellant's letter, Exhibit 6, did not comply with the requirements of the said section. The appeal D was therefore allowed in that the trial court was without jurisdiction to entertain the case. This appeal is from the judgment of the court below.

The parties filed their Briefs in this court. The appellant formulated the following two issues as arising for determination in the appeal:- E

"1. Whether the provisions of Sections 97(2) and 98 of the Ports Act, are valid and constitutional.

F *2. If so whether Sections 97(2) and 98 Ports Act, were properly applied to the case of the appellant (founded on a contract of service) and whether (or not that is the case whether) the Court of Appeal was right that non-compliance with the said provisions deprived the trial court of jurisdiction."*

G The respondent, on the other hand, formulated only on issue which is:-

"whether there was no absence of the pre-action notice which renders the appellant's suit in competent."

H The appellant had, in his Brief, invited this court to review or depart from its previous decisions in N.B.C. v. Bankole (1972) 4 S.C. (Reprint) 81; (1972) 1 All NLR (Pt.1) 327 and NNPC v. Amadi (2000) 6 S.C. (Pt.1) 66; (2000) 10 NWLR (Pt.674) 76, both cases were pre-action notice actions. But at the hearing in this court, Mr. Opasanya, learned counsel for the appellant abandoned the request

relating to a review or departure from those previous decisions on the point.

It is the contention of the appellant, as canvassed in the appellant's Brief that the appellant in fact complied with the pre-action notice as prescribed in Sections 97(2) and 98 of the Ports Act, (now Sections 110 and 111 of Ports Act, Cap. 361, Laws of the Federation, 1990). Reference is made in this respect to a letter dated 18th June, 1984, written by the appellant to the General Manager, Nigerian Ports Authority Lagos and admitted at the trial as Exhibit E. The letter is headed: *'Interdiction - A Confederacy of injustice.'* The letter is reproduced on pages 16 to 18 of the printed record of appeal. Although the letter was an appeal by the appellant to the respondent's General Manager for a review of the interdiction order without pay imposed on him, learned counsel for the appellant, however, urged us to infer that the letter passed as the required pre-action notice.

The appellant having rightly abandoned his request for us to overrule our previous decisions in respect of pre-action notice, what is left to be determined in this appeal therefore is whether there is sufficient evidence on record to support the contention of the appellant that there was compliance with the requirement of the mandatory statutory provision. ***The relevant provision is now Section 110(2) of the Ports Act, (Cap. 361, Laws of the Federation, 1990). It provides as follows:-***

"110 (2) No suit shall be commenced against the Authority until one month at least after written notice of intention to commence the same shall have been served upon the Authority by the intending plaintiff or his agent. Such notice shall state the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims."

The provisions as set out above are clear, direct, and mandatory. The required notice is expected to be given when the decision to commence an action has been taken and it must be given and served on the Chairman or Secretary of the Authority (as provided in Section 111 of the Act), latest one month before the commencement of the action. The notice is also required to be in writing. It follows therefore, that any

purported notice which fails to meet any of the conditions specified in the section of the Act, will be null and void. Any action commenced in breach of the provisions will also have been commenced without complying with one of the required due process or pre-condition and such action would be incompetent. See Madukolu v. Nkemdilim (1962) 2 SCNLR 341.

As I have already mentioned earlier above, the letter relied on in the appellant's Brief is one admitted as Exhibit E, at the trial. It reads as follows:-

*"22, Ebuka Street,
Calabar.
18th June, 1984.*

*The General Manager,
Nigerian Ports Authority,*

Lagos.

Dear Sir,

INTERDICTION - A CONFEDERACY OF INJUSTICE

I refer to your letter HQ/CR/OP/D.51/2580, dated 6th June, 1984, interdicting me without pay for a first offence of inordinate behaviour and hereby appeal to you, most respectfully to set up a tribunal to bear evidence in relation to the charge leveled against me on the following grounds:-

'(a) The corresponding officer is a very interested party which is apparently responsible for him not to issue a query to me as demanded by Section 1204 of the condition of Service Officers - the disciplinary procedure known to me and invoked in paragraph 2 of the aforementioned letter which is susceptible to embarrassing litigations.

(b) Irrespective of the fact that my response to the Port Manager's Memo was regrettably in a high tone I still maintain that every fact unleashed therein is true and can be substantiated at all levels of judgment. This arose grossly from extreme provocation and I am by no means against fair disciplinary proceedings.

(c) That the letter of interdiction marked confidential endorsed to all Ports is scandalous and allows much to be desired. It is apparent therefore, that without any letter of shortcoming or criminal record since my tenure of office I am being programmed for elimination

because I speak frankly and honestly at all times. Who can bear him out? Is to say the least a sacrosanct to your mission this NPA, too - than a confederacy of injustice developed within the body administration to perpetuate falsehood and malpractices.

2. In effect, I would not have even bothered to react further but for the statement accredited to you as reported in the lead story of the Punch group of news-papers Vol. 8 of 15th June, 1984, which I quote in part:-

“Alhaji Musa Ibrahim said some of the evils plaguing the Authority included embezzlement of NPA’s wilful destruction of property, deliberate delay in carrying out official duty until bribe is given, taking official action in favour of self family or tribe at the expense of others and collusion with contractors to inflate costs and prices for personal gains. “God knows we have the monster called indiscipline evident everywhere within the Authority.” He remarked.”

3. On this grounds you are by no means new to the chauvinisms of the department and the proceedings of the said tribunal shall afford you a starting down to earth revelations which is dearth to your progress in the arduous task of administering the authority.

I count on your jurisprudence please.

While I remain,

SGD

(Dominic E. Ntiero) (P/M 2596)

Snr. Ind. Rels. Officer.”

It is clear from the contents of the above letter that it was not aimed as a pre-action notice as prescribed in the aforementioned Section 110(2) of the Ports Act. The contention of the appellant that the letter should be taken as conveying the required notice is therefore totally untenable.

It may be mentioned too that the document presented and relied on as the pre-action notice at the Court of Appeal was Exhibit 6. That document was never sent to that court. But Akpabio, JCA., said as follows about the letter in the leading judgment of that court written by him:-

“The said letter dated 18th June, 1984, is shown in the Index to the records under exhibits as ‘Not typed.’ The original has also not been sent to this court. However, the contents of the said letter is

paraphrased at page 267 of the record by the plaintiff in the course of his evidence-in-chief as follows:-

*I reacted to Exhibit 5 by appealing to the General Manager of the 1st defendant to set up a tribunal to avoid embarrassing litigation. The appeal dated 18th June, 1984. This is a copy of my appeal. Seeks
B to tender. Admitted without objection and marked Exhibit 6. I did not receive any reply to my letter of appeal. I later petitioned the Minister of Transport to prevail on the management to comply with the conditions of my employment."*

*From the extract reproduced above, it will be seen in the 1st
C place that Exhibit 6 was addressed to the General Manager, rather than to the Chairman or the Secretary of the Authority, as required by Section 111 of the Act. Secondly, the said letter, Exhibit 6, does not contain any statement as to what the 'cause of action is nor the name
D and place of abode of the intending plaintiff, and the relief which he claims as required by Section 110(2). The sum total of the above is that Exhibit 6 cannot operate as pre-action notice."*

*I entirely agree with the above view expressed by Akpabio, JCA., that the letter referred to as Exhibit 6 in his judgment could not
E pass as a pre-action notice. It seems that it is probably the same letter that is the one now reproduced on pages 16 to 18 of the printed record of appeal in this court as Exhibit E, which I have also reproduced above. **I however have no doubt in holding that neither the
F document, Exhibit 6 relied on at the court below nor the Exhibit E, now relied on in this court, could pass as the required pre-action notice prescribed in Section 110(2) of the Ports Act. I believe that a pre-action notice should be in the form of a letter usually written by a plaintiff or his solicitor to the prospective
G defendant giving him notice of intention to institute legal proceedings against him for specified reliefs. As the appellant failed to comply with the legal requirement as stipulated in the aforementioned Section 110(2) of the Ports Act, his action was therefore incompetent.***

The question whether the provisions of Section 110(2) of the Act, which prescribes for pre-action notice is inapplicable to the appellant because his claim is founded on contract does not arise. Section 110(1) of the act provides, inter alia, that

“when any suit is commenced against the Authority or any servant of the Authority for any act done in pursuance or execution, or intended execution of any Act or law, duty or Authority, such suit shall not lie or be instituted in any court unless it is commenced within 12 months next after the act, neglect, or default complained of..... etc.” The provisions of Section 110(1) in my view, merely prescribed for a twelve month time limit within which any action against the Authority in respect of breaches of duties in relation to the items mentioned in the subsection. The provisions relating to pre-action notice contained in Section 110(2) of the Act, are independent of those in Section 110(1) of the same section. The question whether the appellant’s claim was founded on contract therefore could not prevent his action from being commenced without first complying with the pre-action notice.

In conclusion, therefore, I hold that there is no merit in the appeal and I accordingly, dismiss it with N50,000 costs in favour of the respondent.

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment of my learned brother, Akintan, JSC. I entirely agree with it and, for the reasons given by him, I also dismiss the appeal with N50,000.00 costs in favour of the respondent.

OGUNTADE JSC

The appellant was an employee of the respondent. He was terminated from the employment by a letter dated 18/8/84. In reaction, the appellant as plaintiff, issued his Writ of Summons claiming as follows:-

“1. A declaration that the order interdicting the plaintiff from service of the defendant is unlawful, null and void.

2. A declaration that the termination of plaintiff’s appointment is unlawful and is null and void

3. A declaration that the purported retirement of the plaintiff from the service of the defendant is unlawful, null and void and of no

effect.

4. A declaration that the plaintiff is still in the service of the defendant.

5. N50,000.00 damages for wrongful interdiction."

The parties filed and exchanged pleadings. The respondent
 B raised a defence that the appellant failed to serve upon it a pre-action
 notice as provided under Section 97 of the Ports Act. At the conclusion
 of hearing at the trial court, the objection filed by the respondent was
 overruled and judgment given in favour of the plaintiff. Dissatisfied,
 C the respondent brought an appeal against the judgment of the High
 Court before the Court of Appeal, Calabar, (hereinafter referred to as
 'the court below'). The court below on 28/5/98, allowed the appeal.
 Plaintiff/appellant's suit was struck out for the failure of the plaintiff/
 appellant to issue a pre-action notice as provided under Section 97(2)
 D of the Ports Act.

Dissatisfied, the appellant has brought a final appeal before this
 court. Aware of the case-law relevant to the success of his client's case
 but which is against his standpoint in this appeal, appellant's counsel
 had in his Brief indicated that he would be praying us at the hearing
 E to review or depart from the previous decisions of this court in N.B.C.
v. Bankole (1972) 4 S.C. 10 (Reprint) 81; (1972) 1 All NLR (Pt.I) 327,
NNPC v. Amadi (2000) 6 S.C. (Pt.I) 66; (2000) 10 NWLR (Pt.674)
 76. When we heard the appeal on 03-03-08, the learned counsel for
 the appellant - Mr. Opasanya indicated to us that he would no longer
 F be urging it on us to depart from our previous decisions on the point.
 This situation no doubt put the learned counsel in a difficult or
 desperate situation. He was driven into asking us to treat a letter written
 by the appellant on 18/6/84 and tendered an Exhibit 6, as amounting
 G by its contents to the pre-action notice as required under Section 97(2)
 of the Ports Act.

My learned brother, Akintan, JSC., has in his leading judgment
 set out in full the said Exhibit 6. He has also stated how the letter Exhibit
 6, which was in fact a communication to alert the respondent of the
 H various wrongdoings going on within the organization could not
 amount to a pre-action notice. I entirely agree with him. The court
 below in my view came to an unassailable decision on the matter.

I would also dismiss this appeal as in the leading judgment of my

learned brother, Akintan, JSC. I would also award against the appellant, N50,000.00 costs in favour of the respondent.

MOHAMMED JSC

This is an appeal against the judgment of the Court of Appeal, Calabar Division delivered on 16th June, 1998, allowing the respondent's appeal and setting aside the decision of the trial High Court, Calabar and entering judgment for the respondent dismissing the appellant's case on the ground that no pre-action notice was served on the respondent by the appellant. B

The appellant who was a staff of the respondent lost his employment following his dismissal from service. He challenged this dismissal in an action filed at the Calabar High Court, claiming a number of declaratory reliefs and damages. The respondent which was the defendant, raised a Preliminary Objection to the suit against it as being incompetent on the grounds that the appellant as plaintiff, did not serve any pre-action notice as required by law before commencing the action. This objection was further reflected in the defence of the respondent in the Statement of Defence filed by it. At the end of the hearing in the matter, the learned trial Judge found in favour of the plaintiff/appellant and granted the declaratory reliefs sought. However, this decision of the trial court was set aside on appeal by the Court of Appeal, Calabar Division which held in its judgment that the failure of the appellant to serve the required pre-action notice, had deprived the trial court of jurisdiction to hear and determine the action which was consequently struck out giving rise to the present appeal in this court. C D E F

The learned counsel to the appellant having abandoned the first issue for determination in the appellant's Brief of Argument which sought to attack the constitutionality of the requirement of a pre-action notice generally, left only one issue for determination. The issue as identified in the respondent's Brief also is whether the Court of Appeal was right in its judgment that the failure of the appellant to serve appropriate pre-action notice before commencing his action against the respondent, had deprived the trial court of its jurisdiction to hear and determine the appellant's case. Although apparently, in his argument in this issue, the learned counsel to the appellant appeared G H

to have conceded the effect in law, of failure to serve a pre-action notice before commencing the present action against the respondent, the learned counsel had strongly asserted that the appellant's letter to the respondent contained at pages 16, 17 and 18 of the record, should have been regarded as such notice in substantial compliance with the Ports Act. I can not however, see how that letter could have served as the required pre-action notice when it does not contain any notice of intention to commence action against the respondent and the reliefs to be sought in that action. The court below was therefore right in not regarding that letter as satisfying the requirement of the law.

In the result, I entirely agree with my learned brother, Akintan, JSC., in his leading judgment that this appeal is bound to fail. Accordingly, I also dismiss the appeal with N50,000.00 costs in favour of the respondent.

D

MUHAMMAD JSC

The appellant was the plaintiff at the trial court. He was an employee of the 1st defendant/respondent. He held the position of Senior Industrial Relations Officer. He served in various capacities since his employment in 1970.

Sometime in 1984, appellant was interdicted without pay by a letter dated 6/6/84. The appellant instituted this action at the trial court challenging the validity of his interdiction claiming some declaratory reliefs. (See pages 278 to 279 of record).

The respondent raised a Preliminary Objection to the competence of the action on the ground that a pre-action notice was not served on it by the appellant in contravention of the provisions of Section 97 of Ports Act. The objection was overruled by the trial court, holding that the provision of Section 97(2) of Ports Act, did not apply to the case of the plaintiff. The trial court found for the appellant on three of his five heads of claims and granted the declarations accordingly.

On appeal to the court below, by the defendant/appellant/respondent, the court held that the appellant failed to comply with the requirements of the said section. It further held that the trial court was without jurisdiction to entertain the appellant's case. It allowed the appeal .

Dissatisfied, the plaintiff/respondent at the court below and now appellant, appealed to us.

He formulated 2 issues:-

“1. Whether the provisions of Sections 97(2) and 98 of the Ports Act, are valid and constitutional?”

2. If so, whether Sections 97(2) and 98 Ports Act, was (sic, were) properly applied to the case of the appellant (found on a contract of service), and whether, (or not that is the case whether) the Court of Appeal was right that non-compliance with the said provisions deprived the trial court of jurisdiction)?”

The learned counsel for the respondent formulated an issue:-

“Whether there was no absence of the pre-action notice which renders the appellant suit incompetent?”

A pre-action notice connotes some form of legal notification or information required by law or imparted by operation of law, contained in an enactment, agreement or contract which requires compliance by the person who is under legal duty to put on notice the person to be notified, before the commencement of any legal action against such a person. As is clear from the facts of this case, the appellant was a staff of the respondent. He was however dismissed. He filed an action at the trial court claiming damages for wrongful dismissal. The respondent raised objection at the trial of the suit as there was no one month pre-action notice to the respondent as required by law. The trial court dismissed the objection. The court below, on appeal, upheld the respondent's objection and dismissed the suit. In dismissing the appeal, the court below, per Akpabio, JCA., (of blessed memory) had this to say:-

“From the extract reproduced above, it will be seen in the 1st place that Exhibit 6, was addressed to the General Manager, rather than to the Chairman or the Secretary of the Authority, as required by Section 111 of the Act. Secondly, the said letter, Exhibit 6 does not contain any statement as to what the ‘cause of action’ is, nor ‘the name and place of abode of the intending plaintiff, and the relief which he claims as required by Section 110(2) i.e. the equivalent of former Section 97(2). The sum total of the above is that Exhibit 6, cannot operate as a ‘pre-action notice’. With the above background in mind, I am of the firm view that Exhibit 6 cannot operate as a pre-action

notice, as none of the requirements of ‘such a notice given is (sic) Section 97(2) of Cap. 155 of 1958 or Section 110(2) of Cap. 361 of 1990, was present..... Finally, I should also observe that failure to serve a pre-action notice is not a mere irregularity which could be waived by the defendant taking further steps in the proceedings as in
B Adegoke Motors Ltd, v. Adesanya (1989) 5 S.C. 113; (1989) 3 NWLR (Pt.109) 250 at 275. Rather it is a statutory requirement, failure of which means that a condition precedent has not been complied with. Such failure will therefore deprive the trial court of any competence or jurisdiction to try the case.”

C I agree with the above reasoning. Earlier and at the trial court, learned SAN., for the defendants raised the objection that the plaintiff had not complied with the provisions of Sections 97(1) and 98(2) of the Ports Act, Cap. 155, LFN as amended in 1961. These sections
D were re-enacted as Sections 110(1) and (2) and 111 of the Ports Act, (Cap. 361), Laws of the Federation of Nigeria, 1990 Section 110(2) of Cap 361, LFN 1990, provides as follows:-

“(2) No suit shall be commenced against the Authority until one month at least after written notice of intention to commence the same
E shall have been served upon the Authority by the intending plaintiff or his agent. Such notice shall state the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims.”

The operative words in the section quoted above are: “no suit
F shall be commenced against the Authority” “until one month at least” after written notice of intention to commence suit has been served on the Ports Authority. The court below found that none of the requirements as stipulated in Section 110(2) of the Ports Act had been complied with and that there ‘was no service as required by the law.
G That language of that provision of the law is simple, plain, clear and unambiguous. It requires no external aid to interpret it other than giving it the ordinary and natural meaning. See S.P.D.C (Nig.) Ltd, v. F.B.I.R (1996) 8 NWLR (Pt.466) 256, Lawal v. G. B. Ollivant (1972) 3 S.C. 124; (1972) 3 S.C. (Reprint) 120, Toriola v. Williams (1982)
H 7 S.C. 27; (1982) 7 S.C. (Reprint) 13, Sunmola v. Oladokun (1996) 8 NWLR (Pt.467) 387, Nnoye v. Anyichie (2005) 1 S.C. (Pt.II) 96; (2005)2 NWLR (Pt.910) 623. The effect of non-compliance with service of pre-action notice amounts to an irregularity. In a relatively

recent case of this court, i.e. Nnoye v. Anyichie (supra) decided in 2005, my brother, Akintan, JSC., observed:-

“As has been shown earlier above, the objection of the jurisdiction was founded on non-compliance with the requirement of a pre-action notice which does not abrogate the right of a plaintiff to approach the court or defeat his cause of action. If, therefore the subject-matter is within the jurisdiction of the court, as in this case, failure of the plaintiff to serve the pre-action notice on the defendant gives the defendant a right to insist on such notice before the plaintiff may approach the court. In other words, non-service of a pre-action notice merely puts the jurisdiction of a court on hold pending compliance with the pre-conditions: see Barclays Bank Ltd. v. Central Bank of Nigeria (1976) 6 S.C 175; (1976) 6 S.C. (Reprint) 115, Jadesimi v. Okotie-Eboh (1986) 1 NWLR (Pt.16) 264; Ijebu-Ode Local Govt. v. Adediji Balogun & Co. Ltd. (1991) 1 S.C. (Pt.I) 1; (1991) 1 NWLR (Pt.166) 136 and Eze v. Ikechukwu (2002) 12 S.C. (Pt.II) 103; (2002) 18 NWLR (Pt.799) 348.

It may be mentioned that the effect of non-service of a pre-action notice, where it is statutorily required, as in this case is only an irregularity which, however, renders an action incompetent. It follows therefore that the irregularity can be waived by a defendant who fails to raise it either by motion or plead it in the Statement of Defence: see Katsina Local Authority v. Makudawa (1971) 1 NMLR 100. If, therefore, a defendant refuses to waive it and he raises it, then the issue becomes a condition precedent which must be met, before the court could exercise its jurisdiction: see Madukolu v. Nkemdilim, (supra).”

See further: Umukoro v. NPA (1997) 4 NWLR (Pt.502) 656. Thus, since it was found by the court below that there was no service of the pre-action notice, and there was no waiver by the defendant, a condition precedent was not fulfilled. This makes the action before the trial court incompetent and that court certainly lacked jurisdiction.

For the fuller reasons given in the leading judgment of my learned brother, Akintan, JSC., I too find no merit in this appeal and I dismiss it with N50,000.00 costs in favour of the respondent.