

SUPREME COURT OF NIGERIA
FRIDAY 1ST MARCH, 2013. SC. 157/2005
CORAM:- M. MOHAMMED, M. S. MUNTAKA-COOMASSIE, S.
GALADIMA, K. B. AKA'AH, S.
S. S. ALAGOA, JJSC

G. O. DUDUSOLA APPELLANT
AND
NIGERIAN GAS COMPANY LTD RESPONDENT

MASTER & SERVANT - Contract of service - Is bedrock upon which aggrieved employee may found his case - As he succeeds or falls on the terms thereof (H1)

CONTRACTS - Statutory employment - If appellant's employment had statutory flavour - Respondent must comply with the conditions of service - Otherwise any termination would be declared null and void (H2)

MASTER & SERVANT - Termination - Validity - Respondent has unfettered right to dismiss appellant - And the motive for exercising the right - Does not render same ineffective (H3)

CONTRACTS - Employment - Termination - Notice of - By payment of salary for period of notice - Party can be discharged from his obligations - Where there is agreement that condition for termination is by notice - Or salary in lieu of notice (H4)

FACTS

Before the High Court of Delta State Warri, plaintiff/appellant filed this action against defendant/respondent seeking inter alia for declaration that the letter of termination issued to him by respondent is wrongful, void and of no effect on the ground that the termination was based on unproven allegation of crime. Appellant also stated that no reason was given by respondent for terminating his appointment more so when the condition of service under which he was employed stated that a reason should be given. Appellant was an employee of respondent whose appointment was termination via Exhibit A which

merely stated that appellant's services were no longer needed. At the trial, Exhibits A (termination letter) and B (appellant's employment letter) were admitted in evidence. However, the condition of service was not tendered in evidence.

In defence of its action, respondent stated that the termination of appellant's appointment had nothing to do with crime. Respondent further stated that the condition of service did not stipulate that reasons must be given for termination, but rather that one month salary should be paid in lieu of notice of termination. After hearing in the matter, the court gave judgment to appellant. Aggrieved, respondent appealed to the Court of Appeal, Benin City Division. The appeal was allowed and judgment of the trial court was reversed mainly on the ground that appellant failed to prove that his termination was based on any wrong doing on his part. Dissatisfied, appellant appealed to Supreme Court.

HELD (Unanimously dismissing the appeal per
AKA'AH S JSC)

MASTER & SERVANT - Contract of service - Fundamentality of

1. As stated in the judgment of the lower court, a contract of service is the bedrock upon which an aggrieved employee may found his case, he succeeds or falls on the terms thereof. Since neither of the parties tendered the contract of service, the court can only fall back on the common law principle of master and servant relationship. (p. 4456 B)

CONTRACTS - Statutory employment

2. It has not been alleged that the Appellant's employment had statutory flavour. If this were the case, the Respondent would be bound to comply with the conditions of service otherwise any action taken to bring to an end the Appellant's employment would be declared null and void and any other act based therein will also be void. (p. 4456 D)

MASTER & SERVANT - Termination - Validity

3. From the evidence presented, it is clear that the relationship between the Appellant and the Respondent is a mere master and servant relationship. In such a case the Respondent who is the master has

an unfettered right to terminate or even dismiss the Appellant, who is the servant. The motive in exercising the right does not render the exercise of the right ineffective. In other words, the Respondent is at liberty to terminate the Appellant's employment with or without any reason.

Termination of a contract of service even if unlawful brings to an end the relationship of master and servant, employer and employee. The law is trite that a servant (employee) even though willing and able cannot be imposed on an unwilling master (the employer). (p. 4456 E)

CONTRACTS - Employment - Termination

4. Where parties to a contract mutually agree that the condition for termination is the giving of notice or payment of equivalent salary in lieu of notice, the only valid way to discharge a party from his obligations under the notice stipulated is the payment of the equivalent salary for the period of the notice. In Exhibit 'A' the Appellant was offered one month's salary in lieu of notice. In the absence of the conditions of service, it is presumed that the Appellant was entitled to one month's notice or a month's salary in lieu of notice. The appointment was therefore validly terminated.

Having found that the Appellant was entitled to one month's salary in lieu of notice, there is nothing left to consider in the second issue whereby the Appellant sought to advance the argument that he was entitled to the alternative claim for damages. This line of argument was abandoned by learned counsel and what he sought for was reinstatement which cannot be ordered. (p. 4457 A)

REPRESENTATION

Lanke Odogiyon with I. A. Sule, for the Appellant
Mike Igbokwe, SAN with N. Nwatarali, for the Respondent

CASES REFERRED TO

Igbinovia v. U. B. T. H. (2000) 8 NWLR (pt. 667) 53

Garba v. University of Maiduguri (1986) 2 SC 128

Unilag v. Olaniyan (1985) 1 SC 199

Shitta-Bey v. Federal Public Service Commission (1981) 1 SC 40

Fakuade v. Obafemi Awolowo University Teaching Hospital (1993)
6 SCNJ 35

UMTHMB v. Dawa (2001) 16 NWLR (pt. 739) 424

Chukwumah v. Shell (1993) 4 NWLR (pt. 289) 512

Titiloye v. Olupo (1991) 9-10 SC 120

B Ekpo v. Ita (1932) NLR 68

Kodilinye v. Odu (1935) 2 WALA 336

Idundun v. Okumagba (1976) 9-10 SC 227

Baba v. Nig. Civil Aviation Training Centre (1991) 7 SC (pt. I) 58

C STATUTE REFERRED TO

Evidence Act 2011, s. 136

LEAD JUDGMENT BY AKA'AHs JSC

D The Appellant was employed by the Nigerian National Petroleum Company (NNPC) in October, 1983 as an Administrative Officer II. In 1986, he was promoted to Administrative Officer I and subsequently seconded to the Nigerian Gas Company Limited (a subsidiary of the NNPC) in 1989. He was thereafter promoted to Senior Administrative Officer which rank he retained until the 26th
E September, 1990 when his employment was terminated. The ground for the termination of his appointment as stated in the said letter was that his services were no longer required. He thereupon sued the Respondent as Defendant before the Delta State High Court, Warri
F claiming the following reliefs in Paragraph 15 of the statement of claim:-

G “(1) A declaration that the letter of termination dated 26th day of September, 1990 issued to the Plaintiff by the Defendant is wrongful, void and of no effect whatsoever in that the termination was based on an allegation of crime which was never investigated by the Nigerian police nor brought before any court of law.

H (2) A declaration that the letter of termination dated 26th day of September, 1990 is contrary to the rules of natural justice and therefore void and of no effect, as same was an outcome of the Defendant’s management decision on an alleged crime of stealing against the Plaintiff.

(3) A declaration that the Plaintiff is still an employee of the Defendant and entitled to all the benefits of his office from the 26th

day of September, 1990.

(4) An order of court directing the Defendant to re-instate the Plaintiff to his office of employment and pay him all outstanding salaries emoluments and benefits from the date of the purported termination.

In The Alternative

B

An order compelling the Defendant to pay all the Plaintiff's salaries and allowances at the rate of N1,814.00 per month from the date of the alleged termination up till September, 2019 when the Plaintiff would ordinarily be expected to retire from the services of the Defendant at the age of 60 years.

C

Particulars

(i) The Plaintiff's salaries from September, 1990 to September, 2019 at the rate of N1,814.00 per month... N631,272.00.

(ii) Allowances: Leave bonus, retirement benefit unspecified amount.

N631.272.00."

"...the warehouse is supervisory over the store supervisor and the store keeper. He denied knowledge about the missing items.

9. However in Mr. L. N. Obiakpi's report dated 14th August, 1990, on his investigation into the said missing items, as submitted to the Defendant's management, he accused the Plaintiff of stealing the said missing items from the Defendant's warehouse, and recommended that the Plaintiff be dismissed from the Defendant's services on (sic) reason of having stolen the missing items.

E

F

10. Acting on the Mr. L. N. Obiakpi's aforesaid report, the Defendant's management without further steps to ascertain or hear from the Plaintiff merely terminated the Plaintiff's employment in the services of the Defendant vide Defendant's letter Ref. No. NGC/ APD/ WR.37 of 26th September 1990. The decision was taken at the Defendant's board of director's meeting of 26th September, 1990. The Defendant is hereby put on notice to produce at the hearing of this case, the minutes of the said meeting held on 26th August, 1990 and Mr. L. N. Obiakpi's said report to the Defendant's management dated 14th August, 1990."

H

The Defendant filed a statement of defence dated 17th day of September, 1992. In Paragraphs 5(f), 6, 7 and 8, the Defendant averred:-

“5. Defendant vehemently denies Paragraphs 5 to 15 of the Plaintiff’s statement of claim. In further answer thereto the Defendant avers as follows:

B That the Plaintiff’s employment terminated vide letter dated 26th day of September, 1990, was done according to the term of conditions of service and so validly terminated.

C 6. Alternatively Defendant aver (sic) that the Plaintiff was clearly not bound to be convicted, acquitted or charged for any alleged criminal conduct before the Defendant can exercise its right to terminate or dismiss the Plaintiff.

D 7. Defendant will contend that even if all the allegations averred to in Paragraph (sic) 7-11 of the Plaintiff’s statement of claim give rise to a criminal offence, the question for answer by this court is not whether the Plaintiff committed the crime but whether the Defendant company acted reasonably in the circumstances in terminating the Plaintiff’s appointment.

E 8. At the hearing of this suit, Defendant will lead cogent and credible evidence of the theft of the 122 umbrellas, 8 rain coats and 2 pairs of rain boots all valued N21,117.00 property of Nigerian Gas Company, Ekpan and evidence to show the involvement and complicity of the Plaintiff. Defendant pleads and relies on the investigation report pleaded in Paragraph 10 of the Plaintiff’s statement of claim. The termination of the Plaintiff’s appointment is a reasonable act by the Defendant company.

F Plaintiff was given opportunity to defend himself and he made use of it.”

G Although the Defendant later brought an application to amend the statement of defence denying all the averments in the statement of claim, the application was opposed on the ground that the Plaintiff had closed his case. The trial judge in his ruling dated 4th October, 1994, held that what the Defendant was attempting to do was to substitute the statement of defence already filed and not to amend it and the application for amendment was refused. So the subsisting statement of defence on which the matter was heard and determined is the one dated 17th day of September, 1992.

H The averments made in Paragraph 6 of the statement of defence cannot be glossed over. In the said Paragraph 6 the Respondent as Defendant pleaded that -

“6. Alternatively, Defendant aver (sic) that the Plaintiff was clearly not bound to be convicted, acquitted or charged for any alleged criminal conduct before the Defendant can exercise its right to terminate or dismiss the Plaintiff.”

The letter terminating the Appellant's appointment tendered as Exhibit 'A' did not give any reason for the action taken against him. I would have differed with the lower court's finding that the Appellant needed to adduce evidence to prove his averments in Paragraphs 7, 8 and 9 of the statement of claim as they were tacitly admitted in Paragraph 8 of the statement of defence if the declaratory reliefs were not sought. See: *Igbinovia v. U. B. T. H.* (2000) 8 NWLR (Pt. 667) 53. What the Appellant would have needed to establish is the fact that the Respondent had no power to dispense with his services. Exhibit 'B' - the letter of appointment, had no provision forbidding the Respondent from proceeding as it did to disengage the Appellant from its employment. If there was such a provision spelt out in the conditions of service, it was the duty of the Appellant to produce the document. His evidence to the effect that the National Industrial Court ruled in *Pengassan v. NNPC* that before a senior staff is terminated, a reason must be given for such an action and that he belonged to that category of staff will not suffice unless the said condition was clearly stated in his contract of service which was not produced before the trial court. Even though the Appellant was not subjected to the criminal process to determine his guilt before relieving him of his employment as was suggested by *Obaseki, JSC.*, in *Garba v. University of Maiduguri* (1986) 2 S.C. 128; (1986) 2 S.C. (Reprint) 90, which dealt with the expulsion of students from the University where the vice chancellor set up an investigation panel to determine the culpability of students involved in rampage in which he was a victim, there is the latter decision in *Baba v. Nigerian Civil Aviation Training Centre* (1991) 7 S.C. (Pt. I) 58, that the Appellant was heard before his services were terminated and so the rules of natural justice that required that the Appellant should be given fair hearing were observed. In his contributory judgment, *Bello, CJN.*, held that an administrative panel is not bound to follow the procedure and practice of the court of law; that although it is bound to observe and comply with the principles of natural justice, that a person who may be adversely affected by its decision is entitled to be given adequate

opportunity not only to know the case against him, but also to answer it, the absence of oral hearing or an opportunity to be heard before an administrative tribunal does not necessarily tantamount to denial of natural justice.

B As stated in the judgment of the lower court, a contract of service is the bedrock upon which an aggrieved employee may found his case, he succeeds or falls on the terms thereof. Since neither of the parties tendered the contract of service, the court can only fall back on the common law principle of master and servant relationship.

C It has not been alleged that the Appellant's employment had statutory flavour. If this were the case, the Respondent would be bound to comply with the conditions of service otherwise any action taken to bring to an end the Appellant's employment would be declared null and void and any other act based therein will also be void. See: *Unilag v. Olaniyan* (1985) 1 S.C. 199; *Shitta-Bey v. Federal Public Service Commission* (1981) 1 S.C. 40; (1981) 1 S.C. (Reprint) 26.

E From the evidence presented, it is clear that the relationship between the Appellant and the Respondent is a mere master and servant relationship. In such a case the Respondent who is the master has an unfettered right to terminate or even dismiss the Appellant, who is the servant. The motive in exercising the right does not render the exercise of the right ineffective. In other words, the Respondent is at liberty to terminate the Appellant's employment with or without F any reason. See: *Fakuade v. Obafemi Awolowo University Teaching Hospital* (1993) 6 SCNJ 35 at 44; (1993) 5 NWLR (PL 291) 47 at 58; *UMTHMB v. Dawa* (2001) 16 NWLR (Pt. 739) 424.

G Termination of a contract of service even if unlawful brings to an end the relationship of master and servant, employer and employee. The law is trite that a servant (employee) even though willing and able cannot be imposed on an unwilling master (the employer).

H Where parties to a contract mutually agree that the condition for termination is the giving of notice or payment of equivalent salary in lieu of notice, the only valid way to discharge a party from his obligations under the notice stipulated is the payment of the equivalent salary for the period of the notice. See: *Chukwumah v. Shell* (1993) 4 NWLR (Pt. 289) 512. In Exhibit 'A' the Appellant was offered one month's salary in lieu of notice. In the absence of the conditions of

service, it is presumed that the Appellant was entitled to one month's notice or a month's salary in lieu of notice. The appointment was therefore validly terminated.

Having found that the Appellant was entitled to one month's salary in lieu of notice, there is nothing left to consider in the second issue whereby the Appellant sought to advance the argument that he was entitled to the alternative claim for damages. This line of argument was abandoned by learned counsel and what he sought for was reinstatement which cannot be ordered.

I find that there is no merit in the appeal and it is hereby dismissed. I affirm the judgment of the lower court. I make no order on costs.

MOHAMMED JSC

The appeal is from the judgment of Court of Appeal, Benin, delivered on 26th January, 2005 by U. M. Abba-Aji, JCA., in leading judgment of the court allowing appeal from the judgment of a Warri High Court by Bozimo, J., (as she then was) given in favour of the Plaintiff now Appellant in his claims against the Defendant/Respondent for terminating the employment of the Appellant on giving him one month's salary in lieu of notice. The Respondent's letter of termination of Appellant's appointment is dated 26th September, 1990. From the record of appeal the following facts are not at all in dispute.

1. Employment relationship between the Appellant and the Respondent had no statutory flavour. It was purely master/servant relationship.

2. With the master/servant relationship between the parties, the right of the Respondent to terminate the appointment of the Appellant for any reason or for no reason at all is not curtailed under the law of contract of employment.

3. The fact that the Appellant was found to have been involved in some dishonest conduct resulting in the termination of his employment having been given one month's salary in lieu of notice the Appellant's complaint of denial of natural justices has no basis whatsoever in law.

As the letter of termination shows that the services of the

Appellant were no longer required by the Respondent that was quite in order under the law. I am therefore in complete agreement with my learned brother, Aka'ahs, JSC that this appeal lacks merit and ought to be dismissed. Accordingly, I also dismiss this appeal and abide by the orders in the leading judgment including the order on costs.

B

MUNTAKA-COOMASSIE JSC

I have an opportunity of reading in advance the leading judgment just delivered by my learned brother, Kumai Aka'ahs, JSC. I entirely agree with the reasons and conclusions herein adumbrated in the leading judgment.

This appeal further reinstated the law vis-à-vis the master servant relationship. The judgment of the lower court is hereby affirmed while the main appeal is dismissed.

D

GALADIMA JSC

I have had the privilege of reading in draft the leading judgment of my learned brother, Aka'ahs, JSC just delivered. I agree with it. I would however emphasise the fact that a contract of service is the basis upon which an aggrieved employee can predicate his claim. He either succeeds or fails in his claim upon the agreed terms. In this case no contract of service has been presented before the court. It has not been shown that the employment of the Appellant had statutory flavour so as to bind the Respondent to comply with the condition of service. However, from the evidence presented at the trial, it is quite clear that the relationship between the Appellant and the Respondent is that of a mere master and servant relationship. It is trite that the master has unfettered right and liberty to terminate or dismiss his servant's employment at any time and for any reason or for no reason at all provided the terms of the contract of service between them are complied with. The motive which led to an employer to lawfully terminate his servant's employment is not normally a relevant factor and the court will have no business with such motive but will only give effect to the contract of service between the parties - See Taiwo v. Kingsway Stores Ltd. (1950) NLR 122; Nwanawu v. Nzekwu (1957) SCNLR 61 and Fakuade v. O.A.U.T.H (1993) 5 NWLR (Pt.

291) 47 at 58. It is trite law that a willing servant cannot be imposed on an unwilling master.

In this case in Exhibit A, the Appellant was offered one month's salary in lieu of notice. In the absence of the condition of service, I agree with the Respondent, that the Appellant was entitled to one month's notice or in lieu, a month's salary. B

In sum, there is no merit in the appeal I too, dismiss it. I abide by the orders made in the leading judgment including costs.

ALAGOA JSC C

This is an appeal against the judgment of the Court of Appeal, Benin Division which set aside the judgment of the High Court, Warri. The Appellant was the Plaintiff in the High Court, Warri and brought this action against the Respondent then Defendant claiming D the following reliefs:-

1) A declaration that the letter of termination dated the 26th September, 1990 issued to him by the Defendant is wrongful, void and of no effect.

2) Said letter of termination is against the rule of natural E justice and therefore void.

3) He is still an employee of the Defendant i.e. to be reinstated.

In the alternative, an order for him to be paid all his salaries F and allowances until he attains the age of 60 years.

Appellant as Plaintiff's allegation was that the store officer of the Respondent had recommended his dismissal on the unproven allegation that he was responsible for missing items in the Respondent's warehouse and that the Respondent without any investigation of this G alleged crime had terminated his appointment and this it did without stating any reasons in the letter of termination for so terminating the appointment of the Appellant when the condition of service under which he was employed stated that a reason should be given. The H high court gave him judgment which was reversed by the Court of Appeal principally on the ground that the Appellant had failed to prove that his termination was based on any wrong doing on his part. The letter of termination only stated that his services were no longer needed.

The Respondent while agreeing that it terminated the Appellant's appointment denied that it had anything to do with the store officer's report which was not tendered by either party. The Respondent's witness also stated that the condition of service which was not also tendered by either party did not say that Appellant must be given reasons for his termination but only stipulated that he be paid one month's salary in lieu of notice of termination of appointment. The Appellant's notice of termination of appointment marked as Exhibit "A" and reproduced from Page 76 of the record of appeal reads as follows:- Exhibit "A"

Nigerian Gas Company Limited
Odin Road, Ekpan P. M. B. 1288, Wari, Bendel State.
Ref: NGC/APD/WR.37
Date: 26th Sept. 1990

Mr. G O. Dudusola
(ID 10636),
Through Head, APD,
Nigerian Gas Company Limited,
Ekpan.

Dear Mr. Dudusola,
TERMINATION OF APPOINTMENT

This is to inform you of the Management's decision that your services with the Nigerian National Petroleum Corporation are no longer required with effect from today, Wednesday, 26th September, 1990.

You should please arrange to hand over immediately all Corporation's property in your possession including official documents, moveable assets and your identity card to your Head of Department and obtain from him a clearance letter confirming your compliance with this requirement.

By a copy of this letter Finance and Accounts Department is being advised to pay you one month's salary (less your indebtedness, if any) in lieu of notice. But please note that this terminal entitlement will only be paid on presentation of the clearance letter mentioned above.

Yours faithfully,
For: NIGERIAN GAS COMPANY LIMITED
Sgd.

Y. B. Iza,

For: Managing Director.

As can be seen from this letter of termination of appointment, no reference was made to any criminal allegation or any investigation earlier carried out. By Section 136 of the Evidence Act, 2011 the burden of proving that the Appellant's appointment was terminated on the allegation of crime levied against him and the consequent investigation of same lay on the Appellant who had failed to prove same - See: Titiloye v. Olupo (1991) 9-10 S.C. 120; Ekpo v. Ita (1932) NLR 68; Kodilinye v. Odu (1935) 2 WALA 336; Idundun v. Okumagba (1976) 9-10 S.C. 227; (1976) 9-10 S.C. (Reprint) 140. Decided cases on this very important principle of law are in-exhaustive. Appellant has therefore failed to establish a link between the termination of his appointment and the allegations made. The question of reinstatement to the services of the Respondent therefore does not arise.

It is for these reasons and the fuller reasons given in the leading judgment of my learned brother, Aka'ahs, JSC which I had the privilege of reading in draft before now and which I wholly agree with, that I too hold that the appeal has no merit and should be dismissed.

I dismiss same while abiding by the order or orders contained in the leading judgment inclusive of order on costs.

F

G

H