

Power of a Statutory Body to Terminate Employment for Any Reason/No Reason At All

In The Supreme Court of Nigeria
Holden at Abuja
On Friday, the 7th day of June, 2024

Before Their Lordships
John Inyang Okoro
Emmanuel Akomaye Agim
Obande Festus Ogbuinya
Habeeb Adewale Olumuyiwa Abiru
Jamilu Yammama Tukur

Justices, Supreme Court

SC. 869/2015

Between:

Maijah Elisha Gyubok

Appellant

And

1. The Federal Polytechnic, Bauchi
2. The Governing Council,
Federal Polytechnic, Bauchi



Respondents

(Lead judgement delivered by Honourable Jamilu Yammama Tukur, JSC)

Facts

The Appellant was employed in the services of the 1st Respondent vide a letter of employment dated 24th August 1992, as Technologist II. He was subsequently promoted to Principal Technologist II on 11th November 2002. By turn of events, on 30th January 2003, the 1st Respondent terminated the Appellant's employment. The termination letter (*Exhibit 6*) reads "**Services no longer required**". The Appellant was dissatisfied with the termination; he reached the conclusion that the termination was wrongful and not in accordance with the Federal Polytechnics Act. The Appellant, thereby, filed an action at the Federal High

Court, Jos, where he sought re-instatement to his job role, on the premise that his employment enjoys statutory flavour and backed by the Federal Polytechnics Act Cap.139 F.17 LFN 2004 prescribing mode/manner of termination. The suit was heard and determined on 24th July 2007 but not the court dismissed the suit filed by the Appellant for being unmeritorious.

This necessitated the filing of a Notice of Appeal at the Court of Appeal. The Appellant was also not successful at the Court of Appeal, and he further appealed to the Supreme Court on 24 November 2020.

Issues for Determination

The Appellant raised 2 (two) issues for determination in his brief of argument filed on 24th November 2020 *to wit*:

- (i) *Whether the Court of Appeal was right in affirming the judgement of the trial Court to the effect that the Appellant's employment with the Respondents was rightly terminated?*
- (ii) *Whether the lower Court of Appeal did not misapply the case of Adeniyi v Yaba College of Technology (1983) SCJN (Pt. II) 307 to the detriment of the Appellant?*

The Respondents filed a brief of argument on 17th February 2016, and relied on issue 1 as nominated by the Appellant in his Brief of Argument.

Arguments

Counsel for the Appellant argued on the **first issue** that the status of his employment was one that enjoyed statutory flavour as his employment was governed by the Federal Polytechnics Act Cap.139 F.17 LFN 2004. In effect, counsel argued that the Respondents could only terminate his employment if they complied with termination procedure identified under *Section 17(1) of the Act*. It was further argued that, by the provisions of the Act, the Appellant could only have been removed from his office on either [a] grounds of misconduct or [b] inability to perform functions of his office. On the above point, counsel posited on behalf of the Appellant that since the termination letter did not border on the foregoing grounds, then the Appellant was wrongfully terminated and entitled to re-instatement. In addition, he submitted that failure to give the Appellant an opportunity of making representations to the 2nd Respondent

amounted to a gross violation of Section 17 of the Act. In sum, the Appellant argued that the Respondents' Federal Staff Manual (*which provided for termination procedure with option of payment in lieu*) could not override the provisions of the Act.

On the **second issue**, counsel for the Appellant argued that the lower court reached a wrong conclusion when analyzing *ADENIYI v YABA COLLEGE OF TECHNOLOGY (supra)*, which, as believed by the Appellant, was on all fours with his appeal. On the strength of *ADENIYI v YABA COLLEGE OF TECHNOLOGY (supra)*, counsel for the Appellant urged the court to grant all reliefs sought before the trial court.

In reaction, counsel for the Respondents (*adopting Appellant's issue one as their sole issue*), argued that parties to a contract are bound by the terms of their agreement. It was argued that the Appellant's termination was in full compliance with the offer letter (*Exhibit 1*), and that the Appellant lost his right to complain on appeal having accepted Exhibit 1 which provided that either party to the contract of employment can determine the contract by one month notice or a month salary in lieu of notice. Moreso, the Appellant had done work with/for the Respondents all that while in furtherance of the contract of employment. The Respondents denied the argument that the Appellant's employment had statutory flavour; they posited that the provisions of the Federal Polytechnics Act is inapplicable in the circumstance. In concluding, counsel for the Respondents distinguished the cases cited by the Appellant on the premise that the judicial authorities so cited were in respect of occasions where the employer was accused of a particular act of misconduct, unlike this instance where the appointment of the Appellant was terminated because his services were no longer required. The apex court was therefore urged to distinguish the judicial authorities and dismiss the appeal.

Court's Judgement and Rationale

In determining the appeal, the Supreme Court had recourse to the provisions of Section 12(1) of the Federal Polytechnic Act, 1990 now Section 17(1) of the Federal Polytechnics Act Cap.139 F.17 LFN 2004, which reads thus:

"12(1) If it appears to the Court that there are reasons for believing that any person employed as a member of the academic, administrative or technical staff on the Polytechnic,

should be removed from office on grounds of misconduct or inability to perform functions of his office, the Council shall:

- a. Give notice of those reasons to the person in question.*
- b. Afford him opportunity of making representation in person in the matter to the Council."*

The apex court noted that the above provision is clear and unambiguous and should, as a matter of interpretation, be given their ordinary/literal meaning with no need for imputations. Their Lordships reiterated the principle that *employment with a statutory body does not automatically clothe the employment of the employee with a statutory flavour, unless it is so stated in their contract of employment – ORJI v ZARIA INDUSTRIES LTD (1992) 1 SC 29.*

As a general rule, the only way to terminate a contract with statutory flavour is to adhere strictly to the procedure laid down in the statute or regulation establishing the employment. This is so because the statute confers on the employee a special status over and above a normal master/servant contractual relationship – BAMGBOYE v UNILORIN & ANOR. (1999) LPELR-737 SC. The foregoing notwithstanding, where, as in this case, the reason for termination is not captured in the relevant statute, an employer is entitled to terminate the contract of his employee for any reason or for no reason at all. So long as he acts within the terms of employment, his motive for termination of the employment cannot be called to question. The Supreme Court considered Exhibit 6 (i.e. termination letter) where it stated that the Appellant's employment was "**for services no longer required**", and noted that an employer is not bound to state the reasons why the service of an employee is no longer required.

Deciding issue two, the court analysed the decision in **ADENIYI v YABA COLLEGE OF TECHNOLOGY (supra)**, and held that the facts giving rise to the decision of the Court in that case, are not similar with the instant appeal because Adeniyi was actually retired on the ground of gross official misconduct, regarding divulging official secrets, with serious implication (*which was not the case in the instant appeal*). Therefore, the apex court held that the argument of the Appellant must resultantly fail because the instant appeal did not border on misconduct to make the provisions of the Act applicable. The Act provides for mandatory procedure that [i] notice to the alleged defaulting employee and [ii]

an opportunity to defend himself, must exist conjunctively where misconduct is alleged. This was not the case here as the reason given for termination of the Appellant's employment is not provided for in the Act.

The Supreme Court held that the Appellant failed to establish convincing reasons why it should interfere with the concurrent findings of the trial and the Court of Appeal. Their Lordships, therefore, unanimously dismissed the appeal of the Appellant.

Appeal dismissed.

Representation:

Dr. S.A.T. S. Abubakar with B.E. Asuquo for the Appellant.

No legal representation for the Respondents.

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