



IN THE NATIONAL INDUSTRIAL COURT OF NIGERIA

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

ON WEDNESDAY 11TH DAY OF DECEMBER, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE SINMISOLA O. ADENIYI

SUIT NO: NICN/ABI/312/2022

BETWEEN:

MR. BENEDICT OJIH CLAIMANT

AND

1. UNITED PARCEL SERVICE NIGERIA LTD

2. THE REGIONAL MANAGER (NORTH), DEFENDANTS

UNITED PARCEL SERVICE NIGERIA LTD

J U D G E M E N T

In summary, the case of the Claimant is that, the Defendants breached the conditions of his service in the dismissal of his appointment and his right to fair hearing was violated, thereby he alleged that the dismissal of his appointment is unlawful, null and void. The Claimant further alleged that he

had suffered psychological, emotional, financial losses and injury to his name and reputation by the action of the Defendants.

2. On the basis of this essential facts, the Claimant instituted the instant action *vide* Complaint and Statement of Facts filed in this Court on 12/10/2022, wherein he claims against the Defendants jointly and severally the reliefs set out as follows:

- i. A DECLARATION that the purported summary dismissal of the Claimant from the 1st Defendant's Company is unlawful, null, void and ineffective, and amounts to unfair treatment by reason of gross irregularity, lack of reasonable cause, denial of fair hearing and a breach of the extant provisions of the Employee's Handbook of the Defendants' Company.
- ii. A DECLARATION that the purported summary dismissal of the Claimant by the Defendants without issuance of any written warning, query, and without affording the Claimant the opportunity to make representation to the allegations contained in the Dismissal letter was an infringement of the Claimant's rights to fair hearing.
- iii. AN ORDER of this Honorable Court setting aside the said purported letter of summary dismissal of the Claimant as unlawful, null and void and of no effect whatsoever.
- iv. AN ORDER of this Honorable Court directing the Defendants to pay to the Claimant, all salaries, wages, emoluments, allowances, pensions, gratuity and other benefits which the Claimant is entitled to receive by virtue of his employment from the date of his purported summary dismissal on 19/02/2021, to his statutory retirement age of 60 years as prescribed in the Employee's Handbook.
- v. AN ORDER of this Honorable Court directing the Defendants to tender an unreserved apology to the Claimant, for the unwarranted injury to his name and reputation, the psychological and mental trauma caused him as a result of the malicious and spiteful summary dismissal.

vi. General Damages in the sum of N20,000,000 (Twenty Million

Naira) arising from the degrading treatment meted out to the Claimant, the injury to his name, reputation, psychological and mental trauma caused as a result of the spiteful dismissal of the Claimant by the 1st Defendant.

vii. AN AWARD of the sum of N5,000,000 (Five Million Naira) as aggravated and exemplary damages for the Defendants' malicious and spiteful conduct

viii. Cost of institution of this action as assessed by this Honorable Court.

3. The 1st Defendant in her Statement of Defence deemed filed on 02/03/2022, contends that the Claimant is not entitled to the reliefs and further contends that the Claimant's action is misconceived, lacking in merit and urged that his action should be dismissed with substantial costs. The 2nd Defendant did not file any process in defence of his case.

The Claimant's Reply to the Statement of Defence of the 1st Defendant was also deemed filed on 02/03/2023.

4. At the plenary trial, the Claimant testified for himself and called no witness. He adopted his *Statements on Oath* as his evidence in support of his claims and further tendered a total of nine (9) documents. The Claimant was subjected to cross-examination by the 1st Defendant's learned counsel; after which his case was closed.

The 1st Defendant elected to rest its case on that of the Claimant even though a Statement of Defendant and the Witness Deposition on Oath of the sole witness was filed.

5. Thereafter, parties filed and exchanged their written final addresses in the manner prescribed by the provision of Order 45 of the Rules of this Honourable Court.

In the final address filed on behalf of the Claimant on 30/07/2024, his learned counsel, **C. J. Nnamdi, Esq.**, identified three issues as having arisen for determination in this suit, namely:

1. *Whether in view of the Claimant's case, there was compliance with the extant provisions of the Defendant's Employee's Handbook in the event leading to the dismissal of the Claimant?*
2. *Whether the Claimant was granted fair hearing before his eventual purported dismissal by the Defendant and if the answer is in the negative, whether he is entitled to his claims as per the Complaint?*
3. *Whether the Claimant is entitled to the reliefs sought in the Complaint?*

6. The 1st Defendant in turn filed his final address deemed properly filed on 15/10/2024, wherein, **Ekene O. Maduagwuna Esq.**, of learned counsel, distilled two issues as having arisen for determination in this suit, namely:

1. *Whether the Claimant has established by credible evidence that his dismissal by the Defendant was in breach of the terms of his employment and the principle of audi alteram partem, such that the dismissal could be regarded as wrongful?*
2. *Whether the Claimant is entitled to the reliefs sought in the Statement of Facts or any relief whatsoever in the light of the evidence elicited under cross-examination in support of the Defendant's pleadings which establishes the reason for summary dismissal of the Claimant?*

7. Upon a proper appreciation of the totality of the pleadings of the respective parties, the evidence adduced at the trial and the totality of the circumstances of this case, it is my considered view that the focal issue that call for resolution in this suit, without prejudice to the issues raised by the parties, could be succinctly framed as follows:

"Whether or not the Claimant established his entitlements to the reliefs claimed in this suit against the Defendants?"

In proceeding to determine the issue, I must state that I had carefully considered and taken due benefits of the totality of arguments canvassed by the respective learned counsel in their written final submissions; to which I shall endeavor to make specific reference as I consider needful in the course of this judgment.

8. The trite position of law is that, in an action for declaratory reliefs such as the present case, the Claimant is duty bound to prove his claim on the strength of his own case. This is essentially so, because declaratory reliefs are not granted on a platter of gold. They are only granted as products of credible and cogent evidence proffered at the instance of the Claimant. See Col. Nicholas Ayanru (Rtd) Vs Mandilas Ltd [2007] 4 SCNJ 388; Nweke Vs Okorie [2015] LPELR 40650.

9. By my understanding of the totality of the case of the Claimant, it seems to me that the basic, essential and relevant facts upon which the Claimant has predicated his claim could be enumerated as follows:

- a. He was initially appointed as a casual staff by the 1st Defendant and on 12/08/2014, he was offered a full-time employment as a Dispatch Rider.
- b. Based on the instruction of the Company, as a Dispatch Rider, the products/packages of the Company are either delivered as Cash on Delivery (COD) or a Free of Charge (FOC).
- c. On 02/11/2020, he delivered four (4) packages with Free of Charge (FOC) inscriptions from the Headquarters in Lagos to the Director of Finance, Federal Ministry of Foreign Affairs Abuja.
- d. Two (2) weeks thereafter, a reconciliation notice was sent from the Lagos Office on the allegation that he collected money for the said packages that was delivered as the packages were not FOC and as a result of the investigation, he was invited by the Manager in Abuja.
- e. He offered explanation that no remittance was made for the packages because they were FOC and pleaded with the Manager for time for him to request the Director to whom the packages were delivered to pay for the delivery.
- f. Eventually, the said Director paid for the packages and on 25/11/2020, he remitted the money to the 1st Defendant and receipts were obtained for the payment.

- g. Subsequently, the Manager informed the internal auditors of the 1st Defendant about the incidence and based on the report, an allegation of late remittance was made against him.

10. The grievance of the Claimant is further that, the 1st Defendant gave him a letter of dismissal without any query or warning issued to him to explain before any panel to explain what transpired and that a suspension letter was neither issued to him or was he given the opportunity to state his defence. The Claimant contends further that, he was entitled to be heard, the allegation being criminal in nature and also alleged that the 1st Defendant failed to comply with the prescribed grievance procedure as laid down in the Employee's handbook before he was purportedly dismissed. The Claimant further testified that after the dismissal of his appointment, letters were written to the Defendants for him to be given opportunity to defend himself but to no avail. The Claimant further alleged that he had suffered great loss, pains, psychological trauma, distress and shame as a result of his summary dismissal that was in bad faith, without justifiable reason and malicious.

11. To further support his case, the Claimant tendered in evidence, the following documents:

- i. Letter of offer of probationary appointment dated 12th August, 2014 – ***Exhibit C1.***
- ii. Employee's Handbook of the Defendant – ***Exhibit C2***
- iii. Query for non-remittance of Summex Fund dated 21/10/2020 – ***Exhibit C3.***
- iv. Receipts issued by the Defendant to the Director (Finance & Account dated 25/11/2020 – ***Exhibit C4.***
- v. Letter of summary dismissal dated 19/02/2021 – ***Exhibit C5.***
- vi. Letters written by the Claimant to the 1st Defendant dated 19/03/2021 and 09/04/2021 – ***Exhibits C6 and C6A.***
- vii. Statement of account of the Claimant with Guaranty Trust Bank Plc – ***Exhibit C7.***

Exhibit C3A, the reply of the query was tendered through the Claimant

under cross- examination by learned counsel for the 1st Defendant.

12. As I had earlier stated, the 1st Defendant had filed a Statement of Defence wherein it denied the entirety of the Claimant's claims but elected to rest its case on that of the Claimant and did not call any witness nor tendered any document in defence. As correctly submitted by the learned Counsel for the Claimant, it is the law that where a Defendant does not adduce evidence, the evidence before the Court goes one way leaving the Court with no other evidence or set of facts with which to do the measuring of the scale. This is because in a situation where a Defendant leads no evidence in proof of the facts pleaded by him, such pleading is deemed abandoned and the Defendant would be left with nothing with which to present against the Claimant.

13. Furthermore, it is settled that where a Defendant abandons his pleading and rests his case on the Claimant's evidence, he is deemed in law to have completely accepted both the pleadings and evidence or the case presented by the Claimant. In a situation as the present case, it may mean that:

(a) The Defendant is stating that the Claimant has not made out any case for the Defendant to controvert or respond to; or

(b) He admits the facts of the case as presented by the Claimant; or

(c) He has a complete legal defence in law in answer to the Claimant's case.

See Dec Oil & Gas Ltd Vs Shell (Nig) Gas Ltd & Anor [2021] LPELR 53462

14. Without doubt, burden of proof is on the party who alleges the affirmative and it lies on the party who will fail in the case where no evidence is given. Generally, the burden of proof rests on the Claimant. In labour law, it is equally settled that the onus is squarely on a Claimant, in an action for unlawful dismissal or termination of appointment to prove the existence of the contract of employment, the terms and/or conditions thereof and how those terms and/or conditions were breached by the employer.

15. Flowing from the above principles, the Claimant herein must not only

plead and prove the terms and conditions of his appointment, he must also prove that there was a departure from the prescribed procedure or that in

applying the procedure there was violation of the rule of natural justice so as to render the formal compliance a travesty. See Iwuchukwu Vs Nwizu [1994] 7 NWLR (Pt 357) 379 at 412; WAEK & Ors Vs Ikang [2001] LPELR 5098; Nigerian Gas Co Ltd Vs Dudusola [2005] 18 NWLR (957) 292; Oloruntoba - Oju Vs Abdul - Raheem [2009] All FWLR (Pt 497) 1 at 42; Imasuen Vs University of Benin [2011] All FWLR (Pt 572) 1791. See also Audu Vs Petroleum Equalization Fund (Management) Board & Anor [2010] LPELR 3824, cited by learned counsel for the 1st Defendant.

16. Now, parties are *ad idem* that the employment between the Claimant and the 1st Defendant was governed by *Exhibit C1*, letter of offer of employment and *Exhibit C2*, 1st Defendant's Employee Handbook. With reference to Exhibit C2, the argument of learned counsel for the Claimant is that Part V, Article 39 (a) – (e) of the said exhibit provides for grievance procedure that involves service of written query or warning to a defaulting employee and further argued that a single query issued in October 2020 was manifestly offensive to the 1st Defendant's Rules as embodied in the Handbook to warrant the summary dismissal of the Claimant. Learned counsel submitted that a right to question a wrong done can be waived, abandoned or relinquished either expressly or by conduct and argued further that the Defendant had waived the right to dismiss the Claimant for failure to exhaust the procedures provided by the Handbook.

17. The argument of learned Claimant's counsel is further that, the way and manner in which the Defendants treated the Claimant amounted to flagrant breach of his right to fair hearing as enshrined in Section 36 of the Constitution of the Federal Republic of Nigeria (as amended) and submitted that the constitutional provision of fair hearing and common law principle of *audi alteram partem* can only be satisfied when a disciplinary body is constituted and the person is given an opportunity to be heard.

18. On his part, learned counsel for the 1st Defendant placed reliance on the case of CCECC (Nig) Ltd Vs Igila & Ors [2020] LPELR 51183 and argued that in the instant case, the Claimant failed to prove that there was a departure from the prescribed procedure or that in applying the rule, there was violation of the rules of natural justice to render the formal compliance travesty. Learned counsel argued further that, the 1st Defendant adhered to the prescribed disciplinary procedure and application and also complied with the rule of

natural justice. Learned counsel further submitted that the allegation of wrongful dismissal is bereft of evidence.

19. At this juncture, I should remark that it seems the argument of learned

counsel for the Claimant in paragraph 3.2 of his written submission is hinged on the assumption that the appointment of the Claimant was terminated. Undoubtably, a contract of employment may be brought to an end by termination or summary dismissal. In law, the terms "dismissal" and "termination of contract" may appear interchangeable, but they have distinct meanings and implications depending on the nature of the employment relationship. Most employment provide the terms which govern either of these consequences in its staff manual or handbook.

20. The primary distinction between dismissal and termination of contract

lies in the nature of the act and the circumstances surrounding it. Termination of contract, can arise from the natural expiration of an agreement or by mutual consent of both parties or where either party to the employment contract finds no further need to continue the employment relationship. The most prevalent method of termination of a contract of employment is by delivery of a written notice from one party to the other. Either party could equally elect to pay compensation in lieu of notice. Termination of contract, especially when done without fault or through mutual agreement, generally preserves the employee's right to claim benefits like severance allowance or the full fulfillment of the contract's terms.

21. Summary dismissal on the other hand, is the right of an employer to terminate the contract of service of an employee with neither notice or payment in lieu of notice and it involves legal grounds related to the employee's performance or conduct such that it undermines the relationship of confidence which exist between the parties. In other words, what amounts to misconduct is as defined by the employer. Additionally, dismissal for just cause may have adverse legal consequences for the employee, such as the loss of separation benefits. The term "gross misconduct" was defined by the Apex Court in UBN Vs Ogboh [1995] 2 NWLR (Pt 380) 647 at 653, as, "**conduct of grave and weighty characters as to undermine the confidence which should exist between the employee and his employer or working against the deep interest of the employer**".

22. Now, there is no contention by parties that the disciplinary procedure of an employee is prescribed in Article 39 of Exhibit C2. The relevant provision on dismissal states as follows:

"The law provides that employees may be summarily dismissed for certain offences covered by broad headings of incompetence, disobedience, negligence or misconduct. Despite laid down disciplinary procedure, an employee will be liable for summary dismissal in the following event:"
(underlining for emphasis)

The events include misrepresentation of facts and information required by (and/or given to) the company and 20 (twenty) other events were listed. It was further stated that the examples of the events are not exhaustive and employees guilty of serious misconduct may be summarily dismissed. 23. The evidence on record is that, a query Exhibit C3, was issued to the Claimant on 21/10/2020, to give reason why disciplinary actions should not be taken against him for failure to remit monies received from Slimmex delivery that had been delivered since 13/10/2020. In his reply to the query in Exhibit C3A on 28/10/2020, the Claimant tendered his apology for the delay in remittance and stated that the delay was due to unforeseen circumstances.

While answering questions under cross-examination by the learned counsel for the 1st Defendant, the Claimant's further testimony was in line with his reply in Exhibit C3A that he apologized for the delay in remittance of the packages delivered. Still under cross-examination, the Claimant further testified that the payment for the delivery of the packages was not made to the Defendant on the same day that he received the money; that he did not seek for the approval of the Management before the money was utilized for a pressing personal need and also testified that the Defendant did not issue a written waiver to him for the delay in remittance of the delivery payment.

24. It is settled law and as correctly submitted by learned counsel for the 1st Defendant that, evidence elicited from a party or his witness(es) under cross examination which goes to support the case of the party cross examining, constitute evidence in support of the case or defence of that party. If at the end of the day, the party cross examining decides not to call any witness, he can rely on the evidence elicited from cross examination in establishing his case or defence. In such a case, it cannot be said that the party called no witness in support of his case or defence, or evidence, as the evidence elicited from his opponent under cross examination which is in

support of his case or defence constitutes his evidence in the case. This was the position of the Apex Court in Akomolafe & Anor Vs Guardian Press Ltd & Ors [2010] 3 NWLR (Pt 1181) 338.

26. The reason for the summary dismissal of the Claimant as stated in Exhibit C5, the letter of summary dismissal, is that he had previously upon enquiry admitted to have withheld funds that were mandated to be remitted to the company daily and that after he had pleaded and assured that such act of misconduct will not be repeated, a similar incident occurred in November, 2020 where he committed the same action. These actions were considered to be serious misconduct and breach of the 1st Defendant.

27. It is now a settled position of law with statutory backing and a legion of decided authorities that what is admitted needs no further proof. By Section 123 of the Evidence Act 2011, no fact needs to be proved in any civil proceeding which the parties to the proceeding or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings; provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions. There are too many decided cases on this principle. See Akinlagun Vs Oshoboja [2006] 12 NWLR (Pt 993) 60; Alhaji Ndayako Vs Alhaji Dantoro & 6 Ors [2004] 5 SCNj 152.

28. In paragraph 23 of his Statement of Facts, the Claimant testified that no written query or warning was issued to him to explain before any panel or authority regarding the incident of 02/11/2020, that is, the Claimant admitted that another allegation of misconduct was levelled against him but his contention is that, no query was issued and that he was denied fair hearing since no panel was set up to investigate the said alleged misconduct.

27. It is equally an elementary principle of law and indeed well settled that parties are generally bound by the terms and or conditions of an agreement which they voluntarily entered into. It is also trite that the Courts are bound by the terms of an agreement which parties before it have freely and validly executed. Thus, if a Court is called upon to construe an agreement, the Court cannot but limit itself to the express terms of the agreement as indicated and/or specified by the parties. This is because where the parties have embodied the terms of their contract in a written document, extrinsic evidence is not admissible to add, vary, subtract from or contradict the

written terms of the contract or agreement. Therefore, where a Court is faced with the task of interpreting a written instruction or agreement from one party to the other or between two or more parties (as the case may be), it is expected that it will carry out its duty within the walls or confines of the written and express terms of the instruction or agreement. See the cases of *Babatunde & Anor Vs Bank of North Ltd & Ors* [2011] LPELR 8249(SC); *Chukwu & Anor Vs Chukwu & Ors* [2018] LPELR 4548.

29. There is no dispute between parties that Exhibit C2 is binding on the parties and by the position of law, this Court is enjoined to interpret same as agreed by the parties. The argument of learned Claimant's counsel is that the 1st Defendant failed to comply with the procedure as prescribed in Part V, Article 39 (a) – (d) of the Employee Handbook in dismissing the Claimant's appointment. I had carefully reviewed the disciplinary procedure as stated in Article 39. The procedure for summary dismissal in Article 39 (e) is clearly distinct from the procedure for termination of appointment. By Article 39 (e), in cases of summary dismissal, the 1st Defendant has the liberty to dispense with the procedure as stated in Article 39 (a) – (d), that is, the procedure for termination of appointment. 30. From the facts and evidence presented, the provisions in Article 39 (a) – (d) are inapplicable in the instant case for dismissal of appointment. And I so hold. Having held that the provisions of Article 39 (a) – (d) is inapplicable in this present case, the Claimant has not established a case of wrongful dismissal against the Defendants. In other words, the dismissal of his appointment by the 1st Defendant was not wrongful. I so further hold. And since the other reliefs being claimed by the Claimant is hinged on his claim for wrongful dismissal, the other reliefs fail. And I so hold.

31. On the basis of the foregoing analysis therefore, I must and I hereby resolve the sole issue for determination in this suit against the Claimant. It is therefore, the conclusion of the Court that the Claimant has failed to lead credible evidence in support of the reliefs claimed against the Defendants in this action. Accordingly, it is the judgment of this Court that the Claimant's claim is unmeritorious. It shall be and it is hereby accordingly dismissed.

Parties shall bear their respective costs.



SINMISOLA O. ADENIYI

(Hon. Judge)

11/12/2024

Legal representation:

C. J. Nnamdi Esq., for Claimant

Ekene O. Maduagwuna Esq., for 1st Defendant

2nd Defendant not represented