

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ILORIN JUDICIAL DIVISION
HOLDEN AT ILORIN
ON THURSDAY THE 15TH DAY OF DECEMBER, 2011
BEFORE THE HONOURABLE JUSTICE A.O. FAJI (JUDGE)

SUIT NO: FHC/IL/CS/4/2008

BETWEEN:

LEWU SUNDAY MICHEALPLAINTIFF

AND

FEDERAL INLAND REVENUE SERVICEDEFENDANT

JUDGMENT

The Writ of Summons in this matter was filed on 5/3/2008. The Plaintiff claims as follows:-

- i. A declaration that the suspension and dismissal of the Plaintiff by the Defendant were in gross violation of his fundamental right to fair hearing and the Federal Public Service Rules and were therefore, unconstitutional, null and void and of no effect whatsoever.
- ii. An order setting aside the letters of suspension and dismissal issued to the Plaintiff and dated 9/5/2003 and 3/9/2004 respectively.
- iii. An order compelling the Defendant to restore and/or reinstate

the Plaintiff to his post as a Clerical Officer 1 without prejudice to normal promotions, allowances and other entitlements that Plaintiff might be entitled to in the ordinary course of his employment in the service of the Defendant.

- iv. An order directing the Defendant to pay to the Plaintiff all salaries, allowances and other entitlements due to the Plaintiff in the service of the Defendant from September 2004 till the Plaintiff is reinstated to his post.

In alternative to reliefs (iii) and (iv) above.

- (v) The sum of N5,000,000.00 (Five Million Naira) only as damages for unlawful dismissal of the Plaintiff from the Defendant's service.
- (vi) Interest at the rate of fifteen percent (15%) per annum on the judgment debt until the full satisfaction of the judgment debt.

A 34 paragraph statement of claim was also filed along with documentary exhibits.

By Motion on Notice dated and filed 18/7/2008 and granted on 3/2/2009, the Defendant was granted leave to file and serve a Preliminary Objection, Statement of Defence and memorandum of appearance out of time and the said processes attached to the Motion on Notice were deemed duly filed and served on 3/2/2009. The Preliminary Objection was dismissed in a

considered ruling delivered by the court on 6/5/2009. The Plaintiff had also filed a reply to the statement of defence on 23/9/2008.

Trial commenced on 10/6/2010 with the Plaintiff's testimony. Plaintiff himself was the sole Plaintiff's witness and he adopted his witness statement sworn to on 26/6/2009. He tendered the following documents which were admitted in evidence as exhibits:

- **Exhibit A:** Defendant's letter dated 4/2/2003.
- **Exhibit B:** Defendant's letter dated 27/3/2003.
- **Exhibit C:** Defendant's letter dated 9/5/2003.
- **Exhibit D:** Defendant's letter dated 3/9/2004.
- **Exhibit E:** Defendant's letter dated 9/2/1996.
- **Exhibits F - F6:** Plaintiff's letter dated 18/4/2004 with attachments.
- **Exhibits G – G4:** Letter dated 3/4/2006 written by the Legal Aid Council to the Defendant's chairman.
- **Exhibits H – H1:** Plaintiff's solicitor's letter dated 29/4/2005 addressed to Defendant's chairman.
- **Exhibit I:** Plaintiff's letter addressed to Defendant dated 27/3/2003.
- **Exhibit J:** Photocopies of two cheques and UBN Plc teller endorsed on the reverse side by the Plaintiff.
- **Exhibit K:** Certified true copy of Police report dated 23/4/2003.

- **Exhibit L:** Letter written by Mojeed Alabi & Co., dated July 1 2008 and addressed to Defendant.
- **Exhibit M:** Letter dated 6/3/2003 written by the Local Vat Officer Offa addressed to the Divisional of Police Officer Offa Unit.
- **Exhibit N:** Certified true copy of Ruling of the Chief Magistrate's Court Ilorin delivered on 9/2/2005.
- **Exhibit O:** Plaintiff's letter dated 9/9/2005 addressed to the Defendant.
- **Exhibit P:** Plaintiff's letter dated 9/9/2005 addressed to the Defendant entitled 'Appeal for reinstatement....etc'.

PW1 i.e. the Plaintiff was cross-examined by Defendant's Counsel. He was not re-examined and Plaintiff closed his case.

The Defence opened on 14/7/2011 with the testimony of Ambrose Appolos Gombe a member of staff of the Defendant in Abuja. DW1 adopted his witness statement filed on 11/5/2011. He tendered:

- **Exhibit Q:** Letter from UBN Plc Ilorin Area Office dated 9/4/2003 addressed to the Local Vat Officer FIR Vat Office, Offa.
- **Exhibit R:** Minutes of Junior Staff Committee held on 28/4/2004.

He was cross-examined by Plaintiff's Counsel and not re-examined. The Defendant closed its case and written addresses were ordered. The addresses were filed, exchanged and adopted by Counsel in open court on 10/11/2011.

The Defendant's address was filed on 8/9/2011 whilst Plaintiff's address was filed on 24/10/2011. Defendant's Counsel submitted that there is a discrepancy between the claim in the Statement of Claim which is N5 million and the N20 million claimed in the written address. The Plaintiff did not also give particulars of special damages and did not lead evidence on same. Plaintiff's Counsel also conceded that Plaintiff did not give particulars of special damages.

Defendant's Counsel reiterated the facts stating that Plaintiff was a former unconfirmed staff of the Defendant at Offa, alleged to be involved in fraud with the connivance of some individuals and Bank staff. This fraud was discovered by the Police and those involved were arrested and arraigned before the Chief Magistrate's Court. The Defendant had however commenced disciplinary action before then and the Plaintiff and another member of staff were queried twice. They responded and the Defendant set up a four-man committee to investigate. After the committee submitted its report, the Plaintiff and the other person were suspended and a disciplinary committee was constituted. That committee sat on Plaintiff's matter and recommended their dismissal to forestall future occurrences.

Counsel identified two issues for determination:

1. Whether or not the Plaintiff is sufficiently indicted in the fraud to warrant his conviction in view of the available documentary evidence but never tendered before the Magistrate Court hence the inconclusiveness of ruling dated 9th of February, 2005.
2. Whether or not the Defendant followed due process in dismissing the Plaintiff.

On Issue No. 1:

Counsel submitted that there is sufficient evidence to convict Plaintiff on the allegations of fraud but because the Police was not interested in the matter, they refused to tender same at the Magistrate's Court. Counsel outlined the documentary and oral evidence and raised questions about Plaintiff's involvement in the alleged fraud. Counsel submitted that had the Police tendered the required documents, and thus prosecuted the matter at the Magistrate's Court diligently, the Ruling by the learned Magistrate would not have been inconclusive.

Counsel referred to Rule 04410 of the Public Service Rules to the effect that disciplinary proceedings can commence or continue even where criminal proceedings are pending or being contemplated against the officer, even if the grounds of the said criminal proceedings and the disciplinary proceedings are the same or similar. Even though where an officer has been acquitted, he shall

not be penalized for the charge, but he can be dismissed or punished on other charges arising out of the same conduct in so far as the issues thus arising are not substantially the same issues as those in respect of which he has been acquitted.

Counsel therefore, submitted that the Ruling of the Magistrate's Court did not in any way determine the matter or order the reinstatement of the Plaintiff but merely terminated the First Information Report (F.I.R.) due to the lack of seriousness on the part of the Police. The Police has not since 2005 done the needful. Counsel also submitted that criminal proceedings do not stop administrative proceedings, especially when the prosecution is not serious about the case. The Defendant is thus not stopped from taking administrative steps. Counsel identified what a Plaintiff in this sort of case must plead and prove.

- (a) That he is employed by the Defendants;
- (b) The terms and conditions of his appointment including duration and termination.
- (c) Who can appoint and remove him.
- (d) The circumstances under which his appointment can be terminated.
- (e) That his appointment can only be terminated by a person or authority other than the Defendant.

Plaintiff has not pleaded and proved these essentials and his claim should be dismissed. He only pleaded and proved that he was an employee of the Defendant and tendered Exhibit E – an appointment letter. Counsel submitted that Exhibit E is not an appointment letter but a letter of posting. It does not contain the terms and conditions of appointment nor does he say his employment has statutory flavour – without more. He did not say if his appointment has been confirmed and gazetted for him to enjoy the privilege of statutory flavour.

Counsel therefore urged the court to dismiss the action relying on:

- MOROHUNFOLA –V- KWARA TECH. (1990) 4 NWLR (Part 145) 506.
- ADAMS –V- L.S.D.P.C. (2000) 5 NWLR (Part 656) at 292.
- ANGEL SPINNING R. OYEING LTD –V- AJAH (2000) 13 NWLR 534 ratio 3.
- ANTE –V- UNIVERSITY OF CALABAR (2001) 3 NWLR 243 ratio 3.

Counsel submitted that reliefs i – iv are declaratory in nature and thus equitable, the Plaintiff having approached the court with soiled hands cannot enjoy a favourable exercise of that discretion. Counsel therefore, urged the court to dismiss prayers (i) to (iv). In the alternative, Counsel submitted that only special as opposed to general damages can be properly awarded in cases of breach of contract. The particulars and evidence in support of same are also required. Counsel relied on:

- OJOMO –V- INCAR (NIG.) LTD. (1993) 7 NWLR (Part 307) 534.
- IJEBU-ODE LOCAL GOVERNMENT –V- ADEDEJI BALOGUN & CO. LTD.
(1991) 1 NWLR (Part 166) 136.
- MOBIL OIL (NIG.) LTD. –V- AKINFOSILE (1968) 1 NMLR 217.
- UNIVERSAL INSURANCE CO. LTD. –V- T.A. HAMMOND (NIG.) LTD.
(1998) 9 NWLR (Part 565) 340.

Counsel submitted that special damages must be specially pleaded and proved and that the claim of N5,000,000.00 in prayer V of the statement of claim is in the realm of special damages but the particulars were not given. Paragraphs 25 and 29 of the statement of claim do not help and Plaintiff did not tender any documents. It is thus speculative. Counsel urged the court to dismiss prayers V and VI. Counsel relied on:

- OLATUNBOSUN –V- NISER (1986) 3 NWLR (Part 29) ratio 18.

The measure of damages in wrongful termination of employment cases is what the employee would have earned over the period of the notice required to lawfully terminate his employment. The Plaintiff failed to show the required length of notice. Counsel urged the court to dismiss Plaintiff's claims.

Arguing Issue No. 2:

Counsel submitted that Defendant followed due process in dismissing Plaintiff for being involved in the diversion or aiding in the diversion of the

federal government's money collected by the Defendant. This falls within the definition of serious misconduct under Section 4 of the Public Service Rules and Rule 04401 xvii. The procedure laid down in Rules 04402, 04302 to 04306 was also followed as Plaintiff was informed of the accusations against him as well as the evidence in support thereof and he was given an opportunity to correct or challenge the said allegations. The rules are to ensure fair hearing under Section 36(1) of the 1999 Constitution.

Counsel relied on:

- NTUKIDEM –V- OKO (1986) 5 NWLC (Part 45) 909.
- BAMIGBOYE –V- UNIVERSITY OF ILORIN 10 NWLR (1622) 290 (1999).
(Counsel's error).
- OSUMAH –V- E.B.S. (2004) 17 NWLR Ratio 2 10 NWLR (1622) 290
(Counsel's error).
- GARBA & ORS. –V- UNIVERSITY OF MAIDUGURI (1986) 1 NWLR
(Part 18) 50.

Counsel defined fair hearing as including the twin pillars of audi alteram partem and nemo iudex in causa sua. This entails the procedure in rules 04402 and 04302 to 04306 of the Public Service Rules.

Counsel submitted that in the determination of Plaintiff's employment, the Defendant strictly observed the rules of natural justice as Plaintiff was:

- Issued queries vide Exhibits A and B.
- Invited before a panel where he made oral and written representations on the issue of fraud.
- Given ample opportunity to defend himself and he answered the queries vide Exhibit I.

His explanations were however not good enough as the evidence before the Panel showed that Plaintiff was involved in fraud. The committee sat on the matter and recommended the dismissal of the Plaintiff. Plaintiff cannot therefore, seriously contend that he was not invited by the disciplinary committee. Proceedings before the committee (being an administrative tribunal) can either be written or oral and need not be oral. Counsel relied on:

1. HART –V- MILITARY GOVERNOR, RIVERS STATE PUBLIC SERVICE COMMISSION & A.G. ((1976) 11 SC 211.
2. ADEDEJI –V- PUBLIC SERVICE COMMISSION (1968) NWLR 102.
3. ADIGUN –V- A.G OF OYO STATE (4) – (1987) NWLR (Part 53)
(Counsel's error).

In which it was re-affirmed that natural justice does not necessarily entail an oral hearing.

Plaintiff has not shown that the absence of an oral hearing prejudiced him. Counsel therefore, submitted that the fact that Plaintiff was not invited

by the committee for an oral hearing is immaterial in so far as he made written representations vide Exhibits A, B, I and K which were taken into account. He could not therefore have been prejudiced.

Counsel also submitted that it is not a requirement under the constitution that before an employer can summarily dismiss his employee under the common law, the employee must be tried before a court of law where the accusation against the employee is one of gross misconduct involving dishonesty bordering on criminality so long as he has been given adequate notice of the allegations against him to enable him make a representation in his own defence. The complaint against him must not necessarily be drafted in the form of a formal charge. It suffices if the complaint conveys the nature of the accusation as in Exhibits A. and B. Counsel referred to ARINZE –V- FIRST BANK (NIG.) LTD. (2000) 1 NWLR 101 D – E.

Counsel submitted further that Plaintiff does not deserve any fair treatment already given him by Defendant in view of the role he played in the fraud and ought to have been dismissed summarily as he admitted the accusation. This amounts to gross misconduct leading to summary dismissal. His conduct is so grave and weighty as to undermine the confidence which

should exist between an employee and the employer. Counsel urged the court to so hold and dismiss the action.

Counsel relied on:

- COOPERATIVE DEVELOPMENT BANK –V- ESSIEN (2001) 4 NWLR (Part 704).
- OBO –V- COMMISSIONER OF EDUCATION BENDEL STATE (2001) 2 NWLR (Part 658) 627.
- OLANIYAN –V- UNIVERSITY OF LAGOS (1985) 2 NWLR (Part 9) 599.
- NEW NIGERIA BANK LTD. –V- FRANCIS OBEVUDIRI (1986) 3 NWLR (Part 29) 388.
- SULE –V- NIGERIAN COTTON BOARD (1985) 2 NWLR (Part 5) 17.
- WOBOSI –V- A.C.B. LTD. (1995) 6 NWLR (Part 404) 658.

Whether or not fair hearing was given in a particular case depends to a large extent on the circumstances and the procedure evolved in arriving at the particular decision. That there was a procedural breach in the deliberations of a domestic tribunal such as disciplinary committee does not mean its findings become automatically ineffective, particularly in circumstances where there is evidence showing gross misconduct on the part of the person being investigated. Counsel relied on: N. N. B. LTD. –V- OBEVUDIRI (1986) 3 NWLR (Part 29) 388 ratio 4.

Plaintiff's Counsel reiterated Plaintiff's claims. Counsel stated that Plaintiff was an administrative staff of the Defendant. He was dismissed from the Defendant's service on 3rd September 2004 upon allegations of criminal conspiracy, forgery, theft, fraud and mischief. Plaintiff's employment is with statutory flavour governed by the Federal Civil Service Rules.

Defendant's case is that Plaintiff was allegedly involved in a fraud at the Offa VAT Office in that his account was credited with a sum of N892,155.26 on 2nd December, 2002. Even though the money was so credited without Plaintiff's knowledge, and when he probed the source of the money, he was informed by those who carried out the lodgements that the money was proceeds of a contract for them and he (Plaintiff) released two cheques for the money to be cashed by one Mallam Adamu Muhammed. DW1 was not a member of the disciplinary committee that investigated the allegation and he admitted that his evidence was based on what he was told and that the Plaintiff had not been tried and convicted for the alleged crime which led to his dismissal from Defendant's service.

Counsel submitted further that there is no dispute that Plaintiff was a permanent employee of the Defendant whose employment was one with statutory flavour. Plaintiff was suspended on 9th May 2003 and later dismissed on 3/9/2004 upon an allegation of a crime. The Plaintiff was tried for the

offence but was discharged. He was dismissed from Defendant's service even before he was tried.

Counsel identified the following issues for determination:

1. Whether the Plaintiff was afforded a fair hearing in the entire proceedings of the Defendant's disciplinary committee.
2. Whether having regard to the nature of the allegations against the Plaintiff the Defendant can find him guilty of the offence and recommend him for dismissal.
3. Whether the imposition of penalty of dismissal of the Plaintiff for allegation of fraud solely on the basis of an indictment by an administrative panel of the Defendant is constitutionally justified and reasonable.
4. Whether or not the Plaintiff is entitled to the relief sought.

Arguing issue number 1, Counsel submitted that the disciplinary committee did not observe Section 36(1) – (4) of the 1999 Constitution as he was never afforded the opportunity to defend the allegation against him before he was presumed guilty of the allegation and recommended for dismissal from service. This occasioned a miscarriage of justice and a denial of fair hearing. Counsel relied on: OLAYE –V- CHAIRMAN MED & DENT PRACT (1997) 5 NWLR (Part 506) 550 at 568.

The queries issued can not cure the defect as the queries were not issued based on allegations of fraud but on an allegation of being absent from work. He was also not informed of the existence of such investigation panel. How then can he be afforded the opportunity to defend the allegation?

Counsel urged the court to resolve issue number 1 in Plaintiff's favour.

Arguing issues two and three together, Counsel submitted that only a properly constituted court of law can find a person guilty of a criminal offence and that Defendant does not fall within the definition of a court and cannot presume Plaintiff to be guilty of the alleged offence in violation of Section 36(5) of the Constitution. Counsel submitted that conviction for offences and punishments are matters appertaining exclusively to judicial power. Counsel relied on:

- UNIVERSITY OF CALABAR & ORS. -V- CHIEWE IKWUZE ESIAGE (1997) 4 NWLR (Part 502) 319 at 751 E – H;
- SOKEFUN -V- AKINYEMI (1981) 1 NCLR 135.
- GARBA -V- UNIVERSITY OF MAIDUGURI (1986) 1 NWLR (Part 18) 550.

Counsel submitted that in the circumstances of Plaintiff's dismissal, being an employment protected by statute, the employee who was unlawfully dismissed may be reinstated to his position.

Counsel therefore, urged the court to resolve issue 4 in Plaintiff's favour and grant all the prayers as claimed. Counsel relied on SHITTA-BEY -V- FEDERAL CIVIL SERVICE COMMISSION (1981) 1 SC 40.

Counsel submitted that the testimony of DW1 was based on hear-say and should not be believed. Counsel submitted finally that where the dismissal of a servant is based on criminal allegation, such allegation must first be proved before the dismissal can stand. Counsel referred to S. B. OLANREWAJU -V- AFRIBANK PLC (2001) FWLR (Part 72) 2008 ratio 5; GARBA -V- UNIVERSITY OF MAIDUGURI (1986) 1 NWLR (Part 18) 550.

Counsel urged the court to grant Plaintiff the reliefs claimed.

As stated earlier on in this judgment, Defendant's counsel did not file a reply on points of law. His brief oral argument on the issue of special damages has been referred to in this judgment.

I must start by saying that whether or not Plaintiff was a confirmed staff of the Defendant is not in issue going by paragraph 1 of the Statement of Defence and paragraphs 1, 3 and 4 of the Statement of Claim.

The allegation forming the basis of Plaintiff's dismissal is an allegation of fraud. This is clear from Exhibits B, C and D. Exhibit B is a query for being absent for 4 days. Exhibit B is a query based on the interrogation of Plaintiff by the Police. Exhibit C is the letter of suspension based on Plaintiff's involvement

in the recent fraud case reported against Plaintiff in the Offa Local VAT Office.

The matter was then referred to the Junior Staff disciplinary committee.

Exhibit D is the letter of dismissal based on the decision on the disciplinary case for which he was suspended. That case from Exhibit C is the recent fraud case.

It is therefore, clear that Plaintiff was dismissed because of fraud.

Exhibit I is Plaintiff's reply to Exhibit C addressed to the Area Tax Controller,

Ilorin. The Defendant posits that disciplinary proceedings took place as a 4

man committee was set up to investigate the matter. That committee

submitted its report and Plaintiff and another member of staff were

suspended. A disciplinary committee was set up and that committee

recommended Plaintiff's dismissal. The Defendant therefore, followed the

procedure in Rules 04402, 04302 and 04306. The Defendant further contends

that Plaintiff made oral and written representations to the committee which

recommended his dismissal as well as the 4 man committee. DW1 did not

however tender any document written by Plaintiff to either of these

committees. Worse still DW1 did not have personal knowledge of what

happened at the committees.

Finally Exhibit R paragraph 2. 14 in which the committee considered Plaintiff's

case only made reference to the Plaintiff's answer to a query and went on to

hold that the refund made by the Plaintiff of his alleged share of the proceeds

of the fraud showed that he took part in the fraud. He was therefore on that basis dismissed from the service. He did not make an oral representation neither was he asked to make a written representation to the Junior Staff Committee to which his matter was referred upon his suspension vide Exhibit C dated 9/5/2003. The committee sat on 28/4/2004 and Plaintiff was dismissed vide Exhibit D on 3/9/2004. From Exhibit R it is clear that the committee made a finding of fact of guilty of Plaintiff in respect of a crime – fraud – and recommended punishment. It is also note-worthy that from Exhibit R, the committee did not consider the Police Report – Exhibit K – which was addressed to the Defendant's Area Tax Controller. Exhibit K shows clearly in paragraphs (c) and (h) that the money was paid into Plaintiff's account without his consent and that Plaintiff did not know that the money was fraudulently obtained. Even if the committee based its findings on Plaintiff's reply to the query on his invitation to the Police, Exhibit K which was written on 3/4/2003 before the committee sat on 28/4/2004 clearly exonerated the Plaintiff of any fraudulent intention. How then did the committee arrive at its conclusion? I have gone this far to show the obvious haste and lack of due process exhibited by the committee in arriving at its findings on Plaintiff and not to show that the process of guilt finding in respect of a crime by the committee was within its purview.

Defendant's Counsel has relied on the case of ARINZE -V- FIRST BANK (NIG.) LTD. (supra). To my mind, that case is with respect not applicable. The relationship in that case was based on the common law as opposed to the instant case which Plaintiff claims has statutory flavour based on the Federal Civil Service Rules. Also no reason was given for the dismissal and the employee also contended that his misconduct was condoned by delay on the part of the employer. The court however, held that that was not material as the Plaintiff was given a fair hearing. That decision also seems to be in conflict or at variance with decision of the Supreme Court in I. H. A. B. U. H. M. B. -V- ANYIP (2011) 12 NWLR (Part 1260) 1. I will discuss that case later in full.

It is also clear from the Statement of Claim and Plaintiff's evidence and Defendant's reliance on the procedure in the Civil Service Rules that Plaintiff's employment was based on the civil service rules and thus has statutory flavour.

It is also clear that Plaintiff was never convicted of the alleged fraud. Exhibit N shows that even though Plaintiff was charged to court, he was not prosecuted as the First Information Report was terminated for want of diligent prosecution. There is thus no finding of guilt against Plaintiff by a duly constituted court of law with the requisite jurisdiction.

Plaintiff has contended that he was denied a fair hearing because the queries he was given to wit Exhibits A and B were not in respect of fraud but based on the allegation of being absent from work. Indeed Exhibit A relates to absence from work. However, Exhibit B asked Plaintiff to explain why he was interrogated by the Police. That query from the entire circumstances and particularly in view of the Police Report i.e. Exhibit K was in respect of the issue of fraud. The reply i.e. Exhibit J sought to explain Plaintiff's role in the fraud. The second query – Exhibit B – was therefore, clearly in respect of the issue of fraud. The Plaintiff was therefore, given an opportunity to and did in fact respond to the queries relating to fraud.

I however agree with the Plaintiff that where there is an allegation of crime, the appropriate forum to determine guilt is a court. In the instant case, the Plaintiff and others were arraigned before a Magistrate's Court but the case was terminated for lack of diligent prosecution. That case was terminated on 9/2/2005 – long after the meeting of 28/4/2004 in Exhibit R and the dismissal of the Plaintiff by Exhibit D on 3/9/2004. The Defendant was thus clearly not interested in the case in court which from the suit number was filed in 2003 before the meeting and the letter of termination. Defendant did not wait for the court to determine Plaintiff's guilt but proceeded to find him guilty of fraud and dismissed him from service. That clearly cannot be done and the

termination of Plaintiff's appointment has to be declared null and void. I so order. The following cases are relevant on this point:

- I. H. A. B. U. M. B. -V- ANYIP (supra).
- F. C. S. C. -V- LAOYE (1989) 2 NWLR (Part 106) 652 at 706; SOKEFUN -V- AKINYEMI (1981) 1 NCLR 135.

I must also state that the address of Counsel on the issue of fraud and even his cross-examination of the Plaintiff seems to be an attempt to establish the fraud before this court in order to show that the committee was right in its conclusion. With respect, what is being challenged is the basis of Plaintiff's dismissal to wit the Junior Staff Committee Report which made a finding of guilt in respect of a crime. The argument with respect should have been put before the court before which the Plaintiff and others were arraigned.

In as much as criminal proceedings cannot stop administrative steps from being taken, if those administrative steps involve a finding on an allegation of crime leading to dismissal of the employee, then in my view it would be more sensible for the administrative body's decision to be based on a finding by a court in respect of the allegation of crime.

I am also of the view that Plaintiff has established the essential elements of his case.

It is not in dispute that he was employed by the Defendant.

It is also clear that his employment was based on the Public Service Rules and Defendant has not seriously contended that Plaintiff's employment does not have statutory flavour.

I therefore, grant reliefs 1 – 3 in the writ of summons.

The Defendant has harped on the discrepancy in the figure claimed as special damages in the writ of summons and that in the address. It is trite that the court cannot award more than a party has claimed. The claim in the writ of summons is therefore the appropriate one. I however note that the claim for special damages is in alternative to relief IV.

Having found that the Plaintiff's employment was wrongfully terminated and that Plaintiff's employment is with statutory flavour, I must also grant pray IV. See:

BASHIR ALADE SHITTA-BEY –V- THE FEDERAL CIVIL SERVICE COMMISSION

(1981) 1 SC 40.

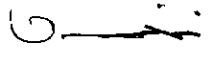
I also grant relief VI but the interest shall be at the rate of 10% pursuant to Order 23 Rule 5 Federal High Court (Civil Procedure) Rules 2009.

The court therefore, hereby orders as follows:

1. The court hereby declares that the suspension and dismissal of

the Plaintiff by the Defendant were in gross violation of his fundamental right to fair hearing and the Federal Public Services Rules and were therefore unconstitutional, null and void and of no effect whatsoever.

2. The letters of suspension and dismissal issued to the Plaintiff and dated 9/5/2003 and 3/9/2004 respectively are hereby set aside.
3. The Defendant is hereby ordered to restore and/or reinstate the Plaintiff to his post as a Clerical Officer 1 without prejudice to normal promotions, allowances and other entitlements that Plaintiff might be entitled to in the ordinary course of his employment in the service of the Defendant.
- iv. The Defendant is hereby ordered to pay to the Plaintiff all salaries, allowances and other entitlements due to the Plaintiff in the service of the Defendant from September 2004 till the Plaintiff is reinstated to his post.
- v. Interest of 10% per annum shall be paid on the judgment debt until the full satisfaction of the Judgment debt by the Defendant.


A. O. Faji
(Judge)
15/12/2011

Counsel:
R.O. Salman Esq. for the Plaintiff.
N. O. Abioye Esq. for the Defendant.

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ILORIN JUDICIAL DIVISION
HOLDEN AT ILORIN
ON TUESDAY 25TH OCTOBER, 2011
BEFORE THE HON. JUSTICE A. O. FAJI (JUDGE)

SUIT NO. FHC/IL/CS/20/2008

BETWEEN:

DR. DELE ABEGUNDE PLAINTIFF

AND

UNIVERSITY OF ILORIN TEACHING HOSPITAL.....DEFENDANT

RULING

I have listened to counsel and considered the processes filed in respect of this application.

Applicant's counsel relies strongly on Order 32 Rule 2 of the Federal High Court Rules 2009. I agree with Mrs. Aimien for the respondent that the rule merely gives the court a discretion.

Indeed, order 32 rule 2 seems to have codified the hoary principles of law in matters of stay of execution.

The main plank of the application is that the judgment sum is considerable and if execution is levied against the Defendant it might become difficult to recover the judgement sum and the appeal might therefore be rendered nugatory. The facts in support in paragraph 5 show that the judgment sum is N8,138,230. The Applicant then deposes that if the money is paid to the Plaintiff it may become considerably difficult to recover the said sum from the Plaintiff if the appeal succeeds.

The Applicant has nowhere said it cannot pay the Judgment sum. Indeed it says it would be able to liquidate the Judgment debt if the appeal fails. In paragraph 16 the Applicant has said it is willing, ready and has the means to pay the judgment debt if the appeal fails. The Applicant is also ready to commit part of its funds to the liquidation of the damages awarded if the appeal fails.

It would seem to me that the Applicant can pay the judgment sum and will suffer nothing if it is ordered to do so. There is no evidence of the collateral circumstances or inherent matters which can render the appeal nugatory. There is nothing that will paralyse the exercise of the constitutional right of appeal if the Applicant is ordered to pay the judgment sum.

There is a vague reference to the difficulty in recovering the judgment sum from the Plaintiff if the appeal succeeds.

The Respondent in paragraph 8 deposed that it will be in the interest of justice if the Applicant is ordered to pay the judgment sum to the Registrar of the court who would in turn pay same into an interest-yielding account opened for that purpose.

It was apparently in answer to this that Applicant's counsel made reference to Order 32 Rule 2 of the Federal High Court Rules 2009.

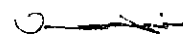
I have already found that Order 32 Rule 2 merely codifies the discretionary power of the court in matters of this nature. I am also of the view that the circumstances justify a stay but on condition. Since Applicant is skeptical about the ability of the Plaintiff who works outside jurisdiction – to refund the judgment sum, I am of the view that the interest of justice will be met if the Applicant is ordered to pay the judgment sum into court.

The court therefore hereby orders as follows:

A conditional stay of execution of the Judgment delivered on 22/7/2011 is hereby granted.

The Judgment debtor/Applicant shall within 7 days pay the judgment sum of N8,173,230 to the Registrar of this court. The Registrar shall forthwith thereafter pay same into an interest-yielding account in the name of the said Registrar with any branch of either First Bank Plc or UBA Plc within Ilorin. The interest payable shall be prime interest.

The Registrar shall also notify both parties by letter as soon as the account has been opened informing them of the nature of the account and the amount of interest. Both parties shall also be entitled to demand for quarterly statements of account from the Registrar.


A.O. FAJI
JUDGE
25/11/2011

Counsel:
Nureini Jimoh Esq. ✓
for Judgment debtor/Applicant
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