

1. DR. TAIWO OLORUNTOBA-OJU
2. DR. A.S. AJAYI
3. DR. ADEYINKA BANWO
4. DR. SOLA ADEMILUKA
5. MR. O.O. OLUGBARA

V.

1. PROFESSOR SHUAIB O. ABDUL-RAHEEM
2. TUNDE BALOGUN
3. UNIVERSITY OF ILORIN
4. THE GOVERNING COUNCIL OF UNIVERSITY OF ILORIN
5. SUPREME COURT OF NIGERIA

SC.75/2007

DAHIRU MUSDAPHER, J.S.C (PRESIDED)  
MAHMUD MOHAMMED, J.S.C  
FRANCIS FEDODE TABAI, J.S.C.  
IBRAHIM TANKO MUHAMMAD, J.S.C.  
OLUFUNLOLA OYELOLA ADEKEYE, J.S.C. (**Read the leading judgment**)

FRIDAY, 12<sup>TH</sup> JUNE, 2009

ADMINISTRATIVE LAW- *Statutory body – Where acting on recommendation of Investigating panel – Need to comply strictly with rules of natural justice.*

ADMINISTRATIVE LAW- *Statutory power – How exercised – Presumption raised thereby.*

ADMINISTRATIVE LAW- *Statutory power to make decision affecting individual – Exercise of – Attitude of court thereto.*

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EVIDENCE - Estoppel - Issue estoppel - Operation of.

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INTERPRETATION OF STATUTES – Construction of statute "Subject to" - Where used in statute – How construed

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JURISDICTION - National Industrial Court – Jurisdiction of Limit of - Whether can grant declaratory and injunctive reliefs.

JURISDICTION- Federal High Court - Exclusive jurisdiction of over action or proceedings seeking declaration or injunction affecting validity of executive or administrative action or decision of Federal Government or its agencies – Section 251(1 )(p), (q) and (r) of the 1999 Constitution

MASTER AND SERVANT - Contract of employment – Whether governed by statute or has statutory flavour – Determination of.

MASTER AND SERVANT - Employment with statutory flavour – Status of employee – Whether enjoys special status over and above ordinary master and servant relationship – How determined as such.

MASTER AND SERVANT - Termination of employment - Employment with statutory flavour - Termination of procedure therefore - Need to comply with procedure down in statute.

MASTER AND SERVANT - Termination of employment - Plaintiff alleging unlawful termination of employment - Onus thereon - How discharged.

MASTER AND SERVANT - Termination of employment - Termination of appointment of employee of University of Ilorin - Compliance with rules of natural justice - What it entails - Section 15(1), University of Ilorin Act.

MASTER AND SERVANT - Termination of employment - Termination of employment of academic, administrative or professional staff of University of Ilorin - Procedure therefor Section 15(1), University of Ilorin Act.

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PRACTICE AND PROCEDURE – Appeal – Grounds of appeal – Ground of appeal and its particulars – purpose of.

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PRACTICE AND PROCEDURE – Appeal – Grounds of appeal – Vague ground of appeal – How treated.

PRACTICE AND PROCEDURE – Appeal – Grounds of appeal – What it must contain.

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PRACTICE AND PROCEDURE – Federal High Court – Exclusive jurisdiction of under section 25(1) of the 1999 Constitution Determination.

PRACTICE AND PROCEDURE – Jurisdiction of court – Ingredients and determinants of.

PRACTICE AND PROCEDURE – Jurisdiction of court – Issue of – Fundamental nature of.

PRACTICE AND PROCEDURE - Jurisdiction of court – source of What de termination jurisdiction - Effect.

PRINCIPLE OF INTERPRETATION – Construction of statute – “Subject to” – Where used in a statute How construed.

STATUTE - "Subject to" - Where used in a statute - How construed.

TRADE DISPUTE - National Industrial Court – Jurisdiction of – Limit of – Whether can grant declaratory and injunctive reliefs.

**Issues:**

1. Whether the Court of Appeal was right in holding that the Federal High Court had no jurisdiction to entertain the appellants’ case.
2. Whether the Court of Appeal was right in holding that the Minister of Labour had no right set aside, nullify or withdraw an award made by the Industrial Arbitration Panel.
3. Whether the Court of Appeal was right in allowing the respondents’ appeal when the respondents did not comply with the procedure laid down in section 15(1) of the University of Ilorin Act before terminating the appellants’ appointments without any reason and without giving the appellants fair hearing.
4. Whether the Court of Appeal was right in holding that the appellants’ were offered opportunity for fair hearing before their appointments were terminated by the respondents.

**Facts:**

The appellants were employed by the 3rd respondent as members of the academic staff in various departments of the University. The 1<sup>st</sup> 4<sup>th</sup> appellants were Assistant Lecturers and the 5<sup>th</sup> appellant was a junior research fellow. The appellants were employed on terms and conditions stated in their letters of appointment and memoranda of appointment. The documents portrayed the appellants as senior staff of the University on permanent and pensionable appointment. A clause in the letters made their appointments subject to other conditions of service specified for such status in the University Regulations governing the senior staff conditions of service, exhibit 11 and the University of Ilorin. The documents also made provisions for the termination of the appellants’ appointments. The appellants executed the memoranda of appointment at the inception of their appointments.

On 15 May, 2001, the University wrote to all the appellants letters of cessation of their appointments. The letters informed the appellants that their services were not required any longer and that in line with their letters of appointment and memoranda of appointment which they signed, they would be paid three months salaries in lieu of notice. The letters did not state any reason for the termination of appointments.

Consequently, the appellants instituted an action at the Federal High Court, Ilorin against the respondents claiming a declaration that the respondents' letters were dated 15 May, 2001 purporting to terminate the appellants' appointments were *ultra vires*, null and void and of no effect whatsoever; a declaration that the respondents were bound to comply with the directive of the Federal Government of Nigeria to reinstate the appellants as contained in the letter of the National Universities Commission dated 29 June, 2001 to the Pro-Chancellor of the 4<sup>th</sup> respondent and the 1<sup>st</sup> respondent; and a declaration that the respondents were not entitled to summarily terminate the appellants' appointment without complying with the provisions of University of Ilorin Act and with other relevant statutes as to discipline.

The appellants also claimed a declaration that the purported termination of the appellants' appointments by the respondents was contrary to the provisions of the Pensions Act in that the appellants were permanent and pensionable staff of the University; a declaration that the contents of the letters of appointment and memoranda of appointment could not override the provisions of the University of Ilorin Act regarding the nature, tenure and discipline of staff of the 3<sup>rd</sup> respondent and all other matters connected or pertaining thereto; a declaration that the purported termination of the appellants' appointments by the respondents negated the fundamental rights provision of the Constitution of the Federal Republic of Nigeria, 1999; an order setting aside the purported termination of the appellants' appointment and nullifying the respondents' letters to the appellants in that regard; and order compelling the respondents to comply with the directive of the Federal Government through the National Universities Commission to the respondents to reinstate the appellants.

The appellants' case was that they were permanent and pensionable staff whose appointments could not be terminated save for disciplinary reasons under section 15 of the University of Ilorin Act as opposed to the ordinary letters which brought their appointments to an end for any reason and that even if the reason was that they disrupted examinations of the University in connection with the roles they allegedly played in the national strike action embarked upon by the Academic Staff Union of Universities (ASUU) in April, 2001, they were still entitled to be heard before the termination of their appointments.

The appellants contended that the Federal High Court was the only competent court to hear their matter and not the National Industrial Court as the issue between the appellants and the respondents was on their contracts of service which commenced in 2001, two years before the Federal Government and ASUU appeared before the Industrial Arbitration Panel and that the termination of the appointments was wrongful and illegal and they were therefore entitled to reinstatement or payment of their salaries, allowances, etc.

The respondents' case was that the termination of the appellants' appointment was not based on disciplinary grounds but in line with clauses contained in their respective memoranda

of appointment signed by them; that the termination had nothing to do with the strike action by ASUU; that since the termination was not illegal or did not run contrary provisions of the University of Ilorin Act and the Constitution, the appellants could not claim salaries and allowances and that the trial court lacked the jurisdiction to pin or grant the reliefs sought by the appellants.

In a considered judgment, the trial court held that the letters of fitment and memoranda as to terms of agreement signed by the appellants were subject to the Senior Staff Regulations and the University Ilorin Act. The trial court further held that the appellants were not I the opportunity of defending themselves on the allegation of filing examination on the campus of the University contrary to the lions of section 15(1) of the University of Ilorin Act. Consequently, the court granted all the appellants' reliefs.

The respondents were aggrieved by the decision of the trial court and they appealed to the Court of Appeal. In its judgment, the Court of Appeal, by a majority decision allowed the appeal and reversed the judgment of the trial court. The Court of Appeal held that the subject matter of the suit before the trial court had elements of a trade dispute and consequently, the Federal High Court was not the proper venue and the proper court ought to have been the National Industrial Court.

Dissatisfied, the appellants appealed to the Supreme Court. In determining the appeal, the Supreme Court considered the provisions of section 251(1(p), (q) and (r) of the Constitution of the Federal Republic of Nigeria, 1999, section 15(1) of the University of Ilorin Act, Cap. 455 Laws of the Federation of ma, 1990 and Order 8 rules 2(1), (2), (3) and (4) of the Supreme Court Rules, which respectively state thus: Section 251(1) (p), (q) and (r) of the Constitution of the Federal Republic of Nigeria, 1999:

“251(1)Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters -

(p) the administration or the management and control of the Federal Government or any of its agencies;

(q) subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies;

(r) any action or proceeding for a declaration or injunction affecting the validity of any administrative action or decision by the Federal Government or any of its agencies..

Section 15(1) of the University of Ilorin Act, Cap. 455 Laws of the Federation of Nigeria, 1990:

"15(1) If it appears to the council that there are reasons for believing that any person employed as a member of the academic or administrative or professional staff of the University, other than the vice-chancellor, should be removed from his office or employment on the ground of misconduct or of inability to perform the functions of his office or employment, the council shall -

- (a) give notice of those reasons to the person in question;
- (b) afford him an opportunity of making representations in person on the matter to the council; and
- (c) if he or any three members of the council so request within the period of one month beginning with the date of notice, make arrangements
  - i. for a joint committee of the council and the senate to investigate the matter and to report on it council, and
  - ii. for the person in question to be afforded an opportunity of appearing before and being heard by the investigating committee with respect to the matter

and if the council, after considering the report of the in committee, is satisfied that the person in question should be removed as aforesaid, the council may so remove him by an instrument in writing signed on the directions of the council.

Order 8 rules 2(2), (3) and (4) of the Supreme Court Rules, 1990:

- (1) All appeal shall be by way of rehearsing and shall be brought by notice (hereinafter called "the notice of appeal") to be filed in the registry of the court below which shall set forth the grounds of appeal, state whether the whole or part only of the decision of the court below is complained of (in the latter case specifying such part) and state also the exact nature of the relief sought and the names and addresses of all parties directly affected by the appeal, and shall be accompanied by a sufficient number of copies for service on all such parties. It shall also have endorsed on it an address for service.
- (2) If the grounds of appeal allege misdirection or error in law the particulars and the nature of the misdirection or error shall be clearly stated.
- (3) The notice of appeal shall set forth concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative and shall be numbered consecutively.
- (4) No ground which is vague or general in terms which discloses no reasonable ground of appeal shall be permitted, save the general ground that the judgment is against

the weight of evidence, and any ground of appeal or any part thereof which is not permitted under this rule may be struck out by the court of its own motion or on application by the respondent.

Bid (Unanimously allowing the appeal):

1. *On Competence of court -*

A court is only competent when

- a) **it is properly constituted as regards numbers and qualifications of members of the court and no member is disqualified for one reason or the other; and**
- b) **the subject-matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction; and**
- c) **the case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.** [Mdukolu v. Nkemdilim (1962) 2 SCNLR 341; Akeem v. University of Ibadan (2003) 10 NWLR (Pt.829) 584; Afribank (Nig.) Plc. V. Bonik Ind. Ltd. (2006) 5 NWLR (Pt. 973) 300; Oloriode v. Oyebi (1984) 1 SCNLR 390; N.D.I.C. v. C.B.N (2002) 7 NWLR (Pt. 766) 272; Ezomo v. Oyakhire (1985) 1 NWLR (Pt. 2) 195 referred to.] (P. 124, paras. E.G)

2. *On Effect where court lacks jurisdiction -*

**The competence of a court to adjudicate upon a matter is both a legal and a constitutional prerequisite. Therefore, any defect in the competence jurisdiction of a court or an action is fatal. The proceedings therein would result in a nullity however well conducted and determined because such defeat is not just extrinsic but intrinsic to the adjudication. Where a court lacks jurisdiction, it lacks the necessary competence to try the case.** [Kalogbor v. General Oil Ltd. (2008). All FWLR (Pt.418) 303 ; F.R.I.N v. Gold (2007) 11 NWLR (PL 1044) 1; Uzoho v. N.C.P.(2007). All FWLR (Pt. 394) 370; Oke v. Oke (2006) 17 NWLR (Pt. 1008) 224; S. P. D. C. Nig. Ltd. v. Isaiah ,(2001) NWLR (Pt. 723) 168; Peenok Investments Ltd. v. Hotel Presidential Ltd. (1983) 4 NCLR 122 referred to.] 124, paras. A-D)

3. *On Fundamental nature of issue of Jurisdiction*

**Jurisdiction is to a court what a gate or door is to a house. That is why the question of jurisdiction of court is called a threshold issue as it is at the threshold of the temple of justice. In order to be able to gain access to the temple of justice to ventilate his grievance, a prospective litigant must show that he not only has a genuine cause but**

he must also ensure that he addresses his complaint to the competent court. Therefore, jurisdiction is fundamental and essential to adjudication. (Pp 124-125, paras. H-A)

4. On Source of jurisdiction of court -

The jurisdiction of a court or tribunal is not inferred or imagined but statutory. Courts are set up under the Constitution, Decrees, Acts, Laws and Edicts. They cloak court with the powers and jurisdiction of adjudication. If the statutes do not grant jurisdiction to a court or tribunal, the court and the parties cannot by consent endow it with jurisdiction. The jurisdiction of a court is confined, limited and circumscribed by the statute creating it. (P. 125, paras. B-C)

5. On What determines jurisdiction of court -

The issue of the jurisdiction of court is determined by the reliefs sought by the claimant in the writ of summons and statement of claim. [Adeyemi v. Opeyori (1976) 9 - 10 SC 31; Onuorah v. Kaduna Refining Petrochemical Co. Ltd. (2005) 6 NWLR (Pt. 921) 393; Abdulhamid v. Akar (2006) 13 NWLR (Pt. 996) 127; C. G. G. (Nig.) Ltd. v. Ogu (2005) 8 NWLR (Pt. 927) 366; Adelusola v. Akinde (2004) 12 NWLR (Pt. 887) 295 referred to.] (P. 126, paras. A-C)

6. On Determination of exclusive jurisdiction of Federal High Court under section 251(1) of the 1999 Constitution -

In the determination of the exclusive jurisdiction of the Federal High Court in respect of section 251(1) of the 1999 Constitution, the court must carefully examine the facts of the case to see whether they justify the application of the section. It is only on a careful examination of the pleadings filed by the parties in a cause or matter, namely the statement of claim, not the defence, that the court can ascertain whether or not the Federal High-Court has exclusive jurisdiction pursuant to the section. [Trade Bank Plc. v. Benilux (Nig.) Ltd (2003) 9 NWLR (Pt. 825) 416 referred to.](P. 126 paras. D-E)

7. On Exclusive jurisdiction of federal High Court over action or proceedings seeking declaration or injunction affecting validity of executive or administrative action or decision of Federal Government or its agencies-

By virtue of section 251(1)(p), (q) and (r) of the 1999 Constitution, notwithstanding anything to the contrary contained in the Constitution and in addition to such other jurisdiction as may be conferred upon it by the Act of the National Assembly, the

**Federal High Court has and exercises jurisdiction to the exclusion of any other court in civil causes or matter relating to**

- (a) the administration or the management and control of the Federal Government or nay of its agencies.**
- (b) subject to the provisions of the Constitution, the operation and interpretation of the Constitution in so far as it affects the Federal Government or any of its agencies;**
- (c) any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or nay of tis agencies.**

**A community reading of these provisions shows that the Federal High Court is vested with the Federal High Court is vested with the power to enter into adjudication of any action or proceedings seeking declaratory or injunctive reliefs. Section 251(1) creates a situation whereupon by party jurisdiction one of the parties must be a Federal Government agency and by subject matter jurisdiction, it must be an action or proceedings for a declaration or injunction affecting the validity of any executive or administrative or decision by the Federal Government or any of it agencies. [NEPA v. Edegbem (2002) 18 NWLR (Pt. 798) 79 referred to.]**

(Pp. 126- 127, paras. F-C)

**8. On jurisdiction of Industrial Arbitration Panel and National Industrial Court-**

**The Industrial Arbitration panel is constituted for the consideration of all trade disputes by the Trade Disputes Act, Cap. 432 Laws of the Federation of Nigeria, 1990. By virtue of section 19(1) of the Act, the National Industrial Court is conferred with powers to settle trade disputes, the interpretation of collective agreements and matters connected therewith. By virtue of section 20(1) of the Act, the National Industrial Court has exclusive jurisdiction to determine questions relating to the interpretation of collective agreements and make award for the purpose of settling trade disputes. In the instant case, the Court of Appeal erred in its conclusion that the trial court lacked the jurisdiction to entertain the case as the issue before the court was the determination of whether the administrative or executive act of the University of Ilorin in the termination of the employment of the appellants was lawful. The issue of the cessation of their employments had no connotation of trade dispute or interpretation of collective agreement. (P. 125, paras. C-H)**

**9. On Limit to jurisdiction of National Industrial Court –**

**Section 15 of the Trade Dispute Act, 1976 which confers jurisdiction on the National Industrial Court does not include jurisdiction to make declarations or to order an injunction. In other words, considering the nature and scope of the jurisdiction and powers of the National Industrial Court as clearly spelt out in the Act, tin- court lacks the competence to make declarations and orders of injunction. [Western Steel Works v. Iron & Steel Workers Union (1987) 1 NWLR (Pt. 49) 284; Kalango v. Dolubo (2003) 16 WRN referred to.] (P. 127, paras. D-G)**

10. On Operation of issue estoppel -

**Generally, within one cause of action there may be several issues raised which are necessary for the Determination of the whole case. Once an issue has been raised and distinctly determined between the parties, neither part can be allowed to raise that issue all over again. (P. 132, para. A)**

11. *On Conditions for successful plea of estoppels -*

**For a plea of estoppel to succeed, the following must be present, that is:**

- a) **the parties or their privies must be the same in both the previous and present proceedings;**
- b) **the res of the subject matter of the litigation in the two cases must be the same;**
- c) **the decision relied upon to support the plea of estoppels must be valid, subsisting and final; and**
- d) **the court that gave the previous decision relied upon to sustain the plea must be a court of competent jurisdiction.**

**All the above must be fully established before the plea can e sustained. In the instant case, then to invoke the doctrine of estoppel. The Court of Appeal was wrong in reversing the decision of the trial court as being caught by the doctrine of estoppel [Adone v. Ikebueln (2001) 14 NWLR (Pt. 733) 385. Atoloye (1985) 2 NWLR (Pt. 9) 578; Yoye v. Olabode (1974) 10 SC 209; Alase v. Olori-Illu (1965) NMLR 66; Fadiora v. Gbadebo (1978) 3 SC 219; Ifa v. Amnkiri (1976) 11 SC 1 referred to.] (P. 132, paras. B-3)**

**Per ADEKEYE, J. S. C. at page 132-133,, PARAS F-E:**

"In the instant case, the appellants filed their case in the Federal High Court in 2001, whereas the Minister referred the Trade Dispute to the Industrial Arbitration 2003. The - matter before the Federal High in Court filed by the appellants pre-dated the Trade dispute referred to the IAP.

- 2) The parties in the matters are different
- 3) The parties before the Federal High Court are the appellants who are members of staff of the University of Ilorin and their employer, the University of Ilorin a domestic affair. The parties in the trade Dispute before the Arbitration Industrial Panel are the Federal Government of Nigeria and the Academic staff Union of Universities.
- 4) The subject matter of dispute before the Federal High Court challenges the administrative and executive act of the employer -the respondents for terminating their

employments by not adhering strictly with the provision of the documents stipulating their conditions of service. The subject matter before the IAP is a Trade Dispute and the terms of Reference are the following points:

- a) **Demand of rights of students to lectures since December, 29<sup>th</sup> 2002.**
- b) **Withholding of students examination Result since March 2002.**
- c) **Reinstatement of 44 sacked lecturers of the University of Ilorin.**
- d) **Insistence of definite annual allocation of the universities over the next five years.**
- e) **The matter before the IAP is not valid, subsisting or final.**
- f) **IAP is an inferior Tribunal while the Federal High court is Superior Court of Record, and as observed by the learned senior counsel for appellants - a temporary award of an inferior Tribunal cannot be used as a retroactive bar to the appellants' case before a superior court of record.**

**On the overall there was no basis to invoke the doctrine of estoppel while the lower court was clearly wrong in reversing the decision of the trial court for being caught by the doctrine of estoppel."**

*On Onus on plaintiff alleging unlawful termination of employment and how discharged -*

**The Onus is on a plaintiff to prove that the termination of his appointment is unlawful. In order to discharge this onus, he must prove:**

- a) **that he is an employee of the defendant;**
- b) **the terms and conditions of his employment by placing before the court the terms of the contract;**
- c) **who can appoint and who can remove him;**
- d) **in what circumstances the appointment be determined by the employer and the breach of the terms.**

[Okomu Oil Palm Co. Ltd. v. Isehienrln, (2001) 6 NWLR (Pt. 710) 660; Emokpae v. University of Benin (2002) 17 NWLR (Pt. 795) 139; Amode (1990) 5 NWLR (Pt. 150) 356; Adeniran v. N.E.P.A. (2002) 14 NWLR (Pt. 786) 30 referred to.] (P. 136, paras. F-H)

13. *On When employment has statutory flavour*

**If the terms and conditions of a contract of employment of service are specifically provided for by statute or regulations made tin then the contract is protected by statute or regulation made there under, then the contract other words, the employment is one with statutory flavour.** [Olaniyan v. University of Lagos (1985) 2 NWLR (Pt. 9) 599; Eperokun v. University of Lagos (1986) 4 NWLR (Pt. 34) 162; Bamgboye of Ilorin (1999) 10 NWLR (Pt. 622) 290; U. B. v. Dawa (2001) 16 NWLR (Pt. 739) 424; Shitta Bey v. F.P.S.C. (1981) 1 SC 40; U. N. T. 11. M.B. v. Nnoli (1994) 8 NWLR (Pt. 363) 376 REFERRED TO.] (p. 137, paras. C-F)

14. *On Determination of whether employment governed by statute -*

**The question of whether a contract of employment is governed by statute or has statutory flavour depends on the construction of the contract itself and the relevant statute. The duty to construe is the exclusive preserve of the courts. In the instant case, there was no dispute that the appellants' contracts of employment were governed by statute. (P. 137, paras. F-G)**

15. *On Termination of employment with statutory flavour –*

**In terminating an employment governed by statute, the procedure laid down in the statute must be complied with. The provisions of the applicable regulations and the memorandum of appointment must be followed to the letter as any breach would render the exercise of termination null and void. [Adeniyi v. Governing Council, Yaba College of Technology (1993) 6 NWLR (Pt. 300) 426 referred to.] (P. 137, paras. G-H)**

16. *On Status of employee and termination in employment with statutory flavour -*

**When an office or employment has a statutory flavour in the sense that its conditions of service are provided for by statute or regulations made thereunder, any person in that office or employment enjoys a special status over and above the ordinary master and servant relationship. In the matter of discipline of such an employee, the procedure laid down by such statute must, be fully complied with. If not, any decision affecting, the right or reputation or tenure of office of that employee will be declared null and void. Also, tin-contract of service which enjoys statutory protection can only be terminated in the manner prescribed by the governing statutory provisions, a breach of which renders the act of termination ultra vires and void. The contract cannot be discharged on the agreement of the parties without compliance with the enabling statutory provision. (Pp. 141, paras. F-H; 142, paras. B-C)**

17. *On Procedure for termination of employment of academic, administrative or professional staff or University of Ilorin*

**By virtue of section 15(1) of Act, Cap. 455 Laws of the Federation of Nigeria, 1990, if it appears to the Council that there are reasons for believing that any person employed as a member of the academic or administrative or professional staff of the University other than the vice-chancellor should be removed from his office or employment on the ground of misconduct or of inability functions of his office or employment,**

- a) **give notice of those reasons to the person in question;**
- b) **afford him an opportunity of making representations in person on the matter to the Council; and**
- c) **if he or any three members of request within the period of one month beginning with the date of the nod arrangements**
  - (i) **for a joint committee of the Council and the Senate to investigate the *matter* and to report on it to the Council; and**
  - (ii) **for the person in question to be afforded an opportunity of appearing before and being heard by the investigating committee with respect to the matter.**

**If the Council, after considering the report of the investigating committee is satisfied that the question should be removed, the Council may so remove him by an instrument in writing signed on the direction of the Council. These provision-hearing in the process of removing a member of the academic or administrative or professional staff of the University. In the instant case, there was no evidence showing that the process was adopted in relieving the appellants of their appointments. (Pp. 140-141, paras. H-F)**

18. *On What employer must prove to justify dismissal or termination of his employee -*  
**In order to justify the dismissal or termination of appointment of an employee, the employer must be in a position to prove to the court's satisfaction:-**
- a) **that the allegation was disclosed to the employee;**
  - b) **that he was given a fair hearing;**
  - c) **that the employer believed that the employee committed the offence after hearing witnesses.**

**[Bamgboye v. University of Ilorin (1999) 10 NWLR (Pt. 622) 290 referred to.] (P. 145, paras. A-B)**

19. *On Construction of "subject to" where used in a statute –*

**Whenever the phrase "subject to" is used in a statute the intention, purpose and legal effect is to make the provision of the section inferior to, dependent on or limited and restricted in application to the section to which it is made subject to. In other words, the provision of the latter section shall govern, control and prevail over the provision of the section made subject to it. It renders the provision of the subject section subservient, liable, subordinate and inferior to the provision of the other enactment. [*Labiya v. Anretiola* (1992) 8 NWLR (Pt. 258) 139; *Tukur. Govt. of Gongola State* (1989) 4 NWLR (Pt. 117) 517; *F. R. N. v. Osahon* (2006) 5 NWLR (Pt. 973) 261 referred to.] (Pp. 138-139, paras. G-B)**

20. *On What fair hearing provision in section 36(1) 7999 Constitution entails: -*

**The fair hearing entrenched in section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 encompasses the twin pillars of justice, namely:**

- (a) **audi alteram partem which means "hear the other party;" and**
- (b) **Nemo judex in causa sua which means "no one should be a judge in his own cause" It is a common law doctrine that in the determination of his civil rights and obligation of his civil rights and obligations a person is entitled to a fair hearing within a reasonable time by a court or tribunal established by law. (P. 142, paras. F-G)**

21. *On Whether section 15(1) of the University <>/ I guarantees fair hearing -*

**Section 15(1) of the University of Act guarantees to the administrative, academic professional staff fair hearing before their appointment and thus gives the exercise of such disciplinary powers a statutory flavour. In the instant case, there was no evidence that the procedure for termination appellants' employments as to fair hear observed. (Pp. 142-143, paras. H-B)**

22. *On Procedure for terminating appointment of employee of University of Ilorin –*

**By virtue of section 15(1) of the University of Ilorin Act, compliance with the rules of natural in terminating an appointment of an employee of the University entails:**

- a) that the complaint must be brought to the notice of the person; and
  - b) that he must be given an opportunity of making representation in person to Council on the matter. (*R 144, paras. G-H*)
23. On Need for statutory body to comply strictly with rules of natural justice in acting on recommendation investigating panel -  
**In the observance of the principle of justice and the essential requirement of fair hearing, there is a distinction between recommendation of an investigating panel has no statutory powers and the recommendation by a statutory body with the requisite statutory powers. Whereas, the recommendation of the panel will not affect the civil rights and obligations of the person whose act or omission is being investigated, the acting upon such recommendation does. Hence the implementation of the recommendation by a statutory body must comply strictly with the rules of natural justice.**  
**In the instant case, the Court of Appeal erred in its conclusion that the appellants were afforded the opportunity to defend themselves. The Court of Appeal failed to distinguish between the report or recommendation of the Investigating panel and the decision of the Council on such recommendation. The appellants were not afforded the opportunity of being heard by the University Council before their appointments were unilaterally and prematurely terminated by the Council, after receiving the report and recommendation of the investigating panel. [*U.N.T.U.M.B. v. Nnoli (1994) 8 NWLR (Pt. 363) 376; Olatunbosun v. N. I. S. E. R. (1988) 3 NWLR (Pt. 80) 25; Aiyetan v. N. I. F. O. R. (1987) 3 NWLR (Pt. 59) 48 referred to.] (P. 145, paras. B-H)***
24. *On Altitude of court to exercise of statutory power to make decision affecting individual*  
**When a statute has conferred on anybody the power to make decisions affecting an individual, the court will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness. (Pp. 14 1-142, paras. H-A)**
25. On Presumption of intention of legislation that power it conferred shall be exercised judicially in accordance with rules of natural justice-  
**There is a presumption that when the legislature confers a power on an authority to make a determination, it intends that the power shall be of natural justice. (P. 142, para. C)**
26. *On Relationship between leading judgment and concurring judgment -*  
**A concurring judgment forms part of the judgment and it is meant to complement the leading judgment by way of addition or an improvement on the issues resolved in the leading judgment. Both the leading and the concurring judgments crystallize into the judgment of an appellate court. [Nwana v. F. C. I. It NWLR (Pt. 889) 128 referred to.] (// paras. 11-A)**
27. On How party's case is made out –

**A party cannot make out a case solely on the address of counsel. A party's case must be made out on acts pleaded and evidence adduced in support of such facts. It will not only amount to springing a surprise on the other party but it will also be akin to hitting the other party below the belt. In the instant case, the respondents have raised by way of pleadings at the trial the trial court the case that the appellants' employment terminated under section 15(3) of the University of Ilorin Act and that would have given the appellants the opportunity to react to it. Consequently, the submission of the respondents in the brief of argument that the Court of Appeal should hold that given the circumstances of the case, the applicable section of the University of Ilorin Act was section 15(3) and that the termination of the appellants' appointments was valid, proper, lawful and complete was liable to be discountenanced. (Pp. 135-136, paras. H-B)**

28. On Procedure for raising fresh issue on

**The leave of court is required to raise a fresh issue on appeal. In the instant case, the respondents required the leave of court to raise the fresh issue that the termination of the respondents' appointment was done under section 15(3) of the University of Ilorin Act. [N.E.P.A v. Savage(2001) 9 NWLR (Pt. 717) 230 referred to .] (P. 136, paras. C-D)**

29. On What notice of appeal must contain –

**By virtue of Order 8, rule 2(2) and (3) of the Supreme Court Rules, 1990, all appeals to the Supreme Court shall be by way of rehearing and by notice of appeal filed in the Registry of the Court of Appeal which shall set forth the grounds of appeal, state whether the whole or part only of the decision of the Court of Appeal is complained of, in the latter case specifying such part, and state also the exact nature of the relief sought and the names and addresses of all parties directly affected by the appeal. The notice shall be accompanied by a sufficient number of copies of service on all such parties. It shall also have endorsed on it an address for service. If the grounds of appeal alleged misdirection or error in law the particulars and the nature of the misdirection or error shall be clearly stated. The notice of appeal shall set forth concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative and shall be numbered consecutively. (P. 120, paras. E-H)**

30. On Need for ground of appeal to relate to decision appealed against -

**An appeal is a challenge against the judgment of a trial court and it is never predicated on what a court has not decided in its judgment or ruling. Therefore, a ground of appeal must arise from the live issues at the trial and not any hypothetical assumption by the appellant. In other words, a ground of appeal must relate to the decision and should be a challenge to the validity of the ratio of the decision appealed against. [Govt. of Akwa Ibom State v. Powercom (Nig)**

Ltd. (2004) 6 NWLR (Pt. 868) 202; Babalola v. State (1989) 4 NWLR (Pt. 115) 264, Azaatse v. Zegeor (1994) 5 NWLR (Pt. 342) 76 referred to.] (P. 121, paras. B-C)

31. *On Formulation of ground of appeal -*

According to the rules of court, a good ground of appeal must be concise, elegantly drafted and straight to the point so that as soon as it is read, the error and misdirection complained against can be immediately understood and digested. One should not forget what the main complaint is by the time one finishes reading the particulars. The ground of appeal should also not be argumentative. The particulars must relate to and flow from the grounds of appeal. Where a ground of appeal cannot stand as a result of its incompetent particular, the ground of appeal is defective and it will be struck out. [Ajaokuta Steel Co. Ltd. v. O. O. Biosah Co. (Nig.)Ltd. v. Hoff (1994) 2 NWLR (Pt. 527) 145; Honika Sawmill (Nig) Ltd. v. Hoff (1994) 2 NWLR (Pt. 326) 252; Ogbonnaya v. Adapalm (Nig.) Ltd. (1993) 5 NWLR (Pt. 292) 147 referred to.] (P. 121, paras. DC)

32. *On Purpose of ground of appeal and its particulars -*

The essence of a ground of appeal and its particulars is to acquaint the respondent with the issue involved in the appeal. Once that purpose is served, a ground of appeal cannot be seen as defective together with any issue formulated therefrom. (Pp. 121-122, paras. H-A)

33. *On Treatment of vague ground of appeal –*

By virtue of Order 8 rule 2(4) of the supreme Court Rules, 1990, no ground of appeal which is vague or general in terms and which discloses on t reasonable ground of appeal shall be permitted, against the weight of evidence. Vagueness of a ground of appeal may arise where it is couched in a manner which does not give allowance for its being understood or where what is stated there is so uncertain and robs it of any form of intelligibility. It may also be vague when the complaint is not defined in relation to the subject-matter or the particulars are clearly irrelevant to the grounds. [Atuyeye v. Ashamu (1987) 1 NWLR (Pt. 49) 267 referred to.] (Pp. 120-121, paras. H-A: 122, paras. B-C)

34. *On Attitude of court to technicality -*

Nowadays, courts denounce judgment by mere technicality. Courts are set up to do substantial justice and in the pursuit of the substantial justice, all forms of technicalities which will act as detriments to the determination of the substantial issues between litigants must be shunned. Thus, although rules of court should be complied with by parties to a suit, it is also in the interest of justice that parties should be afforded a reasonable opportunity, in appropriate circumstances, for their claims to be adequately investigated and properly determined on merit. (P. 122, paras. C-E)

### **Nigeria Cases Referred to in the Judgment:**

A.S. Co.(Nig.) Ltd. v. O. O. Biosah Ltd. (1997) 11 NWLR 527) 145  
Ahdulhamid v. Akar (2006) 13 NWLR (Pi. 996) 127  
Adelusola v. Akinde (2004) 12 NWLR (Pt. 887) 295  
Adeniran v. NEPA (2002) 14 NWLR (Pt. 786) 30  
Adeniyi v. Governing Council of Yaba College of Technology (6 NWLR (Pt. 300) 426  
Adewumi v. A.-G., Ekiti State (2002) 2 NWLR (Pt. 751) 47  
Adeyemi v. Opeyori (1976) 9-10 SC 31  
Adone v. Ikebudu (2001) 14NWLR (Pt. 733) 385  
Afribank (Nig) Plc v. Bonik Ind. Ltd. (2006) 5 NWLR (Pt. 973) 300  
Aiyetan v. N.I.F.O.R (1987) 3 NWLR (Pt. 707) 466  
Ajaokuta Steel Co. Ltd. v. O.O. Biosah Co. (Nig.) Ltd. (1997) H NWLR (Pt. 527) 145  
Ajuebor v. A.-C.,, Edo State (2001) 5 NWLR (pt. 707) 406  
Akeem v. Unibadan (2003) 10 NWLR (Pt. 829) 584  
Alase v. Olori-ilu (1965) NMLR 66  
Amodu v. Amode (1990) 5 NWLR (Pt. 150) 356  
Amuda v. Adelodun (1994) 8 NWLR (Pt. 360) 23  
Araka v. Egbue (2003) 17 NWLR (Pt. 848) 1  
Arioriv. Elemo (1983) 1 SCNLR 1  
Atuyeyee v. Ashamu (1987) 1 NWLR (Pt. 49) 267  
Azaatse v. Zegeor (1994) 5 NWLR (Pt.342) 76  
Babalola v. State (1989) 4 NWLR (Pt. 115) 264  
Bamgboye v. University of Ilorin (199) 10 NWLR (Pt. 622) 290  
Bankole v. N.B.C (1968) 2 All NLR 371  
C.G.G. (Nig.) Ltd v. Ogu (2005) 8 NWLR (Pt. 927) 366  
Egbe v. Alhaji (1990) 1 NWLR (Pt. 128) 546  
Emokpae v. University of Benin (2002) 17 NWLR (Pt. 795) 139  
Eperokun v. University of Lagos (1986) 4 NWLR (Pt. 34) 162  
Esiaga v. University of Calabar (2004) 7 NWLR (Pt. 872) 366  
Ezomo v. Oyakhire (1985) 1 NWLR (Pt. 2) 195  
F.R.N v. Osahon (2006) 5 NWLR (Pt. 973) 261  
Fadiora v. Gbadebo (1978) 3 SC 219  
Forestry Research Institute of Nigeria v. Gold (2007) 11 NWLR (Pt. 1044) 1  
Garba v. University of Maiduguri (1986) I NWLR (Pt. 18) 550  
Govt., Akwa Ibom State v. Powercom Nig. Ltd. (2004) 6 NWLR (Pt. 868) 202  
Honika Sawmill (Nig.) Ltd. Holf (\994) 2 NWLR (Pt. 326) 252  
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Alga v. Amakiri(1976) 11 SC 1  
Ikeni v. Efamo (2001) 10 NWLR (Pt. 720) 1  
Ikoku v. Ekeukwu (1995) 7 NWLR (Pt. 410) 637  
In Re: Shyllon (1994) 6 NWLR (Pt. 353) 735

Kalango v. Dokubo (2003) 16 WRN 32  
 Kaloghor v. General Oil Ltd. (2008) All FWLR (Pt. 418) 303  
 Kurfi v. Mohamed (1993) 2 NWLR (Pt. 277) 602  
 Labiyi v. Anretiola (1992) 8 NWLR (Pt. 258) 139  
 Madukolu v. Nkemdilim (1962) 2 SCNLR 341  
 Menakaya v. Menakaya (2001) 16 NWLR (Pt. 738) 203  
 Mobil Producing (Nig.) Unlimited v. LASEPA (2002) 18 NWLR (Pt. 79.8) 1  
 N.E.P.A v. Edegbero (2002) 18 NWLR (Pt. 798) 79  
 N.E.P.A v. Seavage (2001) 9 NWLR (Pt. 717) 230  
 N.D.I.C. v. CBN (2002) 7 NWLR (Pt. 766) 272  
 N.U.C. v. Oluwo (2001) 3 NWLR (Pt. 699) 90  
 Nwana v. F.C.D.A. (2004) 13 NWLR (Pt. 889) 128  
 Ogonnaya v. AdaPalm (Nig.) Ltd. (1993) 5 NWLR (Pt. 292) 147  
 Oke v. Atoloye (1985) 2 NWLR (Pt. 9) 578  
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 Okomu Oil Palm Co. Ltd. v. Iserhienrhien (2001) 6 NWLR (Pt. 710) 660  
 Olaniyan v. University of Lagos (1985) 2 NWLR (Pt. 9) 599  
 Olatunbosun v. N.I.S.E.R. Council (1988) 3 NWLR (Pt. 80) 25  
 Oloriode v. Oyebi (1984) 1 SCNLR 390  
 Oloruntoba-Oju v. Dopamu (2008) 7 NWLR (Pt. 1085) 1  
 Oluseye v. L.S.W.M.A. (2003) 17 NWLR (Pt. 849) 307  
 Onuorah v. K.R.P. Co. Ltd. (2005) 6 NWLR (Pt. 921) 393  
 Osunrinde v. Ajamogun (1992) 6 NWLR (Pt. 246) 156  
 Peenok Investments Ltd. v. Hotel Presidential Ltd. (1983) 4 NCLR 122  
 S.P.D.C. (Nig.) Ltd. v. Isaiah (2001) 11 NWLR (Pt. 723) 168  
 Samona v. Ilesanmi (2001) FWLR (Pt. 54) 373  
 Shitta-Bey v. F.P.S.C. (1981) 1 SC 40  
 Tukur v. Govt., Gongola State (1989) 4 NWLR (Pt. 117) 517  
 Trade Bank Pic. v. Benilux (Nig.) Ltd. (2003) 9 NWLR (Pt. 825) 416  
 U.M.T.H.M.B. v. Dawa (2001) 16 NWLR (Pt. 739) 424  
 U.N.T.H.M.B. v. Nnoli (1994) 8 NWLR (Pt. 363) 376  
 Uzoho v. National Council on Privatisation (2007) All FWLR (Pt. 394) 370  
 Western Steel Works Ltd v. Iron & Steel Workers' Union of Nigeria (No. 2) (1987) 1 NWLR (Pt. 49) 284  
 Yoye v. Olubode (1974) 10 SC 209

**Nigerian Statutes Referred to in the Judgment:**

Constitution of the Federal Republic of Nigeria 1999 Ss. 36(1), 251 (1)(p)(q)(r)  
 Decree No. 47 of 1991 S. 1A  
 Evidence Act Cap. 112 Laws of the Federation of Nigeria 1990, S. 132(1)  
 Trade Dispute Act as amended by the Trade Dispute (Amendment)  
 Decree No. 47 of 1991, S. 1A  
 Trade Dispute Act Cap. 432 Laws of the Federation of Nigeria 1990 Ss. 15, 20(1)

University of Ilorin Act Cap. 455, Laws of the Federation of Nigeria, 1990, S. 15(1)(2) & (3)  
University Senior Staff Regulations

**Nigerian Rules of Court Referred to in the Judgment:**

Supreme Court Rules 1999 (as amended) O. 8r. 2(2) (3) (4)

**Appeal:**

This was an appeal against the majority decision of the Court of Appeal allowing the respondents' appeal against the judgment of the Federal High Court which granted the appellants' claim. The Supreme Court, in a unanimous decision, allowed the appeal.

**Editor's Note:**

The decision of the Court of Appeal herein overturned by the Supreme Court has been reported in (2006) 15 NWLR (Pt. 1003) 581.

**History of the Case:**

*Supreme Court:*

*Names of Justices that sat on the appeal:* Dahiru Musdapher J.S.C. (*Presided*); Mahmud Mohammed, J.S.C.; Francis Fedode Tabai, J.S.C.; Ibrahim Tanko Muhammad J.S.C., Olufunlola Oyelola Adekeye, J.S.C. (*Read the Leading Judgment*)

*Appeal No.:* SC. 75/2007

*Date of Judgment:* Friday, 12<sup>th</sup> June, 2009

*Names of Counsel:* Mr. J. O. Baiyeshea, SAN (with him, Mr. Dayo Akinlaja, M.O. Belawu [Mrs.], C. Ihekwezu, Wahab Ismail, O. Oyediran, Agu Gab Agu and T. Aladegbami - *for the Appellants*

Alhaji Y. Alli, SAN (with him, Dr. W. Egbewole, K.K. Eleja, S.A. Oke, B. Ajanaku, T. Omiddiji, U.Y. Anyawu) – *for the respondents.*

**Court of Appeal:**

*Division of the Court of Appeal from which the appeal was brought:* Court of Appeal, Ilorin  
*Names of Justices that sat on the appeal:* Mohammad Saifullahi Muntaka-Coomossie, J.C.A. (*Presided and Read the Leading Judgment*); Tijjani Abdullahi, J.C.A., Helen Moronkeji, Ogunwumiju, J.C.A. (*Dissented*) *Appeal No.:* CA/IL/64/2005

*Date of Judgment:* Wednesday, 12<sup>th</sup> July, 2006

*Names of Counsel:* Alhaji Yusuf O. Ali, SAN (*with him*, S.A. Bello, Mr. K. K. Eleja, B. Akintundc (Miss) and N. Uregbulam [Miss]) -*for the Appellants*

Mr. John Olusola Baiyeshea (*with him*, Dayo Akinlaja. Funke Abolarin [Miss], Wahab Ismail, Uloma Alua [Miss] and Oloyede Oyadiran) -*for his respondents*

**High Court**

*Name of the High Court:* Federal High Court, Ilorin

*Name of the Judge:* Olayinwola, J.

*Suit No.:* FHC/1L/SC/28/2001

*Date of Ruling:* Tuesday, 26<sup>th</sup> July, 2005

*Names of Counsel:* John Olusola Baiyeshea Hsq. Funke Abolarin [Miss], Mr. Wahab Ismail, Mr. Munza Abdullahi) *for the plaintiffs*

K. K. Eleja, Esq. Mr. Ajanaku and Ekundayo (Miss) *for the Defendants*

**Counsel:**

Mr. J. O. Baiyeshea, SAN (with him, Mr. Dayo Akinlaja, M.O. Belawu [Mrs.], C. Ihekwezu, Wahab Ismail, O. Oyediran. Agu Gab Agu and T. Aladeghami [Miss]) *-for the Appellant*

Alhaji Y. Alli, SAN (with him, Dr. W. Egbewole, K. K. Eleja, S. A. Oke, B. Ajanaku, T. Omidiji, U. Y. Anyawu) *Respondents*

**ADELEKE, J.S.. (Delivering the leading judgment):** This appeal emanated from the majority of Court of Appeal Ilorin delivered on the 12<sup>th</sup> of July, 2006. The 1<sup>st</sup> – 5<sup>th</sup> appealants Dr. Taiwo Oloruntoba-Oju, Dr. A.S. Ajayi, Dr. Adeyinka Banwo. Dr. Sola Ademiluka and Mr. O. O. Olugbara were employed by the 3<sup>rd</sup> respondent, the University of Ilorin, as member, of the academic staff in various departments of the University. The 1<sup>st</sup> – 4<sup>th</sup> appellants were Assistant lecturers and the 5<sup>th</sup> appellant was a fellow. The appellants were employed on terms and conditions stated in their letters of appointment and memorandum of memorandum of appointment. All the foregoing documents portrayed the appellant as senior staff of the University on permanent and pensionable appointment. A clause in the letters made their appointments subject conditions of service specified for such status in the University Regulations governing the senior staff conditions of service, Exhibit 11 before the court, and the University of Ilorin Act – Cap 455 Laws of the Federation 1990. All the foregoing document also make provisions for the termination of appointments of the appellants. The appellants executed the memorandum of appointment. On gleaning through the provisions of the University Senior Staff Regulations Exh. 11, Regulations 1.1.3 at page one provides as follows: -

"A member of staff shall hold office on such terms and conditions of service as may be set out in an in writing between him and the university. Such contract being signed on behalf of the university, by the registrar or by such other persons as may be authorised purpose by the university, and any such shall contain or be deemed to contain a provision terms and conditions therein specified Act, the statutes and Regulation of the University."

On the 15<sup>th</sup> of May, 2001 the university wrote to all the appellants, letters of cessation of their appointments. A copy of this Idler produced verbatim reads as follows: -

Dr. I. Oloruntoba - Oju

Dept. of Modern European Language,

University of Ilorin

Ilorin.

Dear Dr. Oloruntoba – Oju

Cessation of Appointment

"I am to inform you that the university does not require your services any longer and, in tune with your letter of appointment Ref. No. UI/SSE/PF71910 of 24<sup>th</sup> February. 1987 and the memorandum of appointment which you signed on 4th March, 1987 you will be paid three month salaries in lieu of notice."

You will please ensure that you settle immediately any indebtedness that may be outstanding against you."

Thank you,

Yours sincerely

M.T. Balogun (Sgn)

Registrar and Secretary to Council.

A replica of this foregoing letter was sent to all the other four appellants. They headed for the Federal High Court Ilorin which shall henceforth be referred to as the trial court to challenge the termination of their appointments. They filed declaratory and mandatory reliefs claiming against the respondents - Professor Shaib Oba Abdulraheern (VC University of Ilorin), the University of Ilorin the Governing Council (Unilorin) as follows:-

- a. A declaration that the defendants' letter dated 15<sup>th</sup> May. 2001 to the plaintiffs titled "Cessation of Appointment" purporting to terminate the plaintiffs' appointment the with the 3<sup>rd</sup> defendant is ultra *vires*, null and void and of no effect whatsoever.
- b. A declaration that the plaintiffs are still in the service of the 3rd defendant.
- c. A declaration that the defendants are bound to comply with the directive of Federal Government of Nigeria to reinstate the plaintiffs as contained in the letter of National Universities Commission dated 29th June, 2001 with reference NUC/ES/261 to the Pro-Chancellor of the 4th defendant and the 1st defendant.
- d. A declaration that the defendants are not entitled to summarily terminate the plaintiffs' appointment without complying with the provisions of the University of Ilorin Act Cap. 455 Laws of the Federation and other statutes as to discipline.
- e. A declaration that the purported termination of the purported termination of the plaintiffs by the defendants under the guise of cessation of appointment or under any guise whatsoever is contrary to the provision of the Pension Act of Nigeria in that plaintiffs are permanent and pensionable staff of the university.
- f. A declaration that the contents of any purported letter of appointment or memorandum purportedly signed by the plaintiffs cannot override the provisions of University of Ilorin Act Cap. 455 LFN 1990 regarding the nature, tenure and discipline of staff of Unilorin and all other matters connected or pertaining thereto.
- g. A declaration that the purported termination of the plaintiffs' appointments by the defendants negates the fundamental rights provisions of the Constitution of the Federal Republic of Nigeria 1999.
- h. An order setting aside the purported termination plaintiffs' appointments and nullifying the defendants' letters to the plaintiffs in that regard.

- i. An order compelling the defendants to comply with directive of the Federal Government through the National universities Commission dated 29<sup>th</sup> June, 2001 reference with reference No. NUC/ES/261 to the reinstate the plaintiffs.
- j. An order compelling the defendants to reinstate and/or restore the plaintiffs to their posts as University of Ilorin with all their rights, entitlements and other perquisites of their offices.
- k. An order compelling the defendants to pay to the plaintiffs all the salaries and allowances from February 2001 till the day of judgment and henceforth.

The *cassation bell* of the appellants as plaintiffs before the Federal High Court Ilorin was that they were permanent and pensionable staff hence their appointments could therefore not be terminated save for disciplinary reasons under section 15 of the University of Ilorin Act as opposed to the ordinary letters which brought appointments to an end without adducing reasons. Even was that they disrupted examinations of the university with the roles they allegedly played in the national strike action embarked upon by the Academic Staff Union of University ASUU in April 2001, they still entitled to be heard before the termination of their appointment. Finally, they asserted categorically that Federal High Court was the only competent court to hear their matter and not the National Industrial Court. The issue between the appellants and respondents was on their contract of service, which commenced in 2001, two years before the Federal Government and ASUU appeared before the Industrial Arbitration panel. It is only the Federal High Court that can grant the nature of declaratory reliefs as claimed by the appellants. On the overall, the appellants saw the termination of their appointments as wrongful and illegal and that were therefore entitled to reinstatement and the payment of salaries, allowances etc.

The case of the respondents was that the termination of the appointments of the appellants was not based on disciplinary grounds but in line with clauses contained in their respective memorandum appointment signed by them. The termination had nothing to do with the strike action by ASUU in April 2001. Since the termination was not illegal or run contrary to the provisions of the University of Ilorin Act and the Constitution it was wrong of them to claim for salaries and allowances. Finally, that the trial court lacked the jurisdiction to entertain or grant the reliefs sought by the appellants.

In the considered judgment of the trial court delivered on the of 26<sup>th</sup> July, 2005, it was held that the letters of appointment and memorandum as to terms of agreement signed by the appellants were subject to the Senior Staff Regulations and the University of Ilorin Act. The appellants were not afforded the opportunity to defend themselves on the allegation of disrupting examination on the campus of the University of Ilorin contrary to the provisions of section 15(1) the University of Ilorin Act. The case of the appellants and respondents are different from that between ASUU and the Minister Labour which led to the award of the Industrial Arbitration Panel. The court granted all the reliefs of the appellants by way of entitlements, salaries and allowances. The respondents being aggrieved by the decision of the trial court - went on appeal to the Court of Appeal Ilorin. In a split judgment delivered by that court on the 12<sup>th</sup> of July, 2006, the majority decision reversed the judgment the trial court and held that the appeal was meritorious. Orders were made as follows:-

- a. That the subject matter of the suit before the trial court had elements of trade disputes the Federal High Court was not the proper venue. The proper court ought to have been the National Industrial Court.
- b. The award made by the Industrial Arbitration panel (IAP) was still valid as the Minister had no power to withdraw same.
- c. The trial court had no jurisdiction to entertain the matter because it was caught up by issue estoppel.

Dissatisfied and aggrieved by the foregoing judgement, the appellants came to his court to this court by way of an appeal. They filled five grounds of appeal from where four issues were distilled for determination.

At the hearing of the appeal, the appellants adopted and relied on four issues as follows:

1. Whether the majority Justices of the Court of Appeal were right in holding that the Federal High Court had no jurisdiction to entertain appellants' case.
2. Whether the learned majority Justices of the Court of Appeal were right in holding that the Minister of Labour has no right to set aside, nullify or withdraw an award having regard to existing laws and in view of the fact that no award from IAP was legally in existence and none was tendered in evidence by the respondents.
3. Whether the learned majority Justices of the Court of Appeal were right in allowing the respondents' appeal when it was apparent from the evidence from the respondents did not comply with the procedure laid down in section 15(1) of Unilorin Act Cap of the Federation 1990 before terminating the appointments without any reason and without giving the appellants any fair hearing.
4. Whether the learned majority Justices of the Court of Appeal were right in holding that the appellants' were offered opportunity for fair hearing before their appointments were terminated by the respondent having regard to the general circumstances of the case.

The respondents in their brief settled three issues for determination as follows: -

1. Whether the Court of Appeal was not right in its conclusion that the trial court lacked jurisdiction to entertain the appellant's case.
2. Whether the decision of the Court of Appeal made by the Ministry of Labour had no right to withdrawal, set aside or nullify an award made by the Industrial Arbitration Panel was assailable.
3. Whether the Court of Appeal was not right in allowing the respondents/defendants' appeal to it, having regard to the material available at its disposal.

Prior to the hearing of this appeal the respondents gave notice of preliminary objection to the competence of grounds 1 - 5 of the grounds in the notice of appeal on the grounds that:

- a) The appeal was filed in flagrant violation of the rules of this honourable court and the law.
- b) All the grounds of appeal offends against the rules of the honourable court and are liable to be struck out for incompetence.

The learned senior counsel for the respondents submitted that the ground of appeal are not filed in compliance with the traits of a appeal as stipulated in Order 8 rules 2(2)(3) and (4) of the 2me Court rules.

Grounds 1 and 2 are argumentative, verbose, narrative and certainly concise. They are liable to be struck out. He cited cases in support. *Amuda v. Adelodun* (1994) **8 NWLR** (Pt.360) page 23 at page

31. *Co. (Nig.)Ltd v. O. O. Biosah and Co. Ltd* (1997)11 NWLR Sf527) page 145 at page 156. Ground 3.

The grouse against this ground was that besides being argumentative and narrative, the substance of the ground is not based on the ratio he reasoning in the judgment of the lower court. The complaint he ground is against the *obiter* in the judgment and not the ratio. I ground is therefore not competent and is liable to be struck out.

Ground 4 is prolix and argumentative. It does not constitute an appeal against the ratio in the judgment. This ground must be struck out for incompetence.

Ground 5 is an appeal against the concurrent judgment of Tijani Abdulullahi J.C.A. as opposed to the leading judgment. An appeal can only be against the lead and not the concurrent judgment. This ground is also incompetent and same must be struck out. The eases in *Re Shyllon* (1994)6 NWLR (Pt. 353) page 735 at page 753 and *Egbe v. Alhaji* (1990)1 NWLR (Pt. 128) page 546 at page 590 were cited in support of the prayers in this objection.

If this court finds substance in the objection and decides that all grounds are incompetent the defective grounds are to be struck out and the appeal dismissed. The learned senior counsel referred to the case of *Kurfi v. Mohammed* (1993) 2 NWLR (Pt. 277) page 602 at page 612. The learned senior counsel for the appellants in his reply brief considered all the grounds of appeal and blamed the objection raised by the respondents on a clear misunderstanding of the provision of Order 8 Rules 2(2)(3) and (4) of the Rules of the Supreme Court. The cases of *Amuda v. Adelodun and Shyllon* cited by the respondents are irrelevant and inapplicable.

Ground 5 is raised against the leading judgment of which the concurrent judgment of Tijani Abdulullahi, J.C.A is part. The entire objection is to be discountenanced and dismissed and dismissed and thereafter this court is to hear the appeal on its merit.

I have considered the argument and submission of learned senior for both parties in this appeal. The enabling order for filling an appeal, in this court by virtue of Order 8 Rules 2(2)(3) and (4) the Supreme Court Rules 1999 provides as follows:

Order 8 2(2)(3) and (4).

2. (1) All appeals shall be by way, of rehearing brought by notice (hereinafter called "the notice of appeal") to be filed in the Registry of the court below which shall set forth the grounds of appeal, state whether the whole or part only of the decision of the court below is complained of (in the latter case specifying such part) and state also the exact nature of the relief sought and the names and addresses of all parties directly affected by the appeal, and shall be accompanied by a sufficient number of copies for service on all such pain also have endorsed on it an address for services.
- 2) If the grounds of appeal alleged misdirection or error in law the particulars and the nature of the or error shall be clearly stated.
- 3) The notice of appeal shall set forth concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal v argument or narrative and shall be consecutively.
- 4) No ground which is vague or general in terms which discloses no reasonable ground of appeal shall be permitted, save the general ground that the judgment is against the weight of evidence, and any ground of appeal or any part thereof which is not permitted under this rule may be struck out by the court of its own motion or on application by the respondent.

An appeal is a challenge against the judgment of a trial court and it is never predicated on what a court has not decided in its judgment or ruling. Therefore a ground of appeal must arise from the live issues at the trial and not any hypothetical assumption by the appellant. In other words, a ground of appeal must relate to the decision and should be a challenge to the validity of the ratio of the decision appealed against.

*Govt. of Akwa Ibom State v. Powercom (Nig) Ltd* (2004) 6 LWLR (Pt. 868) page 202  
*Babalola v. The State* (1989) 4 NWLR (Pt. 115) page 264.  
*Azaatse v. Zegeor* (1994) 5 NWLR (Pt. 342) page 76.

According to the rules of court a good ground of appeal must be concise, elegantly drafted and straight to the point, that as soon as it is read, the error and misdirection complained against can be immediately understood and digested. One should not forget what the main complaint is by the time one finishes reading the particulars. It should also not be argumentative

The particulars must relate to and flow from the grounds of appeal. Where a ground of appeal cannot stand as a result of its competent particular, that ground of appeal is defective and it ought to be struck out.

*Ajaokuta Steel Co. Ltdv. O.O. Biosah Co. (Nig)Lfc/(1997)* 11 NWLR (Pt. 527) page 145.  
*Honika Sawmill (Nig) Ltd v. Hoff* (1994) 2 NWLR (Pt. 326) page 252. *Ogbonnaya v. AdaPalm Nig Ltd* (1993) 5 NWLR (Pt. 292) page 147.

I have gleaned through the grounds of appeal, and the crux of the preliminary objection of the respondents' I cannot consider any of the grounds as defective. The grounds and their particulars are related. The particulars may appear verbose - they are not rendered unintelligible by such verbosity. The particulars still serve their purpose in the appeal which is to elucidate and advance the complaint in the ground. The essence of a ground of appeal and its particulars is to acquaint the respondent with the issue involved in the appeal once that purpose is served, a ground of appeal cannot be seen as defective and therefore liable to be struck out together with any issue formulated therefrom. By virtue of Order 8 Rule 2(4) of the Supreme Court Rules – no ground of appeal shall be permitted. Vagueness of a ground of appeal may arise where it is couched in a manner which does not give allowance for its being understood, or where what is stated there is so uncertain and robs it of any form of intelligently. It may also be vague when the complaint is not defined in relation to the subject-matter or the particulars clearly irrelevant to the grounds. The grounds of appeal and their appellants in this appeal do not suffer any of the described shortcomings. *Atuyeye v. Ashamu* (1987) 1 NWLR (Pt. 49) page 267.

I must repeat the clarion call that courts nowadays denounce judgment by mere technicality. Courts are set up to do substantial justice and in the pursuit of this all forms of technicalities which will act as a detriment to the determination of the substantial issues between litigants must be shunned. While recognizing that rule court should be complied with by parties to a suit, it is also in the interest of justice that parties should be afforded a reasonable opportunity in appropriate circumstances for their claims be adequately investigated and properly determined on merit. With this at the back of my mind I shall not hesitate to overrule the objection of the respondents as lacking in merit. I shall in the circumstances proceed to consider the substantive appeal - and the determination therein.

### **Issue One**

Whether the majority Justices of the Court of Appeal were right holding that the Federal High Court had no jurisdiction to entertain appellants' case.

The appellants senior learned counsel Mr. John Baiyeshea SAN submitted that relying on the statement of claim of the appellants the nature of the reliefs sought before the trial court are declaratory and injunctive orders challenging the executive act and decision the respondents. Such reliefs are squarely within the jurisdiction conferred on the Federal High Court by section 251 (i) (p) (q) and (r) of the 1999 Constitution of the Federal Republic of Nigeria. The appellants challenged the breach of their contract of and wrongful termination of their appointment by their employer the 3rd respondent. The 3rd respondent - the University of Ilorin is undoubtedly an agency of the Federal Government. The appellants learned senior counsel referred to the case of *NEPA v. Edeghero & Ors* (2002) 12 SCNJ 173 at paragraph 183; (2002) 18 NWLR (Pt. 798) 79. He explained further that because the claims of the appellants declaratory and injunctive they are not within the jurisdiction of either Industrial Arbitration Panel or the National Industrial Court. The learned counsel cited the case of *Western Steel Works Ltd & Anor v. Iron & Steel Workers Union of Nigeria* (No. 2) (1987) 1 I, R (Pt.49) page 284.

The totality of the reliefs sought by the appellants in their statement of claim do not relate to a trade dispute or implementation of collective agreements as concluded by the majority Justices of the lower court. He urged the issue therefore to be resolved in favour of the appellants.

The learned senior counsel for the respondent Alhaji Yusuf Ali, explained that jurisdiction which is the bedrock of a case is determined on the statement of claim of the plaintiff. The kernel of the appellant's case before the trial court was the alleged termination their appointments by the respondents as a result of their participation in a National Strike by ASUU. The appellants alleged that the termination was a flagrant violation or breach of the agreement signed between the Negotiation Team of the government and the officials of the Academic Staff Union of Universities ASUU). The learned senior counsel concluded that a careful consideration of the statement of claim especially paragraphs 14-16 of the amended statement of Claim which form the kernel of the appellants' case bordered on Trade disputes being issue of employment and non employment of the appellants. The proper forum for the appellants to institute their action was the National Industrial Court which has exclusive jurisdiction to determine questions as to interpretation of collective agreement and make Awards for the purpose of settling Trade Disputes. The respondents' learned counsel supported his submission with cases like *Adelusola v. Akinde* (2004) 12 NWLR (Pt. 887) page 295 at page 312; *Araka v. Egbue* (2003) 17 NWLR (Pt. 848) page 1 *Adewumi v. A.G., Ekiti State* (2002) 2 NWLR (Pt. 751) page 474 at page 512. *Madukolu v. Nkemdilim* (1962) 2 SCNLR page 341.

The learned senior counsel urged this court to resolve this issue in favour of the respondents.

I have carefully read and digested the submission of the learned senior counsel for both parties on this issues trial which is whether the trial court had rightly assumed jurisdiction in the appellants suit. It is trite that the competence of a court to adjudicate upon a matter is both a legal and a constitutional prerequisite. Hence, any defect in the competence and jurisdiction of a court or an action is fatal. The proceedings therein would result in nullity howsoever well conducted and determined, because such defect is not just extrinsic, but intrinsic to the adjudication. Where a court lacks jurisdiction it lacks the necessary competence to try the case.

*Kalogbor v. General Oil Ltd* (2008) All FWLR (Pt. 418) page 303. *Forestry Research Institute of Nigeria v. Gold* (2007) 5 SCNJ 302 (2007) 11 NWLR (Pt. 1044) pages 1  
*Uzoho v. National Council on Privatization* (2007) All FWLR (Pt. 394) page 370

Oke v. Oke (2006) 17 NWLR (Pt. 1008) page 224

S.P.D.C Nig. Ltd v. Hotel Presidential Ltd (1983) 4 NCLR page 122.

A court is only competent when: -

1. It is properly constituted as regards numbers and qualifications of members of the court and no member is disqualified for one reason or the other
2. The subject-matter of the case is within its jurisdiction and there is no feature in the case which prevents court from exercising its jurisdiction and
3. The case comes before the court initiated by law and upon fulfillment of any condition proceed to the exercise of jurisdiction.

*Madukolu v. Nkemdilim* (1962) 2 SCNLR 341

*Akeem v. Unibadan*, (2003) 10 NWLR (Pt. 829) page 584

*Afribank (Nig) PLC v. Bonik bid. Ind* (200) 5 NWLR (Pt. 973) 300

*Oloriode v. Oyebi* (1984) 1 SCNLR 390

*NDIC v. CBN* (2002) 7 NWLR (Pt. 766) page 272

*Ezomo v. Oyakhire* (1985) 1 NWLR (Pt. 2) page 195

Further by way of simple analogy, jurisdiction is to a court what a gate or door is to a house. That is why the question of a court's jurisdiction is called a threshold issue because it is the threshold of the temple of justice. In order to be able to gain access to the temple of justice to ventilate his grievance a prospective litigant must show that he not only has a genuine cause but he must also ensure that he addresses his complaint to the competent court. Hence, jurisdiction is fundamental and essential to adjudication.

The jurisdiction of a court or tribunal is not inferred or imagined statutory.

Courts are set up under the Constitution, Decrees, Acts, Laws and Edicts, they cloak the courts with the powers and jurisdiction of adjudication. If the statutes do not grant jurisdiction to a court or tribunal the court and the parties cannot by consent endow it with jurisdiction. The jurisdiction of a court is confined, limited and circumscribed by the statute creating it.

The Industrial Arbitration Panel (IAP) is constituted for the consideration of trade disputes by the Trade Dispute Act Cap. 432 Laws of the Federation. By virtue of section 19 (1) of the Trade Dispute Act Cap. 432 Laws of the Federation 1990 - the National Industrial Court is conferred with powers to settle trade disputes the interpretation of collective agreements and matters connected therewith. By virtue of section 20(1) the National Industrial Court has exclusive jurisdiction to determine questions relating to the Interpretation of collective agreement and make award for the purpose of settling trade dispute. While the trial court concluded that it had jurisdiction to try the suit of the appellants, the Court of Appeal declared that it lacked jurisdiction as the issues before the court affecting the appellants emanated from Trade Disputes. It is my humble opinion that the learned majority Justices of the lower court erred in their perception. The issue before the court is for the determination of whether the administrative or executive act of the University of Ilorin in the termination of the employment, of her employers, the appellants, was lawful. It is a matter simple, straight forward and within a narrow compass. The majority Justices of the lower court unnecessarily extended the scope of their cause of action to include their activities during the National University Strike as the local officials of ASUU on the 3<sup>rd</sup> respondents' campus. Their suit under the umbrella of ASUU against the Federal Government is quite separate and distinct from their grievances with their employer who brought to an abrupt end their employment without given due consideration

to all the terms and conditions of their employment as expressed in documents. The issue of cessation of their employment has no connotation of trade dispute or collective agreement. The appellants approached the Federal High Court for declaratory and injunctive reliefs as covered by section 251 (1) (q) (r) of the 1999 Constitution. It has now become legally customary through long practice to determine the issue of jurisdiction of court on the reliefs sought by the claimant, in the writ of summons and statement of claim.

*Adeyemi v. Opeyori* (1976) 9 - 10 SC page 3 1

*Felix Onuorah v. Kaduna Refining Petrochemical* All FWLR (Pt. 256) page 1356 at page 1364; (2005) (921) 393.

*Alhaji Ibrahim Abdulhamid v. Akar & 1 or* (2006) 5 SCNJ page 45 at page 54 (2006) 13 NWLR (Pt. 996) 127.

*C.G.G (Nig) Ltd. v. Ogu* (2005) 8 NWLR page 927, page 366.

*Adelusola v. Akinde* (2004) 12 NWLR (Pt. 887) page 295 at page 312.

In the determination of the exclusive jurisdiction of the Federal High Court in respect of section 251 (1) of the 1999 Constitution court must carefully examine the facts of the case to see whether they justify the application of that section. In the case of *Trade Bank Pic v. Benilux (Nigeria) Ltd* (2003) 9 NWLR (Pt. 825) page 416.

The Supreme Court held that "It is only on careful examination of the pleadings filed by the parties, in a cause or matter namely statement of claim not the defence that the court can ascertain or not the Federal High Court have exclusive jurisdiction pursuant to section 251 (1) (p) (q) (r) of the 1999 Constitution."

Section 251 (1) (p) (q) and (r) of the 1999 Constitution provide that: -

"Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by the Act of the National Assembly, the High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes or matters relating to:

(p) The administration or the management and control of the Federal Government or any of its agencies

(q) Subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies.

(r) Any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the federal Government or any of its agencies.

The community reading of the foregoing provisions reproduced above is that the Federal High Court is vested with the power to enter into adjudication of any action or proceeding seeking declaratory or injunctive reliefs which is the fulcrum of the cause of action of the appellants.

Section 251 (1) creates a situation whereupon by party jurisdiction - one of the parties must be a Federal Government Agency and by subject-matter jurisdiction it must be an action or proceedings a declaration or injunction affecting the validity of any executive administrative action or decision by the Federal government or any of its agencies. This was confirmed by the Supreme Court in the case of *NEPA v. Edegbero & Ors* (2003) 12 SCNJ 173; (2002) 18 NWLR (Pt. 798)

This also brings into focus that the action or proceeding under Section 251 (1) of the Constitution must be for declaration or functions as in the case under consideration or in conjunction as in the case under consideration. Whereas in the case of *Western Steel Works v. Iron & Steel Workers* (1987) 1 NWLR (Pt. page 284 the Supreme Court specified that section 15 of the Trade Dispute Act 1976 conferring jurisdiction on the National Industrial Court did not include jurisdiction to make declaration and Border injunction.

The foregoing was echoed in the case of *Kalango & ors v. Dokubo ors* (2003) Vol. 16 WRN page 32 at 49 where the Court of Appeal Did as follows: -

"Considering the nature and scope of the jurisdiction and powers of the National Industrial Court as clearly spelt out in the Act, the court lack competence to make declarations and orders of injunction of the type sought by the plaintiffs/respondents in the instant case."

The majority Justices of the lower court were misguided by not reading the paragraphs, of the statement of claim of the appellants as a whole but extracted a few paragraphs 9, 10, 11, 12, 13, 14, 16 which exposed the presumed reasons for terminating the appointment of the appellants. These paragraphs are only meant to throw more light into the grievances of the appellants and the reliefs sought as compensation for wrongful and illegal termination of their appointments by the respondents.

It is apparent that the majority Justice of the Court of Appeal erred in holding that the Federal High Court had no jurisdiction to entertain the appellants case.

Finally, I find the case of *Dr. Taiwo Oloruntoba & 5 other v. Prof. P. Dopamu & 6 ors* (2008) 2 SCNJ page 87 at pages 104 and 111; (2008) 7 NWLR (Pt. 1085) 1 extremely relevant to the case in hand. The case which was referred to the industrial Arbitration Panel was between the Federal Government and Academic Staff Union of Universities vide Exhibits 4 and 5. In unanimously allowing the appeal – the Supreme Court said: -

"That while it may appear from the circumstances of the claim that the plaintiffs claims suggest a pursuit of Trade Union Activities, a closer look at the trial Judge should have revealed that the claim alleged in the main, the failure of the University authorities to abide by the provisions of the University of Ilorin Act, Cap 455 LFN 1990 than a Trade Dispute as defined by section 47(1) of the Trade Dispute Act Cap 432 1990 LFN.

That the dispute in the suit appears mainly to or not the provisions of the University of Ilorin Act were complied with by the Defendants/Respondents in the discharge of their statutory duties and both trial court and the lower court were wrong in viewing this case as Trade Dispute. The Federal High Court therefore has jurisdiction. The case is remitted back to the Federal High Court for trial before another Judge."

The foregoing case is a sister case, similar in context referred to the Industrial Arbitration Panel constituted on the matter between Federal Government and the Academic Staff Union of Universities as affecting the University of Ilorin and its staffers.

The learned senior counsel for the appellants has rightly drawn our attention to the decision of this court in that sister case. This confirms the submission of the learned counsel for the respondents before the panel in Exh. DW5. We adopt the view of the court in that case in

respect of the jurisdiction of the Federal High Court in this case. Issue one is consequently resolved in favour of the appellant.

### **Issue Two**

Whether the learned majority Justices of the Court of Appeal were right in holding that the minister of Labour has no right to set aside, nullify or withdraw an award having regard to existing laws and in view of the fact that no award from IAP was legally in existence and none was tendered in evidence by the respondents.

The learned senior counsel for the appellants argued and submitted that the learned majority of Justices wrongly decided that the Minister of Labour has no right to set aside, nullify or withdraw an award without regard to the relevant laws and circumstances of the case. This purported award of the Industrial Arbitration Panel was not produced and tendered by the respondents during the trial of this case. The appellants filed this case at the federal High Court since August 2001 to challenge the purported termination of their appointments by the respondents. The case has nothing to do with any matter before the IAP, as the appellants were not parties there.

The learned majority Justices wrongly based the doctrine of issue estoppels on an award they could not see physically so as to determine the legality of its withdrawal by the Minister of Labour. The learned senior counsel cited the case of *Samona v. Ilesanmi* (2001) FWLR (Pt. 54) page 373 at page 382 on the applicability of section 132 (1) of the Evidence Act. The learned senior counsel submitted further that the issue of estoppels is not applicable to this case in view of the dissimilarities between the case in -hand and the matter referred to the IAP in respect of parties subject-matter and jurisdiction of court. The learned senior counsel cited cases in support of the submission.

*Western Steel v. Iron Worker* (supra) *Kalango v. Dokubo* (supra) *Ezekwillie Ikoku v. Reuben Ekeukwu* (1995 7 SCNJ page (Pt. 410) 637 *Makeen Ikeni v. Chief Efamo & 2 ors* (2001) 5 SCNJ page 144 at page 157 (2001) 10 NWLR (Pt. 720) 1

The learned senior counsel for the respondents replied that the lower court rightly held that the Federal High Court lacked jurisdiction to entertain the appellants' suit in that the Industrial panel had made an award in the matter which according to the lower court, the Minister of Labour lacked the vires to set aside. The lower court rightly reversed the decision of the trial court that the minister had withdrawal the award. The lower court refused to pronounce on the other issues submitted for its consideration stemming from the fact that the trial court lacked the jurisdiction to entertain the suit. This court cannot pronounce on such issues also since the opinion of the Court of Appeal is not known. The learned senior respondents' counsel emphasized that it was the finding of the learned trial judge that there was an award made by the Industrial Arbitration Panel which the appellants did not raise the issue against and that findings has therefore become sacrosanct, valid, extant and correct. Since the appellants did not raise the issue against the find that IAP made an award before the Court of Appeal, they cannot raise some before this court without leave. This issue based on the award is not valid or competent and same must be struck out. The learned senior counsel further submitted that the appellants did not appear before the Industrial Arbitration Panel as parties but as privies as the matter was pursued on their behalf by the National body of Academic Staff Union of Universities. From this angle the rendering of an award by the Industrial Arbitration Panel on the issue of

termination of appointment of the appellants and the trial court cannot make any decision, declaration or order on same issue.

The learned senior counsel supported same with the dictum in the case of *Osunrinde v. Ajamogun* (1992) 6 NWLR (Pt. 246) page 156 at paragraph D where the Supreme Court observed that :-

“It is trite that where a court settled, by a final decision, the matters in dispute between the parties neither a party nor his privy may relitigate that issue again by bringing a fresh action. Issue estoppels applies whether the point involved in the earlier decision is one of fact or law or one of mixed facts and law.”

The learned senior counsel for the Respondents urged this court to regard the conclusion of the Court of Appeal on the award of the Industrial Arbitration Panel as sound, firm and unassailable. The learned senior counsel for the respondents finally submitted that the Federal High Court is not vested with the requisite powers and/or *vires* to entertain any matter that has to do with settlement of Trade disputes and where jurisdiction is ousted by statute there must be strict compliance with it.

*Ajuebor v. A.-G., Edo State* (2001) 5 NWLR (Pt. 707) page 466 at 481 C-D.

*N.U.C. v. Oluwo* (2001) 3 NWLR (Pt. 699) page 90 at -page 102 – 103.

Section IA of the Trade Disputes Act as amended by the Trade Disputes (Amendment) Decree No. 47. of 1992 has clearly ousted the jurisdiction of any court in Nigeria in respect of Trade Disputes and has exclusively vested jurisdiction in the National Industrial Court. The court is to resolve the issue in favour of the respondents.

In the prevailing circumstance of this case, the pertinent question to resolve in this issued is whether any award delivered by IAP on the termination of appointments of the appellants now constitutes an issue estoppels which will amount to an abuse of judicial process if the trail court has to make any decision on the same issue allover again. In short, whether the trail court lacks the jurisdiction to entertain the case before it having been caught by issue estoppels. I do not instead to belabour this issue as I found the argument and submission of the learned senior counsel for the appellants sound and convincing for the following reasons.

The instrument referring the Trade Dispute between Federal Government of Nigeria and the Academic staff Union of Universities and Industrial Arbitration panel for settlement was signed by the Minister of Labour and Productivity on the 20th of May, 2003, with the Terms of Reference specified in Exhibit DW 2.

Exhibit DW 4 was a notice of objection to the award sent to the honourable Minister dated the 31st of March, 2004.

By the 2nd of August, 2004 the matter was referred by the minister to the industrial Arbitration Panel by the Minister for reconsideration as it has no binding effect on the parties.

This is the reason why the learned senior counsel for the appellants emphasized that the learned trial judge could not have declined jurisdiction on a non existing award having failed to put it evidence during the trial of this case. On whether rendering of any award by the Industrial Panel can ground any plea of estoppels, it has to comply with the yardsticks for invoking a plea of issue estoppels as stated in the cases cited by the parties like

*Osunrinde v. Ajamogun* (1992) 6 NWLR (Pt. 246) pg 57.

Ezekwillie Ikoku v. Reuben Ekeukwu (1995) 7 NWLR (Pt. 410) 637 SCNJ pg 180 at pg 190; (1995) 7 NWLR (Pt. 410) 637 and Mackeen Ikeni v. Chief William Efamo & 20 ors (2001) 5 SCNJ 144 at pg. 157 (2001) 10 NWLR (Pt. 720) 1.

Generally speaking, within one cause of action there may be several issues raised which are necessary for the determination of the whole case. Once an issue has been raised and distinctly determined between the parties neither party can be allowed to raise that issue all over again. For a plea of estoppel to succeed the preconditions namely are:

1. That the parties or their privies are the same in both the previous and present proceeding.
2. That the claim or issue in dispute in both actions is the same.
3. That the res of the subject matter of the litigation in the two cases are the same.
4. That the decision relied upon to support the plea of estoppel is valid, subsisting and final.
5. That the court that gave the previous decision relied upon to sustain the plea is a court of competent jurisdiction.

All the foregoing requirements of the doctrine must be fully established before the plea can be sustained.

Ikebodu v. Adone (2001) 14 NWLR (Pt. 733) pg 385 SC.

Oke v. Atoloye (1985) 2 NWLR (Pt. 9) pg 578

Yoye v. Olubode (1974) NLR (Pt. 2) pg 118; (1974) 10 SC 209

Alase v. Olori-Illu (1965) NMLR pg 66

Fadiora v. Gbadebo (1978) 3 SC 219

Iga v. Amakiri (1976) 11 SC 1

In the instant case, the appellants filed their case in the Federal High Court in August 2001, whereas the Minister referred the Trade Dispute to the Industrial Arbitration in May 2003. The matter before the Federal High Court filed by the appellants pre-dated the Trade dispute referred to the IAP.

- 1) The parties in the matters are different
- 2) The parties before the Federal High Court are the appellants who are members of staff of the University of Ilorin and their employer, the University of Ilorin – a domestic affair. The parties in the trade dispute before the Arbitration Industrial Panel are the Federal Government of Nigeria and the Academic Staff Union of Universities.
- 3) The subject of matter dispute before the Federal High Court challenges the administrative and executive act of the employer – the respondents for terminating their employments by not adhering strictly with the provision of the documents stipulating their conditions of service.

The subject matter before the IAP is a Trade Dispute and the terms of reference are the following points:

- a) Demand of rights of students to lectures since December, 29<sup>th</sup> 2002.
- b) Withholding of students examination result since March 2002.
- c) Reinstatement of 44 sacked lecturers of the University of Ilorin
- d) Insistence of definite annual allocation of the universities over the next five years.
- e) The matter before the IAP is not valid, subsisting or final

- f) IAP is an interior while the Federal High Court is superior court of record, and as observed by the learned senior counsel for the appellants- a temporary award of an inferior Tribunal cannot be use as a retroactive bar to the appellants' case before a superior court of record.

On the overall , there was no basis to invoke the doctrine of estoppel while, the lower court was clearly wrong in reversing the decision of the trial court for being caught by the doctrine of estoppel. Issue Two is resolved in favour of the appellants.

### **Issue Three**

Whether the learned majority justices of the court of appeal were right in allowing the respondents appeal when it was apparent from the evidence on record that the respondents did not comply with the procedures laid down in section 15 (1) of Unilorin Act Cap 455 Laws of the Federation 1990 before terminating the appellants appointment without any reason giving the respondents any fair hearing.

The kernel of the argument of the learned senior counsel under this issue is that the Respondents did not have the right to terminate the appellants appointments without following the due process of fair hearing provided for by section 15 (1) of the University of Ilorin Act notwithstanding the purported signing of the memorandum of Appointment and the fact that their Cessation letters were silent on the reasons for terminating their appointments. The reversal of the decision of the trial court of Appeal is perverse and has occasioned great miscarriage of justice to the appellants. Exhibit 20 – the Minutes of the Emergency Meeting of Council held on Tuesday 15<sup>th</sup> May, 2002 in the University of Ilorin Counsel Chambers gave an insight into the decision of the council to terminate the appointment of the appellants. This documents relating to the appointment of the appellants, such as the letters of appointment, Memorandum of appointment, University senior staffs Regulations and the University Act Cap. 455 Laws of the Federal amplify on the terms and conditions of their service.

The learned senior counsel for the respondents concluded that the argument canvassed by the appellants under this issue three has become merely academic and of no moment.

The Court of Appeal refrained from pronouncing on the correctness of the decision on the trial court that the termination of the appointments of the appellants was wrongful, because of its view that the Federal High Court had no jurisdiction to entertain the suit. This court will therefore not make it a practise to pronounce on an issue over which it has not had the benefit of the opinion of the Court of Appeal. There is no constitutional provision whereby his court can entertain an appeal directly form the High Court. Both the appellants and respondents executed the Memorandum of appointment exhibits 28-29 thereby making the documents valid and enforceable against the parties. The Revised Regulations governing conditions of services of senior staff also confirm the enforceability of Exhibits 28-29, the Memorandum of employment. It is therefore expressly implied in the conditions of service that parties can, bring the relationships to an end before the employees reach the mandatory age of retirement. Section 15 (1) of the University Act is not applicable as Exhibits 12 0 16 the letters of cessation of appointment did not indicate that they were issued on disciplinary grounds. The learned senior counsel further submitted that the termination in the instant clause 10 of the memorandum of appointment wherein the

proper notice or salary in lieu of notice was given to the appellants. If the termination was done on basis of misconduct, the appellants would not have been entitled to notice or salary in lieu of notice as provided in clause 10 of Exhibits 28-29. Furthermore, he submitted that the appellants have waived their legal rights under the University of Ilorin Act by appending their signature to the Memorandum embodying clauses 1 and 10.

The learned trial judge was not expected to go outside their letters of termination of appointment Exhibits 12-15 and doing so has occasioned a miscarriage of justice. The learned senior counsel further explained that the only relevant section of the University Act is section 15 (3) which stipulates that the University council can terminate the appellant's appointment on other grounds other than misconduct for good cause. The Respondents do not have to obtain leave of his court to argue this issue in respect of invocation section (15 (3) of the University or Ilorin Act. It is a new argument not a fresh issue on the invocation of the University Act to terminate the appointment of the parties, as the court of Appeal had the right to look into the applicability of the University of Ilorin Act to the termination of appointment of the appellants.

The respondents cited cases to support the foregoing argument *Oluseye v. L.S.W.N.A.* (2003) 17 N.W.L.R. (Pt. 849) pg. 307 at pg. 318

*Ariori v. Elemo (1983) SCNLR 1*

*Mobil Producing (Nig). Unlimited v. LASEPA* (2002) 18 NWLR (Pt. 789) page 203 at pg 203

*Idoniboye –Obu v. Menakay* (2001) 16 NWLR (Pt. 738) pg 203 at pg 263

*Bamigboye v. University of Ilorin* (1999) 10 NWLR (Pt. 622), pg. 290 at pg. 302

*Esiaga v. University of Calabar* (2004) 7 NWLR (Pt. 872), pg. 366

*Olaniyan v. University of Lagos* (1985) 2 NWLR (Pt. 9) pg. 599.

Before considering the submission of learned senior counsel on this issue, I cannot but express my amazement at the inconsistency of the Respondent on this issue particularly on the steps required to terminate the appointments of employees of the respondent. Secondly, since the lower court did not properly consider the issue of termination of the appellants in view of the pronouncement that the lower court lacked jurisdiction to entertain the suit instituted by the appellants, this court cannot consider this issue as it does not have the benefit of the opinion of the lower court. The respondents have now introduced a new issue which was not their case before the trial court or even in their letters of termination Exhibits 12-16, that the University terminated the appointment by invoking section 15(3) of the University Act. I make bold to say that such submission is unacceptable. A party cannot make out a case solely on the address of counsel but on fact pleaded and evidence adduced in support of such facts. It will not only amount to springing a surprise to the appellants; it will be akin to hitting the appellants' below the belt in the defence of their case before the court. Invocation of section 15(3) of the University of Ilorin Act to terminate the employment of the appellants is a very strong wicket for the Respondents. This should have been raised by way of pleadings at the trial court, and the appellants given the opportunity to react to it. It is now too late and obviously belated to consider such defence in favour of the respondents. Page 61 paragraphs 12-16 of the Respondents Brief of Argument which states that; "we therefore pray your lordship to hold that given the circumstance of this case, the applicable section of the University of Ilorin Act is 15 (3) and further to hold that the termination of appointments of the appellants pursuant to section 15 (3) is valid, proper, lawful and complete" shall be discountenanced by this court. The learned

senior counsel for the appellants rightly submitted that it is a fresh issue which requires the leave of this court to raise same, and I so hold.

*N.E.P.A. v. Savage* (2001) 9 NWLR (Pt. 717) page 230

The strong point canvassed under this issue is noncompliance particularly with the requirements of fair hearing as a procedure laid down in section 15(3) of the University Act 455 Laws of the federation 1990 before terminating the appointments of the appellants.

It is trite law that the onus is on the plaintiffs/appellants to prove that the termination of their appointments is unlawful and to discharge this onus, they must prove that

- a) They are employees of the respondents
- b) Placing before the court the terms of the contract the terms and conditions of their employment.
- c) Who can appoint and who can remove them
- d) In what circumstances the appointments can be determined by the employer and breach of the terms.

*Okomu Oil Palm Co Ltd. v. Iserhienrhien* (2001) 6 NWLR (Pt. 710) pg 660 at pg 673

*Emokape v. University of Benin* (2002) 17 NWLR, (Pt. 795) pg. 139.

*Amodu v. Amode* (1990) 5 NWLR (Pt. 150) pg. 356

*Adeniran v. N.E.P.A* (2002) 14 NWLR (Pt. 786) pg 30

The case of the appellants is that the terms and conditions of their appointments are as stipulated in these documents before the court as follows:

- 1) Letters of appointment Exhibits 105
- 2) Memorandum of Appointment Exhibits 28, 29 and DWI
- 3) University of Ilorin Revised regulations governing the conditions of services of senior staff of the University dated 24<sup>th</sup> March, 1994. Exh II.
- 4) The University of Ilorin Act Cap 455 Law of the Federation

By virtue of the foregoing documents the appellants claimed that their employment is protected by statute and that they therefore' enjoy special legal status over and above the ordinary common law master and servant relationship. I must express that where the terms and conditions of a contract of employment or service are specifically provided for by statute or regulations made thereunder- it is said to be a contract protected by statute or in other an employment with statutory favour:

*Olaniyan v. University of Lagos* (1985) (Pt. 19) pg. 599

*Eperokan v. University of Lagos* (1986) 4 NWLR (Pt. 34) pg. 162

*Bamgboye v. University of Ilorin* (1999) 10 NWLR (pt. 622) pg. 290

*University of Maiduguri Teaching Hospital Management Board v. Dawa* (2001) 16 NWLR (Pt. 739) pg. 424

*Shitta-Bey v. FPSC* (1981) 1 SC pg. 40

*UNTHMB v. Nnoli* (1994) 8 NWLR (Pt. 363) pg. 376.

The question whether a contract of employment is governed by statute or not depends on the construction of the contract itself or the relevant statute. The duty to construe is the exclusive preserve of the Courts. In this case there is no dispute that contract of employment of the appellants was governed by statute.

What is left to investigate here is whether in the process of writing cessation of appointment letters to be appellants' the procedure laid down in the applicable statute was complied with.

Provisions of regulations and memorandum of appointment must be followed to the letter as any breach would render the exercise of terminating null and void.

Adeniyi v. Governing Council of Yaba College of Technology( 1993) 6 NWLR, (Pt. 300)pg. 426.

The respondents strenuously argued that the termination of appointment of the appellants were based on the bilateral agreement of the parties executed by the appellants in their memorandum of appointment Exhibits 28-29 which remain legally binding on the parties. Clause 10 of Exhibits 28, and clause 6 in Exhibits 29 and DW 1. The relevant clause reads;

Whether the University or the Assistant Lecturer shall terminate the appointment without having given three months notice in writing of his attention to do so or having tendered payment of three months' salary in lieu of notice. In the case of notice already given, the University may tender payment of the amount of salary application to the period of notice unexpired and upon doing so the appointment of the Assistant Lecturer shall terminate immediately provided always that in the event of any act of omission, which an appropriate organ of the University may adjudge willful misconduct on the part of the Assistant Lecturer, the University may terminate the appointment summarily without notice or salary in lieu of notice”

Such letter of appointment has embodied in the first paragraph the provision that:

“The appointment, which is subject to the University regulations, shall be for a total period of two years only”

The memorandum of appointment Exhibit 29 in clause stipulates that:

“Other conditions of services will be as specified for the status of the Assistant lecturer in the University Regulations governing the conditions of service for senior staff which is subject to periodical review by the University”.

It is noteworthy that the letter of appointment is made subject to the University senior staff regulations Exhibit 11. The senior staff Regulations is made subject to the University Act Cap 455.

Whenever the phrase “subject to” is used in a statute the intention, purpose and legal effect is to make the provisions of the section inferior, dependent on, or limited and restricted in application to the section to which they are made subject to. In other words the provision of the latter section shall govern, control and prevail over the provision of the section made subject to it. It renders the provision of the subject section subservient, liable, subordinate and inferior to the provisions of the other enactment.

Labiya v. Anretiola (1992) 8 NWLR (Pt. 258) pg. 139.

Tukur v. Government of Gongola State (1989) 4 NWLR (Pt. 117) pg. 517

FRN v. Osahon (2006) 5 NWLR (Pt. 973) pg. 261.

In effect the letters of appointment, the Memorandum of appointment, the senior staff regulations are made subject to the University of Ilorin Act Cap 455 in their implementation.

Regulation 1.1.3 at page 1 of the senior staff regulations reads as follow: -

“A member of staff shall hold office on such terms and conditions of services as may be set out in any contract in writing between him and the University, such contract being signed on behalf of the University, by the Registrar or by such other persons as may be authorized for that purpose by the University, and any such contract shall contain or be

deemed to contain a provision that the terms and conditions therein specified are subject to the provisions of the Act, the statutes and regulations of the University”.

In my view all these documents, the letter of appointment, the memorandum of appointment the senior staff regulations, and the provisions of the University Act Cap. 455 shall be construed conjunctively to determine the nature and the terms and conditions of service of the appellants and whether same have been breached by the respondents.

The letters of cessation of employment exhibit, 12 – 16 which I have re-stated earlier on in this judgment did not state the reason for terminating the appointments of the appellants by invoking clause 10 or 6 of exhibits 28 or 29 or DW 1, the memorandum of appointment.

The claim of the Respondents that the appellants have waived their rights under the University Act is of no moment as there is no basis for such connotation. The provisions of section 15 (1) or 15 (3) is applicable to all termination of employment of all senior staff of the institution. The cessation letters issued to the appellants exhibits 12-16 were silent on the reason for termination of their appointments. They gathered the reason through Exhibit 17 -20 tendered in court. Exhibits 17 is the University of Ilorin Bulletin where the senate of the University disassociates itself from subversive advertisement and the official reaction to the disruption of examination by ASUU officials.

Exhibit 18 is the security report on the activities of ASUU on the campus, and the visit of Dr. Awopetu from Obafemi Awolowo Ile-Ife disrupting examination being held by the students.

Exhibit 19 is the letter emanating from the Pro-Chancellor of the University of Ilorin to Obafemi Awolowo complaining about disrupting of examination by Dr. Awopelu of AOU with the connivance of other academic staff of the University of Ilorin.

Exhibit 20 is the minutes of the Governing Council of the University of Ilorin where the decision to terminate the appointment of the appellants was made for reason of disruption of examination on the campus. Exhibit 20 indicates that the governing council of the University which gave an order to terminate the appointments which would fit into section 15 (1) of the University Act Cap. 455.

This brings into limelight the question of fair hearing in that if the appellants were deprived of their appointments for a cause did the appellants follow due process as stipulated in the provisions of section 15(1) of the University of Ilorin Act and chapter 8 of Exhibit 11 – the senior staff regulations. The grouse of the appellants are that as senior academic staff of the University on pensionable appointments, the Respondent cannot serve them with letter of cessation of appointment without giving them a hearing. The sole witness for the Respondent during the trial of the case before the Federal High Court gave evidence that the appellant's appointments were terminated based on their memorandum of appointments only and for no other reason. Further that they were not arraigned before the governing council neither were they taken through any disciplinary process. Exhibit 20 the minutes of the governing council of the University of Ilorin did not reveal that the appellants were made to comply with the provision for the discipline of Senior staff before a decision was made to relieve them of their posts.

Section 15 (1) of the University Act and regulation 3.4.0. of the senior staff regulations contains the same provisions. Section 15(1) of Cap. 455 provides as follows:

If it appears to the council that there are reasons for believing that any person employed a member of the academic or administrative or professional staff of the University

other than the Vice-Chancellor, should be removed from his office or employment the ground of misconduct or of inability to perform the function of his office or employment on the ground of misconduct or of inability to perform the functions of his office or employment, the council shall: -

- a. Give notice of those reasons to the person in question
- b. Afford him an opportunity of making representations in person on the matter to the council and
- c., If he or any three members of council so request within the period of one month beginning with the date of the notice to make arrangements:
  - i. For a joint committee of the council and the senate to investigate the matter and report on it to the council and
  - ii. for the person in question to be afforded an opportunity of appearing before and being heard by the investigating committee with respect to the matter.

And if the council, after considering the report of the investigating committee is satisfied that the person in question should be removed as aforesaid, the council may so remove him by an instrument in writing signed on the direction of the council.

The foregoing makes provision for fair hearing in the process of removing a member of the academic or administrative or professional staff of the University. I do not have evidence to substantiate that this process was adopted in relieving the appellants of their appointments. The pronouncements of our courts in their age long decisions down to the recent ones have advocated that

*"When an office or employment has a statutory character in the sense that its conditions of service are provided for by the statute or regulations made thereunder any person in that office or employment enjoys a special status over and above the ordinary master and servant relationship. In the matter of discipline of such an employee, the procedure laid down by such statute must be fully complied with. If not, any decision affecting the right or reputation or tenure of office of that employee will be declared null and void. When a statute has conferred on anybody the power to make decisions affecting individual, the court will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness. Where a contract of service enjoys statutory protection, the latter can only be terminated in the manner prescribed by the governing statutory provisions, a breach of which renders the act ultra vires and void. The contract cannot be discharged on the agreement of the parties without compliance with the enabling statutory provision.*

There is a presumption that when the Legislature confers a power on an authority to make a determination it intends that the power shall be exercised judicially in accordance with the natural justice"

*Olaniyan v. University of Lagos (1985) (Pt. 9) NWLR pg. 599*

*Eperokun v. University of Lagos (1986) 4 NWLR (Pt. 34) pg:*

*Bankole v. N.B.C (1968) 2 All NLR, pg. 371*

*Shitta-Bey v. federal Public Service Commission (1981) ISC pg 40*

*Olatunbosun v. N.I.S.E.R. Council (1988) 3 NWLR (Pt. 80) pg 3*

*Aiyetan v. N.I.F.O.R (1987) 3 NWLR (Pt. 59) pg. 48*

*Garbav. University of Maiduguri (1986) 1 NWLR (Pt. 18)pg. 48*

*Adeniyi v. Governing Council of Yaba College of Technology (1986)1 NWLR (Pt. 18) pg. 550 (Pt. 300) 426*

The nature of fair hearing to be observed in this context is as entrenched in section 36(1) of the Constitution of the Federal Republic of Nigeria 1999, as it encompasses the twin pillars of justice namely:

- (a) *Audi alteram partem* - (Hear the other party)
- (b) *Nemo iudex in causa sua* (no one should be a judge in his own cause).

It is equally a common law doctrine that the determination of his civil rights and obligations a person is entitled to a fair hearing within reasonable time by a court or tribunal established by law. Section 15(1) of the University of Ilorin Act guarantee administrative, academic and professional staff fair hearing before their appointment is terminated thus giving the exercise of such disciplinary powers a statutory flavour. The learned senior counsel for respondents distinguished the case of *Olaniyan* from instant case. There is similarity in that case with the case in hand as to the *cassus belli* reasoning and decision particularly on the issue of fair hearing in the termination of appointment of employees whose contract of employment enjoys statutory flavour. There is no iota of evidence that the procedure for termination of employment of the appellants as to fair hearing was observed in this case. Issue three is resolved in favour of the appellants.

#### Issue Four

Whether the leaned majority justices of the Court of Appeal were right in holding that the appellants were offered opportunity for fair hearing before their appointments were terminated by the respondents hearing before their appointments were terminated by the respondents having regard to the general circumstances of the case.

The learned senior counsel for the appellant submitted on this issue that the learned majority justices of the lower court agreed that by virtue of section 15(1) of the University of Ilorin Act the appellants appointments should not have been terminated without following the due process of fair hearing. Regardless of this observation they reversed the decision of the trial court. Their reversal of the decision of the trial court is therefore perverse and have occasioned a great miscarriage of justice. The jurisdiction that the appellants were given an opportunity to defend themselves but they turned it down cannot be substantiated from the evidence on record. The learned majority justices made a wrong use of exhibit 20 to arrive at this conclusion. This court is urged to resolve this issue in favour of the appellants' appointment is unfair and violates the laws and regulations governing their appointment.

The learned senior counsel for the respondents replied that the ground on which this issue was formulated was incompetent, as it relates to an academic issue. The issue is predicated on the concurring judgment of Tijani Abdullahi J.C.A. A ground of appeal predicated on a concurring judgment is not a valid ground of appeal. Where an issue for determination is distilled from a valid and invalid ground of appeal both grounds will have to be dismissed or discountenanced on the ground of incompetency.

I have earlier on given my ruling on the preliminary objection raised on competency of this appeal. I agree with the submission of the learned senior counsel for the appellants quoting from the decision of this honourable court in the case of *Nwana v. FCDA* (2004) All FWLR (Pt. 220) pg. 1245; (2004) 13 NWLR (Pt. 889) 128 at pg 1245 paragraph B - C particularly that a concurring judgment forms part of the leading judgment and it is meant to complement same by way of addition or an improvement on the issues resolved in the leading judgment. Both leading and concurrent judgments crystallize into the judgment of an appellate court.

The judgment of the lower court was that appellants were given opportunities to defend themselves before their appointment were terminated but for reasons which were difficult to comprehend decided not to avail themselves with it. This conclusion was based on Exhibit 20, the minutes of the emergency meeting of council of the University held on Tuesday 15th May, 2002 in the chambers. The chairman and all members were in attendance purpose of the meeting was to consider the Administrative and ASUU fact finding committee had already been constituted to investigate the activities of ASUU on the campus. An administrative fact finding committee had already been constituted to investigate the activities of ASUU on the Campus. The committee submitted a report to council members of ASUU involved in the disruption of second semester examination were invited and given opportunity of fair hearing which they turned down. After careful deliberation on the committees report and recommendations the council decided as follows:

"that the appointments of the under listed erring lecturer be terminated with immediate effect in line with sec 15.3 of the University of Ilorin Act, the provision-8.4.3 of the Senior Staff Regulations and in tune with the memorandum of their respective appointments."

The decision affected the five appellants. By virtue of section 15 of the University of Ilorin Act, the power to remove a member of Academic or administrative or professional staff of the University other than the vice chancellors from his office on the ground misconduct or inability to perform the functions of the office is vested only in the council while section 15(1) guarantees foregoing staff fair hearing before their appointments are terminated. This gives, the exercise of such disciplinary powers a statutory flavour.

By virtue of section 15(1) of the University Act what compliance with rules of natural justice in terminating the appointment of a university employee entails are:-

- 1) That the complaints must be brought to the notice of the person and
- 2) He must be given an opportunity of making representation in person to council on the matter.

In order to justify the dismissal or termination of appointment of an employee, the employer must be in a position to prove to the courts satisfaction.

- a) That the allegation was disclosed to the employee
- b) That he was given a fair hearing
- c) That the council believed that the appellants committed the offence after hearing witnesses.

Bamgboye v. University of Ilorin (1999) 10 NWLR (Pt. 622) pg 290 SC.

I must remark that the learned majority justices of the lower court made a gross mistake in their conclusion that appellants were afforded the opportunity to defend themselves which they turned down. The learned justices failed to distinguish and draw a line between the report or recommendation of a panel and the decision of the Council on such recommendation. The act of the University Ilorin is performed through its Council. Statutory provisions establishing a corporate body like the University of Ilorin always empower the body to employ staff and to discipline them. Once the statutory provisions are clear as to how to deal with an erring servant they must be adhered to strictly including a clear observation of the principles of fair hearing.

Shitta-Bey v. Federal Public Service Commission (2981) SC 40

Olaniyan v. University of Lagos (1985) 2 NWLR (Pt. 9) pg. 599.

U.N.T.H.M.B. v. Nnoli (1994) 8 NWLR (Pt. 363) pg. 376 SC.

*In the case of University of Nigeria Teaching Hospital Management Board v. Nnoli (1994) 8 NWLR (Pt. 363) pg 376 at pg. 404 paras. F-G the supreme Court said that:*

*"In the observance of the principles of natural justice and the essential requirement of fair hearing there is a distinction between the recommendation of an investigating panel which has no statutory powers and the action on the recommendation by statutory body with requisite statutory powers. Whereas the recommendation of the panel will not affect the civil rights and obligations of the person whose act or omission is being investigated like the appellants in this case, the acting upon such recommendation does. Hence the implementation of the recommendation by a statutory body must comply strictly with rules of natural justice."*

Olantunbosun v. N.I.S.E.R. (1988) 3 NWLR (Pt. 80) pg. 25 Aiyetan v. Nifor (1987) 3 NWLR, (Pt. 59) pg 48.

The appellants were not afforded the opportunity of being heard by the University Council before their appointments were unilaterally and prematurely terminated on 15/5/2002 by the council, after receiving the report and recommendation of the Investigating panel.

Issue four is resolved in favour of the appellants.

In the final analysis the appeal is allowed.

The majority judgment of the lower court including the costs is set aside.

The judgment of the trial court is affirmed.

This court hereby grants all the reliefs of the plaintiffs/appellants as specified in paragraph 25, clauses A - J of their amended statement of claim before the trial court as follows:

- a) Declaration that the defendant's letter dated 15<sup>th</sup> May, 2001 to the plaintiffs titled "Cessation of Appointment" purporting to terminate the plaintiffs appointment" defendant is *ultra vires*, null and void and effect whatsoever.
- b) Declaration that the plaintiffs are still in the service of the 3<sup>rd</sup> defendant.
- c) Declaration that the defendants are bound to comply with the directive of the Federal Government of Nigeria to reinstate the plaintiffs as contained in the letter of National Universities Commission dated 29th June, 2001 with reference NUC/EJ/261 to the Pro-chancellor of the 4th defendant, and the 1st defendant.
- d) Declaration that the defendants are not entitled to summarily terminate the plaintiffs' appointment without complying with the Provisions of the University of Ilorin Act Cap. 455 LFN and other relevant statutory to discipline.
- e) Declaration that the purported termination plaintiffs by the defendants under the guise of "Cessation of appointment" or under any guise whatsoever is contrary to the provision of the Pension Act of Nigeria in that plaintiffs are permanent and Pensionable Staff of the University.
- f) Declaration that the purported termination of the plaintiffs appointments by the defendants negates the fundamental rights provisions of the Constitution of the Federal Republic of Nigeria 1999.
- g) Order setting aside the purported termination of plaintiffs appointment and nullifying the defendants' letter to the plaintiffs in that regard
- h) Order compelling the defendants to comply with directive of the Federal Government through the National Universities Commission dated 29th June, 2001 with reference No.NUC/ES/261 to the defendant to reinstate the plaintiffs.
- i) Order compelling the defendants to reinstate the plaintiffs to their posts as lecturers in University of Ilorin with all their rights, entitlement and officer perquisites of their offices.
- j) Order compelling the defendants to pay to the plaintiffs all the salaries and allowances from February 2001 till the day of this judgment and henceforth.

The appellants are entitled to costs in both lower court and this court which I assess at N50,000 and N10,000 to the appellants against the respondents.

**MUSTAPHER, J.S.C.** I have read before now the lead judgment of my colleague Adekeye, J.S.C. just delivered with which I entirely agree. In the judgment aforesaid, all the issues submitted for the determination of the appeal have been admirably, exhaustively and comprehensively dealt with. I respectfully adopt the reasoning as mine and also allow the appeal and abide by all the consequential orders contained therein including the orders as to cost.

**MOHAMMED, J.S.C.** I had the privilege of reading in draft the leading judgment of the learned Justice of this court Adekeye J.S.C. which has just been delivered. The facts of the case that gave rise to the dispute between the parties, the contract agreements, the applicable regulations and statutes were well outlined in the judgment. All the issues raised in the appeal were well set out, extensively discussed and resolved according to the law. I entirely agree with the reasoning and the conclusions arrived at in resolving the issues as contained in the judgment and I hereby adopt them as mine. Accordingly, I also allow the appeal, set aside the judgment of the court below and restore the judgment of the trial court in favour of the plaintiff/appellants with N50,000.00 costs in favour of the appellants against the respondents.

**TABAI, J.S.C.** I read, in draft, the lead judgment prepared by my learned brother, Adekeye J.S.C. and I agree entirely with the reasoning and conclusions reached therein that there is merit in the appeal which ought to be allowed and is hereby also allowed by me. I also abide by the order on costs as assessed in the lead judgment.

**MUHAMMAD, J.S.C.** I read in advance the judgment delivered by my learned brother, Adekeye, J.S.C. I agree with her reasoning and conclusion. I abide by all consequential orders made in the judgment including order as to costs.