ANTHONY ABIODUN OLOWOOKERE v. THE GOVERNING COUNCIL ADEYEMI COLLEGE OF EDUCATION ONDO

COURT OF APPEAL
(AKURE DIVISION)

CA/AK/26/2010
MONDAY 18TH JUNE, 2012

(KEKERE-EKUN; IYIZOBA; ADUMEIN, JJ.CA)

EMPLOYMENT - Termination – An employee seeking to reverse the termination of his appointment must establish that he was not given a fair hearing by his employer.

CIVIL PROCEDURE – Rules of Court – Where the rules of court provide that an act should be done within a particular time, the act ought to be done within the time prescribed.

CIVIL PROCEDURE – Issues for determination – Courts of law are restricted to deliberate on only live issues and not indulge in academic exercises and any non issue is liable to be struck out.

APPEAL – Respondent's Notice – A respondent's notice will be discountenanced if the respondent fails to comply with the relevant rules of court.

Facts:

The appellant was employed by the respondent as an accountant in 1990. He served in different capacities and in December 2003 was appointed as the head of the audit unit.

Due to a series of events that led to a crisis in the respondent college, an administrative committee was set up to look into its affairs and an audit of the financial activities of the college was carried out. The audit report as well as the administrative committee inquiry indicted the appellant who was thus relieved of his appointment on the directive of the Minister of Education.

The appellant made several unsuccessful attempts to have his termination reversed. He then instituted an action against the respondent at the Federal High Court, Akure Judicial Division claiming *inter alia*, a declaration that his letter of termination of appointment was illegal, unlawful, wrongful and therefore null, void and of no effect.

The trial court dismissed his claims and the appellant being dissatisfied appealed to the Court of Appeal.

Held *(unanimously dismissing the appeal):*

[1] ***Employment - Termination – An employee seeking to reverse the termination of his appointment must establish that he was not given a fair hearing by his employer.***

The contents of exhibits 10 and 13 destroy the appellant's claim that no reason was given for his indefinite suspension and that he was never made to answer any charge. In fact, before exhibit 13 was written, the respondent, by its letter dated 19th July, 2004 admitted as the exhibit 11, informed the appellant that an Audit Team from the Federal Ministry of Education requested to have his attention and advised the appellant to treat the matter as "important" and to "comply". There is no evidence from the appellant that the Audit Team and the Visitation Panel did not afford him a fair hearing. His wife - PW1, who was not present at or during proceedings of both the Audit Team and Visitation Panel has no proper standing to testify in respect of what happened at or during their deliberations.

In other words, the appellant as head of the internal audit unit was indicted for inefficiency; he was accordingly warned and given opportunity to defend himself before his appointment was terminated as earlier highlighted in this judgment. I agree with the respondent that from the facts of this case, there was compliance with the regulations which governed the appellant's employment before his appointment was terminated.

The evidence of DW2 was not challenged nor contradicted or controverted by the appellant. Surprisingly, the appellant, who made serious allegations against the respondent, preferred to stay in the United Kingdom while his case was pending at the lower court. The appellant allowed his wife, who was not present during the hearings of both the Audit Team and the Visitation Panel, to pursue his claim and testify on his behalf that he was not given a fair hearing before his appointment was terminated. On the balance of probabilities, the appellant did not make out a case in the lower court to warrant an order reversing the termination of his appointment by the respondent. **(P. 49 lines 23-32; P. 51 lines 27-32; P. 52 lines 1-9)**

[2] ***Civil Procedure – Rules of Court – Where the rules of court provide that an act should be done within a particular time, the act ought to be done within the time prescribed.***

I have examined the records in the file and the proof of service of the appellant's brief clearly indicates that A. A. Suleiman, Esq., learned counsel for the respondent personally received and signed for the appellant's brief on the 16th day of December, 2010 at 12.15 p.m. By a

simple arithmetical calculation, from the 16th day of December, 2010 when the appellant's brief was served on the respondent and the 20th day of January, 2011 when the respondent's brief was filed was clearly more than 30 days.

The rules of a court of law are meant to be obeyed. In order words, where the rules of court prescribe that an act shall be done within a particular period, the act ought to be done within the time so prescribed. See *Bowaje v. Adediwura* (1976) 6 S.C. 143; *N.A. Williams v. Hope Rising Voluntary Funds Society* (1982) 1 - 2 S.C. 145 and *Sanusi v. Ayoola & Ors.* (1992) 9 NWLR (Pt. 265) 275.

However, in this case, the respondent by a motion on notice dated the 2nd day of February, 2011 and filed on the 3rd day of February, 2011 sought an order for extension of time within which to file the respondent's brief and an order deeming the respondent's brief as properly filed and served. The motion on notice was granted on the 9th day of March, 2011 and in the eyes of the law, the respondent's brief is competent and valid. The objection to the competence of the respondent's brief is hereby overruled.

Once again, it is hereby reiterated that Rules of Court must be obeyed. The respondent here failed woefully to comply with the mode, manner and time of filing a respondent's notice and its purported respondent's notice shall not be countenanced.

The respondent's notice is endorsed on the top thereof with the following words: "RESPONDENT'S ADDITIONAL RECORD". Order 8 rule 6, of the Court of Appeal Rules, provides thus:

> **"Where the respondent considers that there are additional records which may be necessary in disposing of the appeal, he shall be at liberty, within 15 days of the service on him of the records, to compile and transmit to the court such records to be known as the additional records of appeal."**

In purporting to act under Order 8 rule 6 of the Rules of this court, the respondent has not shown that its purported "additional records of appeal" was compiled and transmitted within 15 days of the service on it of the record of appeal. Further, as stated earlier, even if it was compiled and transmitted within the 15 days period prescribed by the Rules, it has not been shown that the alleged "additional records of appeal" had previously been filed in the registry of the lower court before its purported compilation and transmission. No matter the angle from which the respondent's notice is viewed, it is obviously incompetent. **(P. 45 lines 19-39;P. 46 lines 21-43)**

[3] ***Civil Procedure – Issues for Determination – Courts of law are restricted to deliberate on only live issues and not indulge in academic exercises and any non issue is liable to be struck out.***

In the present case, the name struck out by the court below on the 24th day of November, 2008 pursuant to a notice of preliminary objection dated the 12th day of May, 2008 was "HON. MINISTER FOR EDUCATION FEDERAL MINISTRY OF EDUCATION ABUJA". Therefore, the issue of whether the "Minister of Education" is a juristic person, as argued by the appellant is purely academic. The "Minister of Education" was never made a party by the appellant to his suit in the lower court and it is not a live issue. Courts of law do not indulge in academic exercises. The law courts restrict their deliberations to only live issues. See *Oyeneye v. Odugbesan* (1972) 4 SC 244; *Nkwocha v. Governor, Anambra State* (1984) 1 SCNLR 634 and *Chukwuka Ogudo v. The State* (2011) 18 NWLR (Pt. 1278) 1.

Therefore, the issue of the Minister of Education being or not being a juristic person is a non-issue in this appeal and I will waste no further time on it. **(P. 45 lines 41 - 45; P. 46 lines 1 - 8)**

[4] ***Appeal – Respondent's Notice – A respondent's notice will be discountenanced if the respondent fails to comply with the relevant rules of court.***

The respondent's notice, earlier reproduced in this judgment, was attached to its respondent's brief. There is no evidence that fees were paid for it and that it was duly filed. By the combined provisions of Order 9 rules 4 and 5 of the Court of Appeal Rules, 2007 twenty copies of the respondent's notice should be filed within thirty days after the service of the notice of appeal on the respondent and one of the copies of the notice "shall be included in the record". The respondent's notice here was neither filed in the registry of the lower court nor included in the record of appeal. It has not been brought to us by due legal process. The purported respondent's notice here cannot be relied on by this court. See the case of *Santos v. Epe Native Authority* (1943) 17 NLR 67 where a letter forming part of a correspondence written without prejudice was not relied on by the court to prove that a pre-action was given. Once again, it is hereby reiterated that Rules of Court must be obeyed. The respondent here failed woefully to comply with the mode, manner and time of filing a respondent's notice and its purported respondent's notice shall not be countenanced.
(P. 46 lines 10 - 24)

ADUMEIN, JCA (Delivering the lead Judgment): The appellant was employed as an Accountant II by the respondent vide letter dated the 4th day of December, 1990 and his appointment was confirmed through another letter dated 22nd June,

1995. The two letters were admitted by the lower court as exhibits 1 and 2, respectively. The appellant served in different capacities and was by a letter dated 1st December, 2003 (exhibit 5) appointed head of the respondent's internal audit unit. Between 1995 and 2004 the appellant was severally promoted vide exhibits 3A, 3B and 3C and he also received letters of commendation dated 9th April, 2002 and 8th January, 2004 - exhibits 9B and 9A respectively, notwithstanding that he had earlier been issued two queries in 1994 and 1996 (exhibits 19 and 17); series of events however occurred in the respondent's college resulting into crisis. An administrative committee of inquiry into the crisis was undertaken by the Federal Ministry of Education. An audit of the financial activities of the college was also carried out. By exhibits 20 and 18, the summary of the audit report and that of the administrative committee of inquiry showed that the appellant was implicated. The appellant's appointment was consequently terminated by a letter from the respondent with Ref. No. RPA/OLO/P. 1265/65 dated 26th November, 2004 - exhibit 12.

After two appeals for a review of the termination of his appointment were refused, the appellant took out an action in the Federal High Court, Akure Judicial Division in suit No. FHC/AK/CS/14/2005 and claimed in his amended statement of claim as follows:

"Whereof the plaintiff's claim against the defendant as follows:

(a) A DECLARATION that the letter of termination of appointment of the plaintiff dated 26th day of November, 2004 is illegal, unlawful, wrongful, inoperative, unconstitutional and therefore null, void and of no legal effect.

(b) A DECLARATION that the plaintiff is entitled to be reinstated to the service of Adeyemi College of Education with all the requisites of office, rights, promotions and entitlements which the plaintiff is entitled from the date of termination of the date of judgment and until the plaintiff is fully reinstated to his office.

OR IN THE ALTERNATIVE

(a) A DECLARATION that the plaintiff is entitled to retirement with payment in accordance with retirement benefits as contained in the regulation governing the condition of services.

(b) A DECLARATION that the plaintiff's retirement benefits shall be calculated in line with his entitlement to promotion,

yearly increment and all other allowances incidental to his promotion from the date of termination to the date of judgment and until the judgment is fully implemented."

The appellant's claim was disputed by the respondent as the defendant in the lower court. Initially, the respondent was the 2nd defendant while the 1st defendant in the court below was "THE HON. MINISTER FOR EDUCATION FEDERAL MINISTRY OF EDUCATION ABUJA". A preliminary objection was filed in the lower court contending that the 1st defendant therein was not a juristic person and the objection was sustained. The name of "THE HON. MINISTER FOR EDUCATION FEDERAL MINISTRY OF EDUCATION ABUJA" was consequently struck out. The case was, therefore, fought between the appellant and the respondent only.

Evidence was led by both parties, written addresses were filed, exchanged and adopted. In a reserved judgment delivered on the 14th day of October, 2010 the learned trial Judge dismissed the appellant's claim - both the main and alternative claims. Being dissatisfied the appellant filed a notice of appeal containing 7 (seven) grounds. The parties filed and exchanged briefs of argument. The appellant formulated four issues for determination, namely:

"(A) Whether or not the Honourable Minister of Education is a Juristic personality.

(B) Whether or not on proper interpretation of S8 of Federal College of Education Act, the Minister directives on matter of general character or matter of policy include individual employment and whether where Ministers' directives cover every administrative action the college is not bound to follow the procedure that governs the plaintiffs (sic) employment in carrying out the directives.

(C) Whether or not upon proper evaluation of the pleadings, evidence led and circumstances of this case the plaintiff is entitled to relief's (sic) sought.

(D) Whether or not the termination of the appellants' employment is in accordance with the regulations governing conditions of service of Junior and Senior Staff Regulations on condition of service. "

The respondent also framed four issues:

"2.01 Whether issue A (formulated by the appellant) presumably distilled from ground 1 of the Notice of Appeal could be related to the judgment delivered by the lower trial Court

on 14th day of October 2010 and which judgment is the subject matter of this appeal.

2.02 Whether the wordings of section 8 of the Federal Colleges of Education Act 2004 are not clear enough to warrant a resort to other rules of Interpretation.

2.03 Whether from the pleadings, the totality of the evidence and documents placed before the lower court, the Federal Ministry of Education or at least the Attorney General of the Federation ought not to have been brought in as a defendant by the appellant.

2.04 Whether from the totality of the evidence (both oral and documentary) the respondent had not complied with the Regulations governing conditions of service of the appellant."

Attached to the respondent's brief is a document marked "RESPONDENT'S ADDITIONAL RECORD" and it is titled "NOTICE OF INTENTION TO CONTEND THAT JUDGEMENT SHOULD BE AFFIRMED ON GROUNDS OTHER THAN THOSE RELIED ON BY THE COURT BELOW" dated 23/11/2010 and filed on 24/11/2010 and the relevant parts thereof read thus:

"TAKE NOTICE that upon the hearing of the above appeal, the respondents intend to contend that the decision of the court below dated 14th day of October, 2010 shall be affirmed on grounds other than those relied on by the court below;

AND TAKE NOTICE that the grounds on which the respondents intend to rely are as follows:

1. Going by the pleadings and evidence before the trial court, the Honourable Minister of Education is a disclosed principal of the respondents; and as such the said Minister ought to have been sued and held liable for whatever wrong the appellant suffered and in the absence of the said Minister being a party before the lower court, the plaintiffs claims ought to been dismissed on that ground.

2. Since it is a common ground among the parties that the decision and directives to suspend and later terminate the appellant's appointment with the respondent was taken and given by the Honourable Minister of Education, the acts which resulted in the appellants cause of action are acts of

> **the said Minister of Education; which therefore makes the Minister or the Federal Ministry of Education or at least the Attorney General of the Federation a party in the matter; and since none of these bodies was made a party, the lower court ought to have dismissed the plaintiffs claims on that ground."**

The appellant's issue 1 and the respondent's issue 1 and the argument on its respondent's notice shall be taken together. The appellant's argument is that the "Minister of Education" having been assigned duties and functions by law, including National Commission for Federal Colleges of Education Act, is a juristic person which can sue and be sued. The respondent, on the other hand, contended that the issue of juristic personality of the Minister of Education was not considered in the judgment appealed against by the appellant. The respondent stated that the issue was raised when the Minister of Education was still a party to the appellant's suit and was determined in a ruling of the lower court delivered on the 24th day of November, 2008 as contained in pages 204 - 212 of the record of appeal. The respondent submitted, *inter alia*, as follows:

> **"The respondent submits that the Ruling of 24th day of November 2008 was not appealed against and the time within which to appeal against same had lapsed. The appellant had neither applied for, nor (sic) been granted leave for an extension of time to appeal and has in fact not appealed against same."**

The respondent urged the court to strike out ground 1 of the appellant's notice of appeal and issue 1 distilled there from for being incompetent as the ground of appeal was not related to the judgment appealed against.

It was further contended by the respondent that the appellant's complaint, as borne out by his pleading and evidence, bothered on the actions of the Minister of Education and therefore "the Minister or his Ministry or at least the Attorney General of the Federation" was a necessary party. The respondent then contended that "having failed to bring in the disclosed principal, the appellant's case ought rightly to be dismissed."

In his reply brief, the appellant argued that an appellate court could on its own motion consider a substantial point of law arising on the record, even though it was not included as one of the grounds of appeal nor referred to by the appellant at the hearing in the lower court. He submitted that the respondent stated in the court below that the Minister of Education was not a juristic person but changed its argument in this court by saying that the Minister is a juristic person who ought to have been sued as a defendant in the first place. Accordingly, the appellant contended, the respondent is estopped from changing its position.

Mr. Pius Olu Daodu, learned counsel who settled the appellant's briefs, argued that the matter involved a contract of employment and that the "Governing council of the college of Education is the appropriate authority to be sued."

Learned counsel for the appellant also urged the court to hold that the respondent's brief is incompetent as it was filed outside the 30 days after service of the appellant's brief. He argued that the appellant's brief was served on the respondent on the 16th day of December, 2010 and the 30 days allowed by the Rules of this Court expired on the 17th day of January, 2011 while the respondent's brief was filed on the 20th day of January, 2011 without the leave of the court.

Order 17 rule 4 (1) of the Court of Appeal Rules, 2007 applicable to this appeal (now Order 18 rule 4 (1) of the Court of Appeal Rules, 2011) provides thus:

> **"The respondent shall also within thirty days of the service of the brief for the appellant on him file the respondent's brief which shall be duly endorsed with an address or addresses for service."**

I have examined the records in the file and the proof of service of the appellant's brief clearly indicates that A. A. Suleiman, Esq., learned counsel for the respondent personally received and signed for the appellant's brief on the 16th day of December, 2010 at 12.15 p.m. By a simple arithmetical calculation, from the 16th day of December, 2010 when the appellant's brief was served on the respondent and the 20th day of January, 2011 when the respondent's brief was filed was clearly more than 30 days.

The rules of a court of law are meant to be obeyed. In order words, where the rules of court prescribe that an act shall be done within a particular period, the act ought to be done within the time so prescribed. See *Bowaje v. Adediwura* (1976) 6 S.C. 143; *N.A. Williams v. Hope Rising Voluntary Funds Society* (1982) 1 - 2 S.C. 145 and *Sanusi v. Ayoola & Ors.* (1992) 9 NWLR (Pt. 265) 275.

However, in this case, the respondent by a motion on notice dated the 2nd day of February, 2011 and filed on the 3rd day of February, 2011 sought an order for extension of time within which to file the respondent's brief and an order deeming the respondent's brief as properly filed and served. The motion on notice was granted on the 9th day of March, 2011 and in the eyes of the law, the respondent's brief is competent and valid. The objection to the competence of the respondent's brief is hereby overruled.

In the present case, the name struck out by the court below on the 24th day of November, 2008 pursuant to a notice of preliminary objection dated the 12th day of May, 2008 was "HON. MINISTER FOR EDUCATION FEDERAL MINISTRY OF EDUCATION ABUJA". Therefore, the issue of whether the "Minister of Education" is a juristic person, as argued by the appellant is purely academic. The "Minister

of Education" was never made a party by the appellant to his suit in the lower court and it is not a live issue. Courts of law do not indulge in academic exercises. The law courts restrict their deliberations to only live issues. See *Oyeneye v. Odugbesan* (1972) 4 SC 244; *Nkwocha v. Governor, Anambra State* (1984) 1 SCNLR 634 and *Chukwuka Ogudo v. The State* (2011) 18 NWLR (Pt. 1278) 1.

Therefore, the issue of the Minister of Education being or not being a juristic person is a non-issue in this appeal and I will waste no further time on it.

The respondent's notice, earlier reproduced in this judgment, was attached to its respondent's brief. There is no evidence that fees were paid for it and that it was duly filed. By the combined provisions of Order 9 rules 4 and 5 of the Court of Appeal Rules, 2007 twenty copies of the respondent's notice should be filed within thirty days after the service of the notice of appeal on the respondent and one of the copies of the notice "shall be included in the record". The respondent's notice here was neither filed in the registry of the lower court nor included in the record of appeal. It has not been brought to us by due legal process. The purported respondent's notice here cannot be relied on by this court. See the case of *Santos v. Epe Native Authority* (1943) 17 NLR 67 where a letter forming part of a correspondence written without prejudice was not relied on by the court to prove that a pre-action was given. Once again, it is hereby reiterated that Rules of Court must be obeyed. The respondent here failed woefully to comply with the mode, manner and time of filing a respondent's notice and its purported respondent's notice shall not be countenanced.

The respondent's notice is endorsed on the top thereof with the following words: "RESPONDENT'S ADDITIONAL RECORD". Order 8 rule 6, of the Court of Appeal Rules, provides thus:

> **"Where the respondent considers that there are additional records which may be necessary in disposing of the appeal, he shall be at liberty, within 15 days of the service on him of the records, to compile and transmit to the court such records to be known as the additional records of appeal."**

In purporting to act under Order 8 rule 6 of the Rules of this court, the respondent has not shown that its purported "additional records of appeal" was compiled and transmitted within 15 days of the service on it of the record of appeal. Further, as stated earlier, even if it was compiled and transmitted within the 15 days period prescribed by the Rules, it has not been shown that the alleged "additional records of appeal" had previously been filed in the registry of the lower court before its purported compilation and transmission. No matter the angle from which the respondent's notice is viewed, it is obviously incompetent.

I have examined the other three issues respectively framed by the appellant and

the respondent. The live issue in this appeal is whether having regard to the facts and circumstances of this case, the appellant's appointment was lawfully and/or validly terminated by the respondent.

The appellant's argument is that under section 8 of the Federal Colleges of Education Act, the Minister could give directions on matters of general character or matters of policy that affect all Federal Colleges of Education and not on an individual employment. Learned counsel for the appellant argued that by section 15 of the Federal Colleges of Education Act; 2004, it is the council of the respondent's college and not the minister that is empowered to recruit, determine the tenure of employment and to discipline all staff of the college. Counsel stated that "it is only the council that can suspend any administrative staff on the ground of misconduct or inability to perform the functions of his office".

It was submitted by the appellant that no allegation of misconduct or general inefficiency was made against him; that no query was issued to him; and, in any case, his suspension and the termination of his appointment was without fair hearing. On this point, the case of *Oloruntoba Oju v. Abdul Raheem* (2009) 13 NWLR (Pt. 1157) 83 was cited and relied on. He argued that the procedure laid down in the conditions of service governing his employment were not followed and since his employment enjoyed statutory flavour, he was entitled to be reinstated - *CBN v. Igwillo* (2007) 14 NWLR (Pt.1054) 393 and *Ujam v. IMT* (2007) 2 NWLR (Pt. 1019) 470.

Relying on the case of *A.G; Kwara State v. Abolaji* (2009) of NWLR (Pt. 1139) 202 (the correct page is 199 and not 202 cited by the appellant), the appellant contended that there must be full compliance with the procedure for terminating his appointment.

On behalf of the respondent, A. A. Suleiman, Esq., who settled the respondent's brief, contended that section 8 of the Federal Colleges of Education Act is clear and unambiguous and should be accorded literal interpretation - *Ogbonna v. A. G. Imo State & Ors.* (1992) 1 NWLR (Pt. 220) 647 at 686 - 687, per Karibi-Whyte, JSC. He urged the court to hold that the word "'shall" in section 8 of the Act "implies mandatory compliance and nothing more". Learned counsel submitted that where the law is mandatory, "a trial judge should not look elsewhere or beyond the law." On this point, he relied on *Seaview Investments Ltd. v. Munis* (1991) NWLR (Pt.195) 67 at 88.

Learned counsel relied on the College Regulations- exhibit 16, especially paragraph 6.06 (b) thereof and submitted that there was strict compliance with the conditions governing the appellant's appointment. He argued that by exhibits 17 and 19 - the queries issued to him, the appellant was warned twice and was given an opportunity to defend himself before his appointment was terminated. The respondent's learned counsel submitted that under paragraph 7.02 of exhibit 16, the appellant was expected to be paid 3 months' salary in lieu of notice but that the appellant had

not complied with the procedure for collecting his entitlements from the respondent.

As a side comment, I wish to say that the appellant's brief is replete with references to the contents of some of the documents admitted by the lower court without identifying them by their exhibit numbers. One of such general statements without any specific reference to any of the exhibits before the court can be found in paragraph 3.01 where the learned counsel for the appellant contended, *inta alia*, thus:

> **"The appellant submit (sic) that by virtue of chapter 6 page 34 paragraphs (sic) 6.05 of the regulation, it is only the council that can suspend any administrative staff on the ground of misconduct or inability to perform the functions of his office."**

The list of exhibits at page iii of the record of appeal shows that a total of 20 documents were admitted as exhibits in the lower court and the exhibits are clearly marked and numbered 1 to 20. The regulations governing conditions of service of staff of the respondent College was admitted and marked by the lower court as exhibit 16. Order 17 rule 3 (3) of the Court of Appeal Rules, 2007 required parties to make reference to exhibits which they proposed to rely on. Order 17 rule 3 (3) provided thus:

> **"The parties shall assume that briefs will be read and considered in conjunction with the documents admitted in evidence as exhibits during the proceedings in the court below, and, wherever necessary, reference shall also be made to all relevant documents or exhibits on which they propose to rely in argument."**

The appellant, therefore, ought to have tied his argument to the specific exhibit relied on in his brief. This would have assisted the court in quickly identifying the exhibit relied on, thus saving the court the pains and time expended in going through the mass of documents before it with a view to fully appreciating the argument of learned counsel.

Adeyemi College of Education, Ondo, Ondo State, the respondent in this appeal, is listed as item (i) in the First Schedule to Federal Colleges of Education Act, No.4 of 1986, now Cap. F8, Laws of the Federation of Nigeria, 2004. Therefore, the provisions of the Federal Colleges of Education Act, Cap F8, Laws of the Federation of Nigeria, 2004 apply to the parties to this appeal.

I have fully adverted my mind to the respective submissions of the appellant and the respondent and the legal authorities cited by both of them. I have also examined the record of appeal and the exhibits admitted by the lower court. In paragraphs 9 and 10 of his amended statement of claim, at page 35 of the record, the appellant averred that no reason was given for his indefinite suspension and that "no offence or misconduct alleged against him and he was never made to answer any charge"

before his appointment was terminated. It should be noted that during the hearing in the court below, the appellant, through his wife - Mrs. Ronke Olowokere, who testified as PW1, tendered exhibits 1- 16. Exhibit 10 is a letter dated 8th June, 2004 with Ref. No. RPA/OLO/265/143 addressed to the appellant and it is titled "INDEFINITE SUSPENSION". In the first and second paragraphs of exhibit 10, the respondent stated thus:

> **"The college is in receipt of the instruction from the Visitor to Adeyemi College of Education, Ondo, Professor Fabian N.C. Osuji, Honourable Minister of Education on the report of the Administrative Committee of Inquiry which was held recently in the College.**
>
> **Following the revelation of a series of financial improprieties revealed in the report, the Visitor has directed that you be placed on indefinite suspension with immediate effect. You are therefore to proceed on indefinite suspension."**

Exhibit 13 is a letter by the respondent with Ref. No. RPA/OLO/P.1265/146 and it is titled "Invitation to Appear before Visitation Panel". In it, the respondent informed the appellant that the Visitation Panel needed his attention and requested him to "report before the panel as a matter of urgency."

The contents of exhibits 10 and 13 destroy the appellant's claim that no reason was given for his indefinite suspension and that he was never made to answer any charge. In fact, before exhibit 13 was written, the respondent, by its letter dated 19th July, 2004 admitted as the exhibit 11, informed the appellant that an Audit Team from the Federal Ministry of Education requested to have his attention and advised the appellant to treat the matter as "important" and to "comply". There is no evidence from the appellant that the Audit Team and the Visitation Panel did not afford him a fair hearing. His wife - PW1, who was not present at or during proceedings of both the Audit Team and Visitation Panel has no proper standing to testify in respect of what happened at or during their deliberations.

By its report, exhibit 20, Audit Team indicted the appellant in paragraph 50 as follows:

> **"(ii) The college internal audit unit was rather weak in performing the role of ensuring compliance with the extant rules and at the same time advising the Management on control measures. This was attributed to the following reasons:**
>
> **(a) Posting of Mr. Olowookere from the bursary to head the internal audit unit and after partaken (sic) in the defective system was in contravention to FR2010,"**

The Audit Team then recommended thus: "Main operators of the system be made liable for their individual actions" and "the immediate overhauling of the entire system that will anchor on Accountability, Probity and Transparency..." In exhibit 18, a letter dated 8th November, 2004, the Minister of Education as Visitor to the respondent College, after examining the various reports before him directed that the appointments of the appellant and 5 (five) other members of staff of the College be terminated. Section 7 of the Federal Colleges of Education Act, Cap. F8, Laws of the Federation of Nigeria, 2004 provides:

> **"7. Visitation**
>
> **(1) The Minister of Education shall be the Visitor of each College**
>
> **(2) The Visitor shall, not less than once in every five years, conduct a visitation of the College or appoint a visitation panel consisting of not less than five experts to conduct the visitation-**
>
> **(a) For the purpose of evaluating the academic and administrative performance of the College; or**
>
> **(b) For such other purpose or in respect of any other affairs of the College as the Visitor may deem fit."**

From the foregoing provision, it is clear that the Minister of Education as Visitor of the respondent has the power to constitute a visitation panel for the purposes specified which include the evaluation of the administrative performance of the College or " any other affairs of the College " as he (the Minister of Education-Visitor) may deem fit. The powers of the Visitor under section 7 of the Federal Colleges of Education Act appear to be quite wide. The purpose of a visitation panel appointed by the Visitor of a Federal Government College may include the evaluation of the financial affairs of the college. Furthermore, the Visitor has the power to give directions to the Council of a Federal College of Education. In this respect, section 9 of the Act provides thus:

> **"9. Power of Minister to give directions to the Council Subject to the provisions of this Act, the Minister may give to the Council directions of a general character or relating generally to matters of policy with regards to the exercise by the Council of its functions under this Act and it shall be the duty of the Council to comply with such directions".**

The word "directions" used in section 9 of the Act appears to me to mean "directives" which are orders or official instructions which the Council of the College must comply with. I have carefully read and examined the provisions of section 9 of the

Federal Colleges of Education Act and I am of the opinion the Minister of Education has the power to give directives of general character, for example, that members of the College indicted, by a visitation panel or an audit team, of weak performances or complicity in the mismanagement of College finances should have their appointments terminated; as was done in the instant case. This is more so when one bears in mind that by section 6(1)(i) of the Act one of the functions of the Council is to "recruit staff of the right calibre and determine the career structure of such staff".

In the instant case, the directive of the Minister of Education was not targeted at the appellant alone but a directive of a general character that the persons indicted by the audit team and the visitation panel be relieved of their appointments; and the respondent was duty-bound to comply.

Paragraph 6.06 (b) of the respondent's regulations governing conditions of service of junior and senior staff - exhibit 16 provides thus:

> **"(b) A confirmed employee may have his appointed terminated by the College on grounds of misconduct or general inefficiency provided that he has previously been warned in writing at least twice that his work has been unsatisfactory and that he was given the opportunity to defend himself".**

The audit report - exhibit 20 found that the internal audit unit of the College "was rather weak in performing" its duties because the appellant after partaking in the defective system whilst in the bursary unit was posted to head the internal audit unit. In other words, the appellant as head of the internal audit unit was indicted for inefficiency; he was accordingly warned and given opportunity to defend himself before his appointment was terminated as earlier highlighted in this judgment. I agree with the respondent that from the facts of this case, there was compliance with the regulations which governed the appellant's employment before his appointment was terminated.

In the present case, the respondent's witness, DW2 - Awe Adeyemi testified at pages 232 - 233, inter alia, as follows:

> **"Plaintiff is entitled to pension and gratuity.**
>
> **Plaintiff must collect clearance forms from the Personal (sic) Office and takes (sic) them to different sections of the College i.e. to the bursary, personnel affairs, maintenance, library, health, secondary school, primary school and one will be signed by the school's HOD to ensure he is not indebted to the school in any form but the plaintiff did not take any of these steps".**

The evidence of DW2 was not challenged nor contradicted or controverted by the appellant. Surprisingly, the appellant, who made serious allegations against the respondent, preferred to stay in the United Kingdom while his case was pending at the lower court. The appellant allowed his wife, who was not present during the hearings of both the Audit Team and the Visitation Panel, to pursue his claim and testify on his behalf that he was not given a fair hearing before his appointment was terminated. On the balance of probabilities, the appellant did not make out a case in the lower court to warrant an order reversing the termination of his appointment by the respondent.

I find no reason to disturb the decision of the lower court, having regard to the facts and circumstances of this case. The result is that I find no merit in this appeal which is hereby, accordingly, dismissed. I affirm the judgment of the lower court dismissing the appellant's claims. I make no order for costs.

KEKERE-EKUN, JCA: I have had the privilege of reading before now the judgment of my learned brother, Moore A. A. Adumein, JCA. I agree with his reasoning and conclusion that the respondent duly complied with the regulations governing the appellant's employment before his appointment was terminated. The appellant appeared before both Audit and Administrative panels. I am also of the considered opinion that any evidence led by PW1, the appellant's wife who prosecuted the case on his behalf, on account of his being overseas, alleging that he was not afforded a fair hearing amounts to hearsay and was rightly discountenanced by the learned trial Judge.

I also find no merit in the appeal. It is accordingly dismissed. I affirm the judgment of the lower court and make no order for costs.

IYIZOBA, JCA: I read before now, the judgment just delivered by my learned brother, Moore A.A. Adumein JCA. I agree with the reasoning contained therein and the conclusions arrived thereat. I also hold that the appeal lacks merit and should be dismissed. It is hereby dismissed. I abide by all the consequential orders made in the lead judgment including the order as to costs.

Cases cited in the judgment

A.G. Kwara State v. Abolaji (2009) of NWLR (Pt. 1139) 202
Bowaje v. Adediwura (1976) 6 S.C. 143
CBN v. Igwillo (2007) 14 NWLR (Pt.1054) 393
Chukwuka Ogudo v. The State (2011) 18 NWLR (Pt. 1278) 1
N.A. Williams v. Hope Rising Voluntary Funds Society (1982) 1 - 2 S.C. 145
Nkwocha v. Governor, Anambra State (1984) 1 SCNLR 634
Ogbonna v. A. G. Imo State & Ors. (1992) 1 NWLR (Pt. 220) 647
Oloruntoba Oju v. Abdul Raheem (2009) 13 NWLR (Pt. 1157) 83
Oyeneye v. Odugbesan (1972) 4 SC 244
Santos v. Epe Native Authority (1943) 17 NLR 67

Sanusi v. Ayoola & Ors. (1992) 9 NWLR (Pt. 265) 275
Seaview Investments Ltd. v. Munis (1991) NWLR (Pt.195) 67
Ujam v. IMT (2007) 2 NWLR (Pt. 1019) 470

Statute cited in the judgment
Sections 7, 8, 9 &15 of the Federal Colleges of Education Act 2004

Rules of court referred to in the judgment
Order 8 Rule 6, Order 9 Rules 4 and 5, Order 17 Rules 3 (3) and 4 (1) of the Court of Appeal Rules, 2007

History:

HIGH COURT
Federal High Court (Akure Division)

COURT OF APPEAL (Akure Division)
Kudirat M.O. Kekere-Ekun, JCA *(Presided)*
Chinwe E. Iyizoba, JCA
Moore A.A. Adumein, JCA *(Read the lead judgment)*

Counsel:
Tope Anjola Olamide, Esq for the appellant.
E.E. Bekewe, Esq for the respondent, held the brief of A. A. Suleiman, Esq.