



IN THE NATIONAL INDUSTRIAL COURT OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS
BEFORE HIS LORDSHIP HON. JUSTICE J. D. PETERS

DATE: 21ST MAY, 2025

SUIT NO: NICN/IB/47/2023

BETWEEN

1, Mr. Fagbemi Olakunke Olugbenga
2. Mr. Fagbemi Olutayo Olaseni - **Claimants**

AND

1. Iron Guard Integrated Services Limited
2. Mr. Olumide Ebenezer Osewa - **Defendants**

REPRESENTATION

Adedamola Okunade for the Claimants
Olubiyi Falemara-Williams for the Defendants

JUDGMENT

1. The abridged facts of this case from the side of the Claimants are that they were employed by the 1st Defendant; that they discharged their duties diligently and adhered to the 1st Defendant's workplace policies without any

complaint; that on or about 28/12/22, 1st Defendant purportedly terminated their employment via emails which were never served on them and were never issued any Query to enable them defend any allegations against them and that prior to the termination of their employment they were owed arrears of salaries and allowances by the Defendants. The Defendants alleged that the employment of the Claimants was terminated due to incompetence, lack of expertise and poor performance.

2. On the basis of the above abridged facts, the Claimants approached this Court via their *General Form of Complaint* on 19/7/23 together with the mandated frontloaded processes and sought the following reliefs –

1. Declaration that the termination of the employment of the Claimants by the 1st Defendant on the instruction of the 2nd Defendant vide the Letters of Termination dated 28th December, 2022 is unlawful, void and of no effect.
2. Declaration that the notice of termination of employment of the Claimants by the 1st Defendant on the instruction of the 2nd Defendant on the alleged grounds as contained in the Termination of Employment letter dated 28th December 2022 is against the principles of natural justice, equity and fair hearing.
3. An Order setting aside the termination of Employments of the Claimants vide the Letter of Termination dated the 28th day of

December 2022 by the 1st Defendant on the instruction of the 2nd Defendant.

4. An Order of this Honourable Court directing the Defendants jointly and severally to pay up the sum of Two Hundred and Forty Thousand Naira (=N=240,000.00) being three months arrears of the salary owed the 1st Claimant from the 1st November, 2022 till January 2023.
5. An Order of this Honourable Court directing the Defendants jointly and severally to pay up the sum of Two Hundred and Forty Thousand Naira (=N=240,000.00) being three months arrears of salary owed the 2nd Claimant from 1st November 2022 till 30th of April 2023.
6. An Order of this Honourable Court directing the Defendants jointly and severally to pay up the sum of Three Hundred Thousand Naira (=N=300,000.00) being Three months arrears of allowance for the month of November 2022, December 2022 and January, 2023 at One Hundred Thousand Naira per month (=N=100,000.00).
7. An Order of this Honourable Court directing the Defendants jointly and severally to pay up the sum of Eighty Thousand Naira only (=N=80,000.00) each to the Claimants being the monthly salary due to the Claimants from the months of February, 2023 till Judgment is given in this suit.

8. An Order of this Honourable Court directing the Defendants jointly and severally to pay up the sum of Hundred Thousand Naira only (=N=100,000.00) being the monthly allowance to the 2nd Claimant with effect from the months of February, 2023 till Judgment is given in this suit.
9. An Order of this Honourable Court for payment of Twenty Million Naira to the Claimants against the Defendants jointly and severally being general and exemplary damages for unlawful termination of the Claimants' employment.

3. On 15/9/23, the Defendants entered an appearance to this suit and filed a statement of defence along with all requisite frontloaded processes. The Claimants filed a reply to the statement of defence on 15/3/24 and the trial of this action commenced on 10/6/24.

2. Case of the Claimants

4. The Claimants opened their case on 10/6/24 when 1st Claimant testified as *CW1*, adopted his witness deposition of 19/7/23 as his evidence in chief and tendered 5 documents as exhibits. The documents were admitted in evidence and marked as *Exh. D1 – Exh. D5* respectively.

5. While under cross examination, *CW1* testified that he was not verbally warned before his appointment was terminated; that he was not given any

salary in lieu of notice of termination of employment; that the last salary he was paid was for October 2022; that he was not victimized by the 2nd Defendant; that there was no resolution that the 2nd Defendant be made Director of the 1st Defendant; that the wife of his late brother is not a Director of the 1st Defendant; that he was directed to the Pension Managers who informed him that remittance was made from August 2020 to March 2021 and that an employer cannot terminate an employment without stating the reason.

6. The Claimant testified as *CW2*. He adopted his witness statement on oath of 19/7/23 as his evidence in chief and tendered 5 documents as exhibits. The documents were admitted in evidence and marked as *Exh. D6 – Exh. D10* respectively. Witness also adopted his additional statement on oath of 15/3/24 as his additional evidence in chief.

7. In cross examination, *CW2* stated that he was not verbally warned before his employment was terminated; that he was not paid any salary in lieu of notice of termination; that he did not go back to the 1st Defendant after he received his letter of termination of employment; that he was not indicted in 2022 by the Police to post a Supervisor to a client; that he is not aware if the 1st Defendant passed a Resolution that he should be made a Director of 1st Defendant after the death of his late brother; that before the termination of his employment 1st Defendant was owing him 2 months' salary and that the wife of his late brother is not a Director of the 1st Defendant.

3. Case of the Defendants

8. The Defendants opened their defence on 6/11/24 when one Alhaji Sulaimon Solaju testified on their behalf as *DW1*. The witness tendered a Police Investigation Report dated 6/12/22 as exhibit. The document was admitted in evidence and marked as *Exh. DD1*.

9. While being cross examined, *DW1* testified that he is not responsible for the payment of staff salaries and pensions; that he participates regularly in employment decisions including termination of employment of employees; that he is not aware of how pensions contributions of the employees are paid; that he was told by the 2nd Defendant that Claimants were warned verbally; that he is aware that Claimants had not received their salaries two months before the termination of their employment; that 2nd Claimant embezzled the money given to him and that he does not know if the 2nd Claimant was reported to the Police on the allegation of embezzlement.

4. Final Written Addresses

10. At the close of hearing and pursuant to the direction of the Court, learned Counsel on either side filed their final written addresses in accordance with the Rules of this Court.

11. The final written address of the Defendants dated 4/12/24 was filed on 5/12/24. In it learned Counsel set down the following 2 issues for the determination of this case –

1. Whether by the state of Claimant's pleadings on record of the Court, the Claimants' Appointment with the 1st Defendant/Iron Guard Integrated Services were not terminated by letters terminating their appointments (respectively) dated 28/12/22.
2. And whether by the state of Claimants' pleadings on record of the Court, the Claimants entitled to the grant of their claims either jointly or severally in favor of either of them in this suit against the Defendants.

12. Learned Counsel in arguing the two issues together submitted that the law is settled that when an employee complains of wrongful termination of his employment he has the onus to place before the Court the terms of the contract of employment and also prove in what manner the terms of the contract were breached citing *Augustine F.I Ibama v. Shell Petroleum Development Company of Nigeria Limited (2005)10-11 SCM*; that in the instant case Claimants failed to place any contract of employment before the Court or any terms of such contract that were breached by the Defendants; that Claimant failed to place any *Information Hand Book* before the Court; that no statute stipulates any condition precedent which the Defendants must comply with before terminating the employment of the Claimant and that the

employments of the Claimant with the 1st Defendant did not have any statutory flavor. Counsel submitted further that the law is trite that a Master can terminate the contract of employment of his Servant at any time and for any reason or for no reason at all provided the terms of the contract of service is complied with citing *Garuba v. Kwara Investment Co. Ltd & Ors (2005)1 SCM & S.B. Olarewaju v. Africbank Plc (2001) FWLR (Pt. 72) 2008*. Learned Counsel urged the Court to dismiss the case of the Claimants in its entirety for lack of proof.

13. The final written address of the Claimants was dated and filed on 30/1/25. In it learned Counsel set down the following 7 issues down for determination –

1. Whether the Defendants' termination of the 1st Claimant employment with the 2nd Defendant vide *Exhibit D2* is valid and lawful in the light of the evidence before the Court.
2. Whether the Defendants' termination of the 2nd Claimant's employment with the 1st Defendant vide *Exhibit D8* is valid and lawful in the light of the evidence before the Court.
3. Whether from the totality of the evidence before this Court the Claimants are entitled to the reliefs set out in paragraphs i, ii, iii and iv of the Claimants statement of complaint
4. Whether from the totality of the evidence before this Court the Claimants are entitled to the reliefs as contained in paragraphs v and vi of the Statement of Complaint.

5. Whether from the totality of the evidence before this Court the 2nd Claimant is entitled to reliefs as contained in paragraphs vii and ix of the Statement of Complaint.
6. Whether from the totality of the evidence before this Court the Claimants are entitled to the reliefs as contained in paragraphs vii and x of the Statement of Complaint.
7. Whether the failure of the Defendants to remit the Claimants' pension contributions since March, 2021 constitutes a breach of a statutory duty and a violation of the rights of the Claimants as employees of the 1st Defendants.

14. In arguing the first issue, learned Counsel submitted respecting issue number 1 that the Defendants failed to prove that *Exh. D2 & Exh. D8* were issued and validly served on the Claimants on 28/12/22 and that failure to do so is fatal citing *Sokefun v. Akinyemi & Ors (1980) 5-7 SC & Onwusukwu v. Civil Service Commission (2020)10 NWLR (Pt. 1731) 179 at 200*; that the law is trite that where no express terms of termination are provided in the employment contract, the common law requirement of reasonable notice or payment in lieu thereof applies citing *Chukwuma v. Shell Petroleum Development Co. Ltd (1993)4 NWLR (Pt. 289) 512*; that in the instant case no notice was given and payment in lieu not made. Counsel prayed the Court to resolve this issue in favor of the 1st Claimant.

15. On issues 2 & 3, learned Counsel repeated and reproduced the argument made in relation to issue 1 and prayed the Court to resolve these issues in favour of the Claimants.

16. On issues 4 & 5, learned Counsel submitted that the Claimants led credible evidence in support of their claims; that the evidence were not challenged nor controverted by the Defendants; that the law is trite that facts not denied are deemed admitted citing *Lonestar Drilling Nig. Ltd v. New Genesis Exec. Security Ltd (2011) LPELR-4437 (CA)*; that the Defendants have not disputed the fact of non-payment of salaries to the Claimants by producing any receipts of payments, Bank statement or pay roll records and that the Court is at liberty pursuant to Section 167(d), Evidence Act, 2011. Learned Counsel thus urged the Court to hold that the Defendants arrears of salaries and allowances for the months of November, December 2022 and January 2023.

17. With respect to issue 6, learned Counsel repeated the submissions in respect of issues 1 to 4 and prayed the Court to grant the reliefs contained in paragraph viii of the reliefs in the statement of complaint. Counsel submitted further that this Court is clothed with jurisdiction to award damages jointly and severally in the sum of Twenty Million Naira (=N=20,000,000.00) being damages for the wrongful and unlawful termination of their employment.

18. On issue 7, learned Counsel referred to the evidence led by the Claimants on same and submitted that an employer is mandated to remit the employee's pension account in line with the provisions of the Pension Reform Act; that pension contributions are not mere privileges but entitlements that ensure the financial security of employees after retirement; that the non-remittance of these contributions is not only a breach of the Claimants

contractual and statutory rights but also a disregard for their right to future economic stability. Counsel urged the Court to resolve issue 7 in favor of the Claimants.

19. The Defendants filed a 4-page reply to Claimants' final written address. It was dated and filed on 17/2/25. In it learned Counsel merely repeated his earlier submissions that the Claimants failed to exhibit any terms and conditions of employment breached by the Defendants and that the Defendant served both the soft and the hard copies of the letters of termination of employment on the Claimants. Learned Counsel prayed the court to dismiss the case of the Claimants in its entirety.

6. Decision

20. I have read and have a clear understanding of all the processes filed and issues canvassed by the parties on either side. I patiently heard the oral testimonies of all the witnesses called at trial, watched their demeanor and carefully evaluated all the exhibits tendered and admitted. I, in addition heard the submissions of the learned counsel on either side at the point of adopting their final written addresses. Having done all this, I set down a lone issue for the just determination of this case thus –

Whether considering the pleadings filed and evidence led the Claimants have proved their entitlement to all or some of the reliefs sought against the Defendants either jointly or severally.

21. The state of the law remains trite and beyond peradventure that he who asserts must prove the assertion in order to be entitled to positive disposition

of the Court. This position of the law finds support in both the statute law as well as judicial authorities from appellate Courts. Section 131, 132 & 132 of Evidence Act, 2011 aptly support the position as put forward. In *Mr. Saturday Dibia & Anor v. Maxwell O. Tubonimia & Ors. (2024) LPELR-61798(SC)* Muhammed Lawal Garba, JSC reiterated this age-long principle (citing earlier decisions such as *Adighije v. Nwaogu (2010) 12 NWLR (Pt. 1209) 419*, *Ayorinde v. Sogunro (2012) 11 NWLR (Pt. 1312) 460 (SC)*, *Nigerian Army v. Yakubu (supra)*, *Nagogo v. C.P.C (2013) ALL FWLR (pt. 685) 272 (SC)*, *Awodi v. Ajagbe (2015) 3 NWLR (Pt. 1447) 578 (SC)*) when his lordship said -

"As a foundation, I would like to state that by the provisions of Sections 131, 132 and 133 (1) of the Evidence Act, 2011 (Sections 135, 136 and 137(1) of the 2004 Evidence Act which was in operation at the time of the trial before the High Court) the initial duty and burden of introducing and adducing evidence in support and proof of the existence of any fact asserted by a person in civil claims made before a Court of law, is placed on him because it is he who wants judgment to be entered in his favour by the Court on the basis of the assertion and would therefore be the one to lose if no evidence at all was produced in the case".

22. The only exception to this long established rule is in respect of admission. For, it is also trite in the words of the late jurist Iguh, JSC in *Oseni & Ors v. Dawodu & Ors (1994) LPELR-2795(SC)* (citing *Chief Okparaeke v. Obidike Egbuonu (1941) 7 W.A.C.A. 53 at 55*)-

"A fact which is admitted by the defendant in his pleadings needs not be proved any more by the plaintiff but should in law be regarded as established at the trial".

23. Thus the Claimants who approached the Court are under an obligation to adduce cogent and credible evidence in support of their claims. It is also the Claimants who have a lot to lose if no evidence is adduce on either side of this case. The evidence expected from them may be oral or documentary or both. The fact however remains that documentary evidence is often preferred over and above oral evidence in proof of a fact in issue.

24. Claimants sought 9 reliefs in this Court in this case. Each of them must be proved. The first relief sought is a Declaration that the termination of the employment of the Claimants by the 1st Defendant on the instruction of the 2nd Defendant vide the Letters of Termination dated 28th December, 2022 is unlawful, void and of no effect. Claimants were employed by *Exh. D1 & Exh. D7* respectively. Claimants' appointments were terminated by *Exh. D2 & Exh. D8*. The employment relationship between the parties was one of Master/Servant. It is not one regulated by a statute. The purport of this finding is that the relationship between the parties is one regulated by the terms and conditions as contained in the letters of appointment and any other documents as may be agreed by the parties. The law is trite that parties are bound by the terms and conditions of their agreed contract. The termination of such contract is also to be regulated by the contents of the contract. Where a party fails or neglects to comply with the agreed contract available remedy is one of damages rather than declaration that the contract is a nullity. I have

perused the contents of *Exh. D1 & Exh. D7*. I found no basis within the context of *Exh. D1 & Ex. D7* to void *Exh. D2 & Exh. D8* and declare them of no effect whatsoever as sought. Wrongful as the act of disengagement might be it is certainly not void and of no effect. Accordingly I refuse and dismiss this relief as sought. In much the same vein, I refuse and dismiss the third relief sought for an Order setting aside the termination of employments of the Claimants vide the Letter of Termination dated the 28th day of December 2022 by the 1st Defendant on the instruction of the 2nd Defendant.

25. The second relief sought is for a declaration that the notice of termination of employment of the Claimants by the 1st Defendant on the instruction of the 2nd Defendant on the alleged grounds as contained in the Termination of Employment letter dated 28th December 2022 is against the principles of natural justice, equity and fair hearing. *Exh. D2 & Exh. D8* are the letters of termination of employment issued to the Claimants. I carefully perused these exhibits. I found that the Claimants were accused of gross misconduct. There were accused of causing the 1st Defendant a loss to the tune of =N=2,000,000.00 due to their negligence. In addition I found series of allegations leveled against the Claimants by the Defendants in their 32-paragraph statement of defence dated 13/9/23 but filed on 15/9/23 and adopted as evidence in chief on 6/11/25. It is my finding that the Defendants did not lead any evidence in support of any of the assertions which formed the basis for the termination of the appointment of the Claimants. Indeed there is no record of any Query formally issued to the Claimants. The nearest to any evidence along this line was the testimony of *DW1* under cross examination when in response to a question stated that he was told by the 2nd Defendant

that Claimants were warned verbally. I accordingly hold that there is merit in second prayer sought by the Claimants. I grant same. I declare that the notice of termination of employment of the Claimants by the 1st Defendant on the instruction of the 2nd Defendant on the alleged grounds as contained in the Termination of Employment letter dated 28th December 2022 is against the principles of natural justice, equity and fair hearing.

26. The fourth relief is for an Order of this Honourable Court directing the Defendants jointly and severally to pay up the sum of Two Hundred and Forty Thousand Naira (=N=240,000.00) being three months arrears of the salary owed the 1st Claimant from the 1st November, 2022 till January 2023. The Defendants did not deny the entitlement of the 1st Claimant to this relief. In fact *DW1* affirmed and admitted under cross examination on 6/1/25 that the Claimants were not paid 2 months' salaries before their employment was terminated. It a trite law that facts admitted need no further proof. Accordingly I grant this relief. The Defendants are here ordered jointly and severally to pay up the sum of Two Hundred and Forty Thousand Naira (=N=240,000.00) being three months' arrears of the salary owed the 1st Claimant from the 1st November, 2022 till January 2023. In much the same vein, I grant the fifth prayer. I here order and direct the Defendants jointly and severally to pay up the sum of Two Hundred and Forty Thousand Naira (=N=240,000.00) being three months arrears of salary owed the 2nd Claimant from 1st November 2022 till 30th of April 2023.

27. As sixth relief, Claimants sought an Order of this Honourable Court directing the Defendants jointly and severally to pay up the sum of Three

Hundred Thousand Naira (=N=300,000.00) being Three months arrears of allowance for the month of November 2022, December 2022 and January, 2023 at One Hundred Thousand Naira per month (=N=100,000.00). The Claimants pleaded this fact in paragraph 12 of their statement of facts and repeated same in paragraph 15 of the statement on oath of *CW1* adopted as evidence in chief. this fact was admitted by the Defendants in paragraph 2 of their statement of defence and paragraph 4 of the witness statement on oath of *DW1*. Facts admitted need no further proof remains trite. Accordingly I grant this head of claim. The Defendants are ordered and directed jointly and severally to pay up the sum of Three Hundred Thousand Naira (=N=300,000.00) being Three months arrears of allowance for the month of November 2022, December 2022 and January, 2023 at One Hundred Thousand Naira per month (=N=100,000.00).

28. The seventh relief is for an Order of this Honourable Court directing the Defendants jointly and severally to pay up the sum of Eighty Thousand Naira only (=N=80,000.00) each to the Claimants being the monthly salary due to the Claimants from the months of February, 2023 till Judgment is given in this suit. This Court has refused to make the declaration sought on the nullity of the letters terminating the appointment of the Claimants. By that it simply meant that while the termination might be wrongful, it is not null and remains effective. It further portends that from the date of termination of their appointments, the Claimants ceased to be members of staff of the 1st Defendant. There is thus no basis for any claim for either salaries or allowances from the cessation of the employment relationship between the

parties. Accordingly, I refuse and dismiss this relief as sought. For the same reason as relates to the refusal of the seventh relief, I also refuse and dismiss the 8th which is for payment of the sum of Hundred Thousand Naira only (=N=100,000.00) to the 2nd Claimant being the monthly allowance to the 2nd Claimant with effect from the months of February, 2023 till Judgment is given in this suit.

29. Finally, Claimants sought an Order of this Honourable Court for payment of Twenty Million Naira to them against the Defendants jointly and severally being general and exemplary damages for unlawful termination of the Claimants' employment. In the case of *Rockonoh Property Co. Ltd v. Nigerian Telecommunications Plc* (2001) 14 NWLR (Pt. 733) 468 at 493 Supreme Court per Uwaifor, JSC (now of blessed memory) held:

"General damages are always made as a claim at large. The quantum need not be pleaded and proved. The award is quantified by what, in the opinion of a reasonable person, is considered adequate loss or inconvenience which flows naturally, as generally presumed by law, from the act of the defendant. It does not depend upon calculation made and figure arrived at from specific items."

30. A similar position was expressed by Idris, JCA in *Royork (Nig) Ltd v. A.G and Commissioner for Justice, Sokoto & Anor* (2021) LPELR-55023(CA) when his lordship said -

"The grant of general damages is purely discretionary. It is purely within the prerogative of the trial Judge who after considering the entire facts of the case and evidence tendered in proof of same, can decide the sum of money that will be awarded as general damages. However, we all know that the exercise of discretion by every Judge must be done judicially and judiciously. Once a plaintiff has proved his case with solid and credible evidence, the trial Judge must ensure that his discretion is properly exercised".

31. General damages is often presumed and awarded by the Court. However, a plaintiff can only be obliged with the discretionary powers of the Court if from the evidence adduced by him, the relief is actually proved. In other words, without the proof of the relief, the Court is beset of the discretionary power to presume that general damages accrued and award same. I have considered the whole gamut of this case and the circumstances of the Claimants. I find that the circumstances warrant this Court to exercise its discretion in the award of general damages in favor of the Claimants. Accordingly the Defendants are ordered to pay to the Claimants the sum of Five Hundred Thousand Naira (=N=500,000.00) as general damages. The facts as revealed do not support the award of any exemplary damages as sought by the Claimant.

32. The Defendants are further ordered to pay to the Claimants the cost of this proceedings assessed at =N=200,000.00.

5. Conclusion

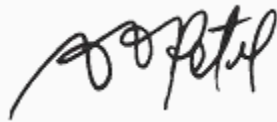
33. Finally, for the avoidance of doubt and for all the reasons as contained in this Judgment,

1. I declare that the notice of termination of employment of the Claimants by the 1st Defendant on the instruction of the 2nd Defendant on the alleged grounds as contained in the Termination of Employment letter dated 28th December 2022 is against the principles of natural justice, equity and fair hearing.
2. I order and direct the Defendants jointly and severally to pay up the sum of Two Hundred and Forty Thousand Naira (=N=240,000.00) being three months arrears of the salary owed the 1st Claimant from the 1st November, 2022 till January 2023.
3. I order and direct the Defendants jointly and severally to pay up the sum of Two Hundred and Forty Thousand Naira (=N=240,000.00) being three months arrears of salary owed the 2nd Claimant.
4. I order and direct the Defendants jointly and severally to pay up the sum of Three Hundred Thousand Naira (=N=300,000.00) being Three months arrears of allowance for the month of November 2022, December 2022 and January, 2023 at One Hundred Thousand Naira per month (=N=100,000.00).
5. Defendants are ordered to pay to the Claimants the sum of Five Hundred Thousand Naira (=N=500,000.00) as general damages.

6. The Defendants are further ordered to pay to the Claimants the cost of this proceedings assessed at =N=200,000.00.

34. All the terms of this Judgment shall be complied with within 30 days from today after which the Judgment sums shall attract a 20% interest per annum.

35. Judgment is entered accordingly.



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Hon. Justice J. D. Peters
Presiding Judge

