

SUPREME COURT OF NIGERIA
FRIDAY 30TH MAY, 2014. SC. 133/2004
CORAM:- W. S. N. ONNOGHEN, S. GALADIMA,
B. RHODES-VIVOUR, J. I. OKORO, JJSC

ADAMS O. IDUFUEKO APPELLANT
AND
1. PFIZER PRODUCTS LIMITED RESPONDENTS
2. G.O. OLUKOYA

CONTRACTS - Terms - Binding nature - Court must respect the sanctity of contract made by parties - And will not allow a term on which there is no agreement to be read into the contract (H1)

CONTRACTS - Written contract - Variation - Appellant cannot now be allowed - To justify his additional award of damages - As extrinsic evidence will not be given to alter the effect of written contract (H2)

CONTRACTS - Written contract - Oral evidence - Evidence Act s. 128(1)(b) makes admissible oral evidence relating to - Existence of separate oral agreement - As to matter on which a document is silent (H3)

MASTER & SERVANT - Termination - Validity - The contract between appellant and 1st respondent being that of master & servant - Can be terminated at anytime by giving appropriate notice (H4)

MASTER & SERVANT - Termination - Damages - In absence of credible evidence supporting appellant's assertion - Any claim for additional damages must fail (H5)

MASTER & SERVANT - Termination - Unlawfulness - Element - This arises where in carrying out the decision to terminate - The employer neglected to adhere to the letter of employment (H6)

MASTER & SERVANT - Termination - Notice - Absence of - Where period of notice is not stipulated - Court is to imply the period that would be adequate - Having regard to the nature of employment

2958 Idufueko v. Pfizer Products Ltd. (2014) 7 KLR (pt. 352)
(H7)

MASTER & SERVANT - Appeals - Concurrent findings - Damages - Appellant not having shown perversity in the findings - The assessment of damages was proper and adequate (H8)

APPEALS - Issues - Not raised at trial - Fate - Where an issue is not raised and pronounced upon by trial court - The same cannot be validly raised as a ground of appeal before appellate court (H9)

CONTRACTS - Privity of contract - A contract cannot confer or impose obligations arising under it on any person - Except the parties to it - As only such parties can sue or be sued on the contract (H10)

MASTER & SERVANT - Contract - Legal personality - Appellant's claim is inconceivable - As 1st respondent is not expected to bear legal burden - Ascribable only to a different legal personality (H11)

ACTIONS - Alternative relief - Award - It is construed distinctively and not conjunctively - Hence appellant who sought same against 2nd respondent - Ought to have brought a separate action (H12)

FACTS

Plaintiff/appellant instituted this action against defendants/respondents at the High Court of Lagos State, claiming for the sum of N2,883,727 being general and special damages arising from the unlawful termination of his employment with 1st respondent. Appellant in the alternative, claim against 2nd respondent for his alleged unlawful interference in the legal relationship between appellant and 1st respondent which purportedly induced his (appellant's) termination from duty. Appellant alleged that he was to retire at the age of 60 years and that he still had about 12 years to serve the company. Appellant had sometime in 1986 addressed a memo (Exhibit C) to 2nd respondent who was the Chairman & Managing Director of 1st respondent company. Appellant in the memo sought for an appraisal of the state of affairs of the company. He equally expressed displeasure to 2nd respondent with regards to the manner the company was being run and how life was made miserable for appellant.

Not satisfied with the letter, 2nd respondent asked appellant to withdraw same. Appellant refused to comply. Thereafter, a letter of termination of appointment was handed over to appellant by 2nd respondent. Hearing commenced in the matter and at the end of which the court partly granted the reliefs sought by appellant. Appellant was awarded the total sum of N21,135.34 being cost for wrongful termination of his employment. Appellant's alternative claim was dismissed for lacking in merit. Dissatisfied with the award of damages, appellant appealed to the Court of Appeal Lagos Division, contending that the success of his primary claim in the trial court ought to also entitle him to the alternative claim. The appeal was dismissed in its entirety. The court affirmed the trial court's judgment and held that appellant failed to prove his alternative claim. Not yet satisfied, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

1. Whether it was open to the lower court to have satisfied the view that there was no basis for the appellant to contend that it was well within the contemplation of the parties that the appellant would remain in the service of the 1st respondent till age of 60, given the evidence adduced by the appellant which was in fact admitted by the respondent's witnesses.

2. Whether upon the uncontested finding that, the appellant's employment was unlawfully terminated the measure of damages applied by the trial court and affirmed by the lower court met the standard imposed by law.

3. Whether upon the holding by the lower court that the Statute of Limitation was not an issue in relation to the claim contained in paragraph 10 of the statement of claim, it was still open to the lower court to have refused to grant the relief appurtenant thereto.

4. Whether upon the totality of the evidence available and the judicial pronouncements binding on the lower court, the jurisprudential concept capture in the expression "statutory flavor" is not applicable to the employment of the appellant.

5. Whether in the circumstance of this case and given the state of the pleadings and evidence adduced thereon, the alternative claim against the 2nd respondent abated upon the partial success of the main claim against the respondents.

6. Whether the claim in respect of the stock option of Pfizer

International Inc. is indeed not maintainable against 1st respondent.

HELD (Unanimously dismissing the appeal per

GALADIMA JSC)

B *CONTRACTS - Terms - Binding nature*

1. In determining the rights and obligations of the parties to a contract, the court must respect the sanctity of contract made by them. Exhibit 'A' tendered by the appellant is the evidence of contract entered by the parties. They are bound by the terms thereof and the court will not allow a term on which there is no agreement to be read into it. (p. 2971 B)

CONTRACTS - Written contract - Variation

D **2. The appellant cannot now find it auspicious to smart out the ambit of Exhibit 'A' and his letter of appointment, which he claimed he misplaced, simply to justify his additional award of damages. The basic principle of law is that extrinsic evidence will not be given to contradict, vary, and alter the effect of a written contract.** (p. 2972 A)

CONTRACTS - Written contract - Oral evidence

F **3. This position of the law has been made clear in UDOGWU v. OKI (1990) 5 NWLR (pt. 153) 721 at 736, where the Court of Appeal followed the reasoning of this court in DA ROCHA v. HUSSEIN (1958) SCNLR 280. The judicial pronouncements in the two cases have found statutory backing in Section 128 (1) (b) of the Evidence Act. That subsection which permits the**

G **admissibility of oral evidence to prove the existence of documentary evidence, is one of the exceptions to the general principle of law expressed in section 128 (1) of the Act. It therefore makes admissible, oral evidence relating to:**

H **“(b) The existence of any separate oral agreement as to any matter on which a document is silent and which is not inconsistent with its terms, if from the circumstances of the case the court infers that the parties did not intend the document to be a complete and final statement of the whole of the**

transaction between them.'

Similarly, section 128 (1) (d) makes admissible oral evidence pertaining to:

'(d). The existence of any distinct, subsequent oral agreement to rescind or modify any such contract, grant, or disposition of property.'

I agree with the learned counsel for the respondents that the foregoing provision regarding admissibility of oral evidence, in the circumstance, should not be seen or understood to allow all kinds of oral evidence to supplant or supplement the express terms of a written contract not contemplated by the parties.

The general rule is that an agreement for variation of an existing contract must itself possess the characteristics of a valid contract such as offer, acceptance and consideration. In the circumstance of this case at hand there is nothing before the trial Court to show or even remotely suggest that the parties were at ad idem on the issue of assertion by the appellant that his employment cannot be terminated before he attains 60 years. (p. 2972 B)

MASTER & SERVANT - Termination - Validity

4. The contract of service between the appellant and the 1st respondent is purely that of Master/Servant relationship. He cannot, under any disguise, turn around and claim that he is entitled to remain in office until 60 years when he hopes to retire from service of the 1st respondent. It is well settled that in such relationship an employer can terminate the service of an employee at any time, giving the appropriate length of notice stipulated in the contract or such length of notice deemed by the court to be reasonable in the circumstance of the case, in the absence of any express provision for length of notice in the contract of service. (p. 2973 C)

MASTER & SERVANT - Termination - Damages

5. Therefore, in the absence of any credible evidence suggestive of the appellant's assertion that his employment cannot be terminated before he attains 60 years, any claim for addi-

tional damages, on this basis must fail. I cannot therefore set aside the measure of damages applied by the trial court and affirmed by the lower court.

The standard set by law for assessment of damages to a party whose employment has been unlawfully terminated has been established in a plethora of decisions of this court. The position of the law is that where the termination of a contract of service was found to have been wrongful, the measure of damages that the plaintiff could be entitled to would be the salaries for the length of time during which notice of the termination would have been given in accordance with the contract of employment. He would, in addition, be paid other legitimate entitlements due to him at the time his employment was terminated. (p. 2973 E)

MASTER & SERVANT - Termination - Unlawfulness - Element 6. It is appropriate to bear in mind that in a contract of employment, the element of unlawfulness arises, where in carrying out the decision to terminate the employment, the employer or employee has failed, neglected or refused to adhere to the principles laid down by statute, in a case of contract with statutory flavor, or by the terms of contract contained in the letter of employment in ordinary contract of employment (p. 2974 A)

MASTER & SERVANT - Termination - Notice - Absence of 7. Furthermore where the period of notice is not stipulated in contract of employment, it behooves on the trial court to apply the test of a reasonable man to imply the period of notice that would have been adequate in the circumstances, having regard to the nature of the employment, the length of service etc. (p. 2975 D)

H Appeals - Concurrent findings - Damages 8. In the light of the foregoing, I find that the appellant has not been able to point out any fault or perversity inherent in the findings of the two courts below to the effect that it was not within the contemplation of parties that the appellant would

remain in the 1st respondent's employment until he attained the age of 60 years and the assessment of damages was proper and adequate in the circumstances. (p. 2976 A)

APPEALS - Issues - Not raised at trial - Fate

9. I agree with the learned counsel for the respondents that it was on the basis of the above reasoning that the trial court refused appellant's claim for accumulated leave allowance and not on the basis of the applicability or otherwise of the Statute of Limitation. The appellant did not proffer any argument at the trial court on the applicability or otherwise of the Statute of Limitation to his claim for accumulated leave allowance. What was submitted for the consideration of the trial court was whether or not the appellant had obtained requisite approval to accumulate his leave allowances and whether he was therefore entitled to the grant of same. From the above extract, the trial court having found that the appellant had not obtained any approval, held that he could not make a valid claim for the accumulated leave allowance. It is trite law that an issue which is not raised, argued and pronounced upon by a trial court, cannot be validly raised as a ground of appeal or as issue for determination before the appellate court, as such issue or argument made thereon are not competent and therefore go to no issue. (p. 2977 G)

CONTRACTS - Privity of contract

10. The appellant argued in his brief that even though the stock option was a personal agreement between him and Pfizer International Inc. of New York, the 1st respondent; who was not a party to the contract, should be held liable for the unpaid stock option benefits accruable to him. He contended that the mere fact that he entered into arrangement with the said company in the course of his employment with the 1st respondent should make the 1st respondent liable for his stock option benefits. This appellant's argument does not take into consideration the simple doctrine of privity of contract, which is that a contract cannot, as a general rule, confer or impose obligations arising under it on any person, except the parties

to it, in other words, only the parties to a contract can sue or be sued on the contract; a stranger to a contract can neither sue nor be sued on the contract. (p. 2978 D)

MASTER & SERVANT - Contract - Legal personality

B 11. In the light of the above settled position of the law on this point, it is quite inconceivable for the appellant to claim from his outstanding stock option for 13 years worth of stocks, which he argued that he would have been entitled to had his employment continued. Learned counsel for the respondents has rightly argued that the legal personality of the 1st respondent is distinct and separate from Pfizer International Incorporated New York. I have not seen, from the record, where the appellant has canvassed contrary argument. To my mind, indeed in law, Pfizer International Inc. New York is a separate and legal entity with its unique legal rights and liabilities. 1st respondent is not expected to carry a legal burden which is only ascribable to Pfizer International Incorporated of New York to carry.

E From the foregoing passages both the trial court and the lower court quite impressively flawed the appellant's arguments on this issue. Indeed in the present circumstances, there are no facts before me to suggest that Pfizer International incorporation of New York acted on behalf of the 1st respondent in respect of the stock option as to make the said 1st respondent liable for the action of the former. In effect, I hold that the claim for stock option by the appellant is not maintainable against the 1st respondent. (pp. 2978 H/2980 E)

G ACTIONS - Alternative relief - Award

12. In my respectful view this argument canvassed by the appellant cannot hold, if he had felt so strongly and certain about the alternative relief, he ought to have brought a separate action and/or claimed the relief against the 2nd respondent distinctively from the relief against the 1st and 2nd respondent jointly or severally, since he is contending that the relief sought is in respect of a separate cause of action.

In law, alternative reliefs are construed distinctively and

not conjunctively. The trial court extensively and meticulously assessed the amount of damages the appellant is entitled to in his principal relief on the basis of proven facts. It is therefore not open to the appellant to now seek to rely on the alternative relief merely because the trial court did not grant him the full sum of money he claimed he is entitled to under his principal relief. To allow this to happen would amount to the appellant seeking double compensation, a practice that this court frowned upon. (p. 2982 D) B

REPRESENTATION

C

Oyetola Oshobi Esq., with B. B. Lawal Esq., O. I. Arasi Esq., O. O. Obayuwana (Miss) for the Respondents
No appearance of counsel for the Appellant in court

CASES REFERRED TO

D

Ewarami v. ACB. (1978) 4 SC 99
Okongwu v. NNPC (1989) 4 NWLR (pt. 115) 296
Uwagbanebi v. Nig. Palm Produce Board (1986) 3 NWLR (pt. 29) 489 E
Ajibade v. Pedro (1992) 5 NWLR (pt. 241) 257
Ibama v. Shell (2005) 10 SC 74
Ihekwoaba v. ACB Ltd. (1998) 10 NWLR (pt. 871) 590
Koiki v. Magnusson (1999) 8 NWLR (pt. 615) 492 F
Baba v. N.C.A.T.C. (1991) 5 NWLR (pt. 192) 388
Udogwu v. Oki (1990) 5 NWLR (pt. 153) 721
Geidam v. NEPA (2001) 2 NWLR (pt. 696) 45
Nwaubani v. Golden Guinea Breweries Plc. (1995) 6 NWLR (pt. 400) 184 G
Chukwuma v. Shell Petroleum (1993) 4 NWLR (pt. 289) 512
Abimbola v. Abatan (2011) 9 NWLR (pt. 717) 66
Enang v. Adu (1981) 11-12 SC 25
Igwego v. Ezeugo (1992) 6 NWLR (pt. 249) 561 H

STATUTE REFERRED TO

Evidence Act, s. 128(1)(b)(d)

LEAD JUDGMENT BY GALADIMA JSC

The appellant as plaintiff had instituted an action at the High Court of Lagos State [“the trial court”] before OBADINA [J], as he then was. It was vide a writ of summons dated 31st July 1987, claiming for the sum of N 2,883,727 (Two Million, Eight Hundred and Eighty Three Thousand, Seven Hundred and Twenty Seven Naira) being general and special damages arising from the unlawful termination of his employment with the 1st respondent. Alternatively, against the 2nd respondent for his alleged unlawful interference in the legal relationship between the appellant and the 1st respondent, which purportedly induced his termination.

At the conclusion of the case by the parties, their learned counsel addressed the court. In his well considered judgment, the learned trial judge, partly decided in favour of the appellant. Of the overall sum claimed by the appellant in his statement of claim, he was awarded a total sum of N21,135.34 (Twenty One Thousand, One Hundred and Thirty-five Naira, Thirty-four Kobo) against the 1st respondent as suffered by the appellant for wrongful termination of his employment, while the other claims of the appellant were dismissed by the trial court as lacking in merit and not sufficiently proved by the appellant.

Dissatisfied with the award of damages by the trial court, the appellant appealed to the Court of Appeal, Lagos Division [“the lower court”] vide a Notice of Appeal dated 26th June, 1990, The appellant contended in that court, inter alia that the quantum of damages awarded by the trial court was inadequate and he was equally unhappy with the trial court’s dismissal of his alternative claim against the 2nd respondent, That despite the success of his primary claim against the 1st and 2nd respondents jointly and severally, the trial court still ought to have granted his alternative claim against the 2nd respondent.

Again, in a well considered judgment delivered on 19th January, 1995, the lower court, in a unanimous decision, dismissed the appellant’s appeal in its entirety. It upheld the trial court’s assessment and award of damages, finding the same to be proper in the circumstances and unassailable in law. On the issue of the alternative claim, the lower court held that the appellant failed to prove his claim of unlawful interference against the 2nd respondent and further stated

thus;

“Where an alternative claim is made in addition to a main claim, it is only where the main claim has not been granted that the consideration and the granting of the alternative claim can arise as both the main claim and the alternative claim cannot at the same time be granted”.

B

The court, per SULU-GAMBARI JCA, in the lead judgment proceeded to dismiss the appeal and award costs to the respondents.

Dissatisfied with the decision of the court below, appellant has further appealed to this court upon the six grounds of appeal vide Notice of appeal filed on 21/2/95 six issues were distilled by the appellant’s counsel from the grounds for determination of the appeal, as per para 3, 1 of the brief of argument filed on 10/9/2004. The issues are as follows

C

1. *Whether it was open to the lower court to have satisfied the view that there was no basis for the appellant to contend that it was well within the contemplation of the parties that the appellant would remain in the service of the 1st respondent till age of 60, given the evidence adduced by the appellant which was in fact admitted by the respondent’s witnesses. [Grounds 1, 2 and 3]*

E

2. *Whether upon the uncontested finding that, the appellant’s employment was unlawfully terminated the measure of damages applied by the trial court and affirmed by the lower court met the standard imposed by law. (Grounds 1, 2 and 3)*

F

3. *Whether upon the holding by the lower court that the Statute of Limitation was not an issue in relation to the claim contained in paragraph 10 of the statement of claim, it was still open to the lower court to have refused to grant the relief appurtenant thereto. (Ground 4)*

G

4. *Whether upon the totality of the evidence available and the judicial pronouncements binding on the lower court, the jurisprudential concept capture in the expression “statutory flavor” is not applicable to the employment of the appellant. (Ground 3)*

5. *Whether in the circumstance of this case and given the state of the pleadings and evidence adduced thereon, the alternative claim against the 2nd respondent abated upon the partial success of the main claim against the respondents. (Ground 6)*

H

6. *Whether the claim in respect of the stock option of Pfizer*

International Inc. is indeed not maintainable against 1st respondent. (Ground 5)”

In the respondents’ brief of argument settled by Oyetola Oshobi, the leading counsel, filed on 17/9/2013 but deemed filed on 15/1/2014; five issues were posited for determination of appeal thus;

- B “[a] *Whether the Appellant has demonstrated sufficient reasons to upset the concurrent findings of the lower court, and trial courts and to cause your Lordships to depart therefrom? (Distilled from Ground 1 and 2 of the Notice of Appeal)*
- C (b) *Whether upon the totality of the evidence available and the judicial pronouncements binding on the lower court, the jurisprudential concept captured in the expression “statutory flavor” can lawfully be stretched to apply to the employment of the appellant? [Distilled from Ground 3 of the Notice of Appeal]*
- D (c) *Whether the finding by the lower court that the Statute of Limitation was not an issue in relation to the claim, contained in paragraph 10 of the statement of claim was by itself a sufficient basis to have granted the relief appurtenant thereto? (Distilled from Ground 4 of the Notice of Appeal)*
- E (d) *Whether in light of the uncontested evidence that the stock option is a private arrangement between the Appellant and Pfizer International Inc. and the failure/neglect/refusal of the Appellant to join the said Pfizer International in the suit, the claim in respect of the stock option of Pfizer International Inc., is maintainable against the 1st Respondent? (Distilled from Ground 5 of the Notice of Appeal)*
- F (e) *Whether the Appellant is entitled to the grant of his alternative claim notwithstanding the success, partial or otherwise, of his primary claim against the Respondent? (Distilled from Ground 6 of the Notice of Appeal)”*
- G

On the 4th of March 2014, the appeal was heard Appellant was duly served with the Hearing Notice. Having earlier filed his brief, it is deemed argued in accordance with the rules of this court. Six and five issues respectively for determination are identified by the parties.

- H These were adopted and relied upon. In my view the issues have been unnecessarily proliferated by the parties. Hence, in arguing the appeal, the learned counsel for the appellant decided to argue issues 1, 2, 3, 4 and 6 together, leaving issue 5 to be argued separately.

The summary of the argument of learned counsel for the ap-

pellant in his brief of argument are as follows: It is submitted that the termination of the appellant was not in compliance with Exhibit 'A', the Personnel Policy Manual and therefore unlawful. That the appellant was no longer marketable as a result of the unlawful termination of his appointment and in consequence, the learned trial judge had to evaluate the issue of "reasonable notice" in consonance with the cases of EWARAMI v. ACB. (1978) 4 SC 99, OKONGWU v. NNPC (1989) 4 NWLR (pt. 115) 296 and UWAGBANEBI v. NIGERIAN PALM PRODUCE BOARD (1986) 3 NWLR (pt. 29) 489. It is contended that the Appellant pleaded and established by preponderance of evidence that the benefits of his employment included bonus, stock options and housing allowance and that the wrong done to him deprived him of the earnings for these benefits for the rest of his working life with the 1st respondent to which he is entitled. It is contended that having proved by the preponderance of evidence that the 1st respondent had not paid him his housing allowances for July 1986; he incurred some reimbursable expenses maintainable against the said 1st respondent which are his contributions to the corporate thrift and credit society.

Learned counsel has further submitted that the appellant has shown by judicial authorities, (which are binding on the trial judge) that in cases of master and servant relationship, the practical effect of a declaration of a nullity of termination of appointment is not always to restore the relationship but to directs the court's attention to quantum of damages in such aggravated circumstance.

Learned counsel for the respondents has argued his issues in response seriatim. It must be noted, however, that the main issue that forms the plank of the appeal is whether the appellant has ably demonstrated sufficient reasons to set aside the concurrent findings of the two lower courts.

The law is well settled that this court will not interfere or disturb concurrent findings of fact by the courts below unless such findings are found to be perverse or capable of occasioning a miscarriage of justice. This principle which has been restated by this court over the years with unwavering consistency and force is founded on the logic that a trial judge is in a best position to draw inferences from primary facts. The Appellate court can reject an inference or inferences and make what it considers to be the right inferences supported by evi-

dence. See the cases of HIGH GRADE SERVICE LTD v. FIRST BANK OF NIGERIA LTD (1991) 11 NWLR (pt. 990)65 at 116.

As it will be shown in the course of this judgment, nowhere has the Appellant in his brief of argument, been able to demonstrate any fault in the judgments of the lower courts. He did not advance any
B reason for this court to interfere with the said findings.

It is in the light of the foregoing that the court below, while agreeing with the findings of the trial court, held at page 199 of the record of appeal thus:

C *“In conclusion, I find no fault in all the items of claim rejected by the learned trial judge and I must commend him for meticulously considering the matter and for his industry in identifying the items of claim as have been established, damages for which he rightly and properly awarded to the appellant. I do not see how such a meticu-*
D *lous conclusion can be faulted. The appeal is in its entirety dismissed with N2,000.00 costs to the 1st and 2nd respondents.*

In my view the appellant has not put up cogent reasons before this court to provoke a departure from the concurrent findings of the two courts. He has failed to canvass a single argument in support of
E this first issue as formulated from ground 1 of the Notice of Appeal. This court could therefore in consonance with its earlier decision, in AJIBADE v. PEDRO (1992) 5 NWLR (pt 241) 257 at page 269, hold that the failure by the appellant to advance an argument on the crucial issue submitted for determination, it should be deemed abandoned.
F Taking such step does not succinctly explain salient misgivings of the appeal. I must explain further why this issue cannot be resolved in favour of the Appellant.

The appellant has contended that he had become a life employee of the respondent, such that he could not be retired until he attained the retirement age of 60 years. For this contention reliance was placed on Exhibit ‘A’ the Personnel Policy Manual of the 1st respondent. The court below has this to say on the Exhibit, at page 194 of the record-

H *“The issue as to whether the appellant was entitled to work for 60 years before his retirement from the company has been put to rest by the trial judge. Such provision can only be contained in the Personnel Policy Manual of the Company, which is Exhibit “A” and since the learned trial judge has perused same and came to the con-*

clusion that no such provision was therein contained, there is no other way from which matter can be reasonably contemplated, No serious point has been canvassed by the appellant to upset that finding of the learned trial judge. It is therefore not within the contemplation of the parties to this action that the appellant should remain in the service of the 1st respondent until he reached the age of 60 years. “ B

In determining the rights and obligations of the parties to a contract, the court must respect the sanctity of contract made by them. Exhibit ‘A’ tendered by the appellant is the evidence of contract entered by the parties. They are bound by the terms thereof and the court will not allow a term on which there is no agreement to be read into it. See IBAMA v. SHELL (2005) 10 SC 74 PP. 75 - 76, IHEKWOABA v. ACB LTD (1998) 10 NWLR (pt 871) 590 at 621, KOIKI v. MAGNUSSON (1999) 8 NWLR (pt 615) 492 at 514 and BABA v. N. C. A. T. C. (1991) 5 NWLR (pt D 192) 388.

In the course of trial the appellants gave oral evidence at page 46 paragraphs 5-19 of the content of his letter of appointment. As I have already noted, nowhere either in Exhibit ‘A’, or the appellant’s letter of Appointment was it stated that his retirement age is set at 60 E years. The testimony of the witnesses called by himself and the respondents show that his assertion was unfounded.

At pages 42-43 of the record of appeal the appellant’s witness (Pw1), the Company Secretary, testified thus:

“As a staff of the company, I am affected by the manual. The relationship between me and the company is regulated by the manual and by letter of appointment. I don’t know whether there is a provision guaranteeing my employment till the age of 60 years. The letter of appointment does not say that my appointment is guaranteed till G the age of 60 years. I see clause 14(1) (iv) of Exhibit A now shown to me. Since I have been in the employment of the 1st Defendant, the appointments of many staff have been terminated before the age of 60 years,

Similarly, at page 67 of the record of appeal, the respondents’ H second witness (DW2), the General Manager of the 1st respondent testified that:

“There is no provision in the Corporate Policy to make me stay in the company until I am 60 years.”

The appellant cannot now find it auspicious to smart out the ambit of Exhibit 'A' and his letter of appointment, which he claimed he misplaced, simply to justify his additional award of damages. The basic principle of law is that extrinsic evidence will not be given to contradict, vary, and alter the effect of a written contract. This position of the law has been made clear in UDOGWU v. OKI (1990) 5 NWLR (pt. 153) 721 at 736, where the Court of Appeal followed the reasoning of this court in DA ROCHA v. HUSSEIN (1958) SCNLR 280. The judicial pronouncements in the two cases have found statutory backing in Section 128 (1) (b) of the Evidence Act. That subsection which permits the admissibility of oral evidence to prove the existence of documentary evidence, is one of the exceptions to the general principle of law expressed in section 128 (1) of the Act. It therefore makes admissible, oral evidence relating to:

"(b) The existence of any separate oral agreement as to any matter on which a document is silent and which is not inconsistent with its terms, if from the circumstances of the case the court infers that the parties did not intend the document to be a complete and final statement of the whole of the transaction between them."

Similarly, section 128 (1) (d) makes admissible oral evidence pertaining to:

'(d). The existence of any distinct, subsequent oral agreement to rescind or modify any such contract, grant, or disposition of property.'

I agree with the learned counsel for the respondents that the foregoing provision regarding admissibility of oral evidence, in the circumstance, should not be seen or understood to allow all kinds of oral evidence to supplant or supplement the express terms of a written contract not contemplated by the parties.

The general rule is that an agreement for variation of an existing contract must itself possess the characteristics of a valid contract such as offer, acceptance and consideration. In the circumstance of this case at hand there is nothing before the trial Court to show or even remotely suggest that the par-

ties were at ad idem on the issue of assertion by the appellant that his employment cannot be terminated before he attains 60 years.

At the trial the parties filed their pleadings and Issues were joined. The respondents rebutted the assertion by the appellant and there was ample evidence before the trial court that the employ- B
ments of some staff of the 1st respondent have been terminated on numerous occasions before the age of 60 years, a fact which the appellant admitted. This is the basis for the findings of the court below.

The contract of service between the appellant and the 1st respondent is purely that of Master/Servant relationship. He cannot, under any disguise, turn around and claim that he is entitled to remain in office until 60years when he hopes to retire from service of the 1st respondent. It is well settled that in such relationship an employer can terminate the service of an employee at any time, giving the appropriate length of notice stipulated in the contract or such length of notice deemed by the court to be reasonable in the circumstance of the case, in the absence of any express provision for length of notice in the contract of service. See IMOLOAME v. WAEC (1992) 9 NWLR (pt. 265) 303 at 321. C D E

Therefore, in the absence of any credible evidence suggestive of the appellant's assertion that his employment cannot be terminated before he attains 60 years, any claim for additional damages, on this basis must fail. I cannot therefore set aside the measure of damages applied by the trial court and affirmed by the lower court. The standard set by law for assessment of damages to a party whose employment has been unlawfully terminated has been established in a plethora of decisions of this court. The position of the law is that where the termination of a contract of service was found to have been wrongful, the measure of damages that the plaintiff could be entitled to would be the salaries for the length of time during which notice of the termination would have been given in accordance with the contract of employment. He would, in addition, be paid other legitimate entitlements due to him at the time his employment was terminated. See GEIDAM v. NEPA F G H

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(2001) 2NWLR (pt 696) 45, NWAUBANI v. GOLDEN GUINEA
BREWRIES PLC. (1995) 6 NWLR (pt 400) 184 at 207.
CHUKWUMA v. SHELL PETROLEUM (1993) 4 NWLR (pt 289)
512 at 560.

***It is appropriate to bear in mind that in a contract of
B employment, the element of unlawfulness arises, where in carrying out the decision to terminate the employment, the employer or employee has failed, neglected or refused to adhere to the principles laid down by statute, in a case of contract
C with statutory flavor, or by the terms of contract contained in the letter of employment in ordinary contract of employment,***
as in the instant case; where the trial court at pages 109, 110 to 111 of the record of appeal held as follows:

*'To resolve the issue regard must be had to the provisions of
D the personnel policy manual- Exhibit A which regulated the relationship between the plaintiff and the 1st defendant,.. From the provisions of Exhibit 'A', when a termination decision has been made certain procedural steps have to be taken, especially a final approval from the Region Manager must be received by the General Manager.
E From the evidence before the Court, there is nothing to show that the required procedural steps were taken before the termination of employment of the plaintiff vide Exhibit 'B', consequently, the termination was wrongful, and unlawful. Having said that the next
F issue is of the wrongful termination.'*

No doubt, the instant case is an ordinary contract of employment. The element of unlawfulness herein is only to the extent that the 1st respondent failed to follow the procedure for termination laid down in the appellant's letter of employment. Consequently, the
G appellant was denied the period of notice and the salary in lieu of notice.

The trial court, as affirmed by the court below had discharged its duty in ensuring that the appellant received the salary in lieu and other pecuniary entitlements which were due to him at the time of
H termination of his employment. These are what the appellant would have been entitled to if the employment was lawfully terminated, that is to say, if the procedure was followed,

On measure of damages recoverable for wrongful termination of employment, this court in CHUKWUMA v. SHELL PETROLEUM

(1993) 4 NWLR (pt 289) 512 at 538 and 539, has held that:

“Having held however that his employment was wrongfully terminated he is only entitled to what he would have earned over the period of notice ...in my respectful judgment, the court below was right in holding that is all, that he was entitled to. In addition, however, he would also be entitled to other allowances for the period of two months normally enjoyed by him such as car allowance, et cetra. Equally too he would be entitled to his entitlement under the pension schemes. See NIGERIAN PRODUCE MARKETING BOARD v. ADEWUNMI (1972) 1 (pt 2) All NLR. 870. INTERNATIONAL DRILLING COMPANY NIG LTD v. AJUOLA (1976) 2 SC 115, WNDC v. ABIMBOLA (1966) 1 All NLR 159. See also MAYNE AND MCGREGOR ON DAMAGES 12TH Edition para. 608 et seq.”

This principle has been restated in NWAUBANI v. GOLDEN GUINEA BREWERIES PLC (supra) and BABAMA v. SHELL PETROLEUM DEVELOPMENT CO. of NIGERIA LTD (supra)

Furthermore where the period of notice is not stipulated in contract of employment, it behooves on the trial court to apply the test of a reasonable man to imply the period of notice that would have been adequate in the circumstances, having regard to the nature of the employment, the length of service etc.

In the instant case the trial court at pp, 122-124 of the record of appeal, taking into consideration, the relevant factors, awarded salary in lieu of six month notice, in addition to the three months salary paid to the appellant by the 1st respondent. In its well considered judgment the lower court commendably endorsed the decision of the trial judge. See page 199 of the record of appeal, containing the passage where this endorsement was made and which I have already extracted above.

Indeed, the trial court at pp. 112 -122 of the record of appeal meticulously considered each and every head of claim for damages put forward by the appellant, granting same where sufficiently proved and refusing where such claim was not established and it awarded a total sum of N21, 135. 34 (Twenty One Thousand One Hundred and Thirty Five Naira, Thirty Four Kobo), representing a bonus on a pro-rata basis for 1985/1986, vacation allowance for ten months, reimbursable expenses for July, 1986 and damages for unlawful ter-

mination of employment.

In the light of the foregoing, I find that the appellant has not been able to point out any fault or perversity inherent in the findings of the two courts below to the effect that it was not within the contemplation of parties that the appellant would remain in the 1st respondent's employment until he attained the age of 60 years and the assessment of damages was proper and adequate in the circumstances.

On issue two, it is instructive that in the course of considering issue one, I did touch on the nature of the legal relationship between the appellant and the 1st respondent. At the risk of repetition, I have stated that it is a pure Master/Servant relationship under common law. It is neither employment where the office is held at pleasure nor protected by statute that is an employment with statutory flavor, it is needless belaboring this point or principle that is so settled in a plethora of decisions of this court. It becomes a mere academic discourse as it is not applicable to the case at hand. Learned counsel for the appellant cannot be heard to argue that appellant's employment should be construed as one with statutory flavour where the overwhelming evidence before the courts below and from the record of appeal clearly show that this is purely master/servant relationship between the appellant and the 1st respondent; governed strictly by the contract of service entered into between them.

The 3rd issue poses the question whether the finding by lower court that the Statute of Limitation was not an issue in relation to the claim contained in para 10 of the statement of claim was by itself a sufficient basis to have granted the relief appurtenant thereto. This is distilled from Ground 4 of the Notice of appeal.

The appellant has argued at page 17 paragraph 4 of his brief that in view of the lower court's holding that the Statute of Limitation was not in issue in respect of the appellant's accumulated leave allowance, then on this basis, the lower court ought to have reversed the trial court's finding that the appellant was not entitled to the purported accumulated leave allowance. My attention has been drawn to page 196 of the record of appeal where the appellant had submitted this issue to the lower court for consideration. Reacting to this point this is what the lower court had to say.

The fourth issue posed as to the question whether the claim of

the appellant as contained in paragraph 10 of the statement of claim was statute barred is unwarranted as no Issue has been joined at the trial court and only a feeble attempt has been made in the brief by the appellant to submit that the claim was not statute barred on a bare statement without further expatiation, The issue of statute bar therefore does not arise for consideration in this appeal. It is mis- B
placed.'

It is instructive to also note that on pp 112-113, of the record the question of Statute of Limitation was never considered. On the contrary the learned trial judge carefully considered the relevant portion of the 1st Respondent's Personnel Policy Manual (Exhibit A) vis-à-vis the oral testimonies of the 2nd and 3rd witnesses of the respondents in arriving at the conclusion that the appellant had failed to prove his entitlement to the accumulated leave allowances. At page 113 of the record of appeal the learned trial judge held that: C

"The plaintiff did not either in the statement of claim or in his evidence state when actually the leave became due and was deferred... The 2nd and 3rd DWs also gave evidence to the effect that leave could not be accumulated without the approval of the immediate boss and that the approval of the 2nd Defendant would be necessary for the plaintiff to accumulate his leave. There is no evidence to controvert the evidence of the 2nd and 3rd DWs on the issue. On the contrary, there is evidence – Exhibit F1 that the 2nd defendant as the boss of the plaintiff rejected the claim in 1970 when the plaintiff raised the issue... from the evidence I find it very difficult to believe the plaintiff that he accumulated leave for 23 weeks. I prefer the evidence of the defence witnesses and reject the plaintiffs evidence on that item of his claim." D E F

I agree with the learned counsel for the respondents that it was on the basis of the above reasoning that the trial court refused appellant's claim for accumulated leave allowance and not on the basis of the applicability or otherwise of the Statute of Limitation. The appellant did not proffer any argument at the trial court on the applicability or otherwise of the Statute of Limitation to his claim for accumulated leave allowance. What was submitted for the consideration of the trial court was whether or not the appellant had obtained requisite approval to accumulate his leave allowances and whether he G H

was therefore entitled to the grant of same. From the above extract, the trial court having found that the appellant had not obtained any approval, held that he could not make a valid claim for the accumulated leave allowance. It is trite law that an issue which is not raised, argued and pronounced upon by a trial court, cannot be validly raised as a ground of appeal or as issue for determination before the appellate court, as such issue or argument made thereon are not competent and therefore go to no issue.

C Issue No. 6 distilled by the appellant is respondents' issue No. 4. It is all about appellant's claim for stock option against the 1st respondent. Appellant pleaded in paragraph 15 of his statement of claim that additionally, he was entitled to a stock option in the circumstances pleaded in paragraph 11 of same. The learned trial judge D found at page 22 of the record that the stock option was personal between the appellant and Pfizer International Inc., New York.

The appellant argued in his brief that even though the stock option was a personal agreement between him and Pfizer International Inc. of New York, the 1st respondent; who was not a party to the contract, should be held liable for the unpaid stock option benefits accruable to him. He contended that the mere fact that he entered into arrangement with the said company in the course of his employment with the 1st respondent should make the 1st respondent liable for his stock option benefits. This appellant's argument does not take into consideration the simple doctrine of privity of contract, which is that a contract cannot, as a general rule, confer or impose obligations arising under it on any person, except the parties to it, in other words, only the parties to a contract can sue or be sued on the contract; a stranger to a contract can neither sue nor be sued on the contract. See CHUKWUMA MAKWE v. NWUKOR & ANOR (2001) 14 NWLR (pt 733) 356 also CHITTY ON CONTRACTS Vol. 1 para. 19.002 p. 961.

H ***In the light of the above settled position of the law on this point, it is quite inconceivable for the appellant to claim from his outstanding stock option for 13 years worth of stocks, which he argued that he would have been entitled to had his employment continued. Learned counsel for the respondents***

has rightly argued that the legal personality of the 1st respondent is distinct and separate from Pfizer International Incorporated New York. I have not seen, from the record, where the appellant has canvassed contrary argument. To my mind, indeed in law, Pfizer International Inc. New York is a separate and legal entity with its unique legal rights and liabilities. 1st respondent is not expected to carry a legal burden which is only ascribable to Pfizer International Incorporated of New York to carry.

By his own showing, in his testimony at the trial at pages 54 and 53 of the record of appeal, the appellant may not be fully aware of the legal implications of what he had testified before the trial court.

First, at page 54 paragraphs 18-25 of the record, the appellant testified as follows:

"I know about stock option. Stock option is an arrangement whereby the senior members of the 1st defendant are entitled to stocks given to them by Pfizer International incorporation of New York. I am entitled to the stock option. I have been enjoying it since about 1972. It was a personal thing."

At page 63 paragraphs 6-11 the appellant further testified as follows:

"I have collected all the funds contained in Exhibit 'B' I support the statement that stock option is personal between the staff and Pfizer International Incorporation the issue of stock option is an annual event between me and Pfizer International Incorporation, I am aware that Pfizer International Incorporation is separate and distinct from the 1st defendant (Underlined for emphasis)."

Cross-examined at page 65 paragraphs 20-29, Appellant stated as follows:

'Because Pfizer products is a part of Pfizer International; the stocks therefore belong (sic) to Pfizer Products Ltd... Incorporation New York owns 60% shores of Pfizer Products Ltd. I do not know the number of shares Pfizer Ltd I do not know that Pfizer Products Ltd has no shares in Pfizer Inc. New York.'

A point has been made here that the appellant had placed undue reliance on his claim that Pfizer International Incorporated of New York had 60% shares capital of 1st respondent. It is instructive to note however, that the learned trial judge had considered that issue

and rightly concluded that the appellant failed to adduce evidence, proving of the purported shares holding of Pfizer International incorporated of New York in the 1st respondent. Hence at page 197 of the record of appeal, the lower court, agreeing with the learned trial judge, pointed out that the appellant overstressed the point that Pfizer International Incorporated had 60% of the share capital of the 1st respondent but came to the conclusion that he did not provide sufficient evidence to support such argument.

At page 198 the court further held as follows;

“I agree with this decision that since the stock option is claimable from Pfizer International Incorporation which is a complete and separate entity by itself from the 1st Respondent and even if it is conceded to the appellant (which is not) that there is proof that Pfizer International incorporation had 60% of the share capital of the respondent, that does not make the 1st respondent less an independent entity from the Pfizer International Incorporation. Without joining Pfizer International Incorporation in the action presently constituted, no amount of circumvention, and certainly not as presently contended by the appellant, would render the 1st respondent liable on behalf of the Pfizer International incorporation on the basis that the right corporate entity has not been sued. Here too, nothing useful has been canvassed to fault the decision of the learned trial judge on this issue.’

From the foregoing passages both the trial court and the lower court quite impressively flawed the appellant’s arguments on this issue. Indeed in the present circumstances, there are no facts before me to suggest that Pfizer International incorporation of New York acted on behalf of the 1st respondent in respect of the stock option as to make the said 1st respondent liable for the action of the former. In effect, I hold that the claim for stock option by the appellant is not maintainable against the 1st respondent.

The 5th issue posited and canvassed by the parties is in relation to the claim made against the 2nd respondent that he interfered with the legal relations between appellant and 1st respondent including the unlawful termination of the appointment of the appellant.

The appellant’s alternative claim in paragraph 15 of his Statement of Claim reads.

“He is therefore entitled to be paid this sum against both defendants, jointly, severally, for his unlawful termination by the first defendant and the second defendant or in the alternative for interfering in the legal relations between the plaintiff and the first defendant.”

At paragraphs 4.24- 4.25 of the Appellants brief, he has contended that he has proved by preponderance of evidence that the second respondent was actuated by malice and had interfered with the contractual relations between the appellant and the first respondent. It is submitted that the Judicial authorities (NIGERIAN SUPPLIES MANUFACTURING CO. LTD v. NIGERIAN BROADCASTING CORPORATION (1967) 1 ALL NLR 35, UBA LTD v. PENNY-MART LTD (1992) 5 NWLR (pt 240) 228 and MERCANTILE BANK v. ADALMA TANKER AND BUNKERING SERVICES LIMITED (1990) 5 NWLR (pt. 53) 747, 752) are distinguishable on the facts of the instant case; because the alternative prayers in all the foregoing cases were formulated against the one and only defendant

If I can understand the appellant, he is contending that the alternative claim against the 2nd respondent is maintainable in law and deserving of being granted in conjunction with the principal claim.

At page 125 of the record the learned trial judge found that there is evidence that the 1st respondent was a corporate body and the 2nd respondent was its Chairman and Managing Director. He noted that Exhibit ‘B’ was made in the course of his duty without any evidence of malice, and therefore he was not liable in damages to the appellant.

The court below, relying on the cases now sought to be distinguished, agreed with the trial court and held that in view of the success of the appellants’ main claim the alternative claim could not abide.

I am of the respectable view that the lower courts correctly stated the position of the law on the point, particularly as carefully expounded, in the case of G. K. F. INVESTMENT (NIG) LTD v. NIGERIA TELECOMMUNICATIONS PLC (2009) 13 NWLR (pt 1164) 344 where ALOMA M. MUKHTAR (then as JSC.) held at pp 377- 388, as follows;

‘The award made by the trial court, was in its discretion which the court below did not disturb or interfere with, but affirmed the same. I will now deal with an alternative claim and the duty of the

court in such a claim. Where a claim is in the alternative, the court should first consider whether the principal or main claim, ought to have succeeded, It is only after the court may have found that it could not for any reason, grant the principal or main claim, that it would now consider the alternative claim. See the case of *MERCANTILE BANK of (NIGERIA) LTD v. ADATMA TANKER & BUNKERING SERVICE LTD.* (1990) 5 NWLR (pt 153) 747. In Other words, where there are alternative reliefs as in the instant case leading to this appeal, once one of the reliefs is granted the other cannot be granted as there would be no need to do so. See the cases of *WILLIAM AGIDIGBI v. DANAHA AGIDIGBI & 2 ORS* (1906) 6 NWLR (pt 454) 300, 313, 6 SCNJ 105; *CHIEF YESUFU & ANOR v. KUPPER INTERNATIONAL* order already made against the 1st and 2nd respondents jointly and severally.

In my respectful view this argument canvassed by the appellant cannot hold, if he had felt so strongly and certain about the alternative relief, he ought to have brought a separate action and/or claimed the relief against the 2nd respondent distinctively from the relief against the 1st and 2nd respondent jointly or severally, since he is contending that the relief sought is in respect of a separate cause of action.

In law, alternative reliefs are construed distinctively and not conjunctively. The trial court extensively and meticulously assessed the amount of damages the appellant is entitled to in his principal relief on the basis of proven facts. It is therefore not open to the appellant to now seek to rely on the alternative relief merely because the trial court did not grant him the full sum of money he claimed he is entitled to under his principal relief. To allow this to happen would amount to the appellant seeking double compensation, a practice that this court frowned upon in *G. K. F. INVEST. NIG. LTD. V. NIGERIA TELECOMMUNICATIONS PLC.* (Supra) and *AGIDIGBI v. AGIDIGBI* (Supra).

In view of the foregoing, I hold that the appellant's alternative claims before the trial court lacks merit and the concurrent findings of the lower court and trial court on this issue are unassailable.

In the final analysis having resolved all the issues in favour of the respondents, this appeal fails in its entirety and it is hereby dis-

missed. I award no costs in the circumstance, to the respondents.
Appeal dismissed.

ONNOGHEN JSC

I have had the benefit of reading in draft the lead Judgment of my learned brother GALADIMA JSC just delivered. I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed. B

This appeal is mainly on the facts as concurrently found by the lower courts. It is settled principle of law that the Supreme Court does not make a practice of netting aside the concurrent findings of facts by the lower courts unless there are very special circumstances such as where the findings are perverse or not supported having regard to the evidence on record or were reached as a result of applying a wrong approach to the evidence or as a result of a wrong application of a principle of substantive or procedural law. See ABIMBOLA VS ABATAN (2011) 9 NWLR (Pt. 717) 66; ENANG VS ADU (1981) 11 - 12 SC 25; IGWEGO VS EZEUGO. (1992) 6 NWLR (Pt. 249) 561; OGUNBAYO VS STATE (2007) 8 NWLR (Pt. 1035) 157 at 185 - 186; ADEWOLE VS DADI (2003) 4 NWLR (Pt. 810) 369) 619 at 378; PHILLIPS VS E. O. C. & M.D. CO. LTD. (2013) 1 NWLR (Pt. 1336) 6118 at 640. C
D
E

My learned brother has exhaustively demonstrated in the lead Judgment why the concurrent findings of fact should not be disturbed by this Court as same is supported by the acceptable evidence on record and consequently not perverse. In the circumstances, I have nothing more to add. F

I dismiss the appeal and abide by the consequential orders G made in said lead Judgment including the order as to costs. Appeal dismissed.

RHODES-VIVOUR JSC

I have had the advantage of reading in draft the leading judgment of my learned brother Galadima, JSC I agree with his Lordship that concurrent findings of fact by the two courts below are correct. H

The 2nd respondent is the Chairman and Managing Director of

the 1st respondent. The appellant was an employee of the 1st respondent, and as at 1985 he was the Regional Director of Personal and Public Affairs. On the 9th day of July, 1986 his appointment was terminated by the 2nd respondent because he refused to withdraw Exhibit C a memo which the 2nd respondent found offensive. The contract of service agreed between the appellant and the 1st respondent was master and servant, exhibit A. The appellant sued for N2,883,727 for general and special damages in the mistaken belief that the sum represents his total emoluments that would have been due to him, had he retired at the age of 60 years. The trial court was of a completely different view when it awarded N21,135.34 to the appellant as his entitlements. This sum was affirmed by the Court of Appeal.

The issue for consideration by this court is:

Whether the judgment of the Court of Appeal which affirmed D the judgment of the trial court is flawed.

This court rarely interferes with concurrent findings of the two courts below but would readily do so where there has been exceptional circumstance such as the findings are found to be perverse or cannot be supported by evidence, or there was E miscarriage of justice, or violation of some principle of law or procedure. See *Military Gov. of Lagos State & 4 ors. v. Adeyiga ors.* (2012) 2 SC (pt. I) p.68, *ACN V. Lamido & 4 ors.* (2012) 2SC (pt. II) p. 163.

F Learned counsel for the appellant has been unable to show this court that the sum of N21,135,34 assessed by the trial court and affirmed by the Court of Appeal as the appellants entitlements for being wrongfully terminated was wrong. Concurrent findings of fact by the two courts below that the appellant is only entitled to G N21,135.34 remains correct. It is not perverse, rather it is the correct assessment of the sum due to the appellant.

The Appeal is dismissed.

H

AKA'AHS JSC

I read before now the judgment of my learned brother, Galadima JSC. I agree with his reasoning and conclusion that the appeal lacks merit and it is accordingly dismissed.

The contract between the appellant and the 1st

respondent was merely a contract of service between a master and servant which could be terminated at any time. It was certainly not a tenure appointment nor did it enjoy any statutory flavour. The appellant could not insist that he must remain in his employment until he clocked 60 years of age. The appeal is devoid of any merit. I equally dismiss it and make no order on costs. B

OKORO JSC

I have had a preview of the judgment just delivered by my learned brother, Suleiman Galadima, JSC with which I agree that this appeal lacks merit and ought to be dismissed. My learned brother has admirably resolved all the salient issues submitted for the determination of this appeal. I wish to add a few words of mine in support of the judgment. C D

On 17th June, 1986, the appellant who was plaintiff at the trial court, addressed a memo to the 2nd defendant who was the Chairman and Managing Director of the 1st respondent company in which he sought, as it would seem, to appraise him of the state of affairs of the company with particular reference to the division of the company he headed. In that document which is exhibit C at the trial court the appellant equally expressed displeasure to the 2nd respondent with regards to the manner he was running the company and how he was making life miserable for him. The 2nd respondent was unhappy with that letter and then asked the appellant to withdraw the letter which he refused. E F

On 9th September, 1986, the 2nd respondent wrote a letter of termination of the appointment of the appellant. Based on the facts above, the appellant issued writ of summons which he claimed special and general damages by reason of unlawful termination of his appointment and interference with his legal relationship with the 1st respondent. Appellant alleged that he was to retire at the age of 60 years and that he still had about 12 years to serve the company. G

At the conclusion of evidence and address of counsel, the learned trial judge held that there is nothing in exhibit A - "the Personnel Policy Manual" (which is the instrument regulating the relationship between the Appellant and the 1st Respondent) from which it could be inferred that the employment of the Appellant was to last H

until he reached 60 years. The court however found the termination of the appellant's employment wrongful and awarded some damages to a portion of the damages claimed. Appellant's alternative claim was dismissed.

B Although the appellant won his case in part, he was dissatisfied with the stance of the learned trial judge. His appeal to the Court of Appeal was dismissed. He has further appealed to this court. The appellant distilled six issues for determination as follows:-

C 1. *Whether it was open to the lower court to have sustained the view that there was no basis for the appellant to contend that it was well within the contemplation of the parties that the appellant would remain in the service of the 1st respondent till age 60 given the evidence adduced by the appellant which was in fact admitted by the respondent's witnesses. (Grounds 1, 2 and 3).*

D 2. *Whether upon the uncontested finding that, the appellant's employment was unlawfully terminated the measure of damages applied by the trial court and affirmed by the lower court met the standard imposed by law. (Grounds 1 and 2),*

E 3. *Whether upon the holding by the Lower Court that the Statute of Limitation was not an issue in relation to the claim contained in paragraph 10 of the Statement of Claim, it was still open to the lower court to have refused to grant the relief appurtenant thereto. (Ground 4)*

F 4. *Whether upon the totality of the evidence available and the judicial pronouncements binding on the lower court, the jurisprudential concept captured in the expression "statutory flavor" is not applicable to the employment of the appellant. (Ground3)*

G 5. *Whether in the circumstance of this case and given the state of the pleadings and evidence adduced thereon, the alternative claim against the 2nd respondent abated upon the partial success of the main claim against the respondents. (Ground 6)*

H 6. *Whether the claim in respect of the stock option of Pfizer International Inc. is indeed not maintainable against the 1st respondent. (Ground 5)*

The respondents however formulated five issues which are hereunder reproduced:

a) *Whether the Appellant has demonstrated sufficient reasons to upset the concurrent findings of the lower and trial courts and*

b) Whether upon the totality of the evidence available and the judicial pronouncements binding on the lower Court, the jurisprudential concept captured in the expression “statutory flavor” can lawfully be stretched to apply the employment of the appellant? (Distilled from Ground 3 of the Notice of Appeal)

c) Whether the finding by the lower Court that the statute of limitation was not an issue in relation to the claim contained in paragraph 10 of the statement of claim was by itself, a sufficient basis to have granted the relief appurtenant thereto? (Distilled from Ground 4 of the Notice of Appeal)

d) Whether in light of the uncontested evidence that the stock option is a private arrangement between the Appellant and Pfizer International Inc. and the failure/neglect/refusal of the Appellant to join the said Pfizer International Inc. to the suit, the claim in respect of the stock options of Pfizer International Inc. is maintainable against the 1st Respondent? (Distilled from Grounds of the Notice of Appeal)

e) Whether the Appellant is entitled to the grant of his alternative claim notwithstanding the success, partial or otherwise of his primary claim against the 2nd Respondent? (Distilled from Ground 6 of the Notice of Appeal)

The appellant has challenged in his first issue the decision of the court below that there was no basis for the appellant to contend that it was well within the contemplation of the parties that the appellant would remain in the service of the 1st respondent till age 60 given the evidence adduced at the trial. In this matter, the court below as well as the trial High Court found that there was no evidence to show that the appellant was to serve the 1st respondent till he reached the age of 60 years. This is a concurrent finding of fact of the two lower courts. I must say that it is not the practice of this court to disturb concurrent findings of the two courts below except there are reasons to do so. For instance, if it can be shown that the findings were perverse or are not based on the evidence led at the trial; then, and only then can this court interfere. See *V. ERTURHOBORA* (1991) 2 NWLR (pt 173) 252, (1991) 3 SC NJ 1, *NIGERIAN BOTTLING COMPANY LTD V. CONSTANCE O. NGONADI* (1985) 5 SC, 317, *OGBECHIE V. ONOCHIE* (1988) 1 NWLR (pt. 70) 370 at 390.

Apart from that, Exhibit A, the Personnel Policy Manual agreed by the parties as regulating the relationship between them does not

show at what age the appellant was to retire. It is trite that where parties enter into a contract, they are bound by the terms thereof and the court will not allow to read into such a contract terms on which there is no agreement. In other words, the rights, duties and obligations of the parties must reasonably and lawfully be construed within the ambits of the said document. See *KOIKI V. MAGNUSSON* (1999) 8 NWLR (pt. 615) 492; *UNION BANK NIG. LTD V. UMEH & SONS LTD* (1996) 1 NWLR (pt. 426) 565. I have read Exhibit A and as was held by the two courts below, there is nothing in it to show or suggest that the retirement age of the appellant was set at 60 years. Therefore, all the claims made in respect of the unexpired number of years are untenable.

The appellant had also queried the refusal of the two courts below to grant his alternative claim against the 2nd respondent in addition to the partial success of the main claim against the respondents. Something is said, to be alternative to another when it is available in place of the other thing. It is either this or that. Definitely, it cannot be both. In *G. K. F. INVESTMENT LTD V. NIGERIA TELE-COMMUNICATION PLC* (2009) 13 NWLR (pt. 1164) 344, this court held that:

“Where a claim is in the alternative, the court should first consider whether the principal or main claim ought to have succeeded. It is only after the court may have found that it could not for any reason, grant the principal or main claim, that it will consider the alternative claim.”

There is no doubt that the main claim of the appellant was granted by the trial court and affirmed by the court below. Although, the main claim succeeded in part, there was no need to consider the alternative relief in addition to the main claim as equity leans against double portion. It is trite that upon the grant of a principal relief, the court is not to consider or even look at the alternative relief. See *AGIDIGBI V. AGIDIGBI* (1996) 6 NWLR (pt. 454) 300. This issue for me does not avail the appellant.

Based on the above and the more elaborate reasons enunciated in the lead judgment of my learned brother, Galadima, JSC I also dismiss this appeal. I abide by the order as to costs.