

TEXACO NIGERIA PLC
V.
ALFRED G. ADEGBILE KEHINDE
COURT OF APPEAL (ILORIN DIVISION)

CA/IL/92/99

MURITALA AREMU OKUNOLA, J.C.A.(Presided)

PATRICK IBE AMAIZU, J.C.A.

WALTER SAMUEL NKANU ONNOGHEN, J.C.A. (Read the Leading Judgment)

TUESDAY, 1st DECEMBER, 2000

CONSTITUTIONAL LAW - Justifiability - Collective agreement - Whether justifiable.

CONTRACT- Collective agreements - Whether justifiable - Relevant considerations.

CONTRACT- Contract of employment - Collective agreement - When binding –Relevant considerations.

CONTRACT- Contract of employment - Standard term contract of employment -mere there are several editions- how APPLICABLE one determined

CONTRACT-Privities of contract - Doctrine of- Purport of.

CONTRACT - Sanctity of contract - Need to observe.

DAMAGES - Dismissal - Where wrongful - Measure of damages therefor.

DAMAGES - Double compensation - Rules against - Rationale therefor.

DAMAGES - Special damages - Whether applicable in action for wrongful dismissal.

DOCUMENT — Interpretation of documents - Where there are several documents -

Incorporation of one document into another— Principles governing - "Incorporation by reference" - Meaning of.

EVIDENCE - Proof - Wrongful dismissal of employee - Action therefor - What employee must prove?

EVIDENCE - Proof- Wrongful dismissal - Onus of proof of- On whom lies - How discharged

LABOUR LAW - Collective agreement - Whether justifiable - Relevant considerations.

LABOUR LAW - Contract of employment - Standard term contract of employment - Where there are several editions - How applicable one determined.

LABOUR LAW - Dismissal - When wrongful - Action therefore- What plaintiff must prove - Measure of damages therefor.

LABOUR LAW- Termination of employment - Right of master to terminate servant's employment- Whether exercisable with or without reasons.

LABOUR LAW- Termination of employment - Where employment is terminated -Whether parties can still treat as subsisting.

LABOUR LAW - Termination of employment - Wrongful termination of employment - Remedies available to employee.

MASTER AND SERVANT - Special damages - Whether applicable in action for wrongful dismissal.

MASTER AND SERVANT- Collective agreement - When binding - Relevant considerations

MASTER AND SERVANT- Collective agreement – whether justifiable - Relevant considerations.

MASTER AND SERVANT— Contract of employment - Standard term contract of employment - Where there are several editions - How applicable one determined.

MASTER AND SERVANT - Dismissal - When wrongful - Action therefor - What plaintiff

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must prove - Measure of damages therefor.

MASTER AND SERVANT- Termination of employment - Right of master to terminate servant's employment - Whether exercisable with or without reasons.

MASTER AND SERVANT- Termination of employment - When wrongful.

MASTER AND SERVANT - Termination of employment - Where employment is terminated - Whether parties can still treat as subsisting.

PRACTICE AND PROCEDURE - Pleadings - Abidingness of.

PRINCIPLE Of INTERPRETATION-Interpretation of documents-Interpretation of documents - Where there are several documents - Incorporation of one document into another - Principles governing - "Incorporation by reference " - Meaning of.

WORDS AND PHRASES - "Incorporated by reference " - Meaning of.

Issues:

1. Whether the trial court was right to have held that the dismissal of the respondent was unlawful.
2. Whether the trial court was right to have awarded damages in favour of the respondent having regard to the refusal of the court to declare the employment as subsisting.
3. Whether the trial court was justified in its view that the collective agreement was inapplicable in determining the wrongfulness of the dismissal.

Facts:

In November, 1981, the respondent was employed by the appellant as a Sales Clerk. He served the appellant in that capacity at Akure in Ondo State till 1991 when he was promoted to the post of Depot Superintendent and posted to Ilorin depot of the Nigerian National Petroleum Corporation as the appellant's representative in April, 1991. He remained in that capacity until 13th May, 1994 when he was summarily dismissed.

The respondent was unhappy with the action of the appellant dismissing him. He therefore sued the appellant at the High Court praying the court for a declaration that the dismissal was unlawful: that the employment was still subsisting and that he was therefore entitled to the rights, benefits and privileges attached to his employment. The respondent also prayed the court for an order compelling the appellant to pay his salaries from June 1994 till the date of judgment or in the alternative the sum of N3,000,000.00 being special and general damages for wrongful dismissal. The respondent averred that his employment was governed by a collective agreement between the Workers' Union and the appellant. His complaint was based on an alleged breach of his conditions of employment contained in the collective agreement and breach of the rules of fair hearing in the process leading to his summary dismissal. The appellant who gave no reason for the dismissal denied the complaints.

At the conclusion of hearing, the trial court in its judgment found for the respondent. It however found that the collective agreement was ineffectual because it had lapsed by effluxion of time and that there was no breach of the fundamental rights of the respondent to fair hearing in the process leading to his summary dismissal.

Dissatisfied with the judgment, the appellant appealed to the Court of Appeal. The respondent was also dissatisfied with certain aspects of the judgment and he cross-appealed.

Held (Unanimously allowing the appeal and dismissing the cross-appeal):

1. On What plaintiff must prove in a case of wrongful dismissal-
In a case of wrongful dismissal where the complaint of the plaintiff is in effect that his dismissal by the defendant is not in accordance with the terms and conditions of the contract of service between the parties, it is for the plaintiff to plead and prove the conditions of service regulating the contract of service in issue. It can therefore be stated that the terms of the contract of service is the foundation of any case where the issue of wrongful termination or dismissal of employment falls to be determined. [*Amodu v. Amode* (1990) 5 NWLR (Pt. 150) 356; *Iwuchukwu v. Nwizu* (1994) 7 NWLR (Pt. 357) 379 at 412 referred to.] (P.236, paras. F-G)

2. On What plaintiff must prove in a case of wrongful termination or dismissal-
Where an employee complains that his employment has been wrongfully terminated or that he had been wrongly dismissed, he has the onus to produce before the court the terms and conditions of employment and follow same up by proving in what manner the said terms and conditions of service were breached by the employer. The success or otherwise of such a party depends solely on the terms and conditions of the employment since the court is not permitted to go outside the agreed terms and conditions of the employment. [Western Nig. Dev. Corp. v. Abimbola (1966) 4 NSCC 74 referred to.] (Pp. 236-237, paras. H-A)
3. On Onus of proof of wrongful dismissal-
It is not the primary duty of the defendant to prove that the dismissal of the plaintiff is in accordance with the terms of his contract of employment. To say so will amount to putting the cart before the horse. It is rather the primary duty of the plaintiff who asserts and who is seeking declaratory reliefs to prove his assertion before the onus of proof would shift to the defendant to justify the dismissal. In the instant case, the respondent did not make out a "prima facie " case of wrongful dismissal against the appellant. (P.239, paras. C-D)
4. On Whether employer bound to give reason for terminating employee's appointment-
An employer has the legal right to terminate or dismiss an employee without giving reasons for so doing. In the instant case, the appellant did not give any reason for summarily dismissing the respondent. The action of the appellant can be said to be wrongful only if the condition of service is produced and examined by the court, otherwise the court would be conjecturing if it says so.[N.N.B. v. Osunde(1998)9NWLR(Pt.566)511 referred to.] (P.239, paras. D-EJ)
5. On Entitlement of employee whose employment was wrongly determined-
A servant would only be paid for the period he served his master and, if he is dismissed, all he gets as damages is the amount he would have earned if his appointment had been properly determined. The servant is to be paid all his salaries and entitlements up to the date of his dismissal. Thereafter, he is to be paid a month's, two months, three months salary and other entitlements in lieu of notice depending on the terms and conditions of service between the parties. Where no period of notice is stipulated or agreed upon by the parties, the law stipulates that he be given reasonable notice. (P. 242, paras. D-E)
6. On Right of parties to terminate contract of employment-
The right to terminate a contract of employment can be exercised by both parties to the contract. When it is exercised, no reason need be given. It is not for a court to search for the reason for the termination of the contract. (P. 245, para. C)
7. On When termination of employment can be said to be wrongful-
In a purely master and servant relationship which is devoid of statutory flavour and which is purely contractual, termination or dismissal of an employee by the employer cannot be said to be wrongful unless it is proved to be in breach of the terms and conditions of the contract between the parties. In the instance case, the trial court rightly refused the respondent's prayer for reinstatement. It however proceeded to award salaries and other entitlements from the date of dismissal to the date of judgment thereby treating the contract between the parties as if it continued in existence during that period. That was an error. (P.242, paras. F-G)
8. On Whether parties can treat a wrongfully terminated appointment as subsisting-
Whether the dismissal of an employee is lawful or unlawful in a purely master and servant relationship, it has brought the relationship to an end. The parties cannot pretend that the relationship continued because it was wrongfully brought an end. The fact is that it had been brought to an end. The court cannot therefore force a willing servant on an unwilling master. (P.242, paras. G-H)
9. On Measure of damages in actions for wrongful dismissal-

The measure of damages in actions for wrongful dismissal is founded on the law of contract. It is aimed at putting the injured party at the position he would have been but for the breach. A termination of a contract of service, whether lawful or unlawful, brings to an end the relationship of master and servant. (P.242, paras. C-D)

10. On Applicability of special damages in a case of wrongful dismissal-
Special damages cannot be awarded for wrongful dismissal which is founded on the law of contract. Special damages relates to actions founded on torts. (P.242. para. C)
 11. On Attitude of court to double compensation -
The law frowns at double compensation in award of damages to a successful litigant. In the instant case, the respondent was awarded salaries and other entitlements twice. This should not be so. (P.242, paras. A-B)
 12. On When collective agreement is binding-
Where a collective agreement is incorporated or embodied into the conditions or contract of service, it will be binding on the parties. If it is not incorporated, it is not binding. In the instant case, the collective agreement which is not incorporated into the contract of employment suffers the fate of all such collective agreements, to wit: it cannot ground a cause of action being a gentleman's agreement. *A.C.B. Plc v. Nwoduka* (1996) 4 NWLR (Pt. 443) 470 at 484; *A. C.B.Plc v. Nhisike* (1995) 8 NWLR (Pt. 416) 725 at 741; *N.A.B. Ltd. v. Shuaibu* (1991 4 NWLR(Pt. 180) 450 at 459, *U.B.N. Ltd. v. Edet* (1993) 4 NWLR (Pt. 287) 288 referred to.) (Pp. 239-240. paras, G-H: F-G)
 - 13 On Whether collective agreements are justifiable-
Collective agreements are not intended or capable of giving individual employees a right to litigate over an alleged breach of their terms as may be conceived by them to have affected their interest nor are they meant to supplant or even supplement their contract of service. In other words, failure to act in strict compliance with a collective labour agreement is not justifiable. Its power of enforcement lies in some other measures. In the instant case, the finding of the trial court that the collective agreement is inapplicable in determining the wrongfulness of the dismissal of the respondent is unassailable. [*U.B.N. Ltd. v. Edet* (1993) 4 NWLR (Pt. 287) 288 at 298 - 299 referred to.] (P.244, paras. D-F)
 14. On Relevant standard term where there are several editions referred to in a contract of employment-
Where there are several editions of standard terms referred to in a contract of employment, the reference is taken to be the most recent edition existing at the time the contract was made. (P.24Q para. E)
 15. On Meaning of "incorporated by reference "-
The term "Incorporated by reference" is a method of making a secondary document part of a primary document by including in the primary document a statement that the secondary document should be treated as if it were contained within the primary one (P.240, paras. A-B)
 16. On Privity of contract-
Generally, a contract cannot be enforced by a person who is not a party to it, even if the contract is made for his benefit and purports to give him the right to sue upon it. In other words, only parties to a contract can take the benefits of that contract. In the instant case, the respondent was not a party to the collective agreements contained in the staff handbook and he cannot therefore sue on it. {*Ikpeazu v. A. C.B.Ltd.* (1965) NMLR 574 referred to.} (P.244, paras. C-D)
 17. On Sanctity of contract-
Nigerian laws recognise and respect the sanctity of contracts. Where parties have reduced the terms and conditions of service into an agreement, the conditions must be observed. (P.245 para B)
 18. On Bindingness of pleadings-
Parties are bound by their pleadings. Therefore, evidence led on facts not pleaded goes to no issue. (P.239, para. B)
- Nigerian Case Referred to in the Judgment:
ACB Plc v. Nbisike(1995) 8NWLR (Pt.416) 725 *A CB Pic v. Nwodika* (1996) 4 NWLR (Pt.443) 470

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Baba v. Nigerian Civil Aviation Training Centre Zaria (1991) 5 NWLR (PU92)388
British Airways v. Makanjuola (1 993) 8 NWLR (Pt.3 1 1) 276
Calabar Cement Co. v. Zanie/(1991)4NWLR(PL188)750
Egbunike v. ACS (1995) 2 NWLR (Pt.375) 34
F. C. S . C. v. Laoye (1 989) 2 NWLR (Pt. 1 06) 652
Habib Nigeria Bank Ltd. v. Koya (1 992) 7 NWLR (Pt.25 1)43
Honika Sawmill (Nig.) Ltd. v. Hoff (1 992) 4 NWLR (Pt.23 8) 673
Ihekwo v. Unijos (1 990) 4 NWLR (Pt. 146) 598
Ikpeazu v. ACB Ltd. (1965) NMLR 374
Imoloame v. WAEC(\ 992) 9 NWLR (Pt.265) 303
Iwuchukwu v. Nwizu(1994) 1 NWLR (Pt.357) 379
Layade v. Panalpina World Trans. Ltd. (1 996) 6 NWLR (Pt.456) 544
Morohunfola v. Kwara Tech. (1990) 4 NWLR (Pt. 145) 506
N.N.B Pic v. Osunde (1998) 9 NWLR (Pt.566) 551
Nigeria Arab Bank Ltd. v. Shuaibu (1991)4NWLR(Pt.186)450
Okunzia v. Amosu (1992) 6NWLR(Pt.248)416
Olaniyan v. University of Lagos (1985) 2 NWLR (Pt.9) 599
Ondo State University v. Folayan (1994) 7 NWLR(Pt.354) 1
Osazuwa v. Edo Civil Service Commission (1999) 4NWLR (Pt.597) 155
Trem v. Obura District Council (1960) SCNLR 70
U. B. N Ltd. v. Ogboh (1995) 2 NWLR (Pt.389) 647
U.B.N Ltd. v. Edet (1993) 4 NWLR(Pt.287) 288
Western Nig. Dev. Corp. v. Abimbola (1966) 4 NSCC 72

Foreign Cases Referred to in the Judgment:

Smith v. South Swutchgear Ltd. (1978) 1 All ER 18

Nigerian Statute Referred to in the Judgment:

Evidence Act, Cap. 112, Laws of the Federation of Nigeria, 1990, S. 149(d)

Book Referred to in the Judgment:

Black's Law Dictionary, 7th Edn, p. 770

Appeal and Cross-appeal:

These were an appeal and a cross-appeal against the decision of the High Court which granted in part the respondent's claim based on wrongful dismissal. The Court of Appeal, in a unanimous decision, allowed the appeal and dismissed the cross-appeal.

History of the Case:

Cowl of Appeal-Division of the Court of Appeal to which the appeal was brought:

Court of Appeal, Ilorin

Names of Justices that sat on the appeal. Muritala Aremu Okunola,

J.C.A.(presided);Patrick ibe Amaizu, J.C.A.

Walter Samuel Nkanu Onnoghen, J.C.A. (*Read the Leading Judgment*)

Appeal No.: CML/92/99

Date of Judgment: Tuesday, 12TM December, 2000 *Names of Counsel:* Yusuf O. Alli;

SAN (*with him*, Ahmeed Akanbi) *-for the Appellant/Cross-respondent* R.A.

Afolabi *-for the Respondent/Cross-appellant*

high Court:

Name of the High Court: High Court, Kwara State

Name of the Judge: J.A.Ibiwoye, J.

Suit No: KWS/283/94

Date of Judgment: Wednesday, 26th August, 1998

Counsel:

Yusuf O. Alli; SAN (*with him*, Ahmeed Akanbi) *-for the Appellant/Cross-respondent*

R.A. Afolabi *-for the Respondent/Cross-appellant*

ONNOGHEN, J.C.A. (Delivering the Leading Judgment): This is an appeal against the judgment of the Kwara State High Court in Suit No. KWS/283/94 presided over by the Hon. Justice J.A. IBIWOYE and delivered on 26th day of August, 1998. The facts of the case are that in November 1981 the respondent was employed by the appellant as a sales clerk vide a letter of appointment which was tendered in the proceedings as Exhibit 1. He served the appellant in that capacity at Akure, in Ondo State till 1991 when he was promoted to the post of Depot Superintendent and posted to Ilorin depot of the NNPC as the representative of the appellant in April 1991. He remained in that capacity until 13th May, 1994 when his employment was summarily brought to an end by summary dismissal vide Exhibit 10. The respondent pleaded and told the court that his employment with the appellant was governed by a collective agreement between the workers' Union and the appellant which agreement was tendered and admitted as Exhibit 5, in addition to Exhibit 1; his letter of appointment. In summarily dismissing

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the respondent vide Exhibit 10, the appellant assigned no reason.

The respondent was not happy with the action of the appellant in dismissing him so he instituted an action in the High Court claiming inter alia the following reliefs as can be seen in amended statement of claim at pages 13 to 17 of the record of proceedings to wit:

"WHEREOF the plaintiff claims as follows:

1. A DECLARATION that the purported dismissal of the plaintiff from the employment of the defendant by letter dated May, 13, 1994 is unlawful, wrongful, null and void.
2. A DECLARATION that the plaintiff is still in the employment of the defendant and therefore entitled to the rights, benefits and privileges (including salaries) attached to his post employment up to the date of judgment.
3. AN ORDER compelling the defendant to pay to the plaintiff all his salaries from June 1994 up to the date of judgment.
4. And/or in the ALTERNATIVE, the plaintiff claims the sum of three million Naira (N3m) being the special and general damages for the plaintiff's wrong dismissal from the defendant's employment as a Depot Superintendent on May, 13, 1994

The respondent's complaint is based on an alleged breach of his conditions of employment contained in Exhibit 5 and breach of the rules of fair hearing in the process leading to his summary dismissal. The appellant denied these complaints.

Parties called evidence and tendered certain documents at the trial at the end of which the learned trial Judge found for the respondent against the appellant. In finding for the respondent the learned trial Judge agreed that Exhibit 5 was ineffectual because it had lapsed by effluxion of time.

Secondly the trial Judge found as a fact that there was no breach of the fundamental rights of the respondent to fair hearing in the processes leading to his summary dismissal.

Dissatisfied with that judgment the appellant has appealed to this court on 10 grounds of appeal to be found at pages 83 to 97 of the record of appeal. Out of these grounds of appeal learned counsel for the appellant YUSUF O. ALLI, Esq., SAN, leading AHMEED AKANBI Esq. has formulated two issues for our determination. The issues are:

1. "Whether the learned trial Judge was right to have held that the dismissal of the respondent was unlawful, wrongful, null and void when:
 - (i) The respondent did not tender the valid condition of service, nor discharged the onus of proof;
 - (ii) The respondent failed to make out a case of lack of fair hearing;
 - (iii) The relationship between the appellant and respondent was a mere master/servant relationship;
 - (iv) The trial Judge wrongly invoked the provisions of section 149(d) of the Evidence Act, and,
 - (v) The learned trial Judge took a lot of irrelevant things into consideration in arriving at his conclusion.
2. Whether the learned trial Judge was right to have awarded damages in favour of the respondent having regard to the refusal of the trial court to grant relief No.2 on the amended statement of claim and the general circumstances of the case."

On the other hand the respondent is also dissatisfied with certain aspect of the judgment and has consequently and with the leave of this court, cross-appealed against the said judgment particularly the finding by that court that Exhibit 5 had lapsed before the respondent's cause of action arose. I will return to the cross-appeal later in this judgment.

The appellant's brief of argument was filed on 29th October 1998. On the 5th day of June 2000, the appellant filed a reply brief and cross-respondent's brief in this matter.

When the appeal came up for hearing on the 25th of October 2000, the learned counsel for the appellant, Yusuf O. Alii, Esq, SAN adopted the two briefs of argument and referred the court to page 86 of the record in relation to issue No. 1 and submitted that there is no appeal against the finding by the lower court that the case of fair hearing was not made out. That the lower court having so held ought to have dismissed the case. He then urged the court to invoke the provisions of section 16 of the Court of Appeal Act in making the correct order.

As regards issue No.2, learned counsel referred the court to the case of *Union Bank v. Ogbon* (1995) 2 NWLR (Pt.389) 647 at 664 on employment without statutory flavour. Finally learned counsel urged the court to allow the appeal and dismiss the cross-appeal.

The respondent's brief of argument in the main appeal and cross-appeal were deemed filed on 24th May 2000. During the hearing of the appeal, learned counsel for the respondent/cross-appellant R.A. AFOLABI Esq., relied on these briefs of argument and urged the court to dismiss the appeal and allow the cross-appeal.

On issue No.1, learned counsel for the appellant stated that the case of the respondent at

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the trial is that his dismissal was wrongful because it was not in accordance with the conditions of service binding the parties and that the dismissal breached his right to fair hearing in that he was not allowed to know and confront his accusers. That the respondent admitted that apart from Exhibits 1 and 5, his employment was governed by nothing else.

That the trial Judge held that Exhibit 5 was useless to the respondent's case but in a curious way went on to hold that he did not agree that the respondent had failed to lead evidence to show how Exhibit 19 (the letter of dismissal) was in breach or departure from Exhibit 5.

Learned counsel then submitted that he who asserts must prove unless the other party admits what had been asserted. That the respondent having asserted that his dismissal was wrongful having been done contrary to his condition of service, he has the duty to prove same since the appellant did not admit same, particularly as most of the reliefs sought are declaratory - for this learned counsel cited and relied on sections 135 and 136 of the Evidence Act. *Bella v. Eweka* (1981) 1 SC 101 at 103 and *Omitigbo v. Nwekeson* (1993) 3 NWLR (Pt.283) 533 at 544 - 545.

That for the respondent to succeed in this case, he has to plead and prove the following:

- (a) His employment by the appellant.
- (b) The terms and conditions of his employment.
- (c) Must tender all the documents that deal with his employment, such as letter of appointment, conditions of service and letter of dismissal and
- (d) The circumstances under which his employment would be dispensed with.

That the trial Judge having held that Exhibit 5 was inapplicable to the case, the respondent had thereby failed to plead and prove the terms of his employment - *Morohunfola. Kwara State College of Technology-* (1990)4 NWLR(Pt. 145) 506 at 527; *Homka Sawmill (Nig.) Ltd. v. Hoff* (1992) 4 NWLR (Pt.238) 673; *Ondo State University v. Folayan* (1994) 7NWLR(Pt.354) 1 at 25.

Learned counsel further submitted that where the relationship of master and servant has no statutory flavour, the rules guiding such employment is the normal rules of contract between parties or the principles of common law. For this counsel referred the court to the case of *Nitel v. Ikaro* (1994) 1 NWLR (Pt.320)350 at 361-362. That the employment of the respondent had no statutory flavour.

That there was no legal or factual basis for the learned trial Judge's invocation of the provisions of section 149(d) of Evidence Act against the appellant on account of the non-tendering in evidence of an alleged appropriate conditions of service. For this counsel relied on *Okunzua v. Amosu* (1992) 6 NWLR (Pt.248) 416 at 435; *Habib Nigeria Bank Ltd. v. Koya* (1992) 7 NWLR (Pt.251) 43 at 56-57.

That where an employer has the right to dispense with the services of an employee by termination and/or dismissal, it needs not give any reason and the court cannot go behind what is contained in the letter of dismissal to hold the dismissal wrongful. Learned counsel referred to the case of *NNB Plc v. Osunde* (1998)9NWLR(Pt,566)551 at 511.

That even if Exhibit 5 were to be applicable to this case it would still not have aided the case of the respondent because it is a collective agreement between the Union employees and the appellant - see *ACS Plc v. Nbisike* (1995) 8 NWLR (Pt416) 725 *all41;NigeriaArabBankLtd. v. J.E. Sfcuai'6u*(1991)4NWLR(Pt.186) 450 at 459.

That only the employment of a confirmed employee whose employment has statutory-flavour cannot be brought to an end by termination or summary dismissal except for misconduct or other reasons and in accordance with the steps set out in the statute. That in any other case the employment can be brought to an end without any reason stated. For this learned counsel cited and relied on *Union Bank v. Ogbob* (1995) 2 NWLR (Pt.380) 647 at 664; *Layade v. Panalpina World Trans. Ltd.* (1996) 6 NWLR (Pt.456) at 544.

However, that once the court had found that the dismissal was not in breach of the rules of fair hearing as it did at page 86 of the record, the court should have dismissed the claim. He then urged this court to dismiss the respondent's case.

In his reply learned counsel for the respondent referred to page 55 of the record where the respondent is recorded as saying: "There is nothing regulating my relationship with the defendant beside Exhibits 1 and 5. The defendant has no power to dismiss me as done in Exhibit 10", and submitted that evidence which is unchallenged and uncontradicted if credible ought to be accepted as there is nothing on the other side of the balance. For this learned counsel referred to the case of *Egbunike v. ACS* (1995) 2 NWLR (Pt.375) 34 at 55.

That in a contract of employment the power to dismiss can only be exercised by the employer and in the exercise of that power, the employer must state his reason/reasons and follow the procedure laid down in the conditions of service. Learned counsel then referred the court to *Calabar Cement Co. v. Daniel* (1991) 4 NWLR (Pt. 188) 750 at 758 - 759. *Trem v. Ohura District Council* (1960) SCNLR 70.

That the onus is on the appellant to justify the dismissal of the respondent from his services. That it is for the appellant to show that besides Exhibits 1 and 5 there are other

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documents regulating the relationship between the plaintiff and the defendant. For this learned counsel referred to the case of *Lavade v. Panalpina World Trans. Nig. Ltd.* (1996) 6 NWLR (Pt.456) 544 at 610.

On the issue of applicability of section 149(d) of the Evidence Act, learned counsel referred to page 86 of the record where the trial court found that though Exhibit 5 had lapsed the appellant had failed to produce the current conditions of service and thereby invoked the provisions of section 149(d) of the Evidence Act, and submitted that though the burden of proof in civil cases rests mainly with the plaintiff, the onus of proof is not static. That where a party refuses to produce evidence that is material and is required to prove certain facts which are within the knowledge of the witness, then it is presumed that such evidence if adduced will not favour the party, most especially if the absence of the evidence is not explained to the court.

He then referred the court to the case of *Habib Nig. Bank Ltd. V. Koya* (1992) 7 NWLR (Pt.251) 43 at 58. Learned counsel then concluded this aspect of his submission thus: "The learned trial Judge is right to have stated that the defendant has failed to produce the current handbook stating the conditions of service of its employees. Moreso, when the plaintiff has said "There is nothing regulating my relationship with the defendant besides Exhibits 1 and 5".

On the legal status of a collective agreement learned counsel conceded that such an agreement is devoid of sanctions but submitted that where such an agreement is incorporated or embodied into the conditions of service, it will be binding on the parties. For this learned counsel referred to the contents of Exhibit 1 - letter of appointment which according to him incorporated Exhibit 5 by reference and the case of *ACB Plc v. Nwodika* (1996) 4NWLR (Pt.443) 470 at 484 and 487.

Learned counsel then referred to paragraph 4 of Exhibit 5 dealing with DURATION OF AGREEMENT and submitted that it is the duty of the appellant to prove that another agreement had been concluded and tender same in the court otherwise it is to be presumed that the said agreement is unfavourable to the appellant. That the trial court is bound to accept and act on the agreement before him in the absence of any other agreement. That since there is no proof of any 'Offences' against the respondent as a condition precedent to the imposition of the sanction of summary dismissal, the summary dismissal of the respondent is null and void and of no effect as held by the trial court. He then urged us to affirm the decision of the trial court.

I agree with the submission of learned counsel for the appellant that in view of the state of the pleadings, the primary issue before the lower court was whether the dismissal of the respondent from the service of the appellant was in accordance with the condition of service between the parties. It is only when the issue is resolved against the appellant that the secondary issue of quantum of damages becomes relevant. Going through the briefs of the respondent it is very clear, that the learned counsel for the respondent also agrees with the above stated position.

The lower court did consider that issue and came to the conclusion that the dismissal of the respondent was wrongful, null and void. The issue now is whether the trial court is right in so finding and holding in view of the pleadings, facts of the case and law applicable thereto.

It is settled law that in a case of wrongful dismissal where the complaint of the plaintiff is in effect that his dismissal by the defendant is not in accordance with the terms and conditions of the contract of service between the parties it is for the plaintiff to plead and prove the conditions of service regulating the contract of service in issue - see *Amodu v. A/node* (1990) 5 NWLR (Pt. 150) 356; *Iwuchukwu v. Nwizu* (1994) 1 NWLR (Pt.357) 379 at 412 etc.

It can therefore be said that the terms of the contract of service is the foundation of any case where the issue of wrongful termination or dismissal of employment fails to be determined.

Therefore where an employee complains that his employment has been wrongfully terminated or dismissed he has the onus to produce before the court the terms and conditions of employment and follow same up by proving in what manner the said terms and conditions of service were breached by the employer. It follows therefore that the success or otherwise of such a party depends solely on the terms and conditions of that employment since the court is not permitted to go outside the agreed terms and conditions - see *Western Nig. Dev. Corp. v. Abimbola* (1966)4NSCC72at94.

In the present case the terms and conditions of the employment of the respondent is said to be contained in Exhibits 1 and 5.

Looking at the pleadings, the case of the respondent is stated in paragraphs 3, 13 and 16 of the amended statement of claim at pages 13 - 17 of the record. These are as follows:

- "3 The plaintiff was employed by the defendant on the 1st day of November, 1981 as clerk 4 (Group 5) by letter dated October 26, 1981 and started his career with the defendant at its Akure District Office as a sales clerk. The plaintiff hereby pleads letter dated October 26 1981.
13. The plaintiff avers that by his letter of appointment dated October 26,1981 and the terms of collective agreement between the defendant and the petroleum and Natural Gas Senior Staff Association of Nigeria, it is ultra vires the defendant to dismiss the plaintiff from its service in this manner stated in letter dated May 13, 1994.
16. The plaintiff pleads that he was never allowed to meet face-to-face with his accusers nor was he

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allowed to cross examine them before the defendant purported to dismiss him from its employment.

The appellant in paragraph 2 of their amended statement of defence at pages 18 - 20 of the record admitted paragraph 3 of the amended statement of claim i.e. the appointment of the respondent. However, in respect of paragraphs 13 and 16 of aforesaid amended statement of claim the appellant pleaded as follows:

- "5. The defendant denies paragraph 13 in its entirety and specifically deny that it acted ultra vires in dismissing the plaintiff as alleged.
14. The defendant shall in answer to paragraph 16 of the statement of claim aver that nobody made accusations against the plaintiff neither was oral evidence taken from anyone which would have necessitated the plaintiff cross examining such person.
15. If which is denied, accusations were made defendant shall contend that they were brought to the plaintiff's attention and knowledge and he was given fair opportunity to reply to every allegation made against him as correct or contradict whatever statement were made against him."

In his testimony before the trial court, the respondent tendered the following documents:

- (a) Exhibit 1 - letter of appointment.
- (b) Exhibit 5 - The collective agreement.
- (c) Exhibit 10 - letter of summary dismissal.

At page 85 of the record the respondent stated emphatically as follows:

"There is nothing regulating my relationship with the defendant besides Exhibits 1 and 5"

From the above, it is clear that the respondent, in attempt to discharge the burden of proof placed on him by both the pleadings and law tendered Exhibits 1 and 5 to show that Exhibit 10 was not in accordance with the terms and conditions of Exhibits 1 and 5 being the terms and conditions of his employment. It is therefore clear that in determining the right and obligation of the parties before it, the trial court cannot go outside the contents of Exhibits 1 and 5.

In deciding whether Exhibit 10 is in breach of exhibit 1 and 5, the learned trial Judge had these to say at page 85 of the record:

"I quite agree with George Nna Esq. learned counsel for the defend-ant that Exhibit 5 is incapable in determining the wrongfulness or otherwise of the plaintiff's dismissal because it has elapsed before the plaintiff's cause of action arose.

However I am unable to agree with the learned counsel for the defendant that the plaintiff has failed to lead evidence to show how Exhibit 10 was in breach or departure therefrom."

Learned SAN for the appellant is very unhappy with the second aspect of the finding by the learned trial Judge and has described same as curious.

I myself find that the holding or finding by the learned trial Judge curious. Having agreed with learned counsel for the appellant that Exhibit 5 had lapsed before the cause of action arose; it means that at the time the respondent instituted the action, the terms and conditions of his employment with the appellant are governed by Exhibit 1 minus Exhibit 5. It means in law that exhibit 5 no longer existed nor formed part of Exhibit 1. That being the case it is very obvious that you cannot therefore determine the wrongfulness or otherwise of Exhibit 10 by reference to what no longer existed - i.e. Exhibit 5. I therefore agree with learned SAN that with the finding or holding of the trial court in the early part of the passage quoted supra from page 85 of the record the bottom was completely knocked out of the case for the respondent. There was no way by which the respondent could have discharged the onus placed on him by the pleadings and law in this case. It is the respondent's case that his dismissal was wrongful because it is contrary to his conditions of service which assertion was denied by the appellant as earlier demonstrated from the pleadings.

I am however aware of the fact that the respondent has cross-appealed against the holding of the trial court on the issue of Exhibit 5 having lapsed at the time the respondent's cause of action arose. I will therefore revisit the issue later in this judgment.

On the sub-issue of the invocation of section 149(d) of the Evidence Act; by the lower court, learned counsel for the appellant has submitted that since the respondent did not tender the applicable conditions of service his case ought to have ended there but the trial Judge held that the appellant ought to have tendered the appropriate conditions of service and relied on the said section 149(d) of the Evidence Act.

On the other hand learned counsel for the respondent has argued that the onus is on the appellant to justify the dismissal of the respondent from his service. That it is for the appellant to show that besides Exhibits 1 and 5 there are other documents regulating the relationship between the parties.

I am of the considered opinion that the learned trial Judge erred in invoking section 149(d) of the Evidence Act against the appellant in view of the facts and circumstances of this case. To begin with the onus of adducing evidence in prove of the case lies on the respondent because he is the one to lose if no evidence is called. He asserted that Exhibit 10 is in breach of his conditions of service as contained in Exhibits 1 and 5. He had told the court that:

"There is nothing regulating my relationship with the defendant besides Exhibits 1 and 5. The defendant has no power to dismiss me as done (sic) Exhibit 10."

This piece of evidence clearly admits of the existence of no other document constituting the conditions of service of the respondent's employment. Infact, going through the pleadings it is no where suggested that any

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other document existed besides Exhibits 1 and 5. If any such document existed it was never I pleaded by either party. It is trite law that parties are bound by their pleadings and that evidence or facts not pleaded goes to no issue.

So granted that any other document existed which governs the terms of respondent's employment which document was not pleaded by either party, would it be admissible in evidence if produced? It is my firm view that it is not the primary duty of the appellant to prove that (the dismissal of the respondent is in accordance with the terms of his contract of employment.

To say so will amount to putting the cart before the horse. It is rather the primary duty of the respondent who asserts and who is seeking declaratory reliefs to prove his assertion before the onus of proof would shift to the appellant to justify the dismissal. In the present case on appeal the respondent has not made out a 'prima facie' case of wrongful dismissal against the appellant. I am using the term 'prima facie' advisedly in this context.

The duty on the respondent to make out a 'prima facie' case becomes obvious when one realises the fact that it is settled law that an employer has the legal right to terminate or dismiss an employee without giving reasons for so doing - see *NNB Plc v. Osunde* (1998) 9 NWLR (Pt.566) 511. In the present case, the appellant did not give any reason in Exhibit 10 for summarily dismissing the respondent. It is my view that you can only say that the action of the appellant in this regard is wrongful or contrary to the condition of service when such a document i.e. contract of service is produced and examined by the court, otherwise the court would be conjecturing if it says so.

The next sub-issue to be determined is the legal status of Exhibit 5 – a collective agreement. Both counsels agree that a collective agreement is at best a gentleman's agreement, an extra-legal document devoid of sanctions. However learned counsel for the respondent has submitted that where such a collective agreement is incorporated by reference to the contract of employment between the parties it becomes justifiable. I agree with the submission of learned counsel for the respondent in this respect.

In *ACB Plc v. Nwodika* (1996) 4 NWLR (Pt.443) 470 at 484 Tobi JCA stated the position of the law as follows:

"It is clear from the state of the case law that where a collective agreement is incorporated or embodied into the conditions or contract of service, it will be binding on the parties. Otherwise, No."

I agree completely with my learned brother on the above statement of the law.

In the present case on appeal, both counsels are agreed that Exhibit 5 is a collective agreement. From the contents of Exhibit 1 it is clear that the said Exhibit 5 was not incorporated into the contract of employment by reference so as to make Exhibits 1 and 5, the contract of employment binding on both parties. What is incorporated by reference to Exhibit 1 is the Employees Handbook. The question is; "what is incorporated" by reference? *BLACK'S LAW DICTIONARY*, 7th Edition page 770 defines the terms Incorporation by reference as follows:

"A method of making a secondary document part of a primary document by including in the primary document a statement that the secondary document should be treated as if it were contained within the primary one - often shortened to incorporation - Also termed adoption by reference.

"Now Exhibit 1 states inter alia as follows:

"We refer to your application for employment with this company and to recent interviews and are pleased to offer you a position as clerk 4 (Group 5) effective November 1, 1981 at a salary of N250.00 per month. All other conditions are as per the enclosed Employee's Handbook."

However, a close look at Exhibit 5 shows that it can not be the very Hand-book referred to in Exhibit 1 because ARTICLE 2 of the said Exhibit 5 headed DURATION OF AGREEMENT reads:

(a) The duration of this agreement shall be for a period of two (2) years commencing from the 1ST DAY OF JUNE, 1989 provided that if another Agreement is not concluded by MAY 31 1991 this agreement shall remain in force until such time as another Agreement may be concluded."

This shows that Exhibit 5 came into existence on 1ST JUNE, 1989 whereas Exhibit 1 took effect from November 1, 1981. It is my considered opinion that Exhibit 1 could not have incorporated by reference Exhibit 5 which was not in existence at the time Exhibit 1 was made.

It is the law that where there are several editions of standards terms referred to in the contract the reference is taken to be the most recent edition existing at the time the contract is made - see *Smith v. South Switchgear Ltd.* (1978) 1 All ER 18.

Therefore from the hard facts as contained in the exhibits in this case it is my considered opinion that exhibit 5 was not incorporated to the contract of employment between the party as evidenced in Exhibit 1 as the learned counsel for the respondent would want us believe. It follows therefore that Exhibit 5 being a collective agreement which is not incorporated into Exhibit 1 suffers the fate of all collective agreements to wit: It cannot ground a cause of action being a gentleman's agreement - see *A CB Plc v. Nbisike* (1995) 8 NWLR (Pt.416) 725 at 741; *Nigeria Arab Bank Ltd. v. Shuaibu* (1991) 4 NWLR (Pt. 186) 450 at 459. *Union Bank of Nigeria Ltd. v. Edet* (1993) 4 NWLR (Pt.287) 288.

On the sub-issue of fair hearing the learned trial judge found at page 86 of the record as follows:

"With the contents of Exhibits 3 and 8 there is no basis for the question of fair hearing pleaded by the plaintiff in paragraph 16 of the amended statement of claim. Consequently the case of *Adamo Gbolade Adeilo v. Ijebu Ode District Council* (1962) NSCC (Vol.2) 155 is not appropriate in view of Exhibits 3,

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8 and 9."

In other words the trial court found as a fact that the second ground on which the respondent contested the wrongfulness of his dismissal was found not to have been established. There is no cross appeal by the respondent on this very important finding of facts.

When one puts this holding by the court side by side with that Exhibit 5 which the court agreed had lapsed before the respondent's cause of action arose, it becomes very clear and I have no hesitation whatsoever in coming to the conclusion that the respondent failed to prove his case before the trial court and that that court ought to have- dismissed his case. Issue 1 is therefore resolved in favour of the appellant.

Turning now to the second issue to wit:

Whether the learned trial Judge was right to have awarded damages in favour of the respondent having regard to the refusal of the trial court to grant relief No.2 on the amended statement of claim and the general circumstances of the case:

Learned SAN for the appellant submitted that the learned trial judge by awarding u the respondent in-, salaries, and allowances etc from June 1994 when he was dismissed to August 1998 when judgment wafi given and the sum of N93.930 by way of salary and allowances etc for the period 1SI June 1994 to 31 December 1994 it means the court awarded salaries and allowances for June -December 1994 twice against the principle of double compensation.

That the respondent did not tender his last pay slip so m. to enable the trial Judge know the veracity of his claims.

That the trial court having at pages 90 and 91 of the record refused the relief of declaration that the respondent was still in the employment of the appellant and hereby entitled to rights, privileges, benefits and salaries attached to his post, there was no legal and factual basis to have awarded the damages in this case which were all arrears of salaries and other perquisites covering the period when the respondent did not work at all for the appellant.

That where an employment without statutory-flavour is held to have been wrongful v dispensed with byway of dismissal, the court will no; order reinstatement. That in term; of damages, the plaintiff will only be entitled to his last terminal pays as damage for wrongful dismissal.

For this learned counsel relied or. Ihekwo v Unijos (1990.14 NWLR (Pt. 146) 59S, at 610; Imoiocunev WAEC (1992)19 KWLR (Pt.265) 303 at 319 etc.

He then submitted that this is a proper case for this court to interfere with the damages awarded and urged the court to resolve the issue against the respondent.

In his reply learned counsel for the respondent submitted that the remedy of any employee wrongfully dismissed is to sue for damages. That the legal consequences of a declaration that a dismissal is invalid is that the legal position of the parties will be those existing as at the date of dismissal as a result of voiding the dismissal. For this counsel referred to and relied on the following cases: Olaniyan v. 'University of Lagos (19S5) 2 NWLR (Pt.9) 599; Fed. Civil Senice Commission v. Laoye ('1989') 2 NWLR (Pt.106) 652. Osazmva v. Edo Civil Service Commission (1999)4NWLR (Pt.597)155.

That the trial Judge was right in awarding salaries and other entitlements to the respondent from the date of dismissal to date of judgment.

That the evidence of the respondent on damages was not challenged and uncontradicted so the respondent discharged the burden of proof required of him.

He then argue the court to resolve the issue in favour of the respondent. The law on the issue of award of damages in cases of wrongful termination or dismissal have been settled for a long time no. To begin with, it is trite law that the law downs at double compensation in award of damages to a successful litigant. I have gone through the accord of proceeding and have come to the conclusion that the learned counsel the appellant is correct when he submitted that the respondent was awarded salaries and other entitlement from June 1994 to 31stDecember 1994 twice.

That apart, learned counsel for the respondent did not join issues with his learned friend for the appellant in the matter of award of double compensation. The respondent's brief is very silent on the matter. I therefore take it that he concedes the point.

It is trite law that you cannot talk of special damages in a case of wrongful dismissal which is founded on the law of contract. Special damage relates to action on torts.

It follows therefore that the measures of damages in action for wrongful dismissal is founded on the law of contract. It is aimed at putting the injured party at the position he would have been but for the breach. A termination of a contract of service, whether lawful or unlawful brings to an end the relationship of master and servant.

In the present case the trial Judge awarded to the respondent, his salaries and other entitlements from the time of termination to judgment. The law is very clear on the point that a servant would only be paid for the period he served his master and if he is dismissed, as in this case, all he gets as damages is the amount he would have earned if his appointment had been properly determined. That is the servant is to be paid his salaries and entitlement up to the elate of his dismissal.

Thereafter he is to be paid a month's, two months, three months salary and other entitlements in lieu of notice, depending on the term and conditions of service between the parties. Where no period of notice is stipulated or agreed upon by the panics then the law stipulates that he be given reasonable notice. It is very

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important to re-emphasise the point that in a purely master and servant relationship, as in this case, which is devoid of statutory-flavour and in which the said relationship is purely contractual, termination or dismissal of an employee by the employer cannot be said to be wrongful unless it is proved to be in breach of the terms and conditions of the contract between the parties.

In the present case, the learned trial Judge, rightly, in my opinion refused prayer No.2, which in effect prayed for reinstatement but went ahead to award salaries and other entitlements from the date of dismissal to the date of judgment thereby treating the contract between the parties as if it continued in existence during that period. This is obviously in error because it is trite law that whether the dismissal is lawful or unlawful in a purely master servant situation it has brought the relationship to an end. We cannot pretend that the relationship continued because it was wrongfully brought to an end.

The fact is that it was brought to an end. It is now trite law that you cannot force a willing servant on an unwilling master.

In short, it is my view that issue No.2 be and is hereby resolved in favour of the appellant.

Turning now to the cross-appeal, the respondent, had by leave of this court cross-appealed against the finding of the learned trial Judge at page 85 of the record in respect of Exhibit 5. He filed one ground of appeal out of which he has formulated the following issue for our determination to wit:

"Whether the learned trial Judge was justified in his view that Exhibit 5 was in-applicable in determining the wrongfulness or otherwise of the plaintiffs dismissal."

In his submission in the cross-appellant's briefs, learned counsel stated that Exhibit 5 was incorporated into exhibit 1 by reference. That Exhibit 5 was stated on its face to commence "on 1st March 1989 and to end on February 31 1991" with a proviso that where a new agreement is not concluded by "February 31, 1991 Exhibit 5 was to remain in force until a new agreement is concluded.

That the respondent/cross-appellant was employed with effect from 1st November 1981 and that there is no evidence that after receipt of Exhibit 5 he ever received any other handbook or condition of service. That in interpreting a contract document, one must not import into the document what is not contained therein.

Learned counsel then referred the court to the case of *British Airways v. Makanjuola* (1993) 8 NWLR (Pt.311) 276 at 289; *Baba v. Nigerian Civil Aviation Training Centre Zaria* (1991) 5 NWLR(Pt.192) 388 at 437.

That in view of the provisions as to the duration of Exhibit 5 therein stated, the learned trial Judge was not justified in saying that Exhibit 5 was inapplicable in determining the wrongfulness or otherwise of the plaintiff's dismissal. He then urged the court to allow the cross-appeal.

In his cross-respondent's brief learned SAN submitted that the trial Judge was right in holding that Exhibit 5 was irrelevant to the case in that:

- i. Exhibit 5 was not in existence in 1983 when Exhibit 1 came into existence therefore Exhibit 5 could not have been envisaged by Exhibit 1.
- ii. There is no evidence by the respondent to show that Exhibit 5 is the same document referred to as staff handbook in Exhibit 1. That this cannot be assumed.
- iii. Exhibit 5 is exactly what it is, a collective agreement not stated to be a staff handbook. That neither the parties nor the court can read into Exhibit 5 what is not contained therein.
- iv. That for the respondent/cross-appellant to take the benefit of Exhibit 5 he must first plead his membership of the Petroleum and Natural Gas Senior Staff Association of Nigeria and lead evidence of such membership. That having failed to plead or prove such membership the cross appellant is not entitled to take benefit of the collective agreement. That only a party to a contract is entitled to take the benefit of the contract. For this counsel referred to the case of *Ikpeazu v. ACB Ltd.* (1965) NMLR 374 at 379 etc.
- v. That Exhibit 5 cannot supplant nor supplement the contract of service between the parties,
- vi. That Exhibit 5 being a collective agreement it is not justiciable at the instance of the cross-appellant who is not a party thereto.

Learned counsel then urged the court to dismiss the cross-appeal. I have gone through the pleadings, proceedings and judgment in this matter including the exhibits relevant to the issue at hand. Exhibits 1 and 5 speak for themselves. Whereas Exhibit 1 made on 26/10/81 incorporated by reference a document referred to as Employees' Handbook Exhibit 5 that came into existence on 1st June 1989 is a collective agreement. There is no evidence on record to the effect that Exhibit 5 is the Handbook talked about in Exhibit 1. Even if such evidence exists it is not cogent nor credible in view of the fact that Exhibit 5 on the fact of it was never in existence at the time Exhibit 1 was made so it could never have been in the contemplation of the parties.

It is therefore my considered view that Exhibit 1 did not incorporate by-reference Exhibit 5. In otherwords, Exhibit 5 is independent of exhibit 1.

I therefore agree with both counsel that neither the panics nor the court can read into Exhibit 5 what is not contained therein. This equally applies to Exhibit 1. It is trite law that only parties to a contract can take the benefit of that contract. In *Ikpeazu v. ACB Ltd.* (1965) NMLR 574 at 379 the Supreme Court stated the position of the law as follows:

"Generally a contract cannot be enforced by a person who is not a party, even if the contract is made for his benefit and purports to give him the right to sue upon it."

It is clear from the face of Exhibit 5 that the cross-appellant is not a party thereto as such he cannot sue on it.

In *UBN Ltd. v Edet* (1993)4 NWLR (Pt.287) 288 a1298-299, UWAIFO JCA as then was stated the legal status of collective agreements inter alia as follows:

"..... Collective agreements are not intended or capable to give individual employees a right to litigate over an alleged breach of their terms as may be conceived by them to have affected their interest,

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nor are they meant to supplant or even supplement their contract of service. In other words, failure to act in strict compliance with collective labour agreement is not justiciable. Its power of enforcement lies in some other measures as I shall endeavour to show."

That being the cast, it is my considered view mat tilt holding be the learned trial judge to the effect that Exhibit 5 is inapplicable to determine the wrongful dismissal of the cross-appellant is unassailable and it is hereby affirmed. Consequently the sole issue raised in the cross-appeal is hereby resolved against the cross-appellant.

In conclusion it is my considered opinion that the main appeal is meritorious and is consequently allowed and the cross-appeal dismissed as lacking in merit. The judgment of Hon. Justice A.A. IBIWOYE delivered on 26th August 1998 in suit No.KWS/283/94 is hereby set aside. In its place it is hereby substituted an order of this court, dismissing the case of the plaintiff. I however make no order as to cost.

Appeal Allowed.

OKUNOLA, J.C.A.: I have had the advantage of reading before now the leading judgment of my learned brother Onnoghen, JCA. I agree with the facts of the case as narrated by my learned brother. I also agree with his reasoning and conclusion that the main appeal is meritorious and should be allowed. I hereby allow the appeal. The cross-appeal is also dismissed as lacking in merit. I make no order as to costs.

AMAIZU, J.C.A.: I have had the advantage of reading in draft, the judgment just delivered by my learned brother Onnoghen, JCA. I agree with his reasoning and conclusion.

Our law recognises and respects the sanctity of contracts. Where parties have reduced the terms and conditions of service into an agreement, the conditions must be observed.

It is however well established by our law that the right to terminate a contract of employment can be exercise by both parties to the contract. When it is exercised, no reason need be given. It is not for a court to search for the reason for the termination of the contract.

The appeal has merit and I also allow it. The cross- appeal is hereby dismissed. I abide by the consequential orders made in the lead judgment including the order as to costs.

Appeal allowed, Cross appeal dismissed.