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EXAMINATION OF WRONGFUL TERMINATION OF CONTRACT OF EMPLOYMENT WITH STATUTORY FLAVOUR IN NIGERIAN PUBLIC UNIVERSITIES

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ABSTRACT

The powers to employ and discipline an employee of Nigerian Public Universities are made pursuant to the statute establishing the universities. The provisions for discipline and termination of Contract of employment in public universities in Nigerian Public Universities employment contract sui generis i.e., they are distinct from ordinary master-servant relationship and the termination is handled differently. An employment is said to have statutory flavour where the procedure for employment and discipline, among others, are regulated by statute established the institution. Therefore, employment with statutory backing must be terminated in the way and manner prescribed by the statute and any other manner of termination in consistent with the relevant statute is null and void, and of no effect. This means that in employment with statutory backing regarding discipline and termination of employment contract, the law looks of the legality rather than the motive of termination. Accordingly, failure to comply with the procedures renders any disciplinary action or termination a nullity. These procedures have been observed more in breach, this provokes the writing of this paper; critical appraise of wrongful termination of public sector contract of Employment: A study of Nigerian public universities. This is with a view to determine whether or not the public universities comply with the provisions of the statutes. To determine the proper university organs that are involved in the process of termination of employment and which one is responsible for eventual wrongful termination. The methodology adopted in this research is doctrinal method. The research found among others that Nigerian public universities do not adhere to the provisions of the statute in the determination of employment contract. Accordingly, it is recommended among other things that public universities should adhere strictly with the provisions of the statute in the determination of employment contract as its employment contract is a special one with statutory flavour, therefore stand on a different footing with ordinary contract of employment.

Keywords: Employment, Statutory flavour, Suspension, Termination, Dismissal.

1. INTRODUCTION

Termination of employment contract is defined as involving the acts or circumstances that bring to an end the contract of employment. In other words, extinguishing the rights and obligations created by the employment contract[1]. The Nigerian Public universities are

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[1] Sam, E. (2019) Introduction to Nigeria Labour Law, Princeton & Associate Publishing Co. Ltd, Lagos, p.172

established by the various statutes of the universities which spell out or stipulate the procedure to be followed before the termination of employment, thereby making universities employment contract an employment with statutory flavour. An employment is said to have a statutory flavour when the appointment and termination is protected by statute or laid down regulations made to govern the procedure for employment and discipline of an employee.

The Supreme Court in *PHCN v Offoelo*[2] held that there are two vital elements that must coexist before a contract of employment can be said to have statutory flavour, and these are:

1. That the one Statutory bodies or statutory authorities set up by law (statute) are authorised to implement certain legislation on behalf of the relevant country or state, sometimes by being empowered or delegated to set rules in the field.
2. That principal statute or regulations made provisions for discipline and termination of the staff of the institution for instance.

In the above ruling, the courts held that for a contract of employment to amount to employment contract with statutory flavour the two elements are not only vital but must be present and coexist. It is also to be noted that the act of termination must be done in strict compliance with the provision of the statute. Therefore, any contrary procedure for termination will be declared null and void without effect, amounting to wrongful termination of the employment contract.

The appointment and discipline of staff of public universities have laid down procedures enshrined in the statutes creating the universities, thereby making it a sacred nature of statutory employments in which places same on a high unique status above other contracts of employment, in the sense that its conditions of service are protected by statute or regulations there under. In *Olaniyan v University of Lagos,*[3] the Supreme Court held that "employment with statutory backing must be terminated in the way and manner prescribed by the statute and any other manner of termination in consistent with the relevant statute is null and void, and of no effect". The study views the ruling as appropriate that the only recognized method of termination and employment contract with statutory flavour is by compliance with the procedure laid down in the constitutive Act of the institutions in question. Also, in *Fakuade v OAUTH,*[4] the court held that in employment with statutory backing regarding discipline and termination of employment contract, the law looks at the legality rather than the motive of termination. It is opined that the concern of the Law is the attachment of legality or the sacrifice of motive on the altar of legality with regards to discipline and termination of contract with a statutory flavour.

Arising from wrongful termination of public universities' employment contract and the effect, the Nigerian Public Universities are compelled to reinstate the employee, pay huge sums of money as salaries and other allowances due to the employee during the unlawful termination and be given proper promotion which the employee would have earned during the termination. Such huge damages are for work not done, which the universities end up paying and thus lose revenue. These sums would have been channelled into the running and management of the institutions; this problem is worrisome which needs to be addressed.

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2 (2012) LPELR – 1917 (SC)
3 {1985} 4 NWLR {PT.34} p.559
4 *(1993) 4 HWLR (Pt. 29p) 47 at 58.*

The study is aimed at examining wrongful termination of employment contract in Nigerian public universities with a view to determining whether or not the public universities comply with the provisions of the statutes.

2. LEGAL FRAMEWORK FOR TERMINATION OF EMPLOYMENT CONTRACT IN NIGERIAN PUBLIC UNIVERSITIES

In Nigeria, public universities' employment contract is a broader concept which includes various universities. The provisions of the Acts[5] establishing some various Nigerian public universities are almost identical and similar. The provisions are as follows:

> **(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 the notice, make 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, 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 directions of the Council.
> **(2)** The Vice-Chancellor may, in a case of misconduct by a member of the staff which in the opinion of the Vice-Chancellor is prejudicial to the interests of the University, suspend such member and any such suspension shall forthwith be reported to the Council.
> **(3)** For good cause, any member of staff may be suspended from his duties or his appointment may be terminated by Council; and for the purposes of this subsection, good cause means –

[5] *Section 16 University of Jos Act Cap. U8 LFN 2004. See also Section 16 University of Bayero Act, Section 16 University of Maiduguri Act Section 16 University of Ilorin Act, Section 16 Federal University of Lafia etc all contain similar provisions*

a) conviction for any offence which the Council considers to be such as to render the person concerned unfit for the discharge of the functions of his office; or
b) any physical or mental incapacity which the Council, after obtaining medical advice, considers to be such as to render the person concerned unfit to continue to hold his office; or
c) conduct of a scandalous or other disgraceful nature which the Council considers to be such as to render the person concerned unfit to continue to hold his office; or
d) Conduct which the Council considers to be such as to constitute failure or inability of the person concerned to discharge the functions of his office or to comply with the terms and conditions of his service.

(4) Any person suspended pursuant to subsection (2) or (3) of this section shall be on half pay and the Council shall, before the expiration of a period of three months after the date of such suspension, consider the case against that person and come to a decision as to –
(a) Whether to continue such person's suspension and if so, on what terms (including the proportion of his emoluments to be paid to him);
(b) Whether to reinstate such person, in which case the Council shall restore his full emoluments to him with effect from the date of suspension; or
(c) whether to terminate the appointment of the person concerned, in which case such a person will be entitled to the proportion of his emoluments withheld during the period of suspension; or
(d) whether to take such lesser disciplinary action against such person (including the restoration of such proportion of his emoluments that might have been withheld) as the Council may determine, and in any case where the Council, pursuant to this section, decides to continue a person's suspension or decides to take further disciplinary action against a person, the Council shall before the expiration of a period of three months from such decision come to a final determination in respect of the case concerning any such person.

(5) It shall be the duty of the person by whom an instrument of removal is signed in pursuance of subsection (1) of this section to use his best endeavours to cause a copy of the instrument to be served as soon as reasonably practicable on the person to whom it relates.
(6) Nothing in the foregoing provisions of this section shall prevent the Council from making regulations for the discipline

of other categories of staff and workers of the University as may be prescribed.

It is submitted that these are statutory provisions meant to be strictly complied with.

Accordingly, failure to comply with the procedures above renders any disciplinary action or termination a nullity. This is well in accordance with the age long position of the law that when an act provides for a way of doing a thing that procedure must be followed.

The Vice Chancellor does not have power to terminate any Staff's employment; He can only suspend a Staff and forward report to council as provided by section 16(2). Any termination letter written on the instruction of the Vice Chancellor can be effectively challenged. The appropriate authority to terminate employment of a staff is the University Council or upon its directive.

The misconduct upon which the Vice Chancellor may suspend a staff in section 16(2) has not been defined. This leaves the Vice Chancellor with absolute discretion to determine what amounts to misconduct that is prejudicial to the interest of the university. The lack of clear definition of misconduct is subject to abuse by a Vice Chancellor in favour or against the staff.

The 'good cause' upon which a staff can be suspended or have his appointment terminated in section 16 (3) is the prerogative of only the Council and not any other authority like the Vice Chancellor. This, therefore, means that 'good cause' is not and cannot be tantamount to 'misconduct' mentioned in section 16(2) because they concern two different authorities, which are the Vice Chancellor and the Council.

Section 16 (5) imposes a duty on the person who signs a letter of termination of employment to ensure that the letter is served on the staff. If the staff is not served with the letter, he is not aware of his termination of employment and might continue to perform his normal duties. The implication is that termination of employment takes effect from the time the staff was served with the letter of termination. That is the time that cause of action, if any, commences and begins to run or is calculated and not the time that the letter was dated. Also, the above provisions require that a complaint must be made to the University Council and the Council must send a letter or query to the erring staff by section 16(1). Also, the provision is to the effect that it is either the Vice Chancellor or the Registrar who communicates the termination. The provisions of section 16 are statutory intendment which must be observed without which the termination might be successfully challenged.

> Arising from wrongful termination of contract of employment in public universities, the Nigerian Public Universities are often compelled to reinstate the employee, pay huge sums of money as salaries and other allowances due to the employee during the unlawful termination and be given proper promotion which the employee would have earned during the termination. All this for work not done which universities end up losing revenue. These sums would have been channelled into the running and management of the institutions.

3. CASES OF WRONGFUL TERMINATION IN NIGERIAN PUBLIC UNIVERSITIES

There are cases of termination of employment contract which the courts have declared as wrongful in Nigerian Public Universities. Staff of public universities whose contract of employment with statutory flavour is wrongfully terminated can, in addition to damages as a remedy, also claim specific performance or reinstatement or both damages and reinstatement. The general principle is that specific performance will not be ordered in respect of an obligation to perform personal services except a contract with a statutory flavour. Specific performance in this context means restoration or reinstatement of an employee to his former job where the court is persuaded that an employer has wrongly determined the contract of employment

In *Oloruntoba-Oju–Oju v Abdul-Raheed* [6], an appeal emanating from the majority judgment of the Court of Appeal Ilorin, delivered on the 12th of July 2006. The 1st – 5th appellants, Dr. Taiwo Oloruntoba-Oju, Dr. A.S. Ajayi, Dr. Adeyinka Banwo, Dr. Sola Ademiluka and Mr. O.O. Olugbora were employed by the 3rd Respondent, the University of Ilorin, as members of the academic staff in various departments of the University. While the 1st – 4th appellants were Assistant Lecturers, the 5th appellant was a Junior Research Fellow.

The appellants were employed on terms and conditions stated in their letters of appointment and memorandum of appointment. All the foregoing 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 II before the court, and the University of Ilorin Act – Cap 455 Laws of the Federation 1990. All the foregoing documents also make provisions for the termination of appointments of the appellants. The appellants executed the memorandum of appointment at the inception of their appointments.

On the 15th of May 2001, the university wrote to all the appellants letters of cessation of their appointments. 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 claimed declaratory and mandatory reliefs against the Respondents – Professor Shuaib Oba Abdulraheem (VC University of Ilorin), the University of Ilorin and the Governing Council (Unilorin).

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[6] (2009) 13 NWLR Pt. 1157/87

The case 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 their appointments to an end without adhering to laid down procedures. 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. Finally, they asserted categorically that the 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 whole, the appellants saw the termination of their appointments as wrongful and illegal and that they were therefore entitled to reinstatement and the payment of their 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 of appointment signed by them, and that the termination had nothing to do with the strike action by ASUU in April 2001. They maintained that since the termination was not illegal or not 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, they contended 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 26th of 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) of the University of Ilorin Act. The case of the appellants and Respondents are different from that between ASUU and the Minister of 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 12th of July 2006, the majority decision reversed the judgment of 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 which 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 judgment, the appellants appealed to Supreme Court. In considering the appeal the Supreme Court observed that section 15(1) of the University Act outlines the procedures to be followed for valid termination which was not followed. The court also observed that the University of Ilorin Act makes provision for fair hearing in the process of removing a member of the academic or administrative or professional staff of the University and that there was no evidence to substantiate that this process was adopted in relieving the appellants of their appointments. The court further observed that 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 flavour in the sense that its conditions of service are provided for by the statute or regulations made thereunder, 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.

The court held that when a statute has conferred on anybody the power to make decisions affecting any 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. The contract cannot be discharged on the agreement of the parties without compliance with the enabling statutory provision and that 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 rules of natural justice

The court further held that the nature of fair hearing to be observed in this case 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), and (b) *Nemo judex in causa sua* (no one should be a judge in his own cause), and that section 15(1) of the University of Ilorin Act guarantees to administrative, academic and professional staff fair hearing before their appointment is terminated thus giving the exercise of such disciplinary powers a statutory flavour.

The court therefore concluded that there was no iota of evidence that the procedure for termination of employment of the appellants as to fair hearing was observed in this case. It further held that the learned majority justices of the Court of Appeal made a gross mistake in their conclusion that appellants were afforded the opportunity to defend themselves and that the learned justices failed to distinguish between the report or recommendation of a panel and the decision of the Council on such recommendation. The act of the University of Ilorin is performed through its Council. 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. 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.

The Supreme Court finally allowed the Appeal and the majority judgment of the lower court including the order for costs was set aside; the judgment of the trial court affirmed. We submit that the holding of the Supreme Court is appropriate because, while the recommendation of the investigating committee will not violate the rule of fair hearing,

acting on such recommendation by the Council without affording the affected employee an opportunity of fair hearing before his removal certainly does.

Also, in *Sylvanus Eze v University of Jos*[7], it was an appeal against the judgment of the Court of Appeal, Jos Division, delivered on the 17th December 2012 affirming the decision of the Federal High Court sitting in Jos, which on the 31st May 2007 dismissed the case commenced by the appellant against the respondent. The appeal was predicated on the appellant's notice filed on 13th March 2013 containing two grounds.

The brief facts of the case that brought about the appeal are that the appellant was a senior staff of the respondent working at the institution's Continuing Education Centre. Further to the allegation levied against him of receiving money from newly admitted students of the university without authority, the appellant was queried and subsequently suspended by the Vice Chancellor vide a letter dated 21st July 2006. He appeared before the Council Senate Disciplinary Committee at the latter's meeting held between the 8th and 11th August 2006 and defended himself against the allegation. At its 5th regular meeting held between the 2nd and 4th November 2006, the University's Council, having considered its Disciplinary Committee's report, decided to dismiss the appellant. He did not appear in person before the Council. The appellant the instant suit by an originating summons challenging his dismissal at the trial Court.

Appellant's case is that since his dismissal by the University's Council is outside the three months of his suspension envisaged by Section 15(2) and (4) of the University of Jos Act, the appellant lacks the power of disciplining him talk less of his dismissal conveyed by the Council's letter of 3rd November, 2006.

The trial Court, concluded its determination of the issue the appellant raised by his originating summons thus:

> "I would tend to view that the stipulation of time in this instance as merely directory and not obligatory or absolute. Where it is evident that there was no unnecessary slippage of time where a time limit is breached, such as where there is a university council meeting intervening after a suspension of a staff, with no decision to extend such a suspension taken no decision on further disciplinary action taken, and a final determination of the staff's fate is left to several council meetings down the line thereafter. That would indeed offer (sic) the intendment of the legislature and constitute an unacceptable delay in the exercise of the council's powers of final solution. Nothing here however would abridge the council's right of action…….
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> In the instant case the University Council did not act out of time. The plaintiff is not entitled to any reliefs and his suit is dismissed"

The court of appeal went further to hold as follows:

> "Arguments have been canvassed on behalf of the appellant that because his suspension lasted beyond 3 months it was in

[7] (2020) SC (unreported decision of the Supreme Court delivered on the 15th May, 2020)

> contravention of Section 15(4) of the Act and therefore it rendered the disciplinary proceedings a nullity. I think this a complete misconception of that provision of the Act. I believe one can say that the purpose of giving a time limit in that provision is to ensure that a person on suspension during a disciplinary proceeding is not made to suffer undue hardship by an excessive length of suspension when he is placed only on half pay. I do not see how by exceeding 3 months the disciplinary proceeding is rendered a nullity. In fact, the Council is empowered to exceed the initial 3-month period by not more than a further 3 months. From what happened in the present case, the suspension lasted some 5 months. Unless there is clear evidence to the contrary, I must assume that the Council took liberty under Section 15(4) read as a whole to exceed the initial 3 months. In any event, I am of the view that if the period allowed, whether the initial 3 months or the further 3 months, is exceeded, that will not render the disciplinary proceedings a nullity. I have nothing further to add. In the instant case the Respondent came to a decision within 4 months of the Appellant's suspension. The Appellant's issues are hereby resolved against him. The appeal must fail and it is hereby dismissed. N30, 000.00 costs to the Respondent"

The Appeal to the Supreme Court was predicated on a notice of appeal filed on the 13th March, 2013. He raised his first issue for the determination relying on the leave granted him by the Court to raise same as a fresh point of law. The two issues distilled in the appellant's brief on which basis he seeks the appeal to be determine, on paragraph 3 of the appellant's brief, read:

1. Whether the Council of the University of Jos can dismiss the Appellant based on the report of the Council/Senate Committee without affording the Appellant opportunity of making representations in person to the Council pursuant to Section 15(1) (a) (b) and (c) of the University of Jos Act. (Ground one).
2. Whether the University Council having not taken any decision against the Appellant within three months had extant power to dismiss him pursuant to Section 15(2) and (4) of the University of Jos Act and if my Lords answer this in the negative, whether it was not wrong for the Court of Appeal to have relied on the dictum of Uwaifo JSC in the case *Bamgboye v University of Ilorin*[8] to dismiss appellant's appeal. (Grounds Two)."

The respondent appeared have adopted the appellant's foregoing two issues as having arisen for the determination of the appeal. learned appellant's Counsel, contends that the facts on which this Court will resolve the issue are not in dispute.

Exhibit 3, the Vice Chancellor's letter for the suspension of the appellant is dated 21st July 2006. The letter, it is submitted, indicates that appellant's case was thereafter referred to

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[8] (1999) 10 NWLR (Pt. 622) at 290

the Council/Senate Disciplinary Committee by the vice chancellor in clear breach of what Section 15(1) (c) of the University of Jos Act provides. Though the appellant appeared before the joint committee at its meeting held between 8th -11th 2006, to defend himself, the appellant, it is argued, never made any representation to the University Council. The council, without the benefit of appellant's appearance before it, it is further submitted, at its 5th regular meeting between the 2nd and 4th November 2006, considered its committee's report and dismissed the appellant. The procedure adopted in the dismissal of the appellant, it is argued, not only constitutes non-compliance with Section 15(1) of the University of Jos Act under which it was purportedly done but manifest breach of the appellant's right to fair hearing as well. Once the decision of a tribunal or a court stands in breach of a party's right to fair hearing, learned counsel concludes, it negates the entire proceedings from which the decision arises.

On the issue, D. D. Rimdan, learned counsel for the respondent contends that the appearance or non-appearance of the appellant before the Governing Council of the respondent is an issue of fact to be raised in the pleadings of parties at the trial court rather than at this late stage. Since the pleadings of pleadings of parties at the trial court have not raised the issue, sneaking same by learned appellant's counsel, it is contended, does not avail the appellant.

Counsel's address, no matter how brilliant, does not make up a party's case in the absence of pleadings and evidence adduced in sustaining the party's case. Having disregarded the averments in paragraph 3h and k of the respondent's counter-affidavit to the effect that the respondent had afforded the appellant fair hearing before his dismissal and complied with Section 15 of the University of Jos Act, it is argued, the appellant cannot be allowed to make by his counsel's address a case he never made at trial. Learned respondent's counsel prays that the appellant's desire to make a case different from the one he made at the trial court be refused. After all, he argues, an appeal is but a continuation of the case raised at trial. The issue it is submitted be resolved in respondent's favour and the unmeritorious appeal dismissed.

The Supreme Court held that an allegation that a party was denied fear hearing can be raised at any stage of proceedings even at Supreme Court for the first time. The court further held that it was evident that the governing council neither brought the appellant on which bases it terminated the appellant's appointment nor gave the appellant the opportunity of making a representation in person to it on the matter which is a breach of section 16(1)(b) of the University of Jos Act. In the instant case he never appears before the entire council but only appeared before the Council Committee. It therefore amounts to lack of fair hearing; The Supreme Court declared the termination null and void and of no effect. It therefore ordered the reinstatement of the appellant. The court held in its ruling that where the employment of employee is protected by statute, the employee who is unlawfully terminated may be reinstated.

We opined that the holding of the court is appropriate because the employee appearing before an investigating committee is not the same as appearing before the council by virtue of section 16(1)(c). Therefore, the council cannot just terminate the appointment of the employee based on the recommendation of the report of an investigating committee without affording the employee appearing before it. The principles of natural justice which stipulates that once an allegation of misconduct is made against an employee, the employer's

right to terminate becomes lost and unavailable then the employee becomes entitled to fair hearing. The position follows from a general rule that when a statute directs that a certain procedure be followed before a person can be deprived of a right, such a procedure must be strictly followed otherwise the court will declare void any act done not in accordance with the prescribed procedure.

In *Dr. Inih A. Ebong v. University of Uyo & 2 Ors*[9], the case of the Claimant was that he was appointed as a Senior Lecturer by the 1st Defendant by a letter No. UU/REG/DPA/SE/8/VOL.6/280 dated 8/3/1995 under the terms and conditions applicable in Federal Universities in Nigeria. The Claimant accepted the appointment by a letter dated 30/3/1995 and reported on 2/5/1995. The Claimant worked assiduously for the 1st Defendant and rose to the position of the Head of Department of Theatre Arts, from April 23, 1997 to October 11, 2000 when he voluntarily resigned. However, problems began to set in between the Defendants and the Claimant for his refusal to belong to a group of colleagues who bitterly wanted to oust the Vice Chancellor of the 1st Defendant, Prof. Fola Lasisi from office and to compromise academic standards.

The Claimant who had never gone on annual leave since employment on 3rd September, 1999, applied for deferment of his leave pursuant to the 1st Defendant's policy directive but the request was refused for being against the policy of the 1st Defendant with an advice that leave should be taken as and when due and when the academic session will be in progress. Based on the above, the Claimant timeously applied for his annual leave on 11th June, 2001, through the Head of Department of Theatre Arts, who recommended on 12th June, 2001 and it was approved by the 2nd Defendant on June 22, 2001. The leave was to run from 1st August, 2001 to 12th September, 2001 and was issued with a Leave Certificate endorsed by the Head of Department and the Registrar thereon. No sooner had the Claimant embarked on leave than the Defendants began to stop the Claimant's salary on 31st August, 2001 with retrospective effect from 1st August, 2001, the day the leave commenced. On 12th September, 2001, the Claimant resumed for work and notified the Defendants accordingly. The Claimant had, prior to resumption for duties, written to the Defendants on 7th September, 2001 to protest the stoppage of his salary. On receipt of this letter, the Defendants wrote to the Claimant accusing him of abandonment of duty and threatening to take severe disciplinary action against him to which the Claimant promptly responded by explaining the circumstances that led to his going on the annual leave for 2001.

Thereafter, the Defendants, in a manner suggestive of a premeditated act, belatedly constituted a panel to investigate the allegation of abandonment of duty by the Claimant on 15th October, 2001. The Panel absolved the Claimant of wrongdoing on the issue and recommended the reversal of the directive stopping his salary. But the Defendants not only refused to implement the recommendation of their own panel but suspended the Claimant indefinitely for instituting the said suit against them without their consent or resigning. This was in flagrant breach of the Claimant's fundamental right of access to court and without affording the Claimant an opportunity to defend himself or be heard.

The Claimant was, thereupon, invited to appear before the Senior Staff Disciplinary Committee over an allegation of "Walking out on a Panel of Investigation". Even though the letter of invitation was dated 25th January, 2002, it was served on the Claimant at 8.20a.m for

[9] (2023) NICN (unreported decision of the NICN delivered on the 1st March, 2023)

him to appear by 10:00a. m the same day. The Claimant promptly reacted to this late invitation by writing Exhibit DW2 and also appearing in person to raise objections on the composition of the panel and was never invited to the Panel again. The Claimant pointed out the double standard for suspending him and placing him on half salary for challenging the action in court while nothing was done to the 2nd Defendant (also member of the panel) and other staff who instituted a case (Suit No. HC/438/1999) against the 1st Defendant.

It was the case of the Claimant that even though the Senior Staff Disciplinary Committee was not properly constituted as mandatorily required by law, it produced, a report of sort, which recommended that "Panel of Prof. E. D. Okon should be reconstituted" on the basis that, "it could not give fair hearing to the appellants."

It is against this background that the Defendants without any notice, proceeded to terminate the appointment of the Claimant for "serious misconduct", even when he was allegedly investigated for "gross misconduct". To the Claimant, the stoppage of salary, suspension and eventual termination of appointment, did not comply strictly with the terms and conditions of services of employment as provided in Exhibit CW4.The Claimant has suffered hugely by the acts of the Defendants in material, financial and emotional terms hence this action with all the attendant reliefs.

The case of the Defendant raises his allegation on the basis of the listed below and two investigative panels were set up at various times to investigate the conduct of the Claimant regarding:

a. Allegations of abandonment of duty from 1st August 2001 to September 12, 2001.
b. Allegation of sexual harassment of a female student.

The 1st panel absolved the Claimant on the ground that though, it was wrong by virtue of the Conditions of Service of the 1st Defendant for the Claimant, a Senior Academic Staff to proceed on leave while School was in session without any arrangement as to his students' academic activities; the Claimant couldn't be totally condemned since he had not gone for long vacation for some times. On the date of sitting of the 2nd panel to investigate alleged sexual harassment of a female student, the Claimant appeared before the panel and walked out on the panel.

It is the case of the Defendants that in accordance with the Regulations Governing the Senior Staff Conditions of Service of the 1st Defendant particularly Chapter 2.22, Defendants duly constituted a Senior Staff Disciplinary Committee to review the Reports of the two panels. The Claimant was duly invited to appear before the Senior Staff Disciplinary Committee by a letter dated 25th January, 2002 which the Claimant received and replied by a letter dated 28th January, 2002. It is the further case of the Defendants that the Claimant appeared before this Committee only at its first meeting and abandoned the proceedings. The Senior Staff Disciplinary Committee stayed action on the allegation of abandonment of duty as a result of the action instituted by the Claimant challenging stoppage of his salary. As for the allegation of sexual harassment in which the Claimant walked out on the panel, the Senior Staff Disciplinary Committee of the 1st Defendant stated in its report that was admitted in evidence as follows:

> "A panel of investigation headed by Prof E. D. Okon had been directed by the Vice-Chancellor to look into a report of sexual harassment against Dr. Inih Ebong. Dr. Inih Ebong walked out

> on the panel. He was earlier condoned for a similar act. This action constituted gross misconduct."

It was on the basis of the Report of all the panels set up to investigate the Claimant's acts of misconduct particularly the one he walked out on and subsequently the Senior Staff Disciplinary Committee which he shunned their subsequent meetings, that the 3rd Defendant in its 32nd meeting held on 27th March, 2002 decided that the Services of the Claimant was no longer required by the Defendants, hence, the termination of the Claimant's appointment on 28th March, 2002.

The Court digested the facts of this case as given in the various processes and heard the witnesses and evaluated all the evidence particularly the copious documentary evidence as it were

Whether the Claimant has proved his case to be entitled to any or all of the reliefs sought.

The court observed that the case of the Claimant is that the stoppage of his salary, the indefinite suspension and termination of appointment by the Defendants without following due process were malicious, unlawful and therefore null and void. Generally, the law is that he who asserts must prove and since this is the assertion of Claimant, the burden is on him to so prove. The Court identified three (3) actions of the Defendants that the Claimant wish to declare null and void and wish to consider them in turns.

The Court first port of call is the stoppage of Claimant's Salary. The court observed that a recap of the facts here will do no harm. On 3rd September, 1999, the Claimant who had never gone on annual leave, applied for deferment of his leave, pursuant to the 1st Defendant's policy directive vide Exhibit CW7. The application was refused for being against the policy of the 1st Defendant with a proviso that the leave should be taken as and when due and that the Registrar and the Dean should be informed "when you are ready to proceed on the leave". These are Exhibits CW8 and CW9 dated on the same day i.e., 2nd November, 1999. On the strength of Exhibit CW10, the Claimant rescheduled his leave" from June, 2001, when the academic session will be in progress." The Claimant then applied for annual leave on 11th June, 2001, through the Head of Department of Theatre Arts, who recommended on 12thJune, 2001 and was approved by the 2nd Defendant on 22nd June, 2001.This is the Leave Certificate, Exhibit CW11. The leave was to run from 1st August, 2001 to 12th September, 2001. The Claimant resumed duty from Annual Leave on 12th September, 2001 as evidenced in Exhibit CW12. While on leave, the Defendants stopped the salary of the Claimant on 31st August, 2001 with retrospective effect from 1st August, 2001. This is Exhibit CW13. By Exhibit CW15, the Defendants wrote to the Claimant accusing him of abandonment of duty and threatening to take severe disciplinary action against him. In reply, the Claimant wrote Exhibit CW 16, explaining the circumstances that led to his going on the annual leave for 2001. Thereafter and on 15th October, 2001, the Defendants constituted a panel to investigate the allegation of abandonment of duty by the Claimant. The Claimant appeared before the panel to deny the allegation and to posit that the Leave Certificate speaks for itself and declined any further comment because the matter is in court. At the end of its deliberations, the panel found that the Claimant never went on leave for the past five (5) and was authorized to proceed on leave by the Registry upon the recommendation of his Head of Department and recommended that "The University should reverse the punishment if any already meted on Dr. Ibong." This is found in Exhibit CW17.

This is the evidence of the Claimant on the events leading to the stoppage of his salary which is clearly punctuated by documentary evidence.

For the Defendants, the justification for stopping the salary of the Claimant can only be found in paragraphs 10 and 11 of the Statement of Defence. Paragraph 10 is to the effect that the Claimant went on leave during school session against the directive of 1st Defendant. Paragraph 11 only asserted the Defendants power to stop the Claimant's salary and suspend him to enforce discipline in the university.

On the nature of employment, the consensus is that the relationship between the parties in this case is one clothed with statutory flavour enjoying special legal status over and above the ordinary master and servant relationship. The foundation of the Claimant's case is the Offer of Appointment as Senior Lecturer (Exhibit CW1), the Termination of Appointment (Exhibit CW5) and the Regulations Governing the Conditions of Service, 1998 (Exhibit CW4). So, the basic principles governing the contract of employment with statutory flavour will hold sway here. In this sort of relationship, employment must be terminated in the way and manner prescribed by the relevant statute or regulations and any other manner of termination inconsistent thereof is null and void and of no effect.

The court therefore held that the stoppage of the Claimant's salary, the indefinite suspension of him from duties, and the purported termination of his appointment, by the Defendants without due process were malicious, ultra vires; and unlawful, and therefore null, void and of no effect whatsoever.

4. FINDINGS

In the course of this research, the following findings were made:

a. That Nigerian public universities do not differentiate between contract with statutory flavour and ordinary contract of servant and master. This is why they do not adhere to the strict procedure for termination of employment contract with statutory flavour in the public universities thereby resulting in wrongful termination of employment contract.
b. That Nigerian public universities exercise their disciplinary powers arbitrarily without recourse to essential principles of natural justice particularly the issue of fair hearing which is fundamental in the cause of justice or administration of justice. Some interpret 'fair hearing' very restrictive which makes fair hearing scuttle away within the administration of justice.
c. That most terminations of employment contracts in the University are not upon grounds of valid termination or just cause therefore making it wrongful termination.
d. That in some cases, the Vice Chancellors usurp the powers of the Council to discipline erring staff, which is against the various university statutes in Nigeria. The powers of the Vice Chancellor do not extend to that of dismissal of staff. Rather, he may suspend such erring staff.

5. RECOMMENDATIONS

Accordingly, it is recommended that:

1. Public university's contract of employment is an employment contract with statutory flavour; therefore, the determination must be strictly according to the

provisions spelt out in the statute establishing the university. The strict adherence with the provisions will reduce rampant cases of wrongful termination in the public universities.

2. Nigerian public universities discipline and termination must adhere to the principle of natural justice which encompasses fair hearing. It is trite that the importance of fair hearing cannot be over-emphasized and cannot be scuttled away within the administration of justice.
3. for termination of employment contract to be valid, it must be upon a valid ground or just cause. Therefore, every termination of employment in the University must be upon valid grounds or just causes.
4. The powers of the Vice-Chancellors should be clearly delineated to avoid arbitrary use of powers or usurpation of the powers of the Council in disciplining erring staff.

In the process of termination of employment contract with a statutory flavour in the Nigerian public service the rule of natural justice, which includes fair hearing, must be strictly complied with. The whole rationale is to make termination of public service employment follow due process and where it is not done according to the law, then the claimant is to recover damages and reinstatement if his employment is still subsisting. The end is to prevent recklessness, impunity and injustice from those in power.