

Failure to Give Requisite Notice or Payment In Lieu – Whether Renders Termination Invalid

In The Supreme Court of Nigeria
Holden at Abuja
On Friday, the 8th day of March, 2024

Before Their Lordships

Kudirat Motonmori Olatokunbo Kekere-Ekun
Mohammed Lawal Garba
Helen Moronkeji Ogunwumiju
Adamu Jauro
Tijjani Abubakar

Justices, Supreme Court

SC. 70/2010
SC. 52/2012

Between:

Dangote Cement Plc.
(Formerly Benue Cement Company Plc.)

Appellant

And

1. Peter Asom Ager
2. Gazbriel Samali

Respondents

(Lead judgement delivered by Honourable Mohammed Lawal Garba, JSC)

Facts

The Respondents were employees of the former Benue Cement Company Plc. taken over by the present Appellant who were suspended indefinitely for investigation to be carried out on allegations of fraud and theft in the company's commercial/marketing department. The Respondents protested the indefinite suspension and on finding that the company would not budge, the Respondents filed an action (*against the company*) at the High Court while seeking injunctive

reliefs restraining the company from doing any act adverse to the Respondents during the pendency of the action.

Meanwhile, there was a development post the filing of the action. The company (*i.e.* Benue Cement Company Plc.) had been taken over by the Appellant which became responsible for the termination of the employment of the Respondents (*alongside other employees*). This led to the Respondents amending their claim before the trial court to include reinstatement and payment of entitlements from the date of the indefinite suspension and termination of employment on basis of breach of their contract of employment. At the close of trial, the trial judge found that the indefinite suspension and termination of the Respondents' employment was unlawful and the company was ordered to pay all entitlements from the date of the suspension, termination and disengagement.

Aggrieved by the decision of the trial court, the Appellant appealed to the Court of Appeal. The Court of Appeal however dismissed the Appellant's appeal and held that the Appellant is to pay the salaries of the Respondents from the date of suspension to the date of the judgement. All their entitlements, *i.e.* salaries and allowances are to be paid to them in full up till the date of the judgement.

Further aggrieved, the Appellant filed its Notice of Appeal to the Supreme Court containing two grounds of appeal.

Issues for Determination

The Appellant raised three issues for determination *to wit*:

- (i) *Whether the learned justices of the Court of Appeal were not in error when they affirmed the trial court's holding that the indefinite suspension of the Respondents amounted to a breach of the terms of service contained in Exhibit 1.*
- (ii) *Whether the learned justices of the Court of Appeal were not in error when they affirmed the trial court's declaration of Exhibits 17 and 42 (letters of termination issued to the Respondents) as being unlawful, null and void.*
- (iii) *Whether the learned justices of the Court of Appeal were not in error when they affirmed the undetermined entitlements awarded by the trial court and suo moto extended the damages awarded to cover the period*

from dates of the Respondents' suspensions in 2003 to the date of its judgement (9th December, 2009).

The Respondents were represented by distinct legal practitioners who filed separate (*although largely similar arguments*) brief of arguments bordering on the Appellant's second and third issues for determination.

Arguments

Counsel for the Appellant argued on the first issue that on the authority of **LONGE v F.B.N. PLC. (2006) 3 NWLR (Pt. 967) 228 at 265**, the lower courts erred in law in holding that the suspension of the Respondent amounted to a breach of the terms of service ("*Exhibit 1*"). It was counsel's submission that since the Respondents' suspension was for the purpose of investigation, Exhibit 1 does not apply especially as the Exhibit only applies where the suspension is imposed as a disciplinary measure against an employee who has been found guilty of some wrong doing. The emphatic argument of counsel in this regard was that paragraph 19.01 of Exhibit 1 which stipulates a *seven* day limit in terms of suspension (*without pay*), did not arise.

In reaction to the first issue, counsel representing the 1st and 2nd Respondents respectively, submitted that the indefinite suspension without cause or offence, constituted a breach of Exhibit 1, having exceeded seven days. It was canvassed that in employment/labour matters, the terms and conditions signed by both the employer and employees form the formal agreement/contract that govern and regulate the relationship between the parties. As such, any of the parties who breaches or acts in violation of terms and conditions of the terms of service will be liable in breach of the contract - **OKONKWO v CO-OP. & COMM. BANK NIG. PLC. (2006) FWLR (Pt. 154) 457(SC)**.

Regarding the second issue, counsel for the Appellant argued that the termination letters (*i.e.* Exhibits 17 and 42) were not in contravention of the interlocutory injunction granted by the trial court. The reasoning was that the termination was done by the acquiring company after a successful take over (*and not the target company*). Counsel also argued that failure of the Respondents to plead the issue of "lack or insufficiency of notice of termination in Exhibits 17 and 42" or seek same in their relief, should impact the judgment of the lower court.

Responding to this issue, counsel for the Respondents submitted that parties are bound by their contract and that disobedience of order of injunction by the Appellant amounted to contempt of court which should not be condoned. ***GARBA v F.C.S.C. (1988) 1 NWLR (Pt. 71) 449 at 472.***

Court's Judgement and Rationale

On the first issue in the appeal, applying the principle that statutes be given their plain and ordinary meaning, the Supreme Court agreed with the lower courts that the indefinite suspension of the Respondents and for a period exceeding seven days, breached the provisions of Exhibit 1, which regulates the contract between parties. However, the court regarded the issue as spent because the Appellant did not appeal against the finding at the Court of Appeal. The Supreme Court therefore, held that the law does not permit or allow the Appellant to raise grounds of appeal and canvass arguments as it lacks jurisdiction to directly entertain an appeal against any finding or decision by the trial court which was accepted by the Appellant and in respect of which no appeal was lodged - See ***IJEBU-ODE L.G. v ADEDEJI BALOGUN & CO. LTD. (1991) 1 NWLR (PT. 166) 136(SC).*** In consequence the pronouncement by the lower courts that the indefinite suspension amounted to a violation of Exhibit 1, remain extant and binding on the Appellant.

Deciding issues two and three, the Supreme Court held that the Appellant as the employer has the requisite power and authority to lawfully terminate the employment of the Respondents without any stated reason/s; whether disciplinary or otherwise, so long as the requisite notice or payment *in lieu* thereof, was given or made. Termination of employment can only be said to be wrongful when it was done in breach or violation of, or in a manner not contemplated by the agreed terms and conditions set out either in the contract of the employment entered into by the parties, or contrary to or the relevant statutory provisions governing the employment with statutory flavour - ***GBEDU v LTIE (2020) 3 NWLR (PT. 1710) 104 (SC).*** The courts below found that by Exhibit 17 and 24, the Appellant did not pay any money in lieu of notice as stipulated by paragraph 19.02 of Exhibit 1. As per paragraph 19.02 the Appellant reserves the right to terminate any of its employees without giving any reason; however, the Appellant must pay 1 month or 2 weeks salary depending on the category of the employee, *in lieu* of notice. In the case of the Respondents, the Appellant terminated their appointment by letters dated 16th December 2003 Exhibits 17 and 42 to take effect retrospective from 1st October, 2003. It was

further to the foregoing that the Court of Appeal held that the Respondents are entitled to payment from the date of their suspension to delivery of the judgement.

The Supreme Court disagreed with the decision of the court below that the termination was null and void on the ground only that notice or payment in lieu was not given by the Appellant as stipulated in paragraph 19.02. The court held that *failure to give the requisite prior notice or pay in lieu of such notice before the termination of employment in line with the conditions of service of the employment only renders the termination wrongful, but not null and void or invalid* since the termination was done in the exercise of an acknowledged power and authority of the employer to do so at any time in the course of the employment, without giving any reason at all.

The law, for many years now, has been that in employment that does not enjoy the benefit of statutory favour, but of the nature of pure master and servant relationship, an employee cannot be imposed or an unwilling employer who rightfully exercises the power and authority to end the employment relationship, even if wrongfully done - OBANYE v UBA PLC (2018) 17 NWLR (PT. 1648) 375 (SC). The remedy opened to the employee in cases of wrongful termination of employment by his employer, and recognised by the law, is the claim for damage and the law is now firmly established that the quantum of damages a Claimant would be entitled to is the sum or amount of money to be in lieu of the requisite notice for the proper termination of the employment. Consequently, the Supreme Court ordered that salaries and allowances of the Respondents be paid from the date(s) of indefinite suspension to the dates of the wrongful termination of the Respondents' employment. It was likewise ordered that the Respondents be paid salaries and allowances they would have earned had their employment been properly terminated by giving of requisite notice period embedded in Exhibit 1.

Their Lordships, therefore, unanimously upheld the appeal in part in respect of the order of the court below for payment of salaries and allowances of the Respondents from the date of the suspension to the date of judgement - which order the apex court set aside.

Appeal succeeds in part.

Representation:

T.O. Ezeobi Jnr., for the Appellant.

B.I. Wayo, Esq. with N. Nyikwagh (Ms.) for the 1st Respondent.

A. Labi-Lawal, Esq. for the 2nd Respondent.

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