

SUPREME COURT OF NIGERIA
FRIDAY 11TH JULY, 2014. SC. 126/2008
**CORAM:- M. MOHAMMED, S. GALADIMA, M. U. PETER-
ODILI, M. D. MUHAMMAD, J. I. OKORO, JJSC**

UNIVERSITY OF ILORIN APPELLANT
AND
STEPHEN OLANREWAJU AKINOLA RESPONDENT

PLEADINGS - Binding nature of - Parties as well as courts are bound by pleadings - And in so far as pleadings do not contain admissions - Matters alleged must be proved in evidence (H1)

APPEALS - Concurrent findings - Correctness of - The findings of courts below were thorough - As the same were based on evaluation of what was before them (H2)

ADMINISTRATIVE LAW - University - Powers of visitor - Include appointing others to act on his behalf - Dealing with any affairs of the institution - And overruling decision of its council and senate (H3)

ADMINISTRATIVE LAW - University - Powers of visitor - Delegation of - The visitor does not need to act personally - But can do so through his appointees - Or those made on his behalf (H4)

ADMINISTRATIVE LAW - University - Powers of visitor - Finality of - Resolution of the committee on behalf the visitor - That respondent be placed back in good standing is final - And should be complied with (H5)

FACTS

Plaintiff/respondent initially filed suit no. FHC/IL/M.17/98 at the Federal High Court Ilorin against defendant/appellant. The action was filed as a result of the expulsion of respondent by appellant as a student of the University of Ilorin, following the participation of respondent in student unionism that took place sometime in 1998. Judgment was given in favour of respondent. However, appellant refused to obey the judgment. Consequently, respondent commenced

a contempt proceeding against appellant, which then appealed to the Court of Appeal Ilorin against the judgment of the High Court. As the proceeding and appeal were pending, the visitor to the university constituted a reconciliatory committee that amicably resolved the issues between the parties. Following the reconciliation, respondent was pardoned by appellant and he withdrew his contempt proceedings. Appellant equally abandoned its pending appeal.

Respondent's contention is that despite the steps taken by the parties after the reconciliation, appellant has refused to release his academic records without any official explanation. Respondent had no option than to file suit no. FHC/IL/53/2004 at the trial court, seeking inter alia for a declaration that appellant is statutorily obliged to grant degrees to persons who have pursued a course of study approved by it and satisfied such other requirements as laid down by it. At the end of hearing in the matter, the court granted respondent's claim except the item (i) in which the sum of N7 million was awarded instead of the N30 million he claimed. Being dissatisfied, appellant appealed to the Court of Appeal. The appeal was dismissed which has now led to appellant's appeal in Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the Lower court did not wrongly evaluate the evidence of facts and the exhibits against the Appellant which thereby occasioned a miscarriage of justice.

2. Whether the Lower court was not wrong holding that the judgment of the trial court did not infer from the letter of pardon that the Respondent need not satisfy other requirements.

HELD (Unanimously dismissing the appeal per **PETER-ODILI JSC**)

PLEADINGS - Binding nature of

1. From what the Court below found and stated too, that the Appellant as defendant did not lay evidence in proof of their averment in pleading, which translates to the averment going to no issue or taken as abandoned.

Parties are bound by their pleadings and the case they present in those pleadings is the case to be considered by the

Courts. Also in so far as pleadings do not contain admissions then the matters alleged must be proved in evidence.

(p. 3153 B)

APPEALS - Concurrent findings - Correctness of

2. "From the thorough work done by the two court's below, there is not much to add except to go along with their findings which are concurrent and emanating from concrete findings based on the evaluation of what was before them resulting in the conclusion that the Appellant set out to ensure the respondent had no respite whatever was the outcome of the Visitation Panel, the agreements they were party to and even the pardon Exhibit B2 which they created. The situation akin to sending the Respondent on a mission to buy salt and on getting the salt, finds himself drenched by rain which the Appellant sent. That is give with the right hand and take back with the left, a visitation on a student which ought not to be associated with the University or Ivory Tower as colloquially called or citadel of learning and character formation.

No doubt this issue cannot but be resolved except against the Appellant and in favour of the Respondent. (p. 3156 E)

ADMINISTRATIVE LAW - University - Powers of visitor

3. At this point, I need to bring in the visitorial powers of the Visitor being the President/Head of State of the Federal Republic of Nigeria in relation to the University of Ilorin under Section 14(2) and Sections 6 and 7 Cap U7 University of Ilorin Act LFN Vol.15, 2004 which powers include the following:

- (1) Appointing other persons to act on his behalf.**
- (2) To deal with any affairs of the University.**
- (3) To overrule any decision of the Council of the University.**
- (4) To overrule any decision of the Senate of the University.**

The powers of the Head of State and Commander of the Armed Forces are overriding when the occasion warrants it, and I must say the circumstances in this case called for the exhibition of those powers. (p. 3157 H)

ADMINISTRATIVE LAW - University - Powers of visitor - Delegation

4. Again, to be pointed out is that the Head of State did not need to write or act personally in these intervention scenarios but can do so through those he had appointed to so act even if those appointments were made on his behalf either by the Secretary to the Government or any minister or aid so acting.
(p. 3158 D)

ADMINISTRATIVE LAW - University - Powers of visitor - Finality of
5. Therefore, when the Resolution Committee appointed and empowered as stated above, their resolution of the impasse between the Respondent and the University was final and the University in council or through its Senate or whatever body had no option than to comply as the Resolution Committee was merely the face of the Visitor or Head of State and there would be no question as to whether there should be compliance or not.

In fact, with the powers of the Visitor even without the pardon by the University, once the Resolution Committee pronounced the restoration of Respondents, full entitlements those would be like words made in granite, immutable and unquestionable and the effect being the graduation of the Respondent as a degree holder, however, bitter the pill may be on the University Authorities or staff and whatever the extent of the bruising to their egos may be.

To be exact, what the Appellant and its agents were doing was without the necessary vires and in fact was an affront on the authority and powers of the Head of State.

Having stated the above and getting to the question as to whether the Court of Appeal was not wrong in holding that the trial Court did not infer from the letter of pardon that the Respondent need not satisfy other requirements. To put it bluntly and once again, whether the University gave a pardon to the Respondent or not, once the Visitor acting by himself or through appointees had held that the Respondent be placed back in good standing, that was final. To seek as the Appellant had done in this instance to pock and attempt by ways and

means to find a route or channel to keep the Respondent down only delayed the matter but they cannot have the final say or act as the Respondent had been restored to his position.

(pp. 3158 E/3159 E/3160 B)

NOTABLE POINTS OF INTEREST

B

PETER-ODILI JSC

1. Authority of the Head of State should be obeyed

I cannot conclude without admonishing those in authority to desist from the insubordination that would carry it into disobeying the orders of the Head of State and worst still in an Educational Institution of the Highest Level, the University. It is anomalies such as has taken place therein that have given room for the breakdown of law and order for which the society has become the victim. The Vice-Chancellor, the Governing Council and the Senate of the University are well advised to keep within the ambit or boundaries of respective powers granted them by the University of Ilorin Act. In that wise, none of them should venture within the powers or authorities only available to the Visitor and Head of State. It is indeed unfortunate to do otherwise. (p. 3160 D)

D

E

MOHAMMED JSC

2. Miscarriage of justice – Instance of

Following the concurrent findings of fact by the trial Court and the Court below justifying the granting of the reliefs sought by the Respondent at the trial Court, the complaint of the Appellant in its first issue that the wrong evaluation of evidence by the Court below has resulted in miscarriage of justice to the Appellant, has no basis whatsoever. The Law is well settled that what constitutes miscarriage of justice varies from case to case depending on the facts and circumstances. To reach the conclusion that a miscarriage of justice occurred, it does not require a finding that a different result necessarily would have been reached in the proceedings. It is enough if what happened is not justice according to law. (p. 3162 G)

H

REPRESENTATION

Appellant and Counsel absent

A. Olumide Fusika; with A. A. Adewumi, for the Respondent

CASES REFERRED TO

- Magit v. University of Agriculture Makurdi (2005) 19 NWLR (pt. 959) 211
- B University of Calabar v. Esiaga (1997) 4 NWLR (pt. 502) 719
Onyia v. Oniah (1989) 1 NSCC 319
National Invest. & Properties Co. Ltd v. Thompson Org. Ltd (1969) All NLR 134
- C Akintemi v. Onwumechili (1985) 1 NWLR (pt. 1) 68
Patroci D. Magit v. University of Makurdi (2000) All FWLR (pt. 289) 1313
Ibodo v. Anorofia (1980) 5 - 7 SC 42
Onobruhere v. Esegine (1986) 1 NWLR (pt. 19) 799
- D Shitta v. A.G. Federation (1998) 7 SCNJ 264
Umeojiako v. Ezenamuo (1990) 1 NWLR (pt. 126) 253
Ogbokwelu v. Umeanafunkwa (1994) 4 NWLR (pt. 341) 676
Kossen (Nig.) Ltd. v. Savannah Bank (Nig.) Ltd. (1995) 9 NWLR (pt. 420) 439
- E Anya v. Iyayi (1993) 7 NWLR (pt. 305) 290
State v. Ajie (2000) 11 NWLR (pt. 678) 434
Ojo v. Anibire (2004) 10 NWLR (pt. 882) 571

STATUTE REFERRED TO

- F University of Ilorin Act Cap. U7 vol. 15 LFN 2004, ss. 6, 7, 14(2)

LEAD JUDGMENT BY PETER-ODILI JSC

- G The Appellant herein was the Defendant at the Federal High Court, Ilorin in Suit No. FHC/IL/53/2004 and the Appellant in the Court of Appeal in the appeal NO. CA/IL/53/2006.

- This appeal is against the decision of the Ilorin Division of the Court of Appeal also herein after referred to as the Court below or Lower Court, which judgment was delivered on the 8th day of June, 2007 upholding the decision of the trial High Court.
- H

FACTS BRIEFLY STATED:

The facts relevant for this appeal are stated hereunder thus:
The facts of the case as can be gathered from the record of proceedings are that: The Plaintiff is a student of the University of Ilorin. He

was admitted into the University in 1995 to study Statistics. His Matriculation No. is 95/043061.

The Defendant is a University created and funded at public expense by the Federal Government of Nigeria and incorporated by and in the University of Ilorin Act Cap. 455 of the Laws of the Federation of Nigeria 1990. The Plaintiff/Respondent undertook a course of study for the award of a B.Sc. Degree in Statistics with the Defendant/Appellant between the year 1995 and the first quarter of the year 1999. In the course of his studentship with the Defendant/Appellant, he also partook of student unionism as a result of which he had a problem with the Appellant which led to a legal dispute in an earlier Suit NO. FHC/IL/M.17/98 which ended in his favour.

The Defendant/Appellant refused to obey the judgment in the said suit for which reason the Plaintiff/Respondent commenced contempt proceedings against the Defendant/Appellant which then lodged an appeal against the said Judgment. Both contempt proceedings and the appeal were still pending when the Defendant's visitor, the President of the Federal Republic of Nigeria set up a committee known as the "*Resolution Committee on Politically Victimized and Rusticated Students*" headed by a Special Adviser to the President on Education, Chief S.K. Babalola, to mediate and conciliate the parties.

The parties presented their case to the Presidential Committee and terms of settlement were agreed upon by which the Defendant agreed to pardon the Plaintiff/Respondent for whatever wrongs he was alleged to have committed subject to his fulfilling certain spelt out conditions. The Plaintiff/Respondent fulfilled the conditions set for his pardon, withdrew his contempt proceedings in Suit No. FHC/IL/M.17/98; and the Defendant/Appellant on the other hand notified the Plaintiff/Respondent of his pardon which was announced to the University Community, and abandoned its appeal against the judgment in that suit.

The Defendant/Appellant despite repeated demands and pleas had since then continued to withhold the Plaintiff/Respondent's result without any official explanation other than that it was for "*administrative and not disciplinary case*". The Defendant had since that time continued to withhold the Plaintiff/Respondent's academic records.

The reliefs as sought by the Respondent herein as Plaintiff are

thus:-

“(a) A DECLARATION that the Defendant is statutorily obliged to grant degrees to persons who have pursued a course of study approved by it and satisfied such other requirements as it may lay down.

B (b) A DECLARATION that it is illegal for the Defendant, either directly or surreptitiously, to require any person to satisfy any requirement as to religious or political persuasion to be or continue to be a student and the holder of any degree of the Defendant University.

C (c) A DECLARATION that the Plaintiff, having pursued and completed a course of study for the award of a B.Sc. Degree in Statistics, and also satisfied all other requirements prescribed by the Defendant and made known by it to the Plaintiff, is entitled to be awarded D the same.

(d) A DECLARATION that the Plaintiff is entitled to be given the full particulars of, and afforded an opportunity to defend himself on any “administrative... case” alleged to be pending against him or claimed by the Defendant to be responsible for the withholding of his E academic records.

(e) A DECLARATION that the withholding of the Plaintiff’s academic records since 1998 when he completed the course of study prescribed by the Defendant for the award of a B.Sc. Degree in Statistics for reason of an alleged “administrative... case” stated in the F Defendant’s letter Ref. No. UI/RO/D.14 dated 13th May, 2002 is capricious, oppressive, illegal, unlawful, and constitutes a gross abuse of the Defendant’s statutory powers as contained in the University of Ilorin Act, Cap. 455 of the Laws of the Federation of Nigeria, 1990.

G (f) A DECLARATION that the withholding of the Plaintiff’s academic records since 1998 when he completed the course of study prescribed by the Defendant for the award of a B.Sc. Degree in Statistics for reason of an alleged “administrative.... case” stated in the Defendant’s letter Ref. No. UI/RO.D.14 dated the 13th May, 2002 is H punitive and in breach of the Defendant’s right to a hearing before condemnation and punishment.

(g) AN ORDER of specific performance of the agreement brokered at the instance of the Defendant’s visitor, the President Commander in chief of the Armed Forces of the Federal Republic of

Nigeria, whereby the parties agreed that the Plaintiff shall apologize for his student union activities and pay a restitution in the sum of N1,000.00 to the Defendant and the Defendant in consideration thereof shall restore to the plaintiff all the rights reserved for him as a member of the Defendant-University under the University of Ilorin Act, Cap. 455 of the Laws of the Federation of Nigeria, 1995, which agreement was subsequently notified by the parties to and judicially noticed by the Court on the 29th day of October, 2001 in suit No. FHC/IL/M.17/98.

(h) AN ORDER of mandamus compelling the Defendant to remove forthwith all the administrative (or like) impediments alleged by it to have prevented, and to take all the administrative (or like) steps required for the release of the Plaintiff's academic records including the Degree to which his completed course of study with the Defendant entitles him, and for the release of all said academic record and Degree forthwith.

(i) DAMAGES, on a footing of exemplary damages, in the sum of N30,000,000.00."

The matter proceeded to trial and in the end, the Federal High Court granted all the reliefs except the item (i) in which the sum of N7,000,000.00 were awarded instead of the N30,000,000.00 claimed by the Respondent.

Not satisfied with that decision of the trial court, the Defendant appealed to the Court of Appeal on nine grounds of appeal but the Court below decided against the Defendant/Appellant which upheld the judgment of the trial court. Again, dissatisfied, the Appellant has appealed to the Supreme Court on three grounds of appeal.

On the 29th day of April, 2014 date of hearing, the Appellant was absent and not represented even though there was proof of service and so the Appellant's Brief of Argument settled by Chief Olatunji Arosanyin and filed 8th day of May, 2008; in the circumstances, the Brief of Argument and Reply Brief filed on 25/8/08 was taken argued. In it were crafted two issues which are as follows:-

1. Whether the Lower court did not wrongly evaluate the evidence of facts and the exhibits against the Appellant which thereby occasioned a miscarriage of justice. (Grounds two and three)

2. Whether the Lower court was not wrong holding that the judgment of the trial court did not infer from the letter of pardon that

the Respondent need not satisfy other requirements. (Grounds one)

Adeyinka Olumide - Fusika Esq adopted the Brief of Argument he settled and which was filed on 25/6/08.

In the Brief of Argument was argued the Preliminary Objection raised by the Respondent. Learned counsel stated that in the event of the Court not upholding the Preliminary Objection, then two issues for determination should be utilized in the consideration of the appeal which are as follows:-

(a) Whether the Lower court misdirected itself when it said “That aside, there is nowhere in the judgment where the learned trial judge referred from Exhibit B2 “that the Respondent/Plaintiff was pardoned from taking all examinations and satisfying other requirements of the Appellant/Defendant. (Ground 1 of appeal)

(b) Whether the Lower court rightly affirmed the trial Court’s assumption and exercise of jurisdiction in the Plaintiff’s cause. (Grounds 2 & 3 appeal)

The Preliminary Objection having been abandoned, I shall proceed with the substantive appeal and in doing so make use of the issue as couched by the Appellant which I see as easy to follow.

ISSUE ONE:

Whether the Lower court did not wrongly evaluate the evidence of facts and the exhibits against the Appellant which thereby occasioned a miscarriage of justice.

For the Appellant was submitted that the Lower Court evaluated the evidence and the exhibit placed before the trial court, as the trial court did and as a result a miscarriage of justice was occasioned against the Appellant. That the letter of apology dated 22/6/2001 written by the Respondent was covered by a letter dated the same 22/6/2001 and written by Chief S. K. Babalola, Chairman and Special Adviser on Education to the President.

Learned counsel for the Appellant, Chief Arosanyin contended that on the 13th September, 2001, the Registrar of the Appellant who was the DW4 at the trial court wrote the letter titled “*Review of DISCIPLINARY ACTION ON MR. AKINOLA OLANREWAJU*” in which the last paragraph states that “*it is hoped that you will show appreciation for the University Administration’s kind gesture by keeping to your pledge that you will, henceforth, abide by the rules and regulations of the institution.*” The letter is Exhibit “B2”. He said that by

Exhibit “B2”, the Respondent was restored to his studentship status and he should obey all rules and regulations thereafter. That the said Exhibit “B2” only permitted the Respondent to be in school and continue his studentship and did not automatically graduate the Respondent nor did it order the Appellant to release the result of the Respondent to him. B

For the Appellant was submitted that the respondent ought to have presented his grievance after the letter of pardon before the senate and the Governing Council of the University before filing his suit in Court. That Exhibits G, G1, G2, G3 and G4 were letters directed either to the Vice-Chancellor or the Registrar and not the Senate or Governing Council of the university. That when there was no favourable response to those Exhibits, the Respondent had ample opportunity of appealing to the Senate and Governing Council of the University Council of the University instead of filing the suit in Court. C D

That the trial court had no jurisdiction to enter into an internal matter of the Appellant.

Chief Arosanyin of counsel for the Appellant said the Respondent initiating the Court process did so prematurely as he ought to have first exhausted the University’s internal mechanism for settlement of such disputes after his studentship was restored by the Appellant and his result not released to him. He said that the release of examination results or certificates is within the province of the University and its governing council over which the court ought not to have exercised jurisdiction. He cited *Magit v. University of Agriculture Makurdi* (2005) 19 NWLR (Pt.959) 211; *University of Calabar v. Esiaga* (1997) 4 NWLR (Pt.502) 719. E F

He concluded for the Appellant by saying that the Chief S.K. Babalola’s Resolution Committee on Politically Victimized and Rusticated Students and Staff, resolved only the issue of the respondent’s studentship and not the specific issue of delay or failure to release Respondent’s result or certificate. G

In reaction, learned counsel for the Respondent after going into snippets of the consideration and findings of the two Courts below urged the court to resolve the issue in favour of the respondent by holding that the lower Court did not misdirect itself when it said, *“That aside, there is nowhere in the judgment where the learned trial* H

judge inferred from Exhibit B2 “that the Respondent/Plaintiff was pardoned from taking all examinations and satisfying other requirements of the Appellant/Defendant.”

The Appellant’s Reply on Points on Law in this issue one was a mere recap of the main submissions from their Brief of argument and so, no need for its being repeated herein.

The divergent positions taken by either side may be briefly stated to be thus: In the view of the Appellant, the Lower court wrongly evaluated the facts and the exhibits placed before the trial court if it was rightly done by the Court of Appeal, it would have found that the trial court lacked the jurisdiction to try the case as it was purely an internal matter of the Appellant. Also that the Court of Appeal was wrong to hold that the judgment of the trial Court did not infer from the letter of pardon (Exhibit “B2”) that the Respondent need not satisfy other requirements after the Appellant gave the letter of pardon Exhibit “B2” to the respondent requirements and regulation such as clearance of the respondent by all the Heads of Department.

The stance of the Respondent on the other hand is that the Appellant had failed to fault any of the findings of fact and/or of law upon which the Lower Court upheld the trial Court’s assumption and exercise of judgment in this case and so this case does not present this Court with an occasion to interfere with the concurrent findings and decisions of the two Courts other than to affirm and refuse the invitation to set aside the judgment of the Court of Appeal.

On this question of whether there was proper evaluation of the facts and exhibits by the Court of Appeal, I shall quote excerpts from that court’s judgment for a clearer vision and that is to be found at page 215 of the Record of Appeal and thus:-

“On Ground No.4 of the Notice of Appeal, the appellant complained that the trial judge drew the wrong inference from Exhibit “B2” by interpreting it to mean that the Respondent/Plaintiff was; pardoned from taking all examinations and satisfying other requirements of the Appellant/Defendant.

Learned counsel (for the Respondent) submitted that there is nowhere in the Exhibits tendered at the trial and considered in the judgment of the learned trial Judge was any “letter of invitation to appear before the SDC (Student Disciplinary Committee) mentioned as... particular in support of his ground (iv) of the Appeal under con-

sideration.

A careful perusal of the exhibits tendered and considered in the judgment tends to support the submission of the learned counsel on this point. I am of the opinion that if the document was never in evidence, then it could not have contributed to the weight of evidence against which the Appellant has alleged the judgment to the learned trial judge went.” ^B

The Court below further held as follows:-

“On whether the Presidential Committee gave any directive that the Plaintiff should not retake examinations of invalidated result (particularly NO. ii on Ground III of appeal, after careful perusal of the Record of the Trial Judge, I must agree with the learned Counsel for the respondent that this particular is an expression of the fertile imagination of the Appellant and its Counsel. The evidence from Defendant’s own witnesses (as explicit on the Record of Appeal) shows that the Plaintiffs results were never invalidated, only withheld, So the Presidential Committee could not have deliberated upon or made any decision on a situation (“invalidation of result”) that never existed.” ^C ^D

On the grouse of the Appellant on a lack of proper evaluation by the Court of Appeal, I shall refer to the reference to Exhibit B2”, the pivotal exhibit in this matter and I will quote as follows:- ^E

“...EXHIBIT “B2” being acceptance letter of Apology by the defendant dated 13/9/01 buttresses the point that the Plaintiff’s travails may have resulted from his indiscipline. Excerpts from Exhibit B2 states thus: ^F

“Following the intervention of the Resolution Committee of Politically Victimized and Rusticated Students who visited the University and made an appeal to the University on your behalf, with regards to the disciplinary action (underlining mine) meted to you as a result of your participation in the students rampage of 1998, I am pleased to inform you that the University Administration has decided that: “Your apology ...be accepted.” ^G

“However, Exhibit A2 being memo submission of (defendant) to the Resolution Committee on Politically Rusticated Students in respect of the Plaintiff admitted the Plaintiff was referred to Students Disciplinary Committee (SDC) and (which) had not taken any action before the Plaintiff obtained relief from the Federal High Court, Ilorin. ^H

The defendant's reason for the withholding of the Plaintiff's result could be found at in Page 2 of the said Exhibit A2. It stated thus:-

"Meanwhile, Mr. Akinola has applied for the release of his final examination results to enable him proceed on NYSC programme. This could not be entertained as Senate cannot consider his result until the Appeal pending against his case is decided one way or the other by the Court of Appeal, Ilorin."

"Exhibit A2 also denies any disciplinary measures meted out to the Plaintiff as he was never suspended, rusticated or expelled. It is pertinent to note that Exhibit A2 is contrasting to Exhibit B2. Exhibit B2 states in clear terms that the disciplinary action meted to the Plaintiff as a result of his participation in the student's rampage of 1998 is being waived because of the intervention of the Resolution Committee and Plaintiff's apology being accepted by the Defendant. The question now becomes what was the disciplinary measure meted out to the plaintiff under Exhibit B2 before the intervention of Resolution Committee since (by) Exhibit A2 and even Exhibit H, the Plaintiff was never suspended, rusticated or expelled?"

"I presume, logically and rightly too that the disciplinary measure meted out to the Plaintiff in the absence of suspension, rustication or expulsion, was the withholding of his result which the resolution Committee by its intervention ordered the release to the plaintiff."

The Court is of the firm view that the issue of academic or discipline sought to be introduced through the back door is an afterthought aimed at ousting the jurisdiction of the Court. Exhibit A2 clearly stated that Plaintiff's result cannot be considered by the Senate because of pending Appeal at the Court of Appeal, Ilorin. It went further to say that the Plaintiff merely has not met the conditions for the award of a Degree of the University of Ilorin without saying what the conditions are..."

Clearly within that evaluation by the Court below is found the evaluation, assessment and consideration of the said Exhibit B2 and other related exhibits. Also to be said is the painstaking effort made by the Court of Appeal per Tijani Abdullahi - JCA in reviewing the evidence of witnesses and conceptualizing them with exhibits and circumstances. The Court below had found out that they had searched the Record of proceedings and cannot find where the Defendant

adduced any credible evidence in proof of the allegation in their pleading that the second semester 1997/98 academic session's examination was invalidated and the plaintiff had been so informed by the Plaintiff's H.O.D. and had also pleaded a letter dated 27th March, 2002 which would be relied upon at the trial.

From what the Court below found and stated too, that the Appellant as defendant did not lay evidence in proof of their averment in pleading, which translates to the averment going to no issue or taken as abandoned. ^B

Parties are bound by their pleadings and the case they present in those pleadings is the case to be considered by the Courts. Also in so far as pleadings do not contain admissions then the matters alleged must be proved in evidence. ^C See Onyia v Oniah & Ors (1989) 1 NSCC 319; National investment & Properties Co. Ltd v The Thompson Organization Ltd & Ors (1969) All NLR ^D 134.

To be stated is the concurrent finding by the two Courts below on what transpired with the Respondent's examination, the withholding of the results and the punitive actions taken by the Defendant/Appellant. I will quote pages 212 - 215 of the Record of appeal ^E to buttress. It is thus:- *"administrative and not a disciplinary case as it is being misconstrued by you;..."*

On whether the Presidential Committee gave any directive that the Plaintiff should not retake examinations of invalidated result (Particulars No. II of Ground III of Appeal), after careful perusal of the Record of the trial Judge, I must agree with the Learned Counsel for the respondent that this particular is an expression of the fertile imagination of the Appellant and its counsel. The evidence from Defendant's own witnesses, (as explicit on the Record of appeal), shows that the Plaintiff's results were never invalidated, only withheld. So the Presidential Committee could not have deliberated upon or made any decision on a situation (*"invalidation of result"*) that never existed. ^F

On the alleged misconstruing by the trial Court of the involvement of the Presidential Committee (Particular No. III of Ground III), ^H the Learned Trial Judge made a detailed and a very comprehensive finding which in my opinion cannot be faulted in any way. The Learned Trial judge held thus:-

"I think and rightly too that the Plaintiff is entitled to know why

his result is being withheld especially after the wading in or intervention of Presidential Committee on politically victimized and rusticated students. A very close look at EXHIBIT B...EXHIBIT B2..., EXHIBIT A2... AND EXHIBIT H... reveals an incoherent, insincere, vague, evasive, confusing and contradicting statements regarding what the true offence or reason for the withholding of the Plaintiff's result is... Certain relevant portions of the aforementioned exhibits buttresses these points. For instance in Exhibit B, part of it states - As agreed during our discussion with your management (underlining mine) my Committee invited the two students (one of them, the Plaintiff in this case) to Abuja and counseled them on the need to behave responsibly in all their dealings. Similarly, they voluntarily wrote apology letters through my committee in line with our procedural rules. I therefore wish to forward to you the letters of Apology of (1) Akinola Stephen Olarewaju - 95/043061 (2) Adesina Aderike Rasheedat - 95/043569. As earlier on discussed (Underlining mine) you would be duly informed as soon as the date for the proposed seminar for all recalled students is fixed."

"From the above excerpts from Exhibit B written by Resolution Committee on politically victimized and rusticated students and signed by its Chairman, Chief S.K. Babalola, Special Adviser on Education to the President, addressed to the vice Chancellor University of Ilorin (defendant) it can be deciphered that the committee and the University (defendant) had had common fruitful discussions that led to mutual understanding of the resolution. It is also not in doubt that the theme on the agenda of the discussion was... the Plaintiff and one other student..."

Again, Exhibit B2 being acceptance letter of Apology by the defendant dated 13/9/01 buttresses the point that Plaintiff's travails may have resulted from his indiscipline. Excerpt from Exhibit B2 states thus:

"Following the intervention of the resolution Committee of Politically Victimized and Rusticated Students who visited the University and made an appeal to the university on your behalf, with regards to the disciplinary action meted to you as a result of your participation in the students rampage of 1998, I am pleased to inform you that the University Administration has decided that: "(1) Your apology... be accepted."

However, Exhibit A2 being memo submission of (defendant) to the Resolution Committee on Politically rusticated students in respect of the Plaintiff admitted the Plaintiff was referred to students Disciplinary Committee SDC) and had not taken any action before the Plaintiff obtained relief from the federal High Court Ilorin. The defendant's reason for the withholding of the plaintiffs result could be found in page 2 of the said Exhibit A2. It stated thus: "Meanwhile, Mr. Akinola has applied for the release of his final examination results to enable him proceed on NYSC programme, This could not be entertained as Senate cannot consider his result until the Appeal pending against his case is decided one way or the other by the Court of Appeal, Ilorin."

Exhibit A2 also denies any disciplinary measures meted out to the Plaintiff as he was never suspended, rusticated or expelled. It is pertinent to note here that Exhibit A2 is contrasting to Exhibit B2. Exhibit B2 stated in clear terms that the disciplinary action meted to the Plaintiff as a result of his participation in the student's rampage of 1998 is being waived because of the intervention of the resolution committee and plaintiff's apology being accepted by defendant. The question now becomes what was the disciplinary measure meted out to the Plaintiff under Exhibit B2 before the intervention of Resolution Committee since by Exhibit A2 and even Exhibit H, the Plaintiff was never suspended, rusticated or expelled.

I presume, logically and rightly too that the disciplinary measure meted out to Plaintiff in the absence of suspension, rustication or expulsion was the withholding of his result which the Resolution Committee by its intervention ordered the release to the Plaintiff..."

"It is instructive to note that based on the detailed and comprehensive assessment of the facts, the learned trial Judge applied the law and held that the said committee can be treated either as agent of the Visitor of the Defendant who by statute has overriding authority over the affairs of the defendant, or as an arbitral body whose decision is binding on both parties in so far as they have voluntarily submitted to its jurisdiction." This was how the learned trial Judge put it from P.151 - 158 of the Record.

On Ground No. 4 of the Notice of Appeal, the Appellant Com-
plained that the trial Judge drew the wrong inference from Exhibit 2 by interpreting it to mean that the Respondent/Plaintiff was pardoned

from taking all examinations and satisfying other requirements of the Appellant/Defendant.

Learned Counsel submitted that there is nowhere in the Exhibits tendered at the trial and considered in the judgment of the learned trial Judge was any “*letter of invitation to appeal before the*
 B *SDC*” mentioned as basis of the first particular in support of this ground (iv) of the Appeal under consideration.

A careful perusal of the Exhibits tendered and considered in the judgment tends to support the submission of the learned counsel
 C on this point. I am of the opinion that if the document was never in evidence, then, it could not have contributed to the weight of evidence against which the Appellant has alleged the judgment of the learned trial Judge went.

That aside, there is nowhere in the judgment where the learned
 D trial Judge inferred from Exhibit B2 that the respondent/Plaintiff was pardoned from taking all examinations and satisfying other requirements of the Appellant/Defendant. This I agree with the learned counsel for the respondent when he submitted thus:

“*This is another invention from the Appellant’s unbridled imagi-*
 E *nation.*”

“***From the thorough work done by the two court’s below, there is not much to add except to go along with their findings which are concurrent and emanating from concrete***
 F ***findings based on the evaluation of what was before them resulting in the conclusion that the Appellant set out to ensure the respondent had no respite whatever was the outcome of the Visitation Panel, the agreements they were party to and even the pardon Exhibit B2 which they created. The situation***
 G ***akin to sending the Respondent on a mission to buy salt and on getting the salt, finds himself drenched by rain which the Appellant sent. That is give with the right hand and take back with the left, a visitation on a student which ought not to be associated with the University or Ivory Tower as colloquially***
 H ***called or citadel of learning and character formation.***

No doubt this issue cannot but be resolved except against the Appellant and in favour of the Respondent.

ISSUE TWO:

Whether the Lower Court was not wrong in holding that the

judgment of the trial Court did not infer from the letter of pardon that the Respondent need not satisfy other requirements.

Chief Arosanyin of counsel submitted that the Lower Court was wrong to have held that the trial Court did not infer from Exhibit “B2” that the Respondent was pardoned from taking all examinations and satisfying other requirements of the appellant. That the pardon was not of finality but only to restore the studentship of the Respondent. That the payment of N1000.00 was common to all the students of the University before they could be re-admitted as student of the institution and that Exhibit “B2” could not be conclusive as it only spelt out what the Respondent must do.

Learned counsel for the Appellant submitted that after the letter of pardon, the Respondent must still obey the rules before graduation and it is on record that the Respondent was not cleared by all his departments as required by the regulation of the Appellant. That Exhibit F2 shows that the Respondent was not cleared by some heads of certain departments such as Accountancy and the Faulty Officer. That it is the duty of the court as happened in this case to give effect to Exhibit “B2” and not make a new agreement for the parties. He cited *Baker Marina Nigeria Ltd v Chevron Nigeria Ltd* (2006) SCNJ 124 at 133.

That Exhibit “B2” cannot be used to usurp the function of the senate on the selection of their fit and proper candidate for passing and for the award of certificate, degree and diploma. He referred to *Akintemi & Ors. v. Onwumechili & Ors.* (1985) 1 NWLR (Pt.1) 68 at 85; *Patroci D. Magit v. University of Makurdi* (2000) All FWLR (Pt.289) 1313.

For the Respondent was submitted that the concurrent findings of the two Courts below should be upheld as they were reached without error and from proper evaluation and no miscarriage of justice was occasioned. He cited *Ibodo v. Anorofia* (1980) 5 -7 SC 42; *George Onobruchere & Anor v. Esegine & Anor* (1986) 1 NWLR (Pt.19) 799; *Umeojiako v. Ezenamuo* (1990) 1 NWLR (Pt.126) 253 at 274; *Ogbokwelu & Ors v. Umeanafunkwa* (1994) 4 NWLR (Pt.341) H 676 at 697; *Kossen (Nig.) Ltd v. Savannah Bank (Nig.) Ltd.* (1995) 9 NWLR (Pt.420) page 439 at 454.

At this point, I need to bring in the visitorial powers of the Visitor being the President/Head of State of the Federal

Republic of Nigeria in relation to the University of Ilorin under Section 14(2) and Sections 6 and 7 Cap U7 University of Ilorin Act LFN Vol.15, 2004 which powers include the following:

(1) Appointing other persons to act on his behalf.

(2) To deal with any affairs of the University.

B (3) To overrule any decision of the Council of the University.

(4) To overrule any decision of the Senate of the University.

C The powers of the Head of State and Commander of the Armed Forces are overriding when the occasion warrants it, and I must say the circumstances in this case called for the exhibition of those powers as this Court also held in the earlier cases of similar presentations in *Anya v. Iyayi* (1993) 7 NWLR (Pt.305) D 290 and *Shitta v A.G. Federation* (1998) 7 SCNJ 264.

E Again, to be pointed out is that the Head of State did not need to write or act personally in these intervention scenarios but can do so through those he had appointed to so act even if those appointments were made on his behalf either by the Secretary to the Government or any minister or aid so acting. Therefore, when the Resolution Committee appointed and empowered as stated above, their resolution of the impasse between the Respondent and the University was final and the University in council or through its Senate or whatever body had no option than to comply as the Resolution Committee was merely the face of the Visitor or Head of State and there would be no question as to whether there should be compliance or not. For further clarity, I shall quote the provisions of the university of Ilorin Act and that as follows:-

Section 14 Cap U7 University of Ilorin Act LFN Vol. 15, 2004 establishes the office of the VISITOR.

“Section 14(1) stipulates that the president shall be the Visitor of the University.

H Section 14(2) The Visitor shall often as the circumstances may require Not being less than once every five years conduct a visitation of the University or direct that such a visitation be conducted by such persons as The Visitor may deem fit and in respect of any of the affairs of the University”.

Also of great interest is that both Sections 6 & 7 of the University of Ilorin Act dealing with functions of the Council of the University and functions of the Senate respectively did subject those functions to the overall power and jurisdiction of the VISITOR.

6. Functions of the Council:

(1) Subject to the provisions of this Act relating to the Visitor, B the Council shall be the governing body of the University and shall be charged with the general control and superintendence of the policy, finances and property of the University, including its public relations.

7. Functions of the Senate:

(1) Subject to Section 6 of this Act and subsections (3) and (a) C of this section, and to the provisions of this Act relating to the Visitor, it shall be the general function of the Senate to organize and control the teaching of the University, the admission (where no other enactment provides to the contrary) of students and the discipline of students, D and to promote research at the University.

The conclusion derivable from the above stated provisions is that after the full deliberation of the Resolution Committee and the pardon granted by the University that became the end of the matter.

In fact, with the powers of the Visitor even without the E pardon by the University, once the Resolution Committee pronounced the restoration of Respondents, full entitlements those would be like words made in granite, immutable and unquestionable and the effect being the graduation of the Respon-
dent as a degree holder, however, bitter the pill may be on the F University Authorities or staff and whatever the extent of the bruising to their egos may be.

To be exact, what the Appellant and its agents were doing was without the necessary vires and in fact was an affront G on the authority and powers of the Head of State. These were the findings of the two Courts below which are unassailable and there being no leg on which an interference by this Court on those findings of fact not to talk of the fact that no miscarriage of justice or perverse findings can be alluded to, this court in line with its policy has to go H along with those findings emanating from sound evaluation by the two Courts on the facts available, the operative law and the evidence including the documentary evidence.

Indeed, I am at one with the findings and conclusion of the

two Courts below and so those concurrent findings are upheld. I place reliance on *Kossen (Nig.) Ltd. v. Savannah Bank (Nig.) Ltd.* (1995) 9 NWLR (Pt.420) 439 at 454; *Ibodo v. Enarofia* (1980) 5 - 7 SC 42; *Onobruhere v. Esegine & Anor* (1986) 1 NWLR (Pt.19) 799.

B ***Having stated the above and getting to the question as to whether the Court of Appeal was not wrong in holding that the trial Court did not infer from the letter of pardon that the Respondent need not satisfy other requirements. To put it bluntly and once again, whether the University gave a pardon to the Respondent or not, once the Visitor acting by himself or through appointees had held that the Respondent be placed back in good standing, that was final. To seek as the Appellant had done in this instance to pock and attempt by ways and***
C ***means to find a route or channel to keep the Respondent down only delayed the matter but they cannot have the final say or act as the Respondent had been restored to his position.***
D

I cannot conclude without admonishing those in authority to desist from the insubordination that would carry it into disobeying
E the orders of the Head of State and worst still in an Educational Institution of the Highest Level, the University. It is anomalies such as has taken place therein that have given room for the breakdown of law and order for which the society has become the victim. The Vice-Chancellor, the Governing Council and the Senate of the University
F are well advised to keep within the ambit or boundaries of respective powers granted them by the University of Ilorin Act. In that wise, none of them should venture within the powers or authorities only available to the Visitor and Head of State. It is indeed unfortunate to
G do otherwise.

The two issues raised having been without difficulty resolved in favour of the Respondent and against the Appellant, this appeal lacks merit and is hereby dismissed. I affirm the judgment of the Court of Appeal which upheld the decision and orders of the trial High Court.
H I award N200,000.00 costs to the Respondent to be paid by the Appellant.

MOHAMMED JSC

I have had the privilege of reading the Judgment of my learned brother Mary Ukaego Peter-Odili, JSC, which has just been delivered, before today. I entirely agree with the reasons leading to the conclusion arrived at, that this appeal is devoid of merit and therefore ought to be dismissed. B

The facts leading to the circumstances giving rise to the present appeal have been comprehensively narrated in the lead Judgment. The two issues the Appellant had placed before this Court in its Appellant's brief of argument for the determination of this appeal C are:-

"1. Whether the lower Court did not wrongly evaluate the evidence of facts and the exhibits against the Appellant which thereby occasioned a miscarriage of justice.

2. Whether the lower Court was not wrong holding that the Judgment of the trial Court did not infer from the letter of pardon that the Respondent need not satisfy other requirements."

It is quite plain from these two issues that the main complaint of the Appellant in this appeal rests with the evaluation of the oral and documentary evidence placed by the Parties before the trial Court for consideration in arriving at its final decision. The Court below in its Judgment delivered on 8/6/2007, which is now on appeal, had extensively dealt with the complaint on the evaluation of the evidence on record also raised in the appeal at that Court below before coming to the conclusion that there was no substance at all in that complaint. Looking into some of the documentary exhibits particularly Exhibits 'B2' and 'A2', it is clear that in its letter accepting the apology of the Respondent following the advice of the Resolution Committee of the Politically Victimized and Rusticated Students which visited the Appellant's University, the Appellant had this to say in its letter 'EXHIBIT 'B2':-

"Following the intervention of the Resolution Committee of Politically Victimized and Rusticated Students who visited the University and made an appeal to the University on your behalf, with regards to the disciplinary action meted to you as a result of your participation in the Students rampage of 1998. I am pleased to inform you that the University Administration has decided that your apology... be accepted." H

However, in the memorandum submitted by the same Appellant to the Resolution Committee on Politically Victimized and Rusticated Students in the respect of the Respondent's case in Exhibit 'A2', the Appellant had admitted that although the case of the Respondent was referred to the Students Disciplinary Committee (SDC) of the Appellant, no action was taken by that Committee before the reliefs sought by the Respondent in his action against the Appellant were granted by the Federal High Court Ilorin in its Judgment against the Appellant delivered on 21/6/2006.

It is also observed that in the same Memorandum Exhibit 'A2' the Appellant gave its reasons for failure to release the Respondent's final examination results as follows:-

"Meanwhile, Mr. Akinola has applied for the release of his final examination results to enable him proceeds on NYSC programme. This could not be entertained as Senate cannot consider his result until the Appeal pending against his case is decided one way or the other by the Court of Appeal, Ilorin."

Having regard to the above condition stated by the Appellant for it's Senate to consider the Respondent's application for the release of his examination Results, one would have expected that having accepted the resolution of the dispute between the Appellant and the Respondent on the intervention of the Resolution Committee, the Senate of the Appellant ought to have considered the Respondent's application for the release of his examination Results as soon as the Court of Appeal had delivered its Judgment against the Appellant in favour of the Respondent on 8/6/2007. The need for the Appellant to have done so was quite obvious on the evidence on record especially Exhibit 'A2' where the Appellant asserted that, there was no disciplinary action taken against the Respondent as he was never suspended, Rusticated nor expelled from the University.

Following the concurrent findings of fact by the trial Court and the Court below justifying the granting of the reliefs sought by the Respondent at the trial Court, the complaint of the Appellant in its first issue that the wrong evaluation of evidence by the Court below has resulted in miscarriage of justice to the Appellant, has no basis whatsoever. The Law is well settled that what constitutes miscarriage of justice varies from case to case depending on the facts and circumstances. To reach the conclusion that a miscarriage of justice occurred,

it does not require a finding that a different result necessarily would have been reached in the proceedings. It is enough if what happened is not justice according to law. See *State Vs Ajie* (2000) 11 NWLR (Pt.678) 434 and *Ojo Vs Anibire* (2004) 10 NWLR (Pt.882) 571 at 583.

In the instant case therefore where the Appellant as defendant at the trial Court pleaded its defence to the claims of the Respondent/Plaintiff against it but failed to lead credible evidence in support of the facts pleaded, the trial Court was justified in finding for the Respondent for the reliefs claimed and the Court below was justified in affirming the Judgment of the trial Court on appeal. See *Onyia Vs Oniah & Ors* (1989) 1 NSCC 319. There was nothing in the evaluation of evidence by the Court below that resulted in any miscarriage of Justice.

In the result, I also find no merit at all in this appeal which is hereby dismissed. I abide by the order on costs in the lead Judgment.

GALADIMA JSC

I had a preview of the lead judgment delivered by my learned brother M.U. PETER-ODILI JSC. I completely agree with his reasons leading to the conclusion that this appeal is devoid of merit and should be dismissed. By way of emphasis however, I would like to comment on the mind boggling decision of the appellant to withhold the respondent's result of his B.SC Degree in Statistics, without any reasonable official explanation other than, that it was "*for administrative and not disciplinary case*" for 14 years, The respondent has finally found respite. I cannot interfere with the thorough findings of the two courts below based on the evaluation of evidence placed before them.

The courts will not readily and cannot in any disguise, usurp what is appropriately the functions and powers of the Senate, the Council and the Visitor of the University in the selection of their proper candidates for awards of Degrees, Diplomas and Certificates. See ss.6, 7 and 14(2) Caps 117, University of Ilorin Act LFN Vol, 15, 2004. See also *ANYA v. IYAYI* (1993) 7 NWLR (Pt.502) 719, *MAGIT v. UNIVERSITY OF AGRICULTURE MAKURDI* (2005) 19 NWLR

(Pt.959) 211. Generally the consideration for an award of such accolades as aforementioned are considered the domestic domain of the Universities. These are elastic powers that can change or be changed depending on the facts and circumstances of each case. There are, no doubt, some exceptions and this court has made it clear in a
 B plethora of its decisions. In the instant case such exceptions exist. It is clear that the Appellant herein has exhausted all avenues and entreaties to the appellant to release his academic records including the Degree Certificate to which his completed course of study entitles
 C him. Yet the appellant remains adamant in neither releasing his result nor proffering any good and substantial reason for withholding of the Respondent's academic records since 1998. In the circumstance the courts below could not abdicate their responsibility in ensuring that the appellant abides by the law setting it up. The respondent to
 D my mind, had no choice, but to approach the trial court to seek for redress. He did and he got it.

The learned trial judge made a detailed and comprehensive finding, which cannot be faulted. Consequently, I too affirm the judgment of the court below which upheld the decision and orders of the
 E trial Federal High Court, Ilorin. I abide by the order made on costs, in the leading judgment.

MUHAMMAD JSC

F I had a preview of the lead judgment of my learned brother Mary Ukaego Peter-Odili JSC just delivered. I imbibe the reasoning and conclusion ably marshalled therein to dismiss the unmeritorious appeal. I abide by the order on costs made by my lord as well.

G

OKORO JSC

H I read in draft the illuminating judgment of my learned brother, Mary Ukaego Peter-Odili, JSC just delivered with which I am in full agreement with both the reasons advanced and the conclusion that this appeal lacks merit and ought to be dismissed. My learned brother has quite efficiently set out the facts and issues in this appeal which he has also resolved admirably. I do not intend to repeat the exercise. I adopt them as mine. I however propose to make a few comments in

support of the judgment only.

I am aware that the courts cannot and will not usurp the functions of the Senate, the Council and the Visitor of the University in the selection of their fit and proper candidates for passing and for the award of certificates, degrees and diplomas. See *Akintemi V Onwumechili* (1985) 1 NWLR (Pt 1) 68, *University of Calabar V Esiaga* (1997) 4 NWLR (Pt 502) 719, *Magit V University of Agriculture Makurdi* (2005) 19 NWLR (Pt 959) 211. B

However, although the general rule is that consideration for an award of degrees and certificates are in the domestic domain or jurisdiction of the universities, there are however, exceptions. Such exception is as happened in this case. That is to say, where the student has exhausted all avenues and entreaties, and the university is adamant, intransigent, as in neither releasing the result of the student nor giving good, substantial and verifiable reasons for withholding the result, even after the intervention by the visitor of the university, the student is entitled to approach the court for redress. In such circumstance, the court should not shy away from ensuring that the university authority abides by the Law setting up the Institution. Award of degrees and certificates should be done in accordance with the Instrument setting up the university and they should abide by international best practices on the issue. Certainly, it ought not to be on the whims and caprices of the personnel saddled with the responsibility. C
D
E

The argument by the learned counsel for the appellant that the respondent did not exhaust all avenues of redress before approaching the court did not fly at all. The refusal of the appellant to comply with the directive of its Visitor shows clearly the level of bias and malice which it exhibited against the respondent. This ought not to be so. F

Based on the above comments of mine and the more elaborate reasons adumbrated in the lead judgment, I agree that this appeal is devoid of any scintilla of merit. I also agree that it be, and is hereby dismissed. I abide by the order as to costs. G
H