

SUPREME COURT OF NIGERIA
FRIDAY 1ST FEBRUARY, 2013. SC. 182/2001
**CORAM:- W. S. N. ONNOGHEN, C. M. CHUKWUMA-
ENEH, S. GALADIMA, M. D. MUHAMMAD,
C. B. OGUNBIYI, JJSC**

1. AKAUVE MOSES OSOH & 40 Ors APPELLANTS
AND
UNITY BANK PLC RESPONDENT

MASTER & SERVANT - Collective agreement - Justiciability - For Exhibits D, F, J1-J5, N & P1 to be justiciable - The same must be incorporated into existing service agreement - By amending old provision to reflect new one (H1)

MASTER & SERVANT - Collective agreement – Binding force - Since Exhibits D, F, J1-J5, P1 & G did not create legal relations between the parties - Respondent is not contractually bound (H2)

MASTER & SERVANT - Collective agreement - Contract - There is no privity of contract - As the agreement was not incorporated into the contract of employment (H3)

MASTER & SERVANT - Parties - Pleadings - As there is no specific claim for non payment of terminal benefits - The issue is an after-thought - Since parties are bound by their pleadings (H4)

MASTER & SERVANT - Termination - Damages in action for termination of employment - Can only follow events - Where the termination is wrongful (H5)

JURISDICTION - Determination - Jurisdiction of court in a suit - Is based on plaintiff's averments in the statement of claim - And the reliefs claimed therein (H6)

JURISDICTION - National Industrial Court - Trade dispute - For jurisdiction of the court to arise - It must be established that the subject matter comes within the Trade Dispute Act s. 47(1) (H7)

MASTER & SERVANT - Jurisdiction - High Court - Since the action is for wrongful termination of employment and not trade dispute - The court's jurisdiction is not ousted by Trade Dispute Act s. 47(1) (H8)

MASTER & SERVANT - Termination - Validity - Appellants cannot be described as workers - Since their employment were duly ended - By service of notice of same on them (H9)

FACTS

Appellants were former senior staff of respondent (i.e. New Nigeria Bank Plc). Each appellant had worked in the bank for a period of not less than 10 years. Through individual but identical letters, their respective employments were terminated. The termination was to be followed with one month salary in lieu of notice. However, the said one month salary was not paid until much later. Following this development, appellants initiated this action at the High Court of Edo State, Benin City claiming declaratory reliefs to the effect that respondent ought to have used the agreed parameter evidenced by Exhibits D, F, J1-J5, P1 & G in computing appellants' disengagement entitlements. A mandatory order was also sought by appellants requesting a direction to respondent to pay the outstanding benefits arising from the said Exhibits.

Based on the delay in payment of the one month salary in lieu of notice, each appellant also claimed general damages from respondent. The court granted appellants' entire claims but however declined to make any award of general damages. Respondent was dissatisfied and hence lodged an appeal at the Court of Appeal Benin City Division. Appellants were also unhappy and thus filed cross-appeal. The court upheld respondent's appeal and set aside the decisions of the trial High Court awarding appellants' claims and also dismissing the cross-appeal filed by appellants. Aggrieved, appellants filed appeal to Supreme Court, while respondent cross appealed, challenging among other things the jurisdiction of the trial High Court in the matter.

ISSUES FOR DETERMINATION

"1. Whether the Court of Appeal was right in finding that exhibits DI, F, J1 - J5, N and P were minutes of meetings or in the

category of Exhibit G and as such gentlemen agreement which are not justiciable.

2. Whether or not the court below was right in finding that for item 14 Exhibit J2 to be enforceable, it must be incorporated into the appellants' termination letters of 12/1/94.

3. Whether or not the court below was right to find that the award by the High Court of gratuity and pension based on total emolument predicated on Exhibits D, F, J5, N and R is perverse.

4. Whether the Appellants were not entitled to an award of damages in consequence of the failure to pay their respective entitlements at the time of the termination of their respective employments."

HELD (Unanimously dismissing the appeal and cross appeal per **CHUKWUMA-ENEH JSC**)

MASTER & SERVANT - Collective agreement - Justiciability

1. Thus, inter alia, this court held in Edet's case that "the general tenor of Collective Agreement is that it was never intended that the Agreement should create any legally enforceable contractual obligation by individual employees". For Exhibits D, F, J1-J5, N and P1 to become legally binding and justiciable there must be evidence of adoption of the agreement either by incorporation of the Agreement into the existing service Agreement by amending the old provision to reflect the new one or by addendum incorporating an entirely new award. In the case in hand, nothing of the sort happened between the appellants and the respondents.

From the above authorities, I have no doubt in my mind that Exhibits D, F, J1 - J5, N and P1 are minutes of meeting held or at best, they like Exhibit G' are gentlemen's agreements, "a product of trade unionists pressure" 'totally devoid of sanctions" and that failure to act in strict compliance with any of them is not justiciable". (p. 1154 A)

MASTER & SERVANT - Collective agreement - Bindingness

2. More particularly, the abstract has dealt with Exhibit J2 on redundancy matters as claimed by appellants and the subject

matter of issue 2 for determination here and to hold that as regards the appellants' entitlements, gratuities and pensions payable vis-à-vis their claims for redundancy benefits howsoever these entitlements have to be computed. On whether the respondent therefore is contractually bound to the appellants

B as per the terms of the agreements contained in Exhibits D, F, J1 - J5, N, P1 and G in other words, whether their employment relationships have included and incorporated the said agreements as contained in the aforesaid exhibits, the lower

C court has also found and again, rightly in my view that unless and until the appellants can satisfy the requirements, that is to say, that the said agreements have created legal relations coupled with their respective incorporation into the appellants' respective contracts of employment the appellants can-

D not sue (and even be sued for any breaches of the aforesaid exhibits and so in my view that no reasonable cause of action has arisen between the appellants and the respondent so to sustain the instant action. It has been found and rightly for that matter that the appellants have failed majorly in these

E respects. There is no gainsaying that these preconditions are the inescapable hurdles the appellants here have to skip in order to bring their claims arising as per the said exhibits within being enforceable at law and at the instance of the appellants. It is trite that some collective agreements have been known

F to be imprecisely expressed and therefore are not capable of enforcement as contracts, as borne out in the case of these exhibits on not having given rise to any legal relations, thus creating contractual liabilities between the parties as found in

G the abstract of the lower court's judgment in this matter. Therefore Exhibits D, F, J1-J5, N, P1 & G1 if I may emphasise, not having created any legal relations between the parties are incapable of creating contractual obligations and so incorporating them into the appellants' contracts of employment cannot at all be contemplated. A second look at the foregoing abstract show that the lower court has taken every item of the collective agreements as contained in the said exhibits and has examined them seriatim to conclude that none of them

H has created legal relations as between the collective parties

nor as between the instant parties to this suit.

(pp. 1156 B/1158 B)

MASTER & SERVANT - Collective agreement - Contract

3. In such situations unless and until the collective agreements having created legal relations are incorporated into the contract of employment of an employee the said collective agreements cannot be enforced by the employee indeed either party as in this matter for want of privity of contract. It is on the principle of want of privity of contract that the courts have showed great reluctance to enforcing collective agreements between collective parties at the instance of an employee(s) without the collective agreements having firstly been incorporated into his contract of employment. And so as the said exhibits not being collective agreements per se as found by the lower court and as affirmed herein cannot be examined on this ground of want of privity of contract as they have created no contractual obligations arising from any legal relations.

The doctrine of privity of contract is so fundamental to the enforcement of contractual obligations between the parties to a contract if I may repeat that to enforce a collective agreement at the level of the employer and his employees the agreements have to be firstly incorporated into the conditions of employment of the employees.

It follows that none of them severally or jointly therefore is enforceable in contract as rightly found in the lower court's judgment, which I affirm, as these agreements as I must continue to emphasize in this judgment have not created contractual obligations upon any legal relations as between the parties nor for whatever they are worth have they been adopted or incorporated expressly or impliedly into the respective conditions of service of the appellants as I have also found here. Meaning in effect that issues 2 and 3 for determination in this appeal have particularly become otiose having been exhaustively disposed of in discussing these issues together herein. There is no need examining both issues severally.

I therefore affirm the lower court's dismissal of the award of gratuity and pension entitlements and other benefits based

on the total emoluments of the appellants as predicated on exhibits D, F, J1- J5, N and P1 vis-à-vis the monetary claims of the respective appellants by the trial Court as perverse and must be set aside and I so set each of them aside. The three issues are therefore, resolved against the appellants.

B (pp. 1159 F/1161 E)

Parties - Pleadings

4. The appellants with respect appear to have raised this issue as an afterthought as there is no specific claim to this relief for non-payment of the said terminal benefits of salaries in lieu of notice in the pleadings. It is trite that parties are bound by their pleadings and that matters not pleaded go to no issue. This issue as it stands in my view is untenable as the appellants are seen to have appropriated the said terminal benefits including their respective salaries in lieu of notice though paid later in time without having raised any protests as to the damages caused by the delay of late payments and they have not even made the necessary refunds of the respective sums of money paid to each one of them in order to properly join issue on the question with the respondent. It has therefore portrayed the appellants as approbating and reprobating in regard to the said payments of their terminal benefits accordingly. (p. 1162 G)

MASTER & SERVANT - Termination - Damages

5. I agree with the lower court's findings and I hold that having found that their contracts of employment have not been wrongfully terminated the appellants cannot rely on the case of Chukwumah v. Shell Petroleum etc (supra) not on all fours with the facts of this case to prop up their case here for a claim in general damages. This is so as damages in an action of wrongful determination of employment can only follow events where termination is wrongful. In the above cited case the employee has not been given any notice nor paid any salary in lieu of notice so that the principles that have governed that case are inapplicable here. I therefore agree and affirm the findings of the lower courts on this issue as I see no merits

on the question. Issue 4 is resolved against the appellants.
(p. 1163 B)

JURISDICTION - Determination

6. It is trite that jurisdiction of a court to entertain a suit is based on the plaintiffs' averments in the statement of claim and the reliefs claimed thereof. (p. 1163 H) B

JURISDICTION - National Industrial Court - Trade dispute

7. Fundamentally in order to ground the jurisdiction of the National Industrial Court it must be established that the subject matter comes within the provisions of Section 47(1) of 1992 which has vested exclusive jurisdiction to hear trade dispute(s) on the National Industrial Court. It has to be strictly construed as these provisions seem to impinge on the unlimited jurisdiction of the State High Court as conferred upon it by Section 236(1) of the 1979 Constitution. For a cause of action as in this matter to be considered a trade dispute, the trade dispute has to come within the parameters of the definition of 'trade dispute' as in Section 47(1) (supra) as construed in the case of National Union of Road Transport Workers v. Ogbodo & Ors (supra). The three factors to meet the definition of "trade dispute" as I have adverted to herein must co-exist to bring a matter as the instant claim within the exclusive ambit of the Act. (p. 1168 A) C
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Jurisdiction - High Court

8. The above findings of the lower court cannot be faulted on the issue in question as they have been predicated on a thorough evaluation of the facts as pleaded and documentary evidence that is the said Exhibits before it. I agree with the findings in the judgment of the lower court on the issue of jurisdiction of the instant High Court (vis-à-vis the National Industrial Court) in dealing with this matter as being properly well grounded in law and so with its conclusions that the instant High Court's jurisdiction has not been ousted by any of the aforesaid provisions of the enactments stated above. It follows that the cause of action in this matter ranging as pleaded G
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from declarations on the manner of the termination of the appellants' respective employments to the computation of their respective terminal benefits and entitlements as to their pension and gratuity and to the mandatory injunctions relating to the payments of the appellants' respective terminal benefits and entitlements and for the delayed payments of their respective salaries in lieu of notices cannot by any stretch of the words in these enactment constitute, as claimed by the appellants a trade dispute between the parties. There is no basis for holding otherwise as found by the lower court even as the appellants have alleged that the said trade dispute has arisen from the situation they tag "trade of banking". It follows that this claim is one predicated on a simple action of wrongful termination of the appellants' respective employments with the respondent and their claims severally for their benefits and entitlements arising therefrom. It is not the appellants' case that their respective contracts of employment has not been terminated. At this point they, each of them, have ceased to be workers in the proper sense as contemplated under section 47(1) (*supra*). This action as constituted cannot on any basis be construed as an action founded on a trade dispute. It is clearly not one.

Based on the above reasoning and conclusions the jurisdiction of the High Court of Edo State has not been ousted on the facts of the instant cause of action in this matter in which the appellants are claiming in regard to the wrongful termination of their respective contracts of employment. Clearly it is the instant Edo State High Court not the National Industrial Court that has jurisdiction to deal with this matter as constituted. And I so hold. (pp. 1169 C/1172 H)

MASTER & SERVANT - Termination - Validity

9. The next requirement is for the respondent/cross appellant to establish that the appellants fall within the ambit of the definition of 'workers as defined in Section 47(1) (*supra*) as otherwise the action is not maintainable as a trade dispute. For the instant action for wrongful termination of the respective employments of the appellants to make the billing as a trade

dispute the appellants severally must be a worker of the respondent i.e. under their respective contracts of employment. However, where the appellants' respective contracts of employment have been properly terminated as here there can be nothing remaining of their respective employment relationships under their respective contracts of employment that is as between the instant parties upon which to construe the appellants as "workers" in any respects. And so the appellants' employment relationships with the respondent have properly been treated as having ended/terminated by their respective termination notices. In other words the question of workers and employer relationships between the instant parties to this suit is regarded to all intents and purposes as having ended. In this regard this is so not only on the ground that the notices terminating the appellants' respective employments have been duly served on each of them but also as they, each of them, have been in addition paid their respective salaries in lieu of notices as provided in Exhibit B, which have been accepted without any protests. And this has to be so construed as the said salaries paid in lieu of notices have not been refunded to the respondent in order to properly ground their respective claims in this matter. In this situation there impliedly a clear intention to regard the respective contracts of employment of the appellants as duly terminated and I so hold. (p. 1171 A/D)

NOTABLE POINT OF INTEREST

CHUKWUMA-ENEH JSC

1. Master & servant - Definition of collective agreement

The statutory definition of "Collective Agreement" is as defined in Section 47(1) of the Trade Disputes Act 1990, it provides as follows:-

1. Any agreement in writing for the settlement of disputes and relating to the terms of employment and physical conditions of work concluded between:

- (a) An employer, a group of employers and one more organization representative of employers, on the one hand and
- (b) One or more trade unions or organizations representing

workers or duly appointed representative of any body of workers on the other hand. (p. 1157 E)

REPRESENTATION

H. C. Erhabaa Esq., for the Appellants

B O. Ovrawah Esq., with Onyekachi Umah Esq., for the Respondent/Cross-Appellant

CASES REFERRED TO

- C Thomas v. Olufosoye (1986) 1 NWLR (pt. 18) 669
Ogbuehi v. Governor of Imo state (1995) 9 NWLR (pt. 417) 53
Chukwumah v. Shell Development Nig. Ltd. (1993) 3 NWLR (pt. 289) 512
Ukpakara v. Ebevuhe (1996) 40/47 LRCN 1481
D Makwe v. Nwakor (2001) WRN 1
Nwadiogba v. Nnadozie (2001) 39 WRN 71
Basil v. Fejebe (2001) 21 WRN 58
New Nigeria Bank Plc v. Egun (2001) 22 WRN 29
Nigeria Arab Bank Ltd. v. Shuaibu (1991) 4 NWLR (pt. 186) 486
E A.C.B. Plc. v. Mbisike (1995) 8 NWLR (pt. 416) 725
Ryan v. Liverpool Warehousing Ltd. (1966) L.T.R. 19
Emono v. Nigeria Ports Authority (1966) LL.R. 208
NURTW v. Ogbodo (1998) 2 NWLR (pt. 537) 189
F National Union of Electricity Employees v. BPE (2010) 2 NMLR 291

STATUTES REFERRED TO

Trade Disputes Act 1990, ss. 20(1), 47(1)

Constitution of the Federal Republic of Nigeria 1979, s. 236(1)

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LEAD JUDGMENT BY CHUKWUMA-ENEH JSC

- The plaintiffs, forty one (41) of them in this action in the trial court are Senior Staffers and former employees of the 1st defendant and are the appellants in this appeal. The 1st defendant at the trial court is now the sole respondent in this court as the appeal against the 2nd defendant has been discontinued. It is not contested in the matter that the appellants, each of them, have put in various years of length of service not below ten (10) years in their respective employments with the respondent. By identical letters dated 12/11794, their

respective employments with the respondent have been terminated on the ground that their services are no longer required and as alleged in the said letters their individual accounts have to be credited with a month's salary in lieu of notice, which has been paid much later.

The plaintiffs have initiated the instant action for the wrongful termination of their respective employments in the Edo State High Court Holden at Benin City. Pleadings have been filed and exchanged. The plaintiffs have claimed as set out in their amended joint statement of claim the following reliefs:

"i. A declaration that pursuant to the agreement reached on 27/2/92 between the first defendant and the Association of Senior Staff of Banks, Insurance and Financial Institutions (New Nigeria Bank Plc Unit) being the statutorily recognized sole collective bargaining agent on behalf of and to represent the plaintiffs, authorized to negotiate on behalf of the first Defendant before the purported termination of their respective employments, the respective pension and gratuity rates should take cognizance of their basic salary, housing, transport and luncheon allowances (i.e. total emolument) and not basic salary only as is being offered to the plaintiffs by the 1st Defendant.

ii. A declaration that pursuant to the main collective agreement between the Nigeria Employers Association of Banks, Insurance and Allied Institution and the Association of Senior Staff of Banks, Insurance and Financial Institutions which sets out the conditions regulating the plaintiffs' employment with the first Defendant currently under the management and control of the 2nd Defendant, the plaintiffs' employment with the first Defendant's employment is only properly determinable under Article 5 thereof on redundancy and their entitlement calculated and paid as provided thereunder.

iii. An order of mandatory injunction directing the 1st Defendant currently being managed and/or supervised by the 2nd Defendant to pay the plaintiffs their outstanding benefits (as is more particularly set out in the particulars of special damages set out in the Appendixes 1-14 annexed hereto with interest at 21% from February 1994 till judgment is delivered in this case and thereafter at 10% till the entire sum is paid up.

iv. N5 million damages to each of the plaintiffs for unlawful termination of their employment.

ALTERNATIVELY

(a) A declaration that the first Defendant's letters dated 12/1/94 to each of the plaintiffs purportedly terminating their respective employment is contrary to the main collective agreement between the Nigeria employers Association of Banks, Insurance and Allied institution and the Association of Senior Staff of Banks, Insurance and Financial Institution setting out the conditions of service of the plaintiffs and is thus manifestly unlawful, null, void and unenforceable.

(b) A declaration that the plaintiffs are still in the employment of the 1st Defendant which is currently being managed and/or controlled by the 2nd defendant and are thus entitled to all their salaries, allowances and Increments from 12/1/94.

(c) An order directing the 1st Defendant to deduct all or any sums of money unlawfully and unilaterally credited to the plaintiffs respective accounts as indicated in their letters of purported termination save for tile due accruals to the plaintiffs by way of salaries, allowances were unlawfully declared as terminated by the first Defendant.

The plaintiffs will at the trial found and rely on all documents, letters, books memoranda and entries relevant to this case at the hearing, in proof of their claims."

The aggregate monetary reliefs that have been claimed in the suit by each of the 41 plaintiffs are as set out at pages 76-122 of the record.

Save to say 1993 the 1st defendant has become unhealthy financially as a result of which the 2nd defendant (i.e. the Central Bank of Nigeria) has moved to take over the management of the Bank to avert its total crashing into liquidation as a Bank. The measures that have been put in place in that exercise have led to the reduction of the workforce of the Bank which has necessarily affected the plaintiffs hence the issuance of termination letters to each of them on payment of one month salary in lieu of notice to everyone of them. The plaintiffs have brought this action having been aggrieved by the alleged wrongful termination of their respective employments.

Pleadings have been filed and exchanged and the case has proceeded to trial at the end of which the trial court has found for each of the plaintiffs' respective benefits and entitlements as contained in their respective claims. See pages 76-112 of the record.

The claim for general damages has been dismissed as not proved.

The 1st defendant being dissatisfied with the decision of the trial court has appealed the decision to the lower court. The plaintiffs have also cross-appealed the refusal of the trial court to grant to each of the plaintiffs any general damages based on the delay in paying one month salary in lieu of notice to each of the plaintiffs at the time of notification of terminating their respective employments. It is worthy of note that there is a consensus that the said payments that is to say the one month salary in lieu of notice have much later been paid to each of the plaintiffs although several months after the letters terminating their respective employments. B
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The lower court has in upholding the appeal of the 1st defendant set aside the entire decision of the trial court which has awarded the plaintiffs their respective claims as perverse and it has also dismissed the cross-appeal filed by the plaintiffs for general damages on the basis that the termination of the appointments of the plaintiffs/respondents has not been wrongful. D

The plaintiffs who are the appellants in this Court aggrieved by the decision have now appealed the decision of the Court below given in favour of 1st defendant now respondent in this court by a Notice of Appeal filed on 11/4/2001 containing 4 grounds and an additional ground of appeal filed by leave of court. I must note that the appellants have dropped the Central Bank of Nigeria, the 2nd defendant in this matter hence it has not featured in this appeal. In accordance with the Rules of this court the appellants and respondents have filed and exchanged their respective briefs of argument in this appeal. The appellants have raised four issues for determination as follows- E
F

"1. Whether the Court of Appeal was right in finding that exhibits D1, F, J1 - J5, N and P were minutes of meetings or in the category of Exhibit G and as such gentlemen agreement which are not justiciable.

2. Whether or not the court below was right in finding that for item 14 Exhibit J2 to be enforceable, it must be incorporated into the appellants' termination letters of 12/1/94. H

3. Whether or not the court below was right to find that the award by the High Court of gratuity and pension based on total emolument predicated on Exhibits D, F, J5, N and R is perverse.

4. *Whether the Appellants were not entitled to an award of damages in consequence of the failure to pay their respective entitlements at the time of the termination of their respective employments.* ”

The respondent has filed a brief of argument on 2/11/2001 in which it has adopted the four issues as formulated by the appellants, B which have been similarly replicated in their further Amended brief of argument deemed filed on 18/11/2011.

Let me digress a bit, based on a complete overview of this case to note that the respondent having been granted leave to file and argue a ground of appeal on the issue of jurisdiction of the trial court C to hear and determine this suit ab initio has cross-appealed the lower court’s decision dismissing that ground of appeal as set out at page 367 of the record. I will come to it anon. Even though the issue of jurisdiction which in principle ought and should be dealt with firstly as D borne out by a plethora of authorities my reason for stepping it down in this judgment will become manifest in the conclusions I have reached on that issue later.

On a critical look at the four issues for determination as identified by the appellants in this appeal it is clear that issues 1, 2 and 3 E again considered on an overview of this matter are inter-related not only as they concern the findings of the lower Court that Exhibits D, F, J1 - J5, N and P1 are collective agreements between the joint consultative committees of the employers representatives and employees representatives i.e. the collective parties) in this matter. These F agreements as contained in the aforesaid exhibits are also collective agreements in the category of Exhibit G, the official Handbook titled “Main Agreement between the Nigeria Employers Association of Banks, Insurance and Allied Institutions and Association of Senior G Staff of Banks, Insurance and Financial Institution”. More importantly, the various agreements contained in Exhibits D, F, J1 -15 J5, N and P1 relate to specific issues of staff welfare etc. Following from the above preamble I must state before hand that to discuss issues 2 and 3 as Formulated by the appellants in this matter in my view has to H depend on holding that Exhibits D, F, J1 - J5, N and P1 do constitute agreements raising contractual obligations enforceable at law by the appellants. Meaning that the respondent is contractually bound to the appellants to perform the terms of the agreements contained in Exhibits D, F, J1 - J5, N and P1. The lower court has rejected as

perverse the legal enforceability of the terms of these collective agreements in Exhibits D, F, J1-J5, N and P1 not only as between the collective parties this is to say employer and New Nigeria Bank Plc Unit of the Union but also as between the individual appellants as employees and the respondent as the employer. And it seems to me sound enough. From the above surmises it is my view that I take issues 1, 2 and 3 together at one fell swoop to avoid being repetitive.

Further to the foregoing what is important in discussing the 3 (three) issues raised for determination herein together as it appears to me is that it is not necessary discussing the question whether the respondent in dismissing the appellants has or has not acted in violation of these agreements in exhibits D, F, J1 - J5, N and PI as such; and thus arising therefrom that the respondent has breached the appellants' rights if at all enforceable at law against it. I do not think that whether or not the respondent has violated these agreements even on the peculiar facts of this case should really come into any contention in this case. And so, this appeal has to be proceeded with by conceding the alleged violations in the appellants' favour. In that vein the respondent is taken to have acted practically in violation of these agreements as contained in the said exhibits. This then leads to the most outstanding question in the appeal of whether the respondent ab initio is contractually bound to the plaintiffs/appellants according to the terms of these agreements as contained in the said exhibits. This is because the appellants' legal right of suing in this matter for the alleged breaches as regards the terms of the agreement as contained in the said exhibit are clearly predicated on that footing. See: *Thomas v. Olufosoye* (1986) 1 NWLR (Pt. 18) 669 at 690 and *Ogbuehi v. Governor of Imo state* (1995) 9 NWLR (Pt. 417) 53 at 85.

In this respect the next step is premised on whether the appellants have established that their respective contracts of employment have included, indeed have incorporated these agreements so as to make them enforceable at their suit against the respondent. In that sense once the poser is answered affirmatively the instant action having been predicated on the evidence of having breached their contractual obligations as per the said agreements the claims of the appellants in this suit must succeed otherwise the action must fail. I therefore embark on discussing this matter by taking the question of viola-

tion of these agreements in the appellants' favour.

In this regard the trial court, on the one hand, has granted totally the appellants' rights entitling them to their respective reliefs as claimed and as I have commented above it has also refused the claim as to general damages. The lower court, on the other hand, in reversing the decision of the trial court in this matter has not found these agreements as contained in these exhibits as properly establishing any legal relations giving rise to any enforceable contractual liabilities as between the respondent and the appellants severally in this matter.

I now pause here to come to discuss the three issues in the appellants joint brief of argument. It is their submission that Exhibits D, F, JI - J5, N and PI are binding agreements between the instant parties as they are collective agreements between the management of the respondent and Association of Senior Staff of Banks, Insurance and Financial Institution (New Nigeria Bank Plc Unit) as Exhibit G - the Main Collective Agreement.

The appellants have argued in their joint brief of argument that where the terms of a collective agreement have been adopted at the level of the employer and the New Nigeria Bank Plc Unit as representing the employees that the agreements become automatically binding and enforceable at law as between the instant parties as the agreements have formed part of the terms of their respective employments; they refer to and rely on *Union Bank of Nigeria Ltd & Anor. v. Mrs. F. F. Edet*, and *Abalogu v. The Shell Petroleum Development Co. of Nig. Ltd.* (2003)13 NWLR (Pt.837) 303 at 337, and *Chukwumah v. Shell Development Nig. Ltd.* (1993) 3 NWLR (Pt.289) 512 at 543-544. In this respect they have argued that the terms of these agreements touch on the conditions of the appellants' employment and have created legal relations making them enforceable at law on their being breached at the suit of the appellants without more. On Exhibit D specifically it has been contended to have dealt with 17 items of agreements on specific matters of staff welfare as agreed by the collective parties in this matter. And that such agreements they submit have been so indicated against each of these items in Exhibit D. And that the agreements having been adopted as part of their conditions of employment are enforceable at the suit of the appellants; even moreso Item 11 in Exhibit D has also stipulated 1/3/1992

as the date of the effective implementation of the said agreements particularly so on the issues of pension and gratuity which have to be computed to take cognizance of the appellants' basic salaries, housing etc. On the meaning of "agreement" in the context of this matter. It is submitted that the word, "agreed" as used in these agreements does not admit of any other meaning than what it says/denotes. B

The appellants have also adverted to their pleadings particularly paragraphs 5 and 6 of the Amended statement of claim as well as the appellants' PW1's testimony thereupon to strengthen their case on having reached binding agreements as regards these 17 Items as contained in Exhibit D. They have also referred to paragraph 10 of the Amended Defence and the evidence of DW1 thereupon as well as the address of the Defence Counsel, again to show an overall consensus on the said agreements as having raised contractual liabilities in respect of those items as contained in exhibit D and as pleaded. D They therefore have urged that the parties as well as the courts are bound by the pleadings and have; referred to and relied on *African Continental Seaway Ltd. v. Nigerian Dredging Road and General Works Ltd.* (1977) 5 SC 235 at 250 per Irikefe JSC as he then was (to show that courts 5 are as much bound by the pleadings of the parties) Also see: *Madam Etiko Ukpakara & Ors. v. Ominike Ebevuhe* (1996) 40/47 LRCN 1481 at 1484. E

On Exhibit J2 - the minutes of the meeting of 10/1/92 between the management of the respondent and the appellants branch union; again, 1" the appellants have argued in the same vein to indicate that the agreements reached on redundancy issues are completely in accordance with the stipulation in Exhibit G and that such binding agreements have per se constituted sufficient adoption of the said redundancy provisions as contained in Exhibit G into the appellants' conditions of employment and that they are enforceable at their suit. F G

It has further been submitted that as agreed and pleaded by the appellants in paragraph 5(b) of the Amended statement of claim that the respondent has always negotiated on all issues of its staff conditions of employment with the appellants' unit of the union (i.e. New Nigeria Bank Plc Unit) and never with an individual employee as the individual appellants here and that these agreements having raised contractual obligations arising from their employment relation- H

ship are nonetheless binding and enforceable without more by the appellants who have authorized their union to negotiate these agreements on their behalf.

It is argued that by Exhibit A being a prototype letter of employment issued to each of the appellants that they are bound by the terms of their conditions of employment as stipulated therein and that by the use of such phrase like, “for the time being” in their contracts that all future agreements as and when reached between the respondent and ASSBIFI (New Nigeria Bank Plc Unit) are deemed adopted into their respective letters of employment in their submission as I understand it that the agreement reached between the respondent and the said unit of employees union binds not only the immediate collective parties that is as an agreement made between the employer and New Nigeria Bank Plc Unit of the Union but also between the individual appellants severally as employees and their employer, the respondent in this matter and so are Exhibits D, F, J1 - J5, and P1 being collective agreements on several specific matters in regard to their conditions of employment without having been specifically adopted, all the same that they have formed part of the employees’ contracts of employment and so binding on the appellants and the respondent as they have created legal relations between them, which if breached are actionable at the suit of either party to the contract. See: Union Bank of Nigeria Ltd. & Anor. v. Edet (supra). In this regard they have also submitted that the contents of a written document as the instant agreements (i.e. as per Exhibits D, F, J1-J5, N, P1 and G) which otherwise are clear and unambiguous and reflect agreements as made between the collective parties herein cannot be altered or varied by parole or oral evidence.

The appellants have therefore urged that the issues ought and should be resolved in their favour.

The respondent has responded vehemently to the foregoing submissions in its brief of argument by examining Exhibits D, F, J1 - J5, N and P1 and observing thereof that (1) they are records of the minutes of meetings as to what have taken place between the representatives of the parties herein (as collective parties) and have never been intended to create legal relations and (2) that though the word “agreement” describe and denote the aforesaid exhibits they have been in actual fact true recordings of the resolutions reached at the

various joint negotiating meetings of the collective parties and (3) that various Items discussed at the said meetings do not relate to the conditions of employment of the staffer their welfare and are in most cases otherwise too vague enough to create legal relations. In other words that in most cases the said agreements cannot be construed as creating legal obligations on the part of the collective parties to the agreement nor between the instant parties to this suit. It is therefore submitted that the exhibits are sui generis and come within the purview of collective agreements as defined in Section 47(1) of the Trade Disputes Act 1990. And that the legal status of the section has been judicially pronounced on in *Union Bank of Nigeria Plc v. Edet* (supra) (wherein it is held inter alia that a collective agreement to be binding and enforceable has to be expressly adopted into either the letter of appointment or a subsequent communication varying the terms of employment of an employee). The respondent therefore has submitted that in neither the pleadings nor in the testimonies of the witnesses at the trial have the instant exhibits as aforesaid satisfied the above definition and so that the alleged agreements are not capable of enforcement at law by the appellants. Even then it is alleged that there is no privity of contract between the appellants and the respondent vis-a-vis the said agreements as contained in the aforesaid exhibits. And besides, that none of the appellants as an individual has personally negotiated the adoption of these conditions of employment with the respondent as contained in the said Exhibits but through their Union representatives and that mere labeling of these documents as agreements does not ipso facto make them legally binding enforceable agreements at law by the individual appellants, and that the appellants have failed to prove these agreements as having created legal relations binding and enforceable as contracts as Stipulated in *Edet's* case (supra) and see also *T.C. Makwe v. Nwakor* (2001) WRN 1 at 110 per Iguh, JSC (On privity of contracts to the effect that only parties to a contract can sue and be sued on the contract) and that as these agreements have not been adopted into the appellants' contracts of employment that no legal rights of the appellants have arisen therefrom albeit as regards their respective conditions of employment to sustain the instant claims. See *Thomas v. Olufosoye* (1986) 1 NWLR (Pt. 18) 669 at 690 and *Ogbuehi v. Governor of Imo state* (1985) 9 NWLR {Pt.417} 53 at 85 (which decisions are on the issue

that wherever a plaintiff is claiming a remedy, that the remedy must be founded on a legal right).

Furthermore, it is submitted that the lower court has carefully examined and evaluated these documentary evidence to reach its conclusion of non-enforceability of these agreements by the appellants and that the appellants have not faulted nor have they challenged their evaluation to be wrong or perverse. See: *Nwadiogba v. Nnadozie* (2001) 39 WRN 71 and *Bassil v. Fejebe* (2001) 21 WRN 58 at 75 - 76. The respondent submits that for all this, that the decision in *Union Bank of Nigeria Plc v. Edet* (supra) is properly decided and represents the law in this country and has urged this court to uphold the same even moreso as the principles that have informed that decision have been adopted and followed in many cases including *New Nigeria Bank Plc v. Egun* (2001) 22 WRN 29, *Nigeria Arab Bank Ltd. v. Shuaibu* (1991) 4 NWLR (Pt. 186) 486, *A.C.B. Plc. v. Mbisike* (1995) 8 NWLR (Pt. 416) 725. The court is urged to resolve this issue in favour of the respondent and dismiss the ground of appeal.

The instant issue one, I have to observe, is in pari materia with issue one as raised by the respondent before the lower court as per pages 349 -353 of the record. The lower court has so brilliantly treated the issue and properly evaluated the agreements as contained in Exhibits D, F, J1 - J5, N, P1 and G in issue here to arrive at its solid findings which cannot be faulted. I find the treatment of these questions as impeccable and I have approved and adopted the same for purposes of resolving this appeal. In that regard I quote the following abstract of the lower courts judgment with approval:-

"In order not to gloss over any of them, I intend to consider them one by one in this judgment Exhibit 'D' at pages 211-212 of the record dealt with 17 items. I am of the firm view that what is recorded as Agreement under each Item is clearly a resolution and not a legally binding and enforceable Agreement. By the minutes or recording items 5,6,8,12 and 14 were all 'stepped down'.

Under Items 15 and 16 it was recorded "No Agreement". A careful look at items 1, 2, 3, 4, 7, 9, 10, 11, 13 and 17 reveal that they cannot be intended to create a legal relationship. Can Exhibit 'D' which is in the main minutes of the meeting it recorded be referred to as a legally binding and enforceable Agreement? The an-

swer is in the negative. It seems to me therefore that the learned trial judge made a grave error in law when she held at page 204 of the record that Exhibit D is a binding Agreement and justifiable. Exhibit 'F' at page 214 of the record dealt with 7 items. Item (1) is a decision to implement the Agreement reached on 22/2/92 in favour of Mr. B. I. Anazla and Mrs. Avboraye. It does not seem to me that those not named in item one can note it as legally binding and enforceable in their favour, see Ikpeazu vs. A.C.B. (1965) N.M.L.R. 374 at 379. It seems to me also that items 2, 3,4,5,6 and 7 cannot be construed to create a legal obligation.

Exhibits J1 - J5 at pages 216-220 of the record are of the same pattern as Exhibits 'D' and 'F'. Exhibit J1 was a communique: Exhibit J2 merely reported Management's action taken in respect of the three items on the agenda; Exhibit J3 dealt with n Items 5 which cannot by any stretch of imagination be called legally binding and enforceable agreement; Exhibit J5 dealt with 2 items which cannot be made legally enforceable without more. Exhibit 'N' at pages 224-225 dealt with 13 items or topics. It is particularly instructive to have a close look at items 7,8,9,10 and 12. This document to my mind cannot in law be categorized as an agreement which is legally enforceable. Exhibit pi at pages 226-227 of the record is like the aforementioned ones. I have taken a hard look at Exhibits D, F, J1 - J5, N and P1 and I have come to the conclusion that they belong to the same category as Exhibit in the Main Collective Agreement, Exhibit 'G' is entitled: Main Collective Agreement between the Nigeria Employers Association of Banks, Insurance and Allied Institutions and the Association of Senior Staff of Banks, Insurance and Financial Institution. The status of Exhibit 'G' has been elaborately defined and eloquently explained by this court in Union Bank of Nigeria Ltd. & Anor. vs. Mrs. E. E. Edet (1993) 4 NWLR (Pt. 287) 288 at 297 -298, 303 and 304." Akintan, J.C.A. at page 304 paragraphs C – E said:-

"The learned trial Judge was also in error to have applied the provisions of the booklet (Exh. 13) titled 'Recognition and Procedural Agreement and Main Collective Agreement between the Nigeria Employers Association of Banks, Insurance and Financial Institutions'. This is because he failed to advert his mind to the fact that both the plaintiff and the defendant in the case before him have not adopted the provisions of the document either in the letter of ap-

pointment or in a subsequent communication varying the term of employment before the respondent could enforce its contents against the appellant”.

Thus, inter alia, this court held in Edet’s case that “the general tenor of Collective Agreement is that it was never intended that the Agreement should create any legally enforceable contractual obligation by individual employees”. For Exhibits D, F, J1-J5, N and P1 to become legally binding and justiciable there must be evidence of adoption of the agreement either by incorporation of the Agreement into the existing service Agreement by amending the old provision to reflect the new one or by addendum incorporating an entirely new award. In the case in hand nothing of the sort happened between the appellants and the respondents. In Thomas vs. Olufosoye (1986) 1 NWLR (Pt. 18) 669 at 690, Oputa, JSC said: wherever a plaintiff is claiming a remedy that remedy must be founded on a legal right... the first hurdle for the plaintiff to clear is to let their statement of claim reflect their legal authority to demand the declaration sought and their right which had been injured or which is likely to be injured and for protection of which they need the remedy of an injunction.

Again in Ogbuehi vs. Governor of Imo state (1995) 9 NWLR (Pt. 417) 53 at 85 this court held inter alia:-

“that where a plaintiff fails to establish that his claim is justiciable he has thus failed the first two tests used in determining the locus standi of the person.” From the above authorities, I have no doubt in my mind that Exhibits D, F, J1 - J5, N and P1 are minutes of meeting held or at best, they like Exhibit G’ are gentlemen’s agreements, “a product of trade unionists pressure” ‘totally devoid of sanctions’ and that failure to act in strict compliance with any of them is not justiciable”. See Edet’s case supra.

At page 203 of the record the learned trial judge held that:-
“It is my findings that the plaintiffs were redundant and ought to have been so declared and entitled to redundancy payment as provided for in Exhibit ‘G’ their appointments having ceased on that ground.”

With due respect to the learned trial Judge, the above findings

amount to going on a voyage of discovery as the findings are not supported by the evidence adduced before the trial court.

I should point that there is nothing in Exhibit J2 to show that the 1st appellant expressly adopted the provisions of Exhibit 'G' in relation to redundancy and therefore the findings and conclusion of the lower court on this point are perverse."

The foregoing abstract in essence is the core of the lower courts well considered findings in its judgment in this matter. I have closely examined the above abstract of the lower court's judgment and in my view it rightly has found that Exhibits D, F, J1-J5, N, P1 and G severally belong to the category of collective agreements reached between the respondent (as the employer) on the one hand and the Senior Staff Association of Banks, Insurance and Financial Institution (New Nigeria Bank Plc Unit) on the other hand i.e. as the collective parties). And that they i.e. the agreements) each of them are not intended to create any legal relations giving rise to any contractual obligations as they, each of them (i.e. the agreements) represent the minutes of meetings of the joint consultative committees as between the collective parties and are therefore not justiciable. The term "collective parties" as used in this matter are the representatives of the employer or employer's organization and a trade union or unions. And again it is to be noted that wherever any collective agreements have created legal relations that in order to be binding and justiciable as between an employer and a worker as the instant parties to this action (i.e. the respondent and the individual appellants) the said collective agreements must be firstly incorporated expressly or by necessary implication into the contracts of employment of the workers as the appellants i.e. severally and has referred to and relied on Union Bank: of Nigeria Plc v. Edet (supra). This finding goes to the gist of the contention in the matter. I must also reiterate here that what really is the crux of this matter as I have said earlier on does not perforce pertain to the specific violations of these collective agreements per se the respondent vis-à-vis the appellants' respective entitlements to the benefits and entitlements as stipulated in the aforesaid collective agreements but on whether the said agreements each of them, have created legal relations which are therefore enforceable at law, on their having given rise to a binding contractual obligations between the instant parties to this suit. In other words, this raises the

poser whether these collective agreements are otherwise enforceable at the suit of either party without the said agreements firstly having created legal relations between the parties and secondly on having been incorporated into the contracts of employment of the appellants. Therefore Edet's case on the peculiar facts of this matter is
 B inapplicable to the facts of this case. The lower court has rightly found that both arms of the pre-conditions are not present in this case.

***More particularly, the abstract has dealt with Exhibit J2 on redundancy matters as claimed by appellants and the subject matter of issue 2 for determination here and to hold that as regards the appellants' entitlements, gratuities and pensions payable vis-à-vis their claims for redundancy benefits howsoever these entitlements have to be computed. On whether the respondent therefore is contractually bound to the appellants as per the terms of the agreements contained in Exhibits D, F, J1 - J5, N, P1 and G in other words, whether their employment relationships have included and incorporated the said agreements as contained in the aforesaid exhibits, the lower court has also found and again, rightly in my
 E view that unless and until the appellants can satisfy the requirements, that is to say, that the said agreements have created legal relations coupled with their respective incorporation into the appellants' respective contracts of employment the appellants cannot sue (and even be sued for any breaches
 F of the aforesaid exhibits and so in my view that no reasonable cause of action has arisen between the appellants and the respondent so to sustain the instant action. It has been found and rightly for that matter that the appellants have failed
 G majorly in these respects. There is no gainsaying that these preconditions are the inescapable hurdles the appellants here have to skip in order to bring their claims arising as per the said exhibits within being enforceable at law and at the instance of the appellants.*** On the question that there exists no trade
 H dispute arising from the status of the aforesaid exhibits as between the instant parties the lower court has also found that the instant action, not having been covered by the provisions of sections 20(1) and 47(1) of the Trade Disputes Act has rightly in my view been instituted in the State High court of Edo State. And if it were to be

otherwise, the jurisdiction of the State High Court in this matter would have been rightly ousted. I will however, return to examine further the issue of jurisdiction in some detail anon, even although the lower court has held that the State High Court has jurisdiction in the matter. There can be no doubt that the principles governing the determination of a court's jurisdiction in any relative matter have been expounded by this Court. See the case of *Madukolu v Nkemdilim & Anor* (1961) NSCC (Vol. 21371). It is basic to the entire adjudication that where a court lacks jurisdiction the proceedings are a nullity. B

Finally without any doubt in my mind if I may repeat I agree and affirm with approval the above findings of the lower Court's judgment as per the above abstract as representing the correct statement of the law on those questions dealt with in the said judgment in this matter. And I so adopt these findings. From the foregoing holdings it appears to me the three issues raised for determination in this appeal before this court have been left floundering and so rightly taken together. C D

This matter does not quite rest there. Having agreed with the respondents submissions that Exhibits D, F, J1 – J5, N, P1 & G are all sui generis and fall within the broad definition of collective agreements I further examine the said Exhibits on the backdrop of Section 47(1) of the Trade Dispute Act 1990 which have defined "collective agreements". The statutory definition of "Collective Agreement" is as defined in Section 47(1) of the Trade Disputes Act 1990, it provides as follows:- E F

1. Any agreement in writing for the settlement of disputes and relating to the terms of employment and physical conditions of work concluded between:

(a) An employer, a group of employers and one more organization representative of employers, on the one hand and G

(b) One or more trade unions or organizations representing workers or duly appointed representative of any body of workers on the other hand.

Even though the foregoing provisions of subsection 1 of Section 47 of the Trade Disputes Act are plain and unambiguous and have talked of "any agreements" nonetheless these provisions have nowhere referred to the phrase "any agreement" as used in the Act as conterminous with contracts" in the strict sense of word. The rea- H

son is quite simple and obvious as collective agreements (even in this case construed from the backdrop of the instant agreements as contained in these exhibits) are known to cover many different kinds of agreements on topics and matters that are not really amenable to be described as contracts as they are not legally binding not having created legal relations. So that the phrase “collective agreement” is not in every case synonymous with the word “contract”. Not having appreciated this distinction is the bane of the appellants’ erroneous contention in this appeal by equating the instant agreements as per the said exhibits as legal contract enforceable between the parties. **It is trite that some collective agreements have been known to be imprecisely expressed and therefore are not capable of enforcement as contracts, as borne out in the case of these exhibits on not having given rise to any legal relations, thus creating contractual liabilities between the parties as found in the abstract of the lower court’s judgment in this matter. Therefore Exhibits D, F, J1-J5, N, P1 & G1 if I may emphasise, not having created any legal relations between the parties are incapable of creating contractual obligations and so incorporating them into the appellants’ contracts of employment cannot at all be contemplated. A second look at the foregoing abstract show that the lower court has taken every item of the collective agreements as contained in the said exhibits and has examined them seriatim to conclude that none of them has created legal relations as between the collective parties nor as between the instant parties to this suit.**

The provisions of Section 47 (1) (supra) however require collective agreements to be in writing so as to formalize the agreements. What has further emerged from the definition with respect to many cases of “collective agreements” that where they have created legal relations giving rise to contractual obligations between the parties they are enforceable by the immediate collective parties (i.e. between an employer an employers’ organization and a trade union or unions) but as between the employers and the workers as the respondent and appellants here it is only so where they have been incorporated into the contracts of employment of the employees so as to be actionable for any breaches arising therefrom at the suit of either party to the contractual relationship. Otherwise they are no more than mere

vague inspirational term which are bound to present practical problems of enforcement and the best method being to use political or trade union pressure to bring about their enforcement. The other notable, crucial feature of collective agreements arising from their being the products of the joint negotiating bodies of workers representatives and the employer's representatives and in that regard being in writing is raising the presumption of being legally enforceable provided the agreements have created contractual obligations arising out of legal relations as between the parties. Although the instant Exhibits are documents relating to collective agreements they do not come within the ambit of Section 47(1) (supra) as binding "collective agreements" and therefore are not binding. B
C

In that vein the lower Court has rightly showed the reluctance to enforce the instant collective agreements particularly so as the said collective agreements cannot be reduced to individual contractual obligations as between the instant parties to this suit for being most inappropriate for the reasons I have given above. It is in this regard that the respondent has also raised the issue of want of privity of contract as a crucial hurdle to the enforcement of these exhibits; I think that this proposition is being made on the assumption that the Exhibits are binding collective agreements that is binding as between the collective parties on the one hand and on the instant parties to this suit on the other hand. D
E

In such situations unless and until the collective agreements having created legal relations are incorporated into the contract of employment of an employee the said collective agreements cannot be enforced by the employee, indeed either party as in this matter for want of privity of contract. It is on the principle of want of privity of contract that the courts have showed great reluctance to enforcing collective agreements between collective parties at the instance of an employee(s) without the collective agreements having firstly been incorporated into his contract of employment. And so as the said exhibits not being collective agreements per se as found by the lower court and as affirmed herein cannot be examined on this ground of want of privity of contract as they have created no contractual obligations arising from any legal relations. See the case of *Holland v. London Society of Com-* F
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positors (1924) 40 T.L.R 440. ***The doctrine of privity of contract is so fundamental to the enforcement of contractual obligations between the parties to a contract if I may repeat that to enforce a collective agreement at the level of the employer and his employees the agreements have to be firstly incorporated into the conditions of employment of the employees.***
 B However see *Rookes v. Barnard* (1961) 2 AER 827 per Lord Donovan on the authority of the union to act so as to bind its members.

However, it is also the case as borne out by these collective
 C agreements that a trade union may negotiate with the employer in regards to the terms of conditions of the employees which become binding on an employee upon the individual employee accepting his employer's offer of employment embodying such collective agreements. See: *Edwards v. Skyways Ltd.* (1964) 1 AER. 494. Again in
 D such situations, an employee can sue and be sued as regarding the terms of the collective agreements. This is not the case here as the instant collective agreements have not created ab initio any legal relations firstly as between the collective parties not to say of the want of their incorporation into the contracts of employment of the appel-
 E lants. It is correct from the facts that these agreements have not formed part of the conditions of employment accepted by the appellants at the time of their respective employments. Besides, it is not the case of either party in this matter. It is also not the case of both parties to this
 F matter that these collective agreements all things being equal have been adopted and incorporated by implication into the contracts of employment of the instant employees on having been provided for in the employees on having been provided for in the employees' respective contracts of employment thus meaning that the conditions
 G of employment of the employees have to be regulated by the terms of collective bargain(s). This is moreso where the court is disposed to imply a term that the employment has not only been contracted upon on the terms of the letters of employment but also upon those conditions as they may from time to time be altered. In that regard
 H the employees' respective contracts of employment have by such provisions become amenable for incorporating or adoption by implication the terms of collective agreements as altered. This modus of incorporation of collective agreements has not been alleged in the pleadings nor in evidence in the instant case. See: *Hill v. Levy* (1858)

157 E.R. 366, *Maclea v. Essex Lines* (1933) 45 L.L.R. 25 at 27, *Spring v. National Amalgamated Stevedores & Dockers Society* (1956) 2 AER 231, *Callison v. Ford Motor co. Ltd* (1969) 1 T.R. 74. There can be no doubt as expounded in the above cited cases that where the incorporation of collective agreements into an employee's contract of employment is by this modus they are enforceable at the suit of either party to the contract of employment B

From the above surmises therefore, collective agreements all things being equal, having created legal relations giving rise to contractual obligations, are enforceable at law and at the suit of either the worker (as the appellants) or the employer (as the respondent here provided that the said collective agreements expressly or by necessary implication have been incorporated into the contracts of employment of the worker(s) otherwise they are not enforceable in that case by either of the instant parties in the employment relationship. D

Again, this matter does not quite rest there, as I must go further to add that the above conclusions I have reached in this matter have clearly undermined the status of Exhibits D, F, J1 - J5, N and P1 having been examined severally in this matter has been held as not binding collective agreements at law upon which to consider the appellants respective claims in this matter. E

It follows that none of them severally or jointly therefore is enforceable in contract as rightly found in the lower court's judgment, which I affirm, as these agreements as I must continue to emphasize in this judgment have not created contractual obligations upon any legal relations as between the parties nor for whatever they are worth have they been adopted or incorporated expressly or impliedly into the respective conditions of service of the appellants as I have also found here. Meaning in effect that issues 2 and 3 for determination in this appeal have particularly become otiose having been exhaustively disposed of in discussing these issues together herein. There is no need examining both issues severally. F G H

I therefore affirm the lower court's dismissal of the award of gratuity and pension entitlements and other benefits based on the total emoluments of the appellants as predicated on exhibits D, F, J1- J5, N and P1 vis-à-vis the monetary claims

of the respective appellants by the trial Court as perverse and must be set aside and I so set each of them aside. The three issues are therefore, resolved against the appellants.

B Coming to issue 4, the appellants have contended based upon paragraph 15(a) of the Amended Joint statement of claim that not having paid them their salaries in lieu of notice which ought to have been paid to them simultaneously along with handing to them their respective termination letters, has entitled them to an award of general damages for the omission. However it should be noted that there C is a consensus on both sides that the terminal benefits including their respective salaries in lieu of notice have been paid later. The Court is urged to reverse the lower court on their findings on this issue as they rely for so urging on the case of Chukwumah V. Shell Petroleum (supra) (which has decided that a party seeking to put an end to a D contract of employment must pay to the other party the salary in lieu of notice at the time of termination of the contract). The court is urged to invoke its power under Section 22 of the Supreme Court Act to decide the matter as all the materials to enable it so to do are before the Court.

E The respondent on its part has contended that the appellants are not so entitled to this relief as it is not specifically claimed in their pleadings and proven by evidence at the trial and that the lower courts having found that the appellants' respective employments have F not been wrongfully terminated have dismissed their respective claims on damages. And that there is a concurrent finding by the lower courts, which finding has not been established to be perverse nor has it caused a miscarriage of justice. See: Kenon v. Takam (2001) 34 WRN 98 at 118.

G ***The appellants with respect appear to have raised this issue as an afterthought as there is no specific claim to this relief for non-payment of the said terminal benefits of salaries in lieu of notice in the pleadings. It is trite that parties are bound by their pleadings and that matters not pleaded go to H no issue. This issue as it stands in my view is untenable as the appellants are seen to have appropriated the said terminal benefits including their respective salaries in lieu of notice though paid later in time without having raised any protests as to the damages caused by the delay of late payments and***

they have not even made the necessary refunds of the respective sums of money paid to each one of them in order to properly join issue on the question with the respondent. It has therefore portrayed the appellants as approbating and reprobating in regard to the said payments of their terminal benefits accordingly. I agree with the lower court's findings and I hold that having found that their contracts of employment have not been wrongfully terminated, the appellants cannot rely on the case of Chukwumah v. Shell Petroleum etc (supra) not on all fours with the facts of this case to prop up their case here for a claim in general damages. This is so as damages in an action of wrongful determination of employment can only follow events where termination is wrongful. In the above cited case the employee has not been given any notice nor paid any salary in lieu of notice so that the principles that have governed that case are inapplicable here. I therefore agree and affirm the findings of the lower courts on this issue as I see no merits on the question. Issue 4 is resolved against the appellants.

The other remaining matter concerns the cross-appeal against the decision of the lower Court in dismissing the cross-appeal on the issue of want of jurisdiction of the lower courts to entertain this matter. The parties have filed and exchanged their briefs of argument in the cross-appeal. In the respondent/cross- appellant's brief is raised the sole issue as follows:

"whether or not the trial court had the jurisdiction to hear and determine the appellants claims as pleaded in paragraph 19(i-ii) D and 19(a) of their Joint Amended statement of Claim in view of the provision of the Trade Disputes Act and the Trade Disputes (Amendment Act) 1992"

The appellants/Cross-respondents in their joint brief of argument have raised a sole issue as follows:

"Whether the conclusion of the Court of Appeal that the High Court had jurisdiction to hear the case was correct".

It is trite that jurisdiction of a court to entertain a suit is based on the plaintiffs averments in the statement of claim and the reliefs claimed thereof. In this regard the respondent/cross-appellant has referred to the averments contained in paragraphs 8, 14 and 15 and 19(i) and (ii) alternatively paragraph 19(a), of the

Amended statement of claim to contend that the reliefs sought in paragraph 19 are ancillary to paragraph 19(i) and (ii) and 19(a) and that the ancillary reliefs relate to injunctive reliefs and monetary claims for wrongful termination of the appellants employments. Having had a cursory scrutiny of the pleadings of the parties in the case, the facts of the respondent/cross-appellant's case as projected in its brief in this matter are succinct and simple.

From the pleadings of the respondent/cross-appellant it has emerged that the agreements on staff welfare as per exhibits D, F, J1 -J5, N, P1 and G have been the result of a joint consultative body meetings of both parties this is, the appellants' representatives of Association of Senior Staff of Banks Insurance and Financial Institution (ASSBIFI) (New Nigeria Bank Plc Unit)" and the respondents representatives under the banner of "Nigeria Employee Association of Banks, (NEAB)". It is common ground that Exhibit G i.e. the Main Collective Agreement is the central hub of the other joint agreements reached in this matter. And that collective agreements of this nature and even as per the instant exhibits are never negotiated with any employee as the appellants severally in this case in his individual capacity for his sole benefit. And that the reliefs claimed in this matter have depended on the interpretation of the said 39 Collective Agreements as per the aforesaid exhibits vis-à-vis their being part of the appellants' respective conditions of service. It is opined that the definition of "collective agreement" is as defined in Section 47(1) of the Trade Disputes Act 1992. And that the appellants/cross-respondents have in this matter alleged the existence of a trade dispute between the parties as arising from the non- implementation of their conditions of service as agreed in exhibits D, F, J1 - J5, N, P1 and G in this suit. The appellants therefore have contended that their legal rights have thus been breached hence the instant action to examine the interpretation of these agreements upon which their claims are based. The main thrust of their case is that exhibits D, F, J1 J5, N, P1 and G are collective agreements between the parties and that it is the National Industrial Court and not the instant state High Court that has the exclusive jurisdiction to adjudicate in any dispute arising for their interpretation, the issue having arisen from a trade dispute between the instant parties. They refer to a number of cases that are in support of their stance in this matter to include the following - Union

Bank of Nig. Ltd. & Anor. v. Edet (supra), A. C. B. v. Nbisike (supra), Nigeria Arab Ltd. v. Shuaibu (supra) NURTW V. Ogbado (1998) 2 NWLR (Pt. 537) 189, Anigboro v. Sea Truck (Nig) Ltd. (1995) 6 NWLR (Pt.399) 35, Tidex (Nig) Ltd v. NUPENG (1998) 11 NWLR (pt. 573) 263 and Daniel v. Fadugba (1998) 13 NWLR (pt. 582) 482.

B

They urge the Court to allow the cross-appeal, set aside the order of the lower court dismissing it and to strike out the case for want of jurisdiction.

The appellants/cross-respondents in their brief have contended that paragraph 19 of the Amended Joint statement of claim pertinent in determining the jurisdiction of the trial Court in this matter consists of declarations on the computation of the respective appellants entitlements to pension and gratuity, mandatory orders as regards the payment of their entitlements, benefits and general damages for unlawful termination of their respective employments with the respondent/cross-appellant and for delaying the payments of their respective terminal benefits in lieu of notice. For all this, they have opined that what is in issue in the matter is principally their claims of their respective entitlements based on having breached their respective contracts of employment. As I understand it, that is to say, an action for wrongful termination of their respective contracts of employment by a prototype letter dated 12/1/94 marked Exhibit B. Another question of great contention is as to whether the appellants/cross-respondents are workers within the contemplation of Section 47(1) of the Act (supra) and also whether there is a trade dispute between the parties concerning their conditions of employment. The court is urged to uphold the lower court's findings that the High Court and not the National Industrial Court is the court that has the jurisdiction in this matter.

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To deal with the National Industrial Court and its exclusive jurisdiction in this matter as urged by the respondent/cross-appellant against the backdrops of the foregoing facts and the questions that have arisen for discussion under this issue, it is necessary that I refer to and scrutinize all relevant provisions of the applicable enactments in regard to the matter starting with section 20(1) of the Trade Disputes Act as follows:

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"The court shall, to the exclusion of any other court, have

jurisdiction

*(a) to make awards for the purpose of settling trade disputes;
(b) to determine questions as to the interpretation of (i) any collective agreement...*

(ii)...

B *(iii) the terms of settlement of trade dispute as recorded in any memorandum under section 7 of this Act."*

The foregoing provisions have set out the limits of the jurisdiction of the National Industrial Court and in regard to its power to settle trade disputes on the interpretation of collective agreement between employers and employees and awards of an arbitration tribunal or awards of the court and the terms of the settlement of any trade disputes as recorded in any memorandum. Strictly speaking, it is the terminal benefits and entitlements of the appellants arising out of the termination of their respective contracts of employment that are in issue in this appeal. See: *Daniel v: Fadugba* (1998) 13 NWLR (Pt.) 582. And the question that has in the result come to the fore is whether the National Industrial Court has the requisite jurisdiction based on these facts to entertain the matter as having arisen from a trade dispute between the instant parties to this suit. Another set of provisions relevant and applicable to this matter is Section 1 A(i) of the Trade Dispute (Amendment) Act 1992 which has come into force on 1/1/1992 and it provides as follows:

F *"Section 1A (i) subject to the provisions of sub section (3) of section 20 of this Act, no person should commence an action, the subject matter of a trade dispute or any inter or intra union dispute in a court of law and accordingly, an action which, prior to the commencement of this section is pending in any court should abate and be null and void.*

H *Section 1 (A) (2) Notwithstanding the provisions of the Constitution of the Federal Republic of Nigeria, 1979, any order, judgment or decision made by any court other than the National Industrial Court established under this Act, in respect of any trade dispute, inter or intra union dispute prior to the commencement of this section shall cease to have effect".*

The above provisions as draconian in its plenitude as they are, have served to extend and deepen the exclusive powers of the National Industrial Court as to matters within its exclusive jurisdiction as

regards trade disputes whether inter or intra union disputes and as can be seen it is constituted the final court in all matters within its exclusive jurisdiction. I will come to these provisions later.

Not least in the list of the applicable enactments to the questions raised in this matter is the effect of the provisions of Section 47(1) as to what 'Trade Dispute means. For the definition of "trade dispute" Section 47(1) provides as follows:

"Any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment, or the term of employment or non-employment, or the terms of employment and physical conditions of work of any person."

Within the said section the term "collective agreement" has been defined to mean:

"Any agreement in writing for the settlement of disputes and relating to terms of employment and physical conditions of work concluded between:

(a) an employer, a group of employers or one or more organizations representative of employers, on the one hand:

(b) one or more trade unions or organizations representing workers, or the duly appointed representative of any body of workers, on the other hand".

Having scrutinized the above provisions of the enactments and have found them each one of them plain and unambiguous and applicable to this matter the issue of jurisdiction as contested between the National Industrial Court and the instant State High Court has to be predicated on the facts as pleaded in the Amended statement of claim in this matter. In principle it has to depend on the facts that the cause of action in this matter has arisen from: (1) a trade dispute as per the Trade Dispute Act, 1992; (2) that the trade dispute is between employers and employees or between workers and workers and (3) that the subject matter of the cause of action relates to the term(s) of employment of the worker as the appellants here. See: National Union of Road Transport Workers v. Ogbodo & Ors. (1998) 2 NWLR (Pt.537) 189 at 197 which with approval adopt in deciding this case, also see National Union of Electricity Employees & Anor. v. Bureau of Public Enterprises (2010) 2 NMLR 291 where I have expatiated on the above provisions in the context of the exclusive Juris-

diction of the National Industrial Court. And nothing in this matter has affected my views as expressed in the above cited case.

Fundamentally in order to ground the jurisdiction of the National Industrial Court it must be established that the subject matter comes within the provisions of Section 47(1) of 1992 which has vested exclusive jurisdiction to hear trade dispute(s) on the National Industrial Court. It has to be strictly construed as these provisions seem to impinge on the unlimited jurisdiction of the State High Court as conferred upon it by Section 236(1) of the 1979 Constitution. For a cause of action as in this matter to be considered a trade dispute, the trade dispute has to come within the parameters of the definition of ‘trade dispute’ as in Section 47(1) (supra) as construed in the case of National Union of Road Transport Workers v. Ogbodo & Ors (supra). The three factors to meet the definition of “trade dispute” as I have adverted to herein must co-exist to bring a matter as the instant claim within the exclusive ambit of the Act. The lower court against the background of the above provisions of Section 1(1) (supra) and Section 47(1) of the Trade Dispute has found on this fundamental question at pages 366 and I quote as follows:

“The next issue that arises for consideration is whether the respondents are workers within the meaning and intendment of section 47 of the Act. Before the dispute between the parties arose as to the quantum of benefits payable to them following the cessation of their respective employments and the determination of the parameters of its computation, their respective employments had earlier been terminated. It seems to me therefore that they were no longer employees as required by Section 47(1) of the Act which would have made them workers. Not being workers, the dispute between them and the 1st appellant being the former employer, cannot be a trade dispute, and I so hold. I also hold the view that contrary to the appellants’ contention in their brief, the case as formulated and as contested had nothing to do with what the appellants called the trade of banking.

It seems to me also that a claim for other benefits or for wrongful dismissal and the like cannot be regarded as trade dispute as to bring it within the exclusive ambit of the National Industrial Court.

See: Sea Trucks Nigeria Ltd. vs. Ayo Payne (1955) 6 NWLR (Pt. 400) 166; Conway vs. Wade (1909) A.C. 506 at 520. In the case of Savannah Bank (Nig) Limited VS. Ajilo (1989) 1 NWLR (Pt.97) 305 where it was held that the mischief aimed at by the amendment is to avoid the proliferation of trade union cases in several High Courts and ensure their litigation in the National Industrial Court only. In the light of the foregoing I am of the firm view that the respondents' case in the case in hand was not a trade union matter."

The respondent/cross-appellant has taken exception to the above findings hence its cross-appeal in this matter.

The above findings of the lower court cannot be faulted on the issue in question as they have been predicated on a thorough evaluation of the facts as pleaded and documentary evidence that is the said Exhibits before it. I agree with the findings in the judgment of the lower court on the issue of jurisdiction of the instant High Court (vis-à-vis the National Industrial Court) in dealing with this matter as being properly well grounded in law and so with its conclusions that the instant High Court's jurisdiction has not been ousted by any of the aforesaid provisions of the enactments stated above. It follows that the cause of action in this matter ranging as pleaded from declarations on the manner of the termination of the appellants' respective employments to the computation of their respective terminal benefits and entitlements as to their pension and gratuity and to the mandatory injunctions relating to the payments of the appellants' respective terminal benefits and entitlements and for the delayed payments of their respective salaries in lieu of notices cannot by any stretch of the words in these enactment constitute, as claimed by the appellants a trade dispute between the parties. There is no basis for holding otherwise as found by the lower court even as the appellants have alleged that the said trade dispute has arisen from the situation they tag "trade of banking". It follows that this claim is one predicated on a simple action of wrongful termination of the appellants' respective employments with the respondent and their claims severally for their benefits and entitlements arising therefrom. It is not the appellants' case that their respective contracts of employment

has not been terminated. At this point they, each of them, have ceased to be workers in the proper sense as contemplated under section 47(1) (supra). This action as constituted cannot on any basis be construed as an action founded on a trade dispute. It is clearly not one. To determine whether or not they

B (the appellants) each of them have rightly/wrongly been terminated rest on construing the terms of their respective conditions of employment as have been embodied in their respective contracts of employment with the respondent as provided in Exhibit A, a prototype

C of their respective letters of employment. In this case each of them has been served a notice of termination of employment in addition to having been paid a month's salary in lieu of notice. A trade dispute cannot on the facts and circumstances of this matter arise as between the employees as the appellants severally and their employer as the

D respondent. Besides, it is not the Union that is prosecuting this action on behalf of the appellants but the appellants in their respective individual rights for their entitlements. Equally it is true that the appellants are not capable of suing on these collective agreements on behalf of their union (New Nigeria Bank plc Unit). The issue of apparent

E misjoinder of the instant respective claims of the appellants' i.e. severally under this suit as contemplated in the case of *Emono v. Nigeria Ports Authority* (1966) LL.R. 208 not having been raised in this case by any party has not been considered by this court even

F then as this court cannot suo motu decide it in these proceedings without calling on the parties for their addresses on it. Upon having found that these collective agreements are not binding collective agreements as between the collective parties and similarly as between the appellants and their employer (the respondent) because of not

G having been grounded on any legal relations giving rise to any contractual obligations between them; therefore the said collective agreements as contained in exhibits D, F, J1- J5, N, P1 & G are not enforceable at law albeit at the suit of the appellants or the respondent nor even then as between the collective parties. I am satisfied that

H these items of the reliefs as claimed by the respective appellants in this suit, which have arisen from the alleged breaches clearly amounting to the violations of the collective agreements cannot either singly or conjunctively constitute a trade dispute as defined in Section 47(1) (supra) and therefore the subject matter of this matter cannot be

about trade dispute.

The next requirement is for the respondent/cross appellant to establish that the appellants fall within the ambit of the definition of ‘workers as defined in Section 47(1) (supra) as otherwise the action is not maintainable as a trade dispute. For the instant action for wrongful termination of the respective employments of the appellants to make the billing as a trade dispute the appellants severally must be a worker of the respondent i.e. under their respective contracts of employment. This entails in the context of their case as posited by the appellants and as I understand their case that there is subsisting at the time of the alleged trade dispute (that has arisen from the breach or violation of the conditions of their employment as per the said Exhibits) their respective employment relationships with the respondent. And it is upon which they submit is predicated their respective claims in this matter. But this cannot be so on the peculiar facts of this case as the employer/workers relationships as between the instant parties to this suit have been duly terminated by the said letters of termination of employments served on the appellants severally. ***However, where the appellants’ respective contracts of employment have been properly terminated as here there can be nothing remaining of their respective employment relationships under their respective contracts of employment that is as between the instant parties upon which to stand to construe the appellants as “workers” in any respects. And so the appellants’ employment relationships with the respondent have properly been treated as having ended/terminated by their respective termination notices. In other words the question of workers and employer relationships between the instant parties to this suit is regarded to all intents and purposes as having ended. In this regard this is so not only on the ground that the notices terminating the appellants’ respective employments have been duly served on each of them but also as they, each of them, have been in addition paid their respective salaries in lieu of notices as provided in Exhibit B, which have been accepted without any protests. And this has to be so construed as the said salaries paid in lieu of notices have not been refunded to the respondent in order to properly ground their respective***

claims in this matter. In this situation there impliedly a clear intention to regard the respective contracts of employment of the appellants as duly terminated and I so hold. See: Ryan v. Liverpool warehousing Ltd. (1966) L.T.R. 19.

Consequently, their action as presently constituted has been
 B instituted when the appellants have severally ceased to be workers of
 the respondent within the definition of Section 47(1) (supra) and so
 their respective causes of action cannot be construed as constituting a
 trace dispute on the facts of this case even then against the appellants
 C as ex-workers. It is equally so as the individual appellants having predi-
 cated their respective claims and entitlements in this action on wrongful
 termination of their respective contracts of employments is a clear
 recognition that they are not workers of the respondent within the
 said Act. It should be noted that the appellants have instituted this
 D action upon the alleged breaches of the term(s) of the appellants’
 respective contracts of employment as they cannot bring the instant
 claim as presently constituted under the banner of their Union -New
 Nigeria Bank Plc Unit of the Union.

It is conclusive therefore, from my findings herein that these
 E agreements as contained in Exhibits D, F, J1 - J5, N, P1 and G not
 having given rise to any legal relations between the parties they can-
 not be incorporated into the appellants respective contracts of em-
 ployment Even then it is my view that where the appellants have
 F been found to have ceased to be workers under Section 47(1) (su-
 pra) as here, it then becomes a non-issue indeed immaterial that the
 cause of action is also founded on the facts connected with “non-
 employment” of the appellants as canvassed by the respondent/cross-
 appellant in their brief of argument and it does not call for any fur-
 G ther consideration.

Save to say that no terms of the appellants respective
 conditions of employment as per the said exhibits have formed the
 subject matter of this case, it is therefore my further findings that the
 cause of action in this case has failed to meet conjunctively the three
 H pre-conditions as stated above necessary to properly constitute the
 instant cause of action as a trade dispute so as to confer exclusive
 jurisdiction over this matter on the National Industrial Court.

***Based on the above reasoning and conclusions, the ju-
 risdiction of the High Court of Edo State has not been ousted***

on the facts of the instant cause of action in this matter in which the appellants are claiming in regard to the wrongful termination of their respective contracts of employment. Clearly it is the instant Edo State High Court not the National Industrial Court that has jurisdiction to deal with this matter as constituted. And I so hold. There is therefore no merits in the respondent/cross appellant's appeal and it should be dismissed. B

In the final analysis, I find the appeal and cross-appeal in this matter as most unmeritorious and I dismiss each of the said appeals accordingly and I affirm the judgment of the lower court on the appeal and cross-appeal. The respondent is entitled to the costs of N100,000 against the appellants for both appeals. Appeal/cross-appeal dismissed. C

ONNOGHEN JSC

D

I have had the benefit of reading in draft the lead judgment of my learned brother, Chukwuma-Eneh, JSC just delivered.

I agree with his reasoning and conclusion that the appeal and cross appeal lack merit and should be dismissed. E

I therefore dismiss both appeals and abide by the consequential orders made in the said lead judgment including the order as to costs. Appeal dismissed.

GALADIMA JSC

F

I had the privilege of reading in draft, the lead Judgment of my learned brother, Chukwuma-Eneh, JSC just delivered.

He has carefully set out the background facts and meticulously considered the relevant issues and the arguments of the respective counsel for the parties. His examination of the case law and the applicable principles relevant to the determination of this appeal is quite lucid and well articulated.

My preview in the circumstance will be repetitive and not quite useful. It is in view of this that I find both appeal and Cross Appeal in this matter lacking in merit and I dismiss the two and accordingly affirm the judgment of the lower court on the said appeal and cross-appeal. H

I abide by the order made as to costs.

MUHAMMAD JSC

I had a preview of the lead judgment of my learned brother, Chukwuma-Eneh, JSC before now. I entirely agree with his Lordship's reasoning and conclusion that the appeal and the cross appeal are lacking in merit. I adopt the judgment as mine in dismissing the two appeals. I abide by the consequential orders made in lead judgment including the order on costs.

C _____

OGUNBIYI JSC

I have read in draft the lead judgment of my learned brother, Chukwuma-Eneh, JSC and I completely identify with him that both the main appeal as well as the cross appeal are devoid of any merit; they should be and I hereby also dismiss same in like terms as the lead judgment.

Just for purpose of emphasis, I wish to state that the appeal is against the decision of the Court of Appeal, Benin Division wherein the respondent's appeal was upheld while the appellants' cross-appeal was dismissed. The appellants were former employees of the Respondent then known as New Nigeria Bank Plc who were all in the senior staff category. They had all put in various years of lengthy service not below ten (10) years in the bank. Through individual but identical letters dated 12/11/94, their respective employments were terminated and the individual accounts were to be credited with a month salary in lieu of notice, such was not done until much later. The appellants initiated the suit at the High Court claiming declaratory reliefs to the effect that the 1st Respondent ought to have used the agreed parameter evidenced by written and signed agreements in computing the appellants' disengagement entitlements. A mandatory order was also sought requesting a direction to the Respondent to pay the outstanding benefits. Based on the delay in paying the one month salary in lieu of notice, each appellant also claimed general damages from the Respondent.

Pleadings and evidence before the High Court showed that the Central Bank of Nigeria took over the management and control of the Respondent hence the bank was sued in the said capacity to

enable the decision of the Court bind it. The appeal against the Central Bank was discontinued. The High Court granted each of the appellant his/her entire claim as formulated on the record but however declined to make any award of general damages.

The Respondent was dissatisfied with the High Court's decision and hence lodged an appeal. The appellants were also unhappy and on their behalf filed a cross-appeal to the effect that they were not entitled to the award of general damages. The lower court upheld the Respondent's appeal and set aside the decisions of the trial High Court awarding the appellants claims and also dismissing the cross-appeal filed by the appellants.

The notice and grounds of appeal filed by the appellants herein was amended by the leave of this court and a total of four grounds of appeal were eventually filed. From the said grounds of appeal, the appellants raised four issues for determination which are all reproduced in the lead judgment. I do not consider it expedient to again repeat the issues, the learned counsel representing the appellants faulted the justices of the lower court on their view held in respect of Exhibit D, F, J1 - J5, N and P1 on one hand as well as exhibit G on the other. In other words that the lower law Lords were out of context by holding that the 1st set of exhibits were minutes of meetings or like Exhibit G, a booklet titled Collective Agreement which are not justiciable. It is this document Exhibit 'G' that is at the central focus of this appeal. For purpose of establishing the position and relevance of exhibit G, therefore, its coming into focus through the evidence at the trial court would be related to. PW 1 in his evidence at pages 133 and 134 of the record wherein the witness had this to say:

"At the time I was employed I was given a booklet titled An agreement between Nigerian Employers Association of Banks Insurance and Allied Institutions (NEABIAS) and the Association of Senior Staff of Banks Insurance and Financial Institution (ASSBIFI) otherwise known as the main collective Agreement. The booklet contains the terms of employment with the 1st Defendant. It is a booklet made through the same mechanical method of printing and issued to every senior staff upon being employed. The document is this one... Exhibit G is binding on the banks and their senior staff. The documents regulating the employment are letters of appointment (Exhibit A) and the main collective Agreement (Exhibit G). For termination to

be properly done it must proceed under Article of part 2 section 1 pages 9- 10 of Exhibit G dealing with redundancy.”

It was in evidence before the trial court that Exhibit A was the letter of appointment given to each plaintiff and contains this stipulation that:-

B *“If you accept the offer you will be bound by the terms and conditions of service laid down for employees of the company in force for the time being.”*

C It is also on record that each of the plaintiffs accepted the offer of appointment and undertook to be bound by the terms and conditions of service for the time being in force. This is what the learned trial judge had to say at page 193 in his judgment.

D *“The booklet which the 1st defendant (bank) relied on is titled “CONDITIONS OF SENIOR STAFF EMPLOYMENT WITH NEW NIGERIA BANK LIMITED” it came into effect on the 1st of October, 1975 and the defendants witness said it was still in use as at 1996 when he testified. The document Exhibit G on the other hand titled: “MAIN COLLECTIVE AGREEMENT BETWEEN The Nigeria Employers Association of Bank, Insurance and Allied Institutions AND*
E *The Association of senior staff of Banks, insurance and financial institutions. It was made on 28th November, 1990. This is admittedly not a direct agreement between the Bank and its employers of three institutions and union of employees contained in part II section 1 of*
F *Exhibit G being collective agreement reached between those bodies are enforceable by individual employees.”*

There is no evidence before the trial court and nay on the record that the employer had adopted any aspect of such agreement as contained in Exhibit G. In the absence of adoption, the individual
G employees have no locus to enforce by litigation in court any such collective agreement which is distinguishable from direct agreement between employers and their employees. The appellants in other words are not individual parties to the document, Exhibit G. The appellants’ right to remedy is dependant upon a legal right. The onus
H is on the appellants to prove that the collective agreement. Exhibit G was legally enforceable within the parameters defined by the law. Putting it succinctly and emphatically, the appellants needed to show by evidence that their employers in fact had adopted the provisions of the document Exhibit G either in the employees individual letters

of appointment by incorporating in Exhibit A or in a subsequent communication varying the terms of their employment before they could enforce same. The court below in its findings duly reviewed the exhibits as well as the evidence and rightly came to the conclusion that they were not enforceable in law. As rightly submitted by the learned counsel for the respondent therefore, the appellants have failed to show how this evaluation was wrong. This court cannot in the circumstance interfere with that finding. The documents were rightly held as gentlemen's agreement which is not justiciable. B

With these few words of mine and relying particularly on the comprehensive conclusion arrived at by my learned brother, Chukwuma-Eneh, JSC in the lead judgment, I also find no merit in the main appeal. C

Briefly and on the cross-appeal by the Respondent, the issue raised is: D

"Whether or not the trial court had the jurisdiction to hear and determine the appellants claims as pleaded in paragraph 19(i-ii) and 19(a) of their joint Amended Statement of claim in view of the provision of the Trade Dispute Act and Trade Disputes (Amendment) Act, 1992?" E

The law is trite and well settled that it is the plaintiff's claim that determines the jurisdiction of a court. The question is which court has the jurisdiction to entertain the claim at hand. The two courts in issue are the State High Court which jurisdiction was at the material time relevant and stipulated in section 236(1) of the Constitution of the Federal Republic of Nigeria 1979 and the National Industrial Court had been provided for by section 20 (1) of the Act wherein subsection (b) is set out to: F

"(b) determine questions as to the interpretation of - G

1. Any collective agreement.

2. ...

3. The terms of settlement of trade dispute as recorded in any memorandum under section 7 of this Act."

As rightly submitted by the learned respondent/cross-appellant's counsel, on a corporate reading of the statement of claim filed by the appellants/cross respondents and even the evidence by the witnesses as revealed on the record of appeal, it is observed that the agreements were never negotiated by any of the appellants in their indi H

vidual capacity for their sole benefit.

Without having to belabor the issue, the argument and narration by the Respondent/cross appellant's counsel which is grossly not in its favour is firmly grounded and in line with the conclusion that in the absence of individual workers not being a privy to the collective
B agreement, its contractual effect cannot avail them in that capacity.

The provision of section 47(1) of the Trade Dispute Act defines "trade dispute" as: -

*"any dispute between employers and workers or between
C workers and workers, which is connected with the employment or non-employment, or the term of employment or no-employment, or the terms of person."*

From all indications and with due reference to the conclusions arrived at by the lower court which I also endorse, the appellants/
D cross respondents were no longer employees and cannot therefore come within the provision of section 47(1) of the Act supra. This is what the lower court for instance had to say at page 265 of the record.

*"I am of the view that for the Decree to apply to oust the
E jurisdiction of the lower court, the subject matter of the action must relate to a trade dispute or an inter or intra union dispute as contemplated by section 1 A(1) of the Decree."*

At page 266 the court also proceeded and said:- "the next issue that arises for consideration is whether the Respondents are workers within the meaning and intendment of section 47 of the Act.
F Before the dispute between the parties, arose as to the quantum of benefits payable to them following the cessation of their respective employments and the determination of the parameters of its computation, their respective employments had earlier been terminated.

The bottom line following the foregoing conclusion is obvious; that the cross respondents not being workers, the dispute between them and the cross appellant, being their former employer, is not a trade dispute within the meaning of section 47 (1) of the Act. The section is explicitly clear on the phrase that the dispute must be "be-
H tween employers and workers or between workers and workers." This connotes that non workers who are no longer in the employment of the employer are not covered as wrongly conceived by the cross appellants' learned counsel. As rightly held by the lower court therefore, the jurisdiction of the High Court was not ousted contrary

to the contention held on behalf of the cross appellants. The lower court in other words was on a firm footing when it held that the case was not a trade dispute. The cross appeal like the main appeal is also devoid of any merit.

In the result and with the detailed reasoning and conclusion arrived thereat in the lead judgment I also dismiss the cross appeal as lacking in merit

On the totality of the appeal and the cross appeal herein, in the same vein as the lead judgment of my brother, Chukwuma-Eneh, JSC, I also find no merit therein and are therefore dismissed in terms of the orders made in the lead judgment inclusive of costs.

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