

**SUPREME COURT OF NIGERIA**

21ST MAY, 2010, SC. 168/2007

**CORAM:- D. MUSDAPHER, W. S. N. ONNOGHEN,  
F. F. TABAI, I. T. MUHAMMAD, O. O. ADEKEYE, JJSC**

CENTRAL BANK OF NIGERIA ..... APPELLANT  
AND

1. JACOB OLADELE AMAO

2. JOACHIM ADEBOWALE AJALA ..... RESPONDENTS

3. THOMPSON ADESANMI JEMILO

*(For themselves and as Representatives  
of all Central Bank of Nigeria Pensioners)*

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COURTS - Issues - Nature - Need to be substantial - An issue ought to be such that its resolution by the court - Will determine the matter in controversy one way or the other (H1)

RULES OF COURT - Compliance - Federal High Court Rules - Noncompliance with form of instituting proceedings - Court has option vide O. 2 r. 1 (1) - Of treating same as an irregularity - Which will not nullify the proceedings (H2)

RULES OF COURT - Compliance - Federal High Court Rules - Objection to noncompliance - When to raise - It has to be done within a reasonable time - After objector became aware of the noncompliance (H3)

ACTIONS - Cause of action - Whether continuing - Where pension is being underpaid - If the payment is made monthly - Cause of action arises each time - Plaintiff is paid less than appropriate sum (H4)

COURTS - Federal High Court - Declaratory relief - Granted on affidavit evidence - Propriety - It may be properly so granted - In view of the provisions of O. 46 of the Federal High Court Rules (H5)

ADMINISTRATIVE LAW - Circulars - Rate of pension for C.B.N. - Applicability of the circulars - In view of s. 14(3) of C.B.N. Act - The

decision of the Board to approve the circulars - Made them applicable (H6)

APPEALS - Issues - Raised but not considered - Effect - As same have now been considered by Supreme Court - And found to be without merit - Failure to consider them at lower court did not occasion miscarriage of justice (H7)

### ***FACTS***

The plaintiffs/respondents sued defendant/appellant claiming sundry reliefs by which they sought to compel appellant to take cognizance of the Federal Government circulars on the Harmonization of Pensions, Reference Nos. 136321/s/T3/105 dated 30th January, 1997 and B3216/S.11T3/124 dated 7th January 1998, in the computation and payment of pensions to respondents with effect from 1st January 1997. It was in evidence that following the issuance of the circulars by the Federal Government, respondents wrote to appellant demanding that their pension should thenceforth be paid in accordance with the circulars. In the course of its correspondence with respondents on the matter, appellant did inform respondents in writing as per exhibit JAJ6, that it would implement the circulars. However, appellant subsequently wrote another letter to respondents to the effect that the circulars will only be implemented "against the background of affordability and sustainability", hence the institution of the action leading to this appeal.

At the end of hearing, the trial court entered judgment in favour of respondents. In doing so, it held that appellant was bound by exhibit JAJ6 in which it indicated willingness to comply with the circulars. It was held that the action was not statute barred as contended by appellant. Aggrieved, appellant appealed to Court of Appeal contending that Federal Government had no power to prescribe the pensions payable to appellant's employees in view of s. 14(3) of the C.B.N. Act providing for the powers of the directors of appellant in respect of the matter. The appeal was dismissed. Still dissatisfied, appellant has come on a further and final appeal to Supreme Court.

### ***ISSUES FOR DETERMINATION***

*"1. Whether the Court of Appeal lacked jurisdiction to entertain the appeal before it since the trial court lacked jurisdiction to*

*entertain the case before it because the leave to institute the suit which was for judicial review pursuant to Order 46 of Federal High Court Civil Procedure Rules 1999 had lapsed and it had become impossible to comply with the other provisions of the Rules which prescribed time limits for taking different steps under the Rules before the originating summons was filed thereby rendering the judgment of the Court of Appeal null and void.*

*2. Whether the doctrine of continuing injury is applicable to defeat the application of or prevent the reliance on the Limitation Law as a defence by the appellant in this case and the action of the plaintiffs/respondents will be maintainable against the defendant/appellant perpetually since S.2 (a) of the Public Officers Protection Act can never bar such an action no matter how long after the cause of action arose before the suit is commenced .*

*3. Whether the reliefs of mandamus and declarations were maintainable by the respondents when they did not establish any legal right to the reliefs since the White Paper and the Circulars upon which their claims were based did not have force of law and did not prescribe pension rights for the respondents as claimed by them or at all and no oral evidence was called in the case thereby depriving the claims of any proper factual premises.*

*4. Whether the judgment of the Court of Appeal was based on wrong premises having regard to the basis of the claims of the respondents in the originating summons which is based solely on the contents of the White Paper and the circulars issued thereon as the sources of their right to pension rates claimed by them whereas the Court of Appeal based its judgment on the contents of a letter emanating from the appellant.*

*5. Whether the Federal Government of Nigeria had power and right to prescribe pension and other retirements benefits and/or exercise any right at all in relation to members of staff of the Central Bank of Nigeria concerning their pension benefits in the light of the provisions in section 15 of Pensions Act, save to the limited extent expressed therein and section 14(3) of Central Bank of Nigeria Act.*

*6. Whether the failure of the Court of Appeal to consider issues 2, 5 and 6 before it vitiates the proceedings before that court and rendered the proceedings invalid”*

***HELD*** (Unanimously dismissing the appeal per **ONNOGHEN JSC**)  
***Issues - Nature - Need to be substantial***

1. It is important for counsel to note that an issue put before a court must be substantial in nature so as to determine the matter in controversy one way or the other upon its resolution by the court. What is important therefore is not the number of issues formulated by learned counsel for determination but the quality of the issue(s) so formulated. If a single issue can dispose of a matter one way or the other why formulate many more to waste the precious time of the court. The courts do not deal with hypothetical or academic issues directed at demonstrating academic dexterity or excellence. I will however leave the matter at this point, for now. (p.1725 E)

***RULES OF COURT - Noncompliance - Whether fatal***

2. The respondents do not dispute the existence of the non-compliances. Their argument is on the effect of the non-compliance on the competence of the action or jurisdiction of the trial court to entertain the action hence their reliance on the provisions of order 2 Rules 1(1) and 2(1) of the Federal High Court (Civil Procedure, Rules 1999). It is very clear from the provisions of the above Rule that anything done or left undone in the process of the commencement or purported commencement of any action or proceeding or at any stage in the course of or in connection with any proceedings, etc., the failure to comply with the provisions of the Rules of Court which in effect includes the provisions of order 46 of the 1999 Rules of the Court in relation to time, place, manner, form or content or any other respect, the non-compliance may be treated by the court as an irregularity which will not nullify the proceedings, or any document or judgment or order made in the proceedings. (p. 1727 E/1728 A)

***Objection to noncompliance - When to raise***

3. The above defects, where they exist in any proceedings, must be brought to the attention of the court in question, in the instant case, the trial court so as to enable the court exercise its discretion under the said Rule of either treating the failure to comply with the requirements of the Rules as an irregularity or not.

The issue of non compliance only surfaced in the proceedings before the lower court by which stage and by the provisions of the

Rules quoted supra, the objection or application has obviously become belated as the same had not been brought within reasonable time after the appellant became aware of the non-compliance and before taking fresh steps in the proceedings after becoming so aware. (p. 1728 C/1729 A)

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***Pension - Cause of action - Whether continuing***

4. It is not being contended by the appellant that appellant did not admit liability to pay the harmonized pension but that the time within which to claim for that relief had elapsed thereby leaving the respondents with an empty cause of action. The White Paper and Circulars deal with the rate of monthly pension payable to the respondents and others affected thereby. It is a question, therefore, of the quantum of the monthly pension to be paid to the respondents. The appellant pays monthly pensions to the respondents less than what is provided in the white paper and the two Circulars every month thereby leaving part of their entitled monthly pension unpaid. This clearly demonstrates the fact that the cause of action in the circumstance arises every month when appellant pays less pension to the respondents than their full harmonized pensions, which appellant had agreed to pay. (p. 1731 E)

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***Declaratory relief - Granted on affidavit evidence - Propriety***

5. It is settled law that a declaratory relief cannot be granted upon admission of the defendant in the pleadings and/or without the plaintiff giving oral evidence. However, the above principle is not without exception.

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In the instant case, the declaration sought is by way of judicial review which is a special procedure provided for in Order 46 of the Federal High Court (Civil Procedure) Rules 1999 being the relevant Rules applicable to the facts of this case.

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The above rule clearly shows that the High Court has the *vires* under judicial review to grant declaration etc based on affidavit evidence filed in support of the application as required by the Rules of Court. (pp. 1734 B/1735 B)

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***Rate of pension for C.B.N - Applicability of the circulars***

6. On the power of the Federal Government to issue the circulars *vis-*

*a-vis* the powers of the Board of Directors of the appellant under section 14(3) of the Central Bank of Nigeria Act, the lower court, after reproducing the provisions of the said section continued thus, at pages 526 - 529 of the record:

*Now after the circulars on the harmonization of the pensions policy were issued by the Federal Government and brought to the attention of the Appellant by the Respondents, the Appellant Bank wrote a letter with Ref..... dated 12/3/98 to the Respondents.....*

*From the clear message contained in the above letter, which is that the Bank had approved the harmonized pension as contained in the policy circular issued by the government, it cannot be disputed that it was the Board of the Central Bank of Nigeria, in the exercise of the function and power under section 14(3) of the Central Bank Act, that approved the harmonized pension. So even if the circulars on the harmonization of pension was issued outside the provisions of section 14(3) of the Central Bank of Nigeria Act, the decision of the Board of the Central Bank of Nigeria to approve same had brought or made it come within the provisions of the section.*

I have carefully examined the relevant provisions of the Act and Constitution as well as the submission of both counsel on the issue under consideration and I found that the decision of the lower court on the issue as reproduced above cannot be faulted in any way. (p. 1740 A/1741 A)

#### ***Issues - Raised but not considered - Effect***

7. In any event since the issues allegedly not considered by the lower court had been considered by this Court and found to be devoid of merit, it means that their non consideration by the lower court has not led to or occasioned any miscarriage of justice to warrant any interference by this Court. I therefore, in the circumstances resolve issue 6 against the appellant. (p. 1742 F)

#### **REPRESENTATION**

B. Aluko-Olokun Esq., SAN with him B. K. Abu Esq., for the Appellant.

T. A. Molajo Esq., SAN with him G.N.A. Enebeli Esq., the Respondents.

**CASES REFERRED TO**

- Atungwu vs Okekwu (2000) 1 NWLR (pt. 641) 507 at 517  
 Onyemaizu vs Ojiako (2000) 6 NWLR [pt. 659] 25 at 42- 45  
 Lawal Sanda vs Kukawa Local Government (1991) 3 SCNJ 35  
 Onu vs Agu (1996) 5 SCNJ 74; (1996) 5 NWLR (pt. 451) 652 B  
 Chukwumah vs Shell Petroleum (1993) 4 NWLR (pt. 289) 512 at 553  
 Okedare vs Adebara (1994) 4 SCNJ 254, (1994) 6 NWLR (pt. 349) 157  
 Ijale vs A.G Leventis & Co. Ltd. (1961) All NLR (New Series) 792 at 794,801 C

**STATUTES & RULES REFERRED TO**

- Central Bank of Nigeria Decree, No. 24, 1991, s. 14 D  
 Public Officers Protection Act (Cap. 379) L.FN, 1990  
 Federal High Court (Civil Procedure) Rules, 1990, O. 2 r. 1 & 2 and O. 46  
 Pensions Acts, (Cap. 346) L.FN; 1990, s. 15  
 Constitution of the Federal Republic of Nigeria, 1979, s. 318 E

**LEAD JUDGMENT BY ONNOGHEN JSC**

This is an appeal against the judgment of the Court of Appeal, Holden at Lagos in appeal No. CA/L/461/2000 delivered on the 5<sup>th</sup> day of December, 2006 dismissing the appeal of the appellant against the judgment of the Federal High Court, Holden at Lagos in Suit No. FHC/L/CS/524/1999 delivered on the 22<sup>nd</sup> day of May, 2000 in favour of the plaintiffs, now, respondents in this Court. F

The respondents were former employees of the appellant G who instituted the action seeking the following reliefs:-

1. *An order of mandamus directed to the respondent directing it to pay to the applicants forthwith all accrued pensions calculated with effect from 1st January, 1997 on emoluments currently earned by their serving counterparts as prescribed under the Federal Government Policy on Harmonisation of Pensions and subsequently all such pensions as and when due.* H

2. *A declaration that on a true construction of (a) Federal Government White Paper Ref No. AFNC/86/2/376 dated 7<sup>th</sup> Octo-*

ber, 1997, (b) Federal Government Circulars Ref: No. 136321/S/T3/105 dated 30<sup>th</sup> January, 1997 and B3216/s.IIT3/124 dated 7<sup>th</sup> January, 1998 the appellants are entitled under the Federal Government Policy on Harmonisation of Pensions to payment of such pensions as are based with effect from 1st January, 1997 on emoluments currently earned by their serving counterparts.

3. A declaration that the respondent's decision to pay the applicants pensions on the basis of "affordability and sustainability" is *ultra vires*, null and void.

4. An order of mandamus directing the respondent to pay the applicants forthwith all accrued pensions calculated with effect from 1st January, 1997 on emoluments currently earned by their serving counterparts as prescribed under the Federal Government Policy on Harmonisation of Pensions aforesaid and subsequently all such pensions as and when they fall due.

Further and in the alternative to 4 above, an order of mandatory injunction compelling the respondent to pay the applicants forthwith all accrued pensions calculated as described and subsequently all such pensions as and when they fall due. "

The respondents' employment was made pursuant to section 14(3) of the Central Bank of Nigeria Decree No. 24 of 1991 while the terms and conditions of their employment are as contained in the Staff Manual of the Central Bank of Nigeria made pursuant to the aforesaid section 14(3) of Decree 24 of 1991. All the respondents retired from the service of the appellant before 1991 and were being paid their pension as prescribed by the Board of the Central Bank of Nigeria, the appellant herein.

However, in 1997 the Federal Government of Nigeria issued two circulars and a White Paper thereon in which the said government directed that statutory bodies, including the appellant, should comply with the White Paper and the circulars on Harmonisation of Pension Policy as a result of which the respondents initiated correspondence with the appellants on the issue demanding payment of their pension in accordance with the provisions of the White Paper and the said Circulars. The White Paper and two circulars are exhibits JAJ1; JAJ2 and JAJ3 respectively - see pages 47-57 of the record. The above exhibits were the Federal Government's reaction to the report of the Review Panel on Civil Service Reforms which directed



the harmonization of pensions of officers who retired before 17<sup>th</sup> January, 1991, which were based on their basic salaries only, in line with the pensions of officers who retired thereafter, which were based on their basic salaries and certain approved allowances so as to ensure equality and uniformity of payment of pension to such retired officers who retired on the same salary grade, irrespective of their dates of retirement, with effect from 1<sup>st</sup> January, 1991 and that the said pensions should continue to be reviewed upwards immediately salaries and allowances are reviewed. B

Following the correspondence between the parties, the appellant, by exhibit JAJ6 dated 31<sup>st</sup> July, 1997, informed the respondents inter alia: C

*“Let me assure you that immediately we receive the relevant documents from Government the Bank would implement the harmonized pensions with utmost dispatch.”* D

However by a letter dated 12<sup>th</sup> March, 1998, following further correspondence between the parties, the appellant informed the respondents, inter alia:

*“Following the government policy on the harmonization of pensions and the subsequent release of a circular on same, the Bank has examined the implications of implementing the guidelines and has approved the harmonized pension against the background of affordability and sustainability of the pensions fund over the years.”* E  
See exhibit JAJII at page 60 of the record.

The respondents however, continued to press for implementation of the harmonized pension as approved supra to no avail resulting in the institution of the action, the reliefs of which had earlier been reproduced in this judgment. F

At the conclusion of arguments, the learned trial Judge entered judgment in favour of the respondents holding in effect that: G

1. The appellant had not withdrawn its admission as contained in exhibit JAJ6 of its willingness to comply, with the provisions of exhibits JAJ1; JAJ2 and JAJ3.

(b) That the action is not statute barred as the special defence ought to have been raised at the commencement of argument on the matter and that, in any event, the said contention is erroneous because pensions are of recurrent nature as a result of which the cause of action relating thereto arises a fresh every month when the H

appellant pays the respondents less than their full harmonized entitlement.

It is the appeal against the above decision that was dismissed by the lower court resulting in the instant further appeal to this Court, the issues for the determination of which have been formulated by the learned senior counsel for the appellant, B. ALUKO - OLOKUN SAN, in the appellant's brief of argument filed on the 26<sup>th</sup> day of July, 2007 as follows:-

*"1. Whether the Court of Appeal lacked jurisdiction to entertain the appeal before it since the trial court lacked jurisdiction to entertain the case before it because the leave to institute the suit which was for judicial review pursuant to Order 46 of Federal High Court Civil Procedure Rules 1999 had lapsed and it had become impossible to comply with the other provisions of the Rules which prescribed time limits for taking different steps under the Rules before the originating summons was filed thereby rendering the judgment of the Court of Appeal null and void.  
(Derived from ground of appeal No. 2).*

*2. Whether the doctrine of continuing injury is applicable to defeat the application of or prevent the reliance on the Limitation Law as a defence by the appellant in this case and the action of the plaintiffs/respondents will be maintainable against the defendant/appellant perpetually since S.2 (a) of the Public Officers Protection Act can never bar such an action no matter how long after the cause of action arose before the suit is commenced (Ground 4).*

*3. Whether the reliefs of mandamus and declarations were maintainable by the respondents when they did not establish any legal right to the reliefs since the White Paper and the Circulars upon which their claims were based did not have force of law and did not prescribe pension rights for the respondents as claimed by them or at all and no oral evidence was called in the case thereby depriving the claims of any proper factual premises. (Grounds 3 and 7).*

*4. Whether the judgment of the Court of Appeal was based on wrong premises having regard to the basis of the claims of the respondents in the originating summons which is based solely on the contents of the White Paper and the circulars issued thereon as the sources of their right to pension rates claimed by them whereas the Court of Appeal based its judgment on the contents of a letter ema-*

nating from the appellant. (Grounds 8 and 9).

5. *Whether the Federal Government of Nigeria had power and right to prescribe pension and other retirements benefits and/or exercise any right at all in relation to members of staff of the Central Bank of Nigeria concerning their pension benefits in the light of the provisions in section 15 of Pensions Act, save to the limited extent expressed therein and section 14(3) of Central Bank of Nigeria Act. (Ground 5).* <sup>B</sup>

6. *Whether the failure of the Court of Appeal to consider issues 2, 5 and 6 before it vitiates the proceedings before that court and rendered the proceedings invalid (Ground I).*” <sup>C</sup>

I have to observe that the case before the trial court, as can be gathered from the simple facts earlier stated in this judgment, is very straight forward and did not raise many issues for determination at all. The same thing can be said of the judgment of the trial court <sup>D</sup> which simply held that the appellants were bound to pay to the respondents the harmonized pensions as directed by exhibits JAJ143; JAJ2 and JAJ3 and secondly that the action of the respondents was not statute barred. Is it not funny that the above decision of that court resulted in the formulation of six issues for determination by the lower court and the subsequent formulation of yet another six issues before the court, one of which is the issue of the non consideration of issues 2, 5 and 6 by the lower court!!! <sup>E</sup>

***It is important for counsel to note that an issue put before a court must be substantial in nature so as to determine the matter in controversy one way or the other upon its resolution by the court. What is important therefore is not the number of issues formulated by learned counsel for determination but the quality of the issue(s) so formulated. If a single issue can dispose of a matter one way or the other why formulate many more to waste the precious time of the court. The courts do not deal with hypothetical or academic issues directed at demonstrating academic dexterity or excellence. I will however leave the matter at this point, for now.*** <sup>F</sup> <sup>G</sup> <sup>H</sup>

On the other hand, learned senior counsel for the respondents, T. A. MOLAJO ESQ, SAN in the respondents’ brief of argument filed on 27<sup>th</sup> November, 2007 raised the following four (4) issues for determination to wit:

*"1. Whether the complaint of non-compliance made in the 2<sup>nd</sup> ground of appeal had not been overtaken by the several steps taken by Appellant in the course of the proceedings in the court of first instance.*

*B 2. Whether the plea of statute bar can be sustained having regard to the peculiar circumstances of this case and the exceptions provided by the Public Officers Protection Act (cap 379), LFN. 1990.*

*C 3. Whether the complaint of the Appellant that the judgment of the Court of Appeal altered the basis of the Respondents case is sustainable.*

*4. Whether under and by virtue of the Pensions Act, (cap. 346), LFN 1990 the Appellants is included in the public service for all purposes relating to pensions."*

In arguing issue 1 learned senior counsel for the appellant D submitted that the suit was not initiated before the trial court by due process of law because the leave to institute the action had expired by the time the action was instituted; there was no affidavit of service before the trial judge before he fixed a date for hearing as required by Order 46 Rule 5(6) of the Federal High Court Rules 1999; that E the hearing date fixed on the motion paper was from the date of service less than the prescribed ten (10) days as the motion on notice was served on the respondent on 12/9/1999 and indicated the date for hearing as 15/9/1999 contrary to Order 46 Rule 5(4) of the Rules; F that there was no demand for performance of the duty and refusal thereof before instituting the action for mandamus as the alleged refusal by the respondent to the motion was made on March 12, 1998; that all the non-compliances vitiated the proceedings, thereby G the conditions precedent were not complied with; that the proceedings for judicial review are sui generis as a result of which other provisions of the Rules of Court, other than those of order 43 cannot be employed in the said proceedings to cure any irregularity in the proceedings except provided in order 43 thereof. For the above sub- H missions learned senior counsel cited and relied on the case of Queen vs. Customary Court Grade A, Ileoha (1961) 1 All NLR 811; State vs Police (1971) NMLR 146; Onyemaizu vs Ojiako (2000) 6 NWLR (pt. 659) 25 at 42 - 45; Atungwu vs Okekwa (2000) 1 NWLR (pt. 641) 507 at 517 and urged the court to resolve the issue in favour of the

appellant.

On his part, learned senior counsel for the respondents submitted that the complaints of non-compliance with the terms of the leave granted by the High Court and with the Rules of that court are belated particularly as appellant has not identified any miscarriage of justice occasioned by the non-compliance; that appellant took several steps in the proceedings leading to the judgment on merit after being aware of the defects and ought not to be heard to complain about the procedure adopted at the trial and urged the court to resolve the issue against the appellant. B

In his reaction to the respondents' brief, particularly issue 1 thereof, learned senior counsel filed a reply brief on the 15<sup>th</sup> day of February, 2008 in which he submitted that Order 1(2) of the Federal High Court (Civil Procedure) Rules 1999 did not provide that any or all non-compliances must be treated as an irregularity or irregularities as the court has the duty to consider the nature of the irregularity alleged and decide thereon; that the non-compliance herein are of the nature that robs the court of the jurisdiction to entertain the action. C D

From the submission of learned senior counsel for the respondents, it is very clear that the existence of the non-compliances by the respondents in the form and process of institution of the proceedings have not been denied. ***The respondents do not dispute the existence of the non-compliances. Their argument is on the effect of the non-compliance on the competence of the action or jurisdiction of the trial court to entertain the action hence their reliance on the provisions of order 2 Rules 1(1) and 2(1) of the Federal High Court (Civil Procedure, Rules 1999)***, being the relevant Rules of Court applicable to the facts of this case. E F G

Order 2 Rule 1(1) provides inter alia, as follows:-

*"1(1) Where in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure may be treated as an irregularity and if so treated will not nullify the proceedings, or any document, judgment or order* H

therein....."

**It is very clear from the provisions of the above Rule that anything done or left undone in the process of the commencement or purported commencement of any action or proceeding or at any stage in the course of or in connection with any proceedings, etc., the failure to comply with the provisions of the Rules of Court which in effect includes the provisions of order 46 of the 1999 Rules of the Court in relation to time, place, manner, form or content or any other respect, the non-compliance may be treated by the court as an irregularity which will not nullify the proceedings, or any document or judgment or order made in the proceedings.**

**The above defects, where they exist in any proceedings, must be brought to the attention of the court in question, in the instant case, the trial court so as to enable the court exercise its discretion under the said Rule of either treating the failure to comply with the requirements of the Rules as an irregularity or not.** It does not mean that once there exists non-compliance with the Rules of the court the proceedings or any document, judgment or order made therein is a nullity. The question that follows is how do you bring the non-compliance with the Rules to the attention of the court for an appropriate remedy? The answer lies in the provisions of Rule 2(1) of Order 2 thereof which provides as follows:-

**"2(1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document; judgment or order therein, shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step in the proceedings with leave of court by any interlocutory application, but the application may be raised in the defence."**

From the record, there is no evidence that appellant raised the issue of non compliance with the Rules before the trial court within reasonable time either prior to its taking any fresh steps in the proceedings after becoming aware of the irregularities in the proceedings or with leave of the court raised same in its defence thereto. Learned counsel for the appellant has not suggested that the appropriate steps were duly taken by the appellant even though it filed the necessary processes in opposing the application of the respondents

in the trial court. ***The issue of non compliance only surfaced in the proceedings before the lower court by which stage and by the provisions of the Rules quoted supra, the objection or application has obviously become belated as the same had not been brought within reasonable time after the appellant became aware of the non-compliance and before taking fresh steps in the proceedings after becoming so aware.*** After instituting or commencing the action in the form, time, and manner complained of the appellant filed its processes in opposition and contested the matter to conclusion in that court. Appellant has therefore, in my considered opinion waived its right to complain of the said non-compliance with the Rules of the Court. I also hold that the failure of the respondents in the commencement of the proceedings to comply with the relevant requirements of the Rules of Court whether in respect of time, place, manner, form or content or in any other respect is an irregularity which does not nullify the proceedings or any document, judgment, or order made therein and consequently resolve the issue against the appellant.

On issue 2, learned senior counsel for the appellant referred the court to the White Paper and the two circulars and submitted that if the said documents created any enforceable right and if anybody felt aggrieved by the failure to give effect to their provisions, his right to sue thereon accrued from the day on which those instruments were issued; that the documents were issued in 1997 thereby constituting the accrual of the cause of action from which the period of limitation begins to run relying on *Lawal Sanda vs Kukawa Local Government* (1991) 3 SCNJ 35; that the running of the period of limitation is not affected by time taken by negotiations between the parties - relying on *Eboigbe vs NNPA* (1994) 6 SCNJ 71; that by the time the action was instituted in July, 1999, it had become statute barred. Turning to the letter of the appellant dated March, 12 1998, learned senior counsel submitted that the time to challenge the decision of the appellant to pay respondents' pensions on the basis of affordability and sustainability began to run from that date and that after 12/6/98 the decision becomes unchallengeable and must be given full force by the court; that parties are agreed that the respondents are entitled to be paid their pension benefits or entitlements but that the lower court found that the White Paper and Circulars for

which the respondents founded their action do not have legal force and did not prescribe pension benefits at all; that since the letter of March 12, 1996 cannot be challenged after June 12, 1998 all the reliefs sought must fail because none of them can be properly granted until the letter of March 12, 1998 has been set aside, as a declaration  
 B or injunction cannot be granted except the claimant can establish a legal right thereto. However in a very revealing manner, learned senior counsel submitted thus: *“As long as the letter of March 12, 1998 is in force it circumscribes and delimits the rights of the plaintiffs in  
 C respect of payment of pension to them and the quantum of pension payable to each and everyone of them”* thereby admitting that the respondents have the right to be paid the prescribed rate of pension benefits but as delimited or circumscribed in the said letter of 12/3/98!! That is very different from saying that the respondents have no  
 D legal right to be protected. A legal right, whether circumscribed or unlimited, has clearly been admitted as existing in the respondents which has to be declared or protected.

It is the contention of learned Senior Counsel that the doctrine of continuing injury is not applicable to prevent reliance by the  
 E appellant on the statute of limitation particularly section 2 (a) of Public Officer Protection Act and that since the action was instituted more than three months after the accrual of the cause of action the action is not maintainable, and urged the court to resolve the issue in favour  
 F of the appellant.

On his part, learned senior counsel for the respondents submitted that pensions are essentially of a recurrent nature and fall due for payment every month; that the cause of action arises every month in the circumstance particularly as the appellant pays to the respondents less than their full harmonized pensions, relying on the *Ijale vs A.G Leventis & Co. Ltd.* (1961) All NLR (New Series) 792 at 794, 801  
 G and urged the court to resolved the issue against the appellant.

Section 2 (a) of the Public Officers Protection Act provides as follows:-

H *“2. Where any action prosecution or other proceedings is commenced against any person for any act done in pursuance or execution or intended execution of any Act or Law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any Act, Law, duty or authority, the following provisions*



shall have effect:

(a) *The action, prosecution, or proceedings shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained as of in case of a continuance of damage or injury, within three months next after the ceasing thereof ....*” B

The above provision is very clear and unambiguous. It provides simply that an action against a public officer in respect of any act done in pursuance or execution of any Act or Law of public duty or default in same can only be commenced within three months next after the act, neglect or default complained of except in a case of C continuance of damage or injury in which the person aggrieved must institute the action within three months next after the cessation of the damage or injury complained of.

In dealing with this issue, the lower court however concurrently found and held that, the section of the Act does not apply to the facts of this case. Learned Senior Counsel for the appellant had argued that the cause of action of the respondents had ceased to exist before the institution of the action since it was not commenced within the statutory period of three months and that the proviso in E paragraph (a) of section 2 of the Public Officers Protection Act does not apply in that there is no continuance of damage or injury. ***It is not being contended by the appellant that appellant did not admit liability to pay the harmonized pension but that the time within which to claim for that relief had elapsed thereby leaving the respondents with an empty cause of action.*** F

Both parties therefore agree that the respondents are entitled to be paid their pension benefits which is a right not conferred by either the white Paper or the two Circulars in question. ***The White Paper and Circulars deal with the rate of monthly pension payable to the respondents and others affected thereby. It is a question, therefore, of the quantum of the monthly pension to be paid to the respondents.*** The issue is clearly not whether the respondents are entitled to be paid pensions by the appellant but of G how much, having regards to the provisions of the white Paper and the two Circulars. H

Both parties have not disputed the fact that the issue concerns the monthly payment due to the respondents. ***The appellant***

**pays monthly pensions to the respondents less than what is provided in the white Paper and the two Circulars every month thereby leaving part of their entitled monthly pension unpaid.**

**This clearly demonstrates the fact that the cause of action in the circumstance arises every month when appellant pays less**

**B pension to the respondents than their full harmonized pensions, which appellant had agreed to pay.** It is therefore very clear that there is continuance of injury the cessation of which cannot be determined as long as the respondents live and are paid their monthly pensions other than as harmonized. There is therefore no way by which one can calculate the *“three months next after the ceasing thereof...”* It follows therefore that each month that the respondents are paid pensions less than the harmonized pensions, a cause of action arises in respect of the balance or sum outstanding.

**D** I therefore agree with the lower courts that the provisions of section 2 (a) of the Public Officers Protection Act does not apply to the facts of this case and consequently resolved the issue against the appellant.

**E** On issue 3 learned senior counsel submitted that a party who seeks an order of mandamus or any declaratory relief must establish or show the existence of a legal right vested in him to enable him maintain the action; that a declaration cannot be granted on affidavit evidence only; that a legal, statutory or contractual right cannot emanate from the white Paper and the circulars which have no statutory force and do not form part of the contract of employment of the respondents. For the above submissions learned senior counsel cited and relied on the case of *Okedare vs Adebara* (1994) 4 SCNJ 254, (1994) 6 NWLR (pt. 349) 157; *Titiloye vs Omoniyi* (1991) 10 SCNJ 122; (1991) 7 NWLR (pt. 205) 519; *Chukwuma vs Shell* (1993) 5 SCNJ 1; (1993) 4 NWLR (pt. 289) 512; *Clay Industries Nig. Ltd. vs Aina* (1997) 7 SCNJ 491; (1997) 8 NWLR (Pt. 516) 208 AT 228; *Onu vs Agu* (1996) 5 SCNJ 74; (1996) 5 NWLR (pt. 451) 652.

**H** On his part, Learned Senior Counsel for the respondents submitted that there is a nexus, as found by the lower court, between the appellant’s letter, exhibit JAJI and the Circulars and White Paper, exhibits JAJI-3; that by exhibit JAJI appellant informed the respondents of appellant’s approval of the harmonized pensions in accordance with exhibits JAI-3; that it is therefore not correct to say that

the lower court altered the basis of the respondents case and urged the court to resolve issue 3 against the appellant.

Much have been said by learned senior counsel for the appellant as to whether the White Paper and two Circulars confer any legal right on the respondents enforceable by declaration and mandamus etc etc. However it is important to note that the issues determined by the lower court are as argued before that court by learned senior counsel for the appellant. At pages 515 and 516 of the record, the lower court stated as follows:

*“Before delving into the arguments of learned counsel on the issues formulated..... I should state that after a calm reading of facts of case at the court below, the judgment appealed against as well as the grounds of appeal filed, I find myself in agreement with the learned senior counsel for the appellant that the main, crucial and vital issues to be determined in the appeal are:*

*(1) Whether the Federal Government has the power to prescribe pensions and other retirement benefits for staff of the Appellant outside the Central Bank of Nigeria Act. (2) Whether the Federal Government through or by the circulars issued on the harmonization of pensions for employees in the public service of the Federation, did prescribe and stipulate pensions and other retirement benefits of employees of Central Bank of Nigeria outside the Central bank of Nigeria Act, (3) Whether, depending on the answers to the two issues above the action of the respondent was statute barred. Put in other words whether section 2 (a) of the public officers protection Law is applicable to the action of the Respondents in the court below on period of limitation....”*

Learned Senior Counsel for the appellant has not challenged the above holding by the court below in the instant appeal; that being the case, it is trite law that appellant is bound by that finding and/or holding particularly as to the issues for determination and cannot now say otherwise.

Looking, however, at the issue of granting of a relief of declaration on affidavit evidence, it is clear that the declaration sought in relief (2) is based “on a true construction of (a) federal Government White Paper Ref..... (b) Federal Government Circular Ref.....” etc. While the declaration sought in relief 3 is that “the respondent’s pensions on the basis of “An affordability and sustainability” is ultra vires,

null and void.”

It must once more be pointed out that the legal right of the respondents to payment of pension and other retirement benefits is never said to be grounded on the white Paper and the said Circulars which the respondents requested the court to interpret in relief 2.

B Relief 2 is actually not an ordinary declaratory relief but a declaratory relief based on the construction of documents tendered before the court as exhibits in a proceeding for judicial review.

C ***It is settled law that a declaratory relief cannot be granted upon admission of the defendant in the pleadings and/or without the plaintiff giving oral evidence. However, the above principle is not without exception.***

D ***In the instant case, the declaration sought is by way of judicial review which is a special procedure provided for in Order 46 of the Federal High Court (Civil Procedure) Rules 1999 being the relevant Rules applicable to the facts of this case.***

E In Order 46 Rule 1 (2) it is provided that an application for a declaration or an injunction not being an injunction mentioned in sub-rule (1) (b) of the rule may be made by way of an application for judicial review and the court may in an appropriate case grant the declaration or injunction.

F However before an applicant applies for the substantive order by way of judicial review, he has first of all to apply for leave and obtain same ex parte.

G The application for leave is usually supported by a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought, and an affidavit verifying the facts relied on - see Rule 3(2) of Order 46.

H Upon the grant of leave the applicant is required to apply for judicial review by Originating Motion except during vacation when the application may be made by originating summons to a judge in chambers. The notice of motion or summons is then served on the opponent together with the copies of the statement in support of the application for leave. It should be noted that damages can be, in an appropriate case, claimed in an action for judicial review-see Order 46 Rule 7.

On matters of declaration in a proceeding for judicial review order

46 Rule 9 (5) specifically provides thus:

*“(5) Where the relief sought is a declaration, an injunction or damages and the court considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in an action begun by writ by the applicant at the time of making his application; the court may, instead of refusing the application, order the proceedings to continue as if they had been ..... by writ.”* B

**The above rule clearly shows that the High Court has the vires under judicial review to grant declaration etc based on affidavit evidence filed in support of the application as required by the Rules of Court.** C The court however has the discretion to conduct a full hearing/trial as if the action was instituted by way of a writ of summons, where the court considers it necessary not to refuse the declaration sought *brivi manu*. D

I have carefully gone through the authorities cited and relied upon by the learned senior counsel for the appellant in support of the contention, inter alia that “it is illegal to grant a declarative relief upon affidavit evidence on well established authorities” and I am afraid that the cases cited do not support that contention. In any event and as demonstrated *supra*, by the peculiar nature of the proceedings by way of judicial review, a declaratory relief is grantable, in appropriate circumstances, upon affidavit evidence as provided under the Rules of Court. Affidavit evidence is not pleadings but evidence which the court can act upon in considering whether to grant the relief or not to do so. E F

It is settled law that the principles governing the grant of declaratory relief generally include the following:-

(a) A declaration will be granted even when the relief has been rendered unnecessary by the lapse of time for the action to be tried, if at the time the action was brought, it raised substantial issues of law; G

(b) The claim to which the declaratory relief relates must be substantial, that is the plaintiff must be entitled to relief in the fullest meaning of the word. H

(c) A declaration will only be granted where there is a Breach.

(d) The plaintiff must establish a right in relation to which the declaration can be made, hence the court will not generally decide

hypothetical questions.

(e) The relief claimed must be something which it would not be unlawful or unconstitutional or inequitable for the court to grant.

(f) The relief should also not be contrary to the accepted principles upon which the court exercises its jurisdiction- see B Chukwumah vs Shell Petroleum (1993) 4 NWLR (pt. 289) 512 at 553.

It is the argument of learned senior counsel for the appellant that the respondents have no legal right to entitle them to the reliefs claimed particularly as the White Paper and Circulars do not have the force of law. The above submission is erroneous as the right of the respondents to payment of pensions and other retirement benefits is not grounded on the white Paper and Circulars. At page 8 of the appellant brief paragraph 3.2.8, first two lines, learned counsel emphatically stated thus:

*"Parties do not disagree on the fact that the plaintiffs are entitled to be paid their pension benefits or entitlements."*

However the issue has to do with the rate of the pension benefits or entitlements payable to the respondents. It should be noted E that by the appellant's letter dated March 12, 1998, exhibit JAJ6 in the proceedings, appellant admitted liability to pay the harmonized pension benefits to the respondents but asked for time. That, to me, and as found by the lower court, is evidence in support of the right of the respondents to the harmonized pension benefits. The fact that F the appellant admits of the existence of that right under the letter of March 12, 1998 can be gleaned from page 8 of the appellant brief, lines 4 from the bottom of paragraph 3.2.8, where learned senior counsel stated thus:-

G *"As long as the letter of March 12, 1998 is in force it circumscribes and delimits the rights of the plaintiffs in respect- of payment of pension to them and the quantum of pension payable to each and every one of them."*

H Despite the above unambiguous admission of the existence of the legal rights of the respondents to the harmonized pensions benefits, learned senior counsel still contends that the respondents have no legal right to be declared or enforced by an order of mandamus. In the circumstance and having regards to the facts of this case I hold the view that issue 3, as formulated by the appellant, be and is

hereby resolved against the appellant.

On issue 4 learned senior counsel has argued that the lower court having found that the white. Paper and Circulars do not have legal force, the court ought to have proceeded to hold that claims 1 and 2 failed, but the court rather went on to base the right of the respondents to the reliefs on the letter of March 12, 1998 thereby changing the character of the case of the respondents and urged the court to resolve the issue in favour of the appellant. B

It is clear that the argument of the learned senior counsel for the respondents in his issue 3 already summarized under appellant's issue 3 is relevant to the consideration of this issue. C

However, having regards to my views on issue 3 supra, I find the present issue irrelevant as the same has been substantially subsumed in the consideration of issue 3 supra. The issue is accordingly resolved against the appellant. D

On issue 5 learned senior counsel for the appellant referred to the provisions of section 14 of the Central Bank of Nigeria Act 1991 and submitted that it empowered the Board to employ all the respondents on contract and to prescribe their terms of employment as a result of which the Staff Manual of the Central Bank of Nigeria was made containing the rights and privileges of the respondents and other employees of the appellant, that the Government White Paper is not part of the manual neither is the Federal Government a party to the contract between the parties; that the Pension Act, cap 346 LFN under which the circulars were issued were meant to provide pension benefits of employees in the Public Service of the Federation only. E F

Referring to section 15 of the Pension Act and schedule 2 thereby learned senior counsel submitted that the organization mentioned in section, 15(2) of the Act are to be regarded as part of the Civil Service for the purpose of calculating qualifying service under the Act and as such for all other matters the organizations which include the appellant, are not part of the civil service under the Act; that the Federal Government has no power to act pursuant to the Pension Act to make the White Paper and the Circulars to affect Central Bank of Nigeria and the respondents and that the lower court was in error in holding otherwise; that the power to prescribe salaries, gratuity and pension rights of the employees of Central Bank of H

Nigeria vests exclusively on the Board of the appellant.

On his part, learned senior counsel for the respondents referred to item 7 of the list of the Second Schedule to the Pensions Act and stated that the organisations listed therein are specifically stated to be “*ORGANISATIONS DECLARED AS PUBLIC SERVICE*” by section 15(2); that appellant is therefore part of the Public Service.

Learned Senior Counsel also referred the court to section 318 (1) (c) of the Constitution of the Federal Republic of Nigeria, 1999 which defines the public service of the Federation to include staff of any statutory corporation established by an Act of the National Assembly; that section 23 of the Pensions Act makes the Minister of Establishment the regulating authority in respect of pension rights of all persons who retire from the public service, as a result of which the Minister may by circulars, make provisions for implementation by the 104 organisations making up the Public Service; that appellant recognizes its duty to implement all directives of government made pursuant to the Pensions Act as evidenced in exhibits JAJ6 and JAJ11 and urged the court to resolve the issue against the appellant.

In dealing with the issue, the lower court found and held at pages 517-519 of the record, inter alia, as follows:-

*“It is indisputable that the Appellant i.e the Central Bank of Nigeria, is Federal Government Institution, Organisation, Corporation or establishment. Put simply, the Appellant is an agency of the Federal Government of Nigeria established by Statute i.e the Central Bank of Nigeria Act.*

*It is the Central Bank of Nigeria Act promulgated or passed by the Federal Government, that in section 14(3) provides the Board of the Central Bank of Nigeria with function and power to stipulate pensions and other retirement benefits for employees thereof. Being an agency of the Federal Government it follows therefore that the Federal Government has the power and right to make another law or amend the Central Bank of Nigeria Act in terms and manner which would enable it to implement its policies made in the process of governance of the country in general.*

*Accordingly, the Federal Government has the power and right, through the appropriate process and manner to prescribe the pension and other retirement benefits of employees of the Central Bank*



*of Nigeria being an agency of the Federal Government. This power and right are inherent in the Federal Government and cannot be denied it in whatever circumstance by the agency.*

*By the provisions of section 4 of the 1979 Constitution which was in operation at the material time as well as the 1999 Constitution, the Federal Government has the exclusive power and right to legislate on pensions, gratuities and other like benefits payable out of the consolidated Revenue Fund or any other public funds of the Federation. See item No. 44 of part 1 of the second schedule to both Constitutions. It was in exercise of that power that the Pensions Act, Cap. 341, Laws of Federal Republic of Nigeria (sic) 1990 was enacted by the Federal Government to provide specifically for pensions and other retirement benefits payable to all employees in the Public Service of the Federation which were to be paid out of either the consolidated Revenue Fund or any other public funds.*

*Section 24 of the Pensions Act defines public service as “service under the governance of the Federation in a civil capacity or such other service in any organization specified in schedule 2 ....” In the said schedule 2, of the Act, the Central Bank of Nigeria, the Appellant, was listed as No. 7 among the organizations declared to be part of the public service. Furthermore, the Constitutions (1979 and 1999) in section 318(1) (c) also defined public service of the Federation as follows:-*

*Public Service of the Federation means service of the Federation in any capacity in respect of the Government of the Federation and include service as (c) staff of any statutory corporation established by an Act of the National Assembly.*

*By the above provisions, it is beyond doubt and serious contention that the Appellant bank, a Statutory Corporation established by an Act of the National Assembly i.e the Central Bank of Nigeria Act, is part and parcel of the public service of the Federation over which the Federal Government has the exclusive right and power to prescribe pensions payable to its employees outside the Central Bank of Nigeria Act.*

*The fact that the Appellant’s bank was specifically named in the Pensions Act as one of the Federal Government organizations to which the provisions of the Act applies, makes the position high and dry. I have no hesitation in holding that the Federal Government has*

*the power by law to prescribe the pensions payable to employees of the Appellant bank; a statutory corporation established by an Act of the National Assembly outside the Central Bank of Nigeria Act... .. “*

**On the power of the Federal Government to issue the circulars vis-a-vis the powers of the Board of Directors of the appellant under section 14(3) of the Central Bank of Nigeria Act, the lower court, after reproducing the provisions of the said section continued thus, at pages 526 - 529 of the record:**

*“The above provisions devoid of their legal drafting tone, gives the Board of the Central Bank of Nigeria the functions inter alia, to stipulate periodically, the pensions and other retirement benefits of the employees of the Bank mentioned therein”.....*

**Now after the circulars on the harmonization of the pensions policy were issued by the Federal Government and brought to the attention of the Appellant by the Respondents, the Appellant Bank wrote a letter with Ref..... dated 12/3/98 to the Respondents.....**

**From the clear message contained in the above letter, which is that the Bank had approved the harmonized pension as contained in the policy circular issued by the government, it cannot be disputed that it was the Board of the Central Bank of Nigeria, in the exercise of the function and power under section 14(3) of the Central Bank Act, that approved the harmonized pension. So even if the circulars on the harmonization of pension was issued outside the provisions of section 14(3) of the Central Bank of Nigeria Act, the decision of the Board of the Central Bank of Nigeria to approve same had brought or made it come within the provisions of the section.**

*The Bank could not have otherwise approved the harmonized pensions than pursuant to the provisions of section 14(3) giving the board of the Bank power to stipulate pension and other retirement benefits payable to its employees..... It is for the above reasons that I find that the Federal Government did not prescribe pension payable to the employees of the Central Bank of Nigeria by or through the circulars issued on the harmonization of pension in the public service of the Federation. The circulars are not ultra vires section 14(3) of the Central Bank of Nigeria Act and they apply to or are applicable to employees of the Bank...”*

***I have carefully examined the relevant provisions of the Act and Constitution as well as the submission of both counsel on the issue under consideration and I found that the decision of the lower court on the issue as reproduced above cannot be faulted in any way.*** I therefore adopt same as mine in resolving the issue under consideration against the appellant. B

On issue 6, Learned Senior Counsel for the appellant submitted that the lower court erred in not considering issues 2, 5 and 6 that were validly placed before it thereby breaching the constitutional right of the appellant to fair hearing and urged the court to resolve the issue in favour of the appellant. C

The issues allegedly not considered by the lower court are as follows:-

*“2. Whether the trial court was right in law in holding that the appellant did not resile and that it could not lawfully resile from the admission made by it of liability to honour the terms of the White Paper and Circulars on Harmonisation of Pensions Policy issued at the instance of the Head of State in 1977.*

*5. Whether the respondents established a legal right that entitles them to maintain action for mandamus and declarations and whether the White Paper and the Circulars on Harmonisation Policy issued in 1997 had the force of law or conferred any legally enforceable right on the respondents to entitle them to maintain their action for mandamus and whether it was proper to grant declarations to the respondents when they did not adduce oral evidence.* E F

*6. Whether the entire proceedings before the trial judge and the judgment were null and void and, in consequence, the trial court lacked jurisdiction to entertain the suit because the conditions precedent required to enable the applicants to approach the court to prosecute their claims prescribed by Order 46 of the Federal High Court Civil Procedure Rules 1999 were not complied with, i.e due process were not followed in that the filing and service of the originating summons on the respondents and the hearing did not take place within 14 days from the day on which the trial judge granted leave to the respondents in this appeal to file the originating summons, the leave granted to the respondents had lapsed before they filed the originating summons and the date fixed for hearing was less than 10 days prescribed in the order and these non-compliances resulted in de-* H

*priving the court of jurisdiction to entertain the suit. “*

It should be noted that the three issues *supra* have been repeated in the instant appeal and duly considered in this judgment and found to be without merit. Issue 6 before the lower court is the current issue 1 while the former issue 5 is the current issue 3.

B It is, however, not correct to say that the lower court did not consider the former issue 2. After reproducing the letter dated 12/3/98 at page 527 in the judgment of the lower court, the court proceeded at page 528 to state as follows:-

C *“It is to be noted that the Appellant bank did not throughout the proceedings in the court below as well as in this court deny writing and sending the above letter in the correspondence with the Respondents on the harmonization of pension by the federal Government as contained in the two circulars set out earlier in this judgment.*

D *Rather the Appellant had in the briefs filed by the learned senior counsel on its behalf in the present appeal relied heavily on the said letter in one of the grounds and issues to challenge and resist the claims of the Respondents to the harmonized pension.*

E *From the clear message contained in the above letter, which is that the Bank had approved the harmonized pension as contained in the policy circular issued by the government..... “*

It should, however, be noted that there is no appeal against the above decision of the lower court concerning issue 2 which means in effect that the appellant accepts same as being valid, and I so hold. F Whereas issues 5 and 6 raised before the lower court had been raised afresh before this Court as stated earlier, there is no issue corresponding to the original issue 2 before the lower court.

***In any event since the issues allegedly not considered by the lower court had been considered by this Court and found to be devoid of merit, it means that their non consideration by the lower court has not led to or occasioned any miscarriage of justice to warrant any interference by this Court. I therefore, in the circumstances resolve issue 6 against the appellant.*** H

It is rather unfortunate that the efforts of the Federal Government to put smile on the face of the pensioners of the appellant so as to alleviate their sufferings having regards to the harsh economic realities of this country have been almost frustrated by argu-

ments on legal technicalities whilst the people continue to suffer year in year out. It is disturbing because the people involved are senior citizens of this country who have contributed their quota to the development of the nation during their prime, but look at the way an organization like the appellant is treating them. All that the Federal Government seeks to do, by the circulars, is to harmonises pension in the public service “so as to bring the pensions of officers who retire before January 1991, which were based on their basic salaries only, in line with the pensions of officers who retired thereafter, which were based on their basic salaries and certain approved allowances yet appellant appears not to see the injustice or inequity the Government seeks to redress. To ensure that the respondents do not benefit from the good intention of the Federal Government appellant contends, even in the face of statutory and constitutional provisions to the contrary, that the Central Bank of Nigeria is not part of the Federal Public Service for the purposes of pension and other retirement benefits. It is important for every organization in this country, including the appellant, to wear a human face in its treatment of the people, particularly the senior citizens, because it will be anybody’s turn tomorrow to be a senior citizen. We must re-examine our attitude towards the senior citizens of this country so as not to make them regret their sacrifice for the nation in whatever capacity. The respondents need not be put to the expenses of litigating this matter in the first place let alone all the way to the Supreme Court.

However, having resolved all the issues for determination against the appellant it is obvious that the appeal is without merit and is consequently dismissed by me with N50,000.00 costs to the respondents.

Appeal dismissed.

### **MUSDAPHER JSC**

I have had the opportunity to read before now, the judgment of my Lord Onnoghen, JSC just delivered. In the aforesaid judgment, his Lordship has meticulously and comprehensively discussed all the worthwhile issues submitted for the determination of the appeal. I find it most unnecessary to repeat what his Lordship has fully stated in the judgment. Suffice it for me only to dismiss the ap-

peal as lacking in merit and to abide by the order for costs proposed in the judgment.

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B

**MUHAMMAD JSC**

I have had the advantage of reading the judgment of my learned brother, Onnoghen, JSC. I agree with him that the appeal lacks merit and it should be dismissed. I hereby dismiss the appeal. I  
C abide by orders made in the lead judgment including order as to costs.

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D

**ADEKEYE JSC**

I was privileged to read before now the judgment just delivered by my learned brother, W.S.N. Onnoghen JSC. My Lord had carefully considered all the issues distilled for determination in the appeal. He had exhaustively resolved all the intricate legal points raised  
E by the parties. I agree also with his observation that there must be a change of attitude in the care and concern for our senior citizens in this country. There must be an assurance that our old people will spend their retirement without hassle and anxiety in the process of  
F earning their retirement benefits. I agree with the conclusion in the leading judgment that this appeal is without merit and I also dismiss it with N50,000.00 Respondents.

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H