

**SUPREME COURT OF NIGERIA**  
FRIDAY 27TH MARCH, 2015. SC. 71/2005  
**CORAM:- W. S. N. ONNOGHEN, S. GALADIMA, M. U.**  
**PETER-ODILI, M. D. MUHAMMAD, J. I. OKORO, JJSC**

BUKAR MODU AJI ..... APPELLANT  
AND  
1. CHAD BASIN DEVELOPMENT  
AUTHORITY  
2. FEDERAL MINISTRY OF WATER  
RESOURCES & RURAL DEVELOPMENT ..... RESPONDENTS

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CONTRACTS - Contract of service - Proof - Aggrieved employee following termination from service - Must plead and prove his contract of service - To substantiate his claim (H1)

APPEALS - Concurrent findings - The findings of the lower courts arising from due considerations - And without miscarriage of justice - Are not to be interfered with (H2)

**FACTS**

Before the Federal High Court, Maiduguri, plaintiff/appellant commenced this action against defendants/respondents, claiming inter alia for an order invalidating the dismissal of appellant from the service of 1<sup>st</sup> respondent, reinstatement of appellant and damages. 1<sup>st</sup> respondent's contention is that the suit should be struck out on the ground that it seeks to challenge an action taken by the Head of State under the Public Officers (Special Provisions) Act Cap 381 LFN 1990. Hence, 1<sup>st</sup> respondent contends that the dismissal of appellant was valid in law. 2<sup>nd</sup> respondent raised a similar contention.

A preliminary objection was raised by respondents challenging the jurisdiction of the court to determine the action. In its ruling, the court dismissed the objection. Trial commenced in the matter and at the end of which the court dismissed appellant's claims. Aggrieved, appellant appealed to the Court of Appeal Jos Division. The appeal was heard and dismissed. Not satisfied, appellant has appealed to Supreme Court.

**ISSUE FOR DETERMINATION**

Whether the Lower Court was right in affirming the judgment of the trial Court which was to the effect that notwithstanding the fact that there was a breach of fair hearing leading to appellant's dismissal, failure of the appellant to plead and prove his conditions of service was fatal to his case.

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

*CONTRACTS - Contract of service - Proof*

**1. What can be stated to be the rock solid position of the law with regard to an action by an aggrieved employee on the termination or dismissal from service is that to found his case there is no running away from pleading and proving his contract of service to substantiate his claim. In the case at hand throughout the particulars of claim, there is no plea of the conditions of service governing his employment with the respondents and in evidence nothing is put forward from which those conditions could be ferreted out and no document evidencing the contract of service. It therefore needs be said that waving the flag of a breach of fair hearing entrenched in the Constitution as per Section 33 of the 1979 Constitution prevailing at the time of the action's commencement which section is *impari materia* with the current section 36 of the 1999 Constitution does not provide the saving grace. This is because the absence of the pleading and establishing the contract of service, the Court is left without the working tools with which it can consider the case as advanced by the employee as to whether or not there was breach. In other words, the breach cannot exist in *vacuo* and such a situation produces the absence of a condition precedent which cannot be waived being fundamental.** (p. 945 G)

*APPEALS - Concurrent findings*

**2. What has transpired in this case is an example of when concurrent judgments of two Courts below should be left unhampered with. The reasons are obvious and easy to see as there**

***is no miscarriage of justice, no perversity, no substantial error apparent on the face of the record of proceedings nor is there a wrong application of the substantive or procedural law advanced by the appellant and so the appellant failing on those counts, those findings of the two Courts emanating from due and painstaking considerations are not to be upset or interfered with in this appeal.*** (p. 946 F)

### **REPRESENTATION**

Seni Adio with Nkechi Okoye (Miss), for the Appellant/Applicant  
Chief F. F. Egele, for the Respondents

### **CASES REFERRED TO**

Olumesan v. Ogundepo (1996) 2 NWLR (pt. 433) 632  
Olaniyan v. University of Lagos (1985) 2 NWLR (pt. 9) 600  
UNTH Mgt. Board v. Nnoli (1994) 8 NWLR (pt. 363) 376  
Ridge v. Baldwin (1964) AC 40  
Iderima v. RSCSC (2005) 16 NWLR (pt. 951) 378  
Shitta-Bey v. Federal Service Commission (1981) 1 SC 26  
Rector Kwara State Poly. v. Adefila (2008) All FWLR (pt. 431) 914  
Amodu v. Amode (1990) 3 NSCC 226  
Okumu Oil Palm Co. Ltd v. Iserhienrhen (2001) FWLR (pt. 45) 670  
Salim v. CPC (2013) 6 NWLR (pt. 1315) 501  
CPC v. INEC (2012) 2-3 SC 1  
AG Cross River State v. AG Federation (2012) 7 SC (pt. 11) 72  
AG Rivers State v. AG Akwa Ibom State (2011) 3 SC 1  
Dumez Nig Ltd v. Nwakhoba (2008) 12 SC (pt. 111) 142  
Fedeco v. Goni (1983) LPELR - 1266 (SC)

### **STATUTE REFERRED TO**

Constitution of the Federal Republic of Nigeria 1999, ss. 1(3), 36

### **LEAD JUDGMENT BY PETER-ODILI JSC**

This is an appeal against the judgment of the Court of Appeal sitting at Jos affirming the decision of the Federal High Court Maiduguri, Borno State Coram: Shehu Yahaya J. dismissing the case of the Appellant.

FACTS BRIEFLY STATED:

The proceedings culminating into the present appeal were commenced before the Federal High Court, Maiduguri. The Appellant as the Plaintiff initiated the civil action against the Respondents as Defendants through a writ of Summons and statement of Claim filed on the 4th day of September, 1996 wherein he claimed as follows:

- B *“a. A declaration that the dismissal of the Plaintiff from the service of the 1st Defendant by the letter with reference NO.CBDA./CON/26/W/504 of 3rd May, 1996 is unconstitutional, null, void and of no effect whatsoever.*
- C *b. An order reinstating the plaintiff to his working place with an Order compelling the Defendants to be promoted to the position he is entitled under the Federal Civil Service Rules.*
- c. An order compelling the Defendants and or his (sic) agents to pay all entitlement due and accruable from the date of his dismissal to the date of his re-instatement.*
- D *a. General damages of N10,000,000.00 (Ten Million Naira).*
- b. Costs of this Suit.”*

The 1st Respondent filed a 4 paragraph Statement of Defence dated the 2nd day of December, 1996 and filed on 20th February, 1997 contending in its paragraph 4 as follows:-

- E *“a. That this suit be struck out on the ground that it seeks to challenge an action taken by the Head of State under the public Officers (Special Provisions) Act Cap. 381 Laws of the Federal Republic of Nigeria 1990.*
- F *b. The 1st Defendant shall also contend that the dismissal of the Plaintiff was valid in law and as such that the suit be dismissed.”*

The 2nd Appellant as the 2nd Defendant on the 12th day of June, 1997 filed a 5 paragraph Statement of Defence dated 11th, 1997 contending that:

- G *“This suit be struck out on the ground that it seeks to challenge an action taken by the Head of State under the Public Officers (Special Provisions) Act Cap.381) Laws of the Federal Republic of Nigeria, 1990. The 2nd Defendant shall contend that this suit be dismissed.”*
- H

After the pleadings were exchanged by the parties, the 1st Respondent/Defendant brought a Motion on Notice dated 10th October, 1996 challenging the jurisdiction of the Court to hear the matter. Arguments were taken on the motion. The trial court delivered a

well considered ruling on the 24th April, 1992 and dismissed the preliminary objection.

The trial commenced on the 11th December, 1997. The Appellant/Plaintiff testified for himself as PW1 and the case was adjourned to 20th January, 1998 for cross-examination. The Appellant/Plaintiff was extensively cross-examined by the Respondents on 20th January, 1998; he closed his case on that day. B

The 1st Respondent/Defendant opened its defence on 5th February, 1998 and called only one witness - Umar Muktar as DW1. The DW1 concluded his evidence-in-chief and was also cross-examined the same day. The 2nd Respondent/Defendant called no witness at the trial and after the final addresses by the parties, the trial court on the 17th August, 1998 delivered its judgment dismissing the plaintiff's claims. The Plaintiff appealed to the Court of Appeal Jos Division or the Court below which appellate Court dismissed the appeal and in dissatisfaction the Appellant has come before this Apex Court. C

On the 10th day of February, 2015 date of hearing, learned counsel for the Appellant, Seni Adio Esq. adopted the Appellant's Brief of Argument settled by Oluwakemi Balogun, filed on 2/2/2011 and deemed duly filed on 10/2/2015. In the Brief of Argument were identified two issues for determination which are thus:- E

1. Whether a breach of the constitutional right to fair hearing does not nullify proceedings and actions arising therefrom (Ground 1).

2. Whether in an action for unlawful termination of contract of employment, the appellant who has established a fundamental breach of his constitutional right to fair hearing need to further prove the terms and conditions of employment. (Ground 2) F

Chief F. F. Egele, learned counsel for the Respondents adopted G their Brief of Argument filed on 6/2/15 and deemed filed on 10.2.15. He crafted a single issue for determination which is as follows:-

Whether the Lower Court was right in affirming the judgment of the trial Court which was to the effect that notwithstanding the fact that there was a breach of fair hearing leading to appellant's dismissal, failure of the appellant to plead and prove his conditions of service was fatal to his case. H

The sole issue as formulated by the Respondents captures the nagging question for determination of this appeal and it is safe to use

it for our purpose.

In brief, it is whether there was a breach of fair hearing leading to appellant's dismissal from service, which infraction was not to the advantage of the Appellant irrespective of his failure to plead and establish his conditions of service.

B Canvassing this stance of the Appellant, Mr. Adio of counsel contended that a public servant enjoys special statutory status in his contract of employment comparable to a proprietary right which a person enjoys in a thing and so he cannot be divested of it without a fair hearing. The implication is that such an officer is entitled to be informed of the reason for his dismissal and given an opportunity to defend himself. That the Appellant was employees of the 1st Respondent while the 2nd Respondent was the mother ministry of the 1st Respondent. It was submitted for the Appellant that the 1st Respondent alleged that there was a Federal Government circular instructing the 1st Respondent to remove some officers who fall under the conditions stipulated by the circular which conditions include the following:-

- a. Gross indiscipline
- E b. Gross misconduct
- c. Insubordination
- d. Lateness
- e. Leakage of government secrets
- F f. Tampering of official documents, etc.

That the 1st Respondent in dealing with each officer whose case is being considered was directed to state reasons for the recommendation to remove an officer and serve same on the officer which step was not adhered to as the Appellant in this case was dismissed by a Special Committee set up by the 2nd Defendant without affording him an opportunity of a hearing so as to enable him prepare for his defence. Learned counsel cited Section 33 of the 1979 Constitution of the Federal Republic of Nigeria now Section 36 of the 1999 Constriction; Section 1(3) of the Constitution; *Olumesan v Ogundepo* (1996) 2 NWLR (Pt.433) 632; *Olaniyan v. University of Lagos* (1985) 2 NWLR (Pt.9) 600 at 605; *University of Nigeria Teaching Hospital Management Board v. Nnoli* (1994) 8 NWLR (Pt.363) 376 at 383 etc.

It was further contended for the Appellant that it is an indis-

pensable requirement that a public officer by virtue of the special status conferred on him by law cannot be lawfully dismissed without first telling him what was alleged against him and hearing his defence and explanation as his explanation might disprove of the criminal motive or intent and bring forward other facts in mitigation. He referred to *Reg. v Smith* (1844) 5 QB 614; *Ridge v Baldwin* (1964) AC B 40 at 42.

For the Appellant was canvassed that the two Courts below in dismissing the Appellant's claims noted that the failure of the Appellant to plead and prove his contract of service was fatal to his case. That the fact that the Appellant did not plead the contract of service did not remove the fact that he was employed by the Respondent nor remove the fact that he was unlawfully dismissed having established as accepted by the trial Court that he was not given a fair hearing. That the case of the Appellant fails under the category of public sector employment where the appropriate order reinstatement and not award of damages since a major issue is the breach of fair hearing that has been established. He cited *Iderima v RSCSC* (2005) 16 NWLR (Pt.951) 378 at 382; *Shitta-Bey v. Federal Service Commission* (1981) 1 SC 26 etc. C D E

Chief F. F. Egele of counsel for the Respondent submitted that in a term of contract of service whether statutory or under common law in a written or documented form, the contract of service is the bedrock on which an aggrieved employee must found his case. He cited *Rector Kwara State Polytechnic v. Adefila* (2008) All FWLR (Pt.431) 914 at 982 - 983. F

He stated on that nowhere in the Appellant's particulars of claim can it be found where appellant pleaded a contract of service governing his employment with the respondents nor lead any evidence to prove any contract of service. He relied on *Baba v. NCATC* (1991) 5 NWLR (Pt.192) 388 at 413; *Amodu v. Amode & Anor* (1990) 3 NSCC 226 at 237. G

For the respondent was contended that both the breach of the Appellant's rights to fair hearing and the conditions of service must be proved concurrently so as to establish how the terms of the contract had been breached by the employer. He cited *Okumu Oil Palm Co. Ltd v. Iserhienrhen* (2001) FWLR (Pt.45) page 670 at 683 etc. H

That this appeal emanates from a concurrent judgment of both

the trial and Lower Courts wherein no miscarriage of justice, perversity or a substantial error apparent on the face of the record or a wrong application of the substantive or procedural law has been shown by the appellant and so this court ought not to disturb the concurrent findings of the said Courts. He referred to *Salim v CPC* (2013) 6

B NWLR (Pt.1315) 501 at 524 and 526.

The area of conflict between the parties is indeed very narrow and can be seen firstly from the Appellant's point of view that the Court of Appeal having established that there was a breach of the Appellant's right to fair hearing, the decision of the Special Committee set up by the 2nd Defendant which dismissed him was a nullity which this court is called upon to go along with. The other angle from the stance of the Respondent is that the Apex Court should dismiss the appeal and affirm the decision of the Lower Court as the Appellant did not fulfill a condition precedent of pleading and proving his conditions of service with the defendants as to take benefit of the breach of his fundamental rights to fair hearing in his dismissal.

To now go into the question in issue, I shall quote some relevant snippets of the trial Court and then those of the Court of Appeal and it is thus, firstly page 100 of the Record where the trial Court per Shehu Yahaya J. stated as follows in his findings:-

E “There is evidence that the plaintiff was an employee of the 1st defendant. There is also no dispute as to how (sic) was appointed. However, there is no iota evidence which goes to establish the removing essential facts which form the bedrock of the plaintiff's case.”

F Reacting to those findings, the Court below per Nzeako, JCA at page 155 to 156 stated.-

G “What is the basis upon which the plaintiff could have brought this action? What is its nature? Does the fact that the plaintiff couched his claim as a declaratory action remove it from being an action for unlawful termination of employment which he seeks a declaration to nullify? I think not and the premises, the terms and conditions of the contract of employment are relevant and the Court below decided H correctly in my view and they must be pleaded and proved for the plaintiff to succeed.”

The Appellant has made a lot of fuss on the breach of his fundamental right to fair hearing as he was not called upon to address the committee before his termination from service. The salient ques-



tion that crops up therefore is whether the appellant can succeed in the absence of the breach of that fair hearing without proving his conditions of service with the respondents. The Court of Appeal's position in that regard was not positive and it stated so clearly by saying:-

*"There can be no doubt however that the party claiming a breach of his contract of employment, must plead and prove the contract as well as plead and prove the denial of the constitutional right claimed to be breached. The appellant left out the former. It is in the light of the foregoing that the learned trial judge had considered, not only the breach of the right of fair hearing but also what civil right was being claimed by the breach of fair hearing had been pleaded and proved, but not the right or obligation upon which it was predicated and being claimed."*

Having shown the concurrent findings of the two Courts below which are in line with well established long line of cases especially of this court, an example of which I shall state hereunder as *Amodu v. Amodu & Anor* (1990) 3 NSCC 226 at 237 per Agbaje, JSC thus:-

*"...it appears clear to me that since it is the plaintiff's case that his dismissal by the defendants is not in accordance with the terms and conditions of the contract of service between them. It is for the plaintiff to plead and prove the conditions of service regulating the contract of service in question... In the absence of the conditions of service between the plaintiff and the 2nd defendant, one cannot see whether or not the Governing Council or the Sole administrator of the second defendant has anything to do with the contract sued upon by the plaintiff."* See also *Baba v N.C.A.T.C.* (1991) 5 NWLR (Pt. 192) 388 at 413.

***What can be stated to be the rock solid position of the law with regard to an action by an aggrieved employee on the termination or dismissal from service is that to found his case there is no running away from pleading and proving his contract of service to substantiate his claim. In the case at hand throughout the particulars of claim, there is no plea of the conditions of service governing his employment with the respondents and in evidence nothing is put forward from which those conditions could be ferreted out and no document evidencing the contract of service. It therefore needs be said that***

**waving the flag of a breach of fair hearing entrenched in the Constitution as per Section 33 of the 1979 Constitution prevailing at the time of the action's commencement which section is *impari materia* with the current section 36 of the 1999 Constitution does not provide the saving grace. This is because the absence of the pleading and establishing the contract of service, the Court is left without the working tools with which it can consider the case as advanced by the employee as to whether or not there was breach. In other words, the breach cannot exist in *vacuo* and such a situation produces the absence of a condition precedent which cannot be waived being fundamental.** I place reliance on the following case *Rector Kwara State Polytechnic v. Adefila* (2008) All FWLR (Pt.431) 914 at 982 - 983.

For emphasis the Plaintiff/Appellant is enjoined by law when he complains that his employment has been wrongfully terminated, he has the onus of placing before the Court the terms of contract of employment and then go on to prove in what way the said terms were breached by the employer. Failing on both counts in this instance, the case of the Appellant on at the trial Court which Court said so in clear terms and the Lower Court agreed in toto and well backed by the materials available in the Record. See *Okomu Oil Palm Co. Ltd. v Iserhienrhen* (2001) FWLR (Pt.45) 6790 at 683; *Amodu v. Amodu* (supra).

**What has transpired in this case is an example of when concurrent judgments of two Courts below should be left unhampered with. The reasons are obvious and easy to see as there is no miscarriage of justice, no perversity, no substantial error apparent on the face of the record of proceedings nor is there a wrong application of the substantive or procedural law advanced by the appellant and so the appellant failing on those counts, those findings of the two Courts emanating from due and painstaking considerations are not to be upset or interfered with in this appeal.** I rely on *Salim v CPC* (2013) 6 NWLR (Pt.1315) 501 at 524, 526, a decision of this Court.

My conclusion from the foregoing is that this appeal unmeritorious and I hereby dismiss it as I affirm the judgment of the Court of Appeal which turn had upheld the decision and orders of

the trial Court.

I award the sum of N100,000 costs to each of the Respondents to be paid by the Appellant.

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**ONNOGHEN JSC**

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

The facts of the case have been stated in detail in the lead Judgment thereby making it unnecessary for me to repeat them herein except as may be needed to emphasize the point under consideration.

The claim of appellant at the trial court is as contained at page 7 of the record of appeal, paragraph 31 of the Particulars of claim which is as follows:-

*“(a) A declaration that the dismissal of the plaintiff from the services of the 1st defendant by letter with reference No.CBDA/CON/26/W/504 of 3rd May, 1996 is unconstitutional, null void and of no effect whatsoever.*

*(b) An order re-instating the plaintiff to his working place with an order compelling the defendant to be promoted to the position he is entitled under the Federal Civil Service Rules.*

*(c) An order compelling the defendant and or his agents to pay all entitlement due and accruable from the date of his dismissal to the date of his re-instatement.*

*(d) General damages of N10,000,000.00 (Ten Million Naira) only.*

*(e) Costs of this suit”*

From relief (a) supra, appellant is claiming a declaration to the effect that his dismissal from the services of the 1st respondent is unconstitutional, null and void etc etc. The relief is a declaratory relief which presupposes the existence of a right on which the declaration is hinged. In this case the declaration relates to the employment of appellant which he alleged had been wrongfully terminated by dismissal.

The above being the case, it is clear that for appellant to suc-

ceed, he has the duty to plead and establish his employment and the terms of same. It is only after establishing the above that the court can proceed to determine whether the dismissal in question is outside the terms and conditions of the said employment. You do not put the cart before the horse. It does not work that way.

B However, looking closely at the record particularly the pleadings and evidence thereon, it is very clear that appellant did not plead any contract of service governing his employment with the 1st respondent neither did he give any evidence in proof of same.

C The Lower Court at pages 155 to 156 of the record had these to say.

*“What are the basis upon which the plaintiff could have brought this action? What is its nature? Does the fact that the plaintiff couched his claim as a declaratory action remove it from being an action for unlawful termination of employment, which he seeks a declaration to nullify? I think not and the premises the terms and conditions of the contract of employment are relevant at the court below decided correctly in my view and they might be pleaded and proved for the plaintiff to succeed.”*

E From the appellant brief at page 12, paragraph 5.03 learned counsel for appellant agrees that appellant neither pleaded nor proved his contract of employment/service. He stated thus:

*“My Lords, the fact that the Appellant did not plead the contract of service does not remove the fact that he was employed by the Respondent, nor does it remove the fact that he was unlawfully dismissed (the trial court having established that he was not given a fair hearing). Moreover, failure to plead the contract of service does not in any way hinder the court from making an order of reinstatement.”*

G The above submission confirms that the basic fact of employment and the conditions for such employment was neither pleaded nor established in evidence in an action for wrongful dismissal of an employee!!.

H It is also the contention of learned counsel for appellant that the employment of respondent in question, not being one under the common law master and servant relationship, the decisions relied upon by the Lower Courts in coming to the conclusion it reached are inapplicable. It is my considered view that the submission is errone-

ous. Whether one is suing for wrongful dismissal from an employment with statutory flavor or under the common law principles of master and servant, the fact of the employment and the terms and conditions of same must not only be pleaded but must be proved by evidence before a determination of the wrongful nature of his termination/dismissal can be considered by the court. B

Finally it should be noted that this appeal is on the concurrent findings of fact by the Lower Courts. Appellant has failed to satisfy this court that the said concurrent findings of fact has led to any miscarriage of justice or that the findings are perverse or that the courts have committed any substantial error apparent on the face of the record of proceedings or that there was any wrong application of the substantive or procedural law in the process of arriving at the Judgment on appeal. See the case of Salim Vs CPC (2013) 6 NWLR (Pt.1315) 501 at 524 - 526. C D

It is for the above stated reasons that I too find no merit in this appeal and consequently dismissed it. I abide by the consequential orders made in the lead Judgment including the order as to costs.

Appeal dismissed.

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### ***GALADIMA JSC***

I have had the opportunity of reading the judgment of my learned brother PETER-ODILI JSC, just delivered. I agree with the reasons and conclusion leading to the dismissal of this appeal. F

If the appellant's claim is grounded or founded on the contract of service he must clearly plead and prove its terms and conditions, since he is challenging his dismissal based on the said contract. He must first cross this hurdle, thereafter if the trial court did not accord him first hearing, he can then make that an issue. G

I too agree with the Lower Court which upheld the judgment of the trial High Court that the Appellant failed because he did not plead or establish essential ingredients of his claims.

In the circumstance, this appeal is dismissed for lacking in merit. H I  
I abide by all the consequential orders made in the lead judgment.

**MUHAMMAD JSC**

I read in draft the lead judgment of my learned brother Peter-Odili, JSC. I entirely agree with the reasoning and the conclusion therein that the appeal being bereft of any merit be dismissed. I shall stress and apply a trite principle of law to the facts which are indubitably extant in and about appellant's case.

Appellant's claim founded on the contract of service. He seeks by the claim certain declaratory and injunctive reliefs. The law requires the appellant, on the basis of the reliefs he seeks, to plead and prove his claim. The burden of proof on him to establish these declaratory reliefs to the satisfaction of the court is quite heavy in the sense that the reliefs being declaratory are never granted even on admission by the defendant where the plaintiff, as in the instant case, has failed to establish his entitlement to the declaration by his own evidence. Without evidence from the claimant, which can only be led if pleaded, the court is not obliged to grant declaratory reliefs. The plaintiff succeeds on the strength of his case, and nothing else. See *CPC v. INEC* (2012) 2-3 SC 1, AG, *Cross River State v. AG Federation & Anor* (2012) 7 SC (Pt.11) 72, *AG Rivers State v. AG Akwa Ibom State & Anor* (2011) 3 SC 1 and *Dumez Nig Ltd v. Nwakhoba & 3 Ors* (2008) 12 SC (Pt.111) 142.

In the case at hand the appellant who did not plead and lead evidence on the very contract of service he alleges the respondent breached is not entitled to the reliefs he seeks. Both courts are right to have so held. Their concurrent findings which draw from the evidence, may the lack of it, on record cannot be said be perverse and occasioning injustice to warrant interference at his level. See *Fedeco v. Goni* (1983) LPELR - 1266 (SC) and *Idufueko v. Pfizer Products G Ltd* (2014) 1 NWLR (Pt.1420) 96 at 113.

It is for the foregoing and more so the fuller reasons contained in the lead judgment that I also dismiss the appeal. I abide by the consequential orders made in the judgment including those on costs.

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**OKORO JSC**

I was obliged a copy of the judgment of my learned brother, Mary Ukaego Peter-Odili, JSC just delivered with which I agree with the reasons advanced and the conclusion that this appeal is devoid of

merit and deserves to be dismissed. Briefly put, the appellant herein approached the Federal High Court, Maiduguri to challenge his dismissal from service by the respondents. But unfortunately, the appellant failed to plead in his statement of claim the terms and conditions of his employment. Not having pleaded these conditions, no evidence was led in this regard. Although the learned trial judge found that the appellant was not given fair hearing before he was removed, he however held that such failure cannot be in vacuum as the essential ingredient of the claim of the appellant was missing. An appeal by the appellant to the Court of Appeal dismissed. The appellant has further appealed to this court. B C

I agree that the lone issue formulated by the respondents encapsulate the two issues of the appellant and also covers the entire complaints of the appellant:

It states:

*“Whether the Lower Court was right in affirming the judgment of the trial court which was to the effect that notwithstanding the fact that there was a breach of fair hearing leading to appellant’s dismissal, failure of the appellant to plead and prove his conditions of service was fatal to his case.”* D E

I shall not summarize the arguments of counsel since this has been ably done in the lead judgment.

It is trite law that when an employee complains that his employment has been wrongfully terminated, he has the onus, first to place before the court the terms of the contract of employment and, second, to prove in what manner the said terms were breached by the employer. It is not in principle for the employer who is a defendant to an action brought by the employee to prove any of these issues. See Francis Katto V. Central Bank of Nigeria (1999) 6 NWLR (Pt.607) 390, Iwuchukwu v. Nwizu (1994) 7 NWLR (Pt.357) 379 at 412. F G

In Amodu V. Amodu (1990) 5 NWLR (Pt.150) 356 at 370, this court held as follows:-

*“It appears clear to me that since it is the plaintiff’s case that his dismissal by the defendant is not in accordance with the terms and conditions of the contract of service between them, it is for the plaintiff to plead and prove the conditions of service regulating the contract of service in question.”* H

It has to be understood that as the contract of service is the bedrock upon which an aggrieved employee must found his case, he succeeds or fails upon the terms thereof. Therefore, in a written or documented contract of service, the court will not look outside the terms stipulated or agreed therein in deciding the rights and obligations of the parties. See *Western Nigeria Development Corporation V. Abimbola* (1966) NSCC 172, *Olaniyan V. University of Lagos* (1985) NWLR (Pt.9) 599.

From all I have said above, it clearly shows that the appellant completely missed the point. Failure to plead and prove the terms and conditions of service by a plaintiff seeking to challenge his dismissal is fatal to his case. In fact, this failure completely knocks off the substratum of his case. Therefore, issue of fair hearing or lack of it cannot hang in the air. You cannot put something on nothing and expect it to stand. It will certainly collapse like a pack of cards, See *Macfoy V. U.A.C.* (1961) 3 ALL ER 1169 at 1172. Therefore, I agree with the court below, which upheld the judgment of the trial High Court that appellant's case failed as the essential ingredient to prove his case was neither pleaded nor any scintilla of evidence led in that regard.

Based on the above and the fuller reasons in the lead judgment, I too hold that this appeal lacks merit. It is accordingly dismissed. I abide by all the consequential orders made in the lead judgment.

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H