**ARCHBISHOP OLUBUNMI OKOGIE & ORS.**

**v.**

**MRS MARGARET EPOYUN**

IN THE COURT OF APPEAL OF NIGERIA

ON TUESDAY, THE 23RD DAY OF FEBRUARY, 2010

CA/I/100/2004

**LEX (2010) - CA/I/100/2004**

OTHER CITATIONS

2PLR/2010/6 (CA)

**BEFORE THEIR LORDSHIPS:**

STANLEY SHENKO ALAGOA, JCA

KUDIRAT M. O. KEKERE – EKUN, JCA

SIDI DAUDA BAGE, JCA

**BETWEEN:**

1. ARCHBISHOP OLUBUNMI OKOGIE

2. CHIEF (DR) GERTRUDE BIASACK

3. MR. AKINNIYI

(For themselves and on behalf of the Board of Management of Sacred Heart Hospital) - Appellant(s)

AND

MRS MARGARET EPOYUN - Respondent(s)

**ORIGINATING COURT(S)**

HIGH COURT OF OGUN STATE, ABEOKUTA JUDICIAL DIVISION

**REPRESENTATION:**

PRINCE P. A. ADESEMOWO - For Appellant

AND

Respondent's Counsel absent. - For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

EMPLOYMENT AND ABOUR LAW: Contract of employment - Retiree and calculation of retirement benefits – gratuities and pension – applicable scale – how determined

CHILDREN AND WOMEN LAW: Women in employment – retirement and determination of retirement benefits – pensions and gratuities – applicable scale – relevant considerations

RELIGION AND LAW - JURISPRUDENCE - MATTERS OF FAITH:- Matters of faith as hardly matters for a court of law – When it appears before Court - Need for judge to deal with them without passion but with justice according to law

**PRACTICE AND PROCEDURE** **ISSUES**

ACTION - PLEADINGS: Need for issues to be raised from pleadings

COURT - DUTY OF COURT:- Interpretation of documents – Need to interpret same holistically - Need for a Judge to focus on the duty of interpreting the intentions of the parties as embodied in the document that they intend should govern them with respect to that transaction

JUDGMENT AND ORDER - BASIS OF JUDGMENT: How Judgments are arrived at based – need for it to be based upon an impartial assessment and evaluation of facts and evidence adduced at the trial

INTERPRETATION OF STATUTE- ORDER 17 RULE 9(4) OF THE COURT OF APPEAL RULES, 2007

INTERPRETATION OF STATUTE - INTERPRETATION OF A DOCUMENT: Need for a court not to pronounce on a detached or fragmented part of a document under the rules of interpretation

**MAIN JUDGMENT**

STANLEY SHENKO ALAGOA, J.C.A. (DELIVERING THE LEADING JUDGMENT):

In the Abeokuta Judicial Division of the High Court of Ogun State, the Respondent as Plaintiff took out a writ of summons against the Appellants as Defendants claiming the following reliefs:

"(1) A DECLARATION that Resolution "A" of the Board of Management of the Sacred Heart Hospital meeting of 22nd day of March, 1979 is binding on the defendants.

(2) A DECLARATION that as from the 22nd March, 1979, Pensions and Gratuities of all categories of staff of the Sacred Heart Hospital shall be in accordance with government regulations.

(3) AN ORDER that the pension and gratuity payable to the Plaintiff shall be in accordance with government regulations.

(4) AN ORDER of specific performance on the defendants to pay to the plaintiff her pension and gratuity in accordance with government regulations."

Pleadings were filed and exchanged by the parties from which the following facts briefly emerge. The Appellants are members of the Board of Management of Sacred Heart Hospital, Lantoro Abeokuta while the Respondent was employed as a midwife/midwife-sister by that Hospital between the 4th November, 1979 and August 1994 when according to her, she voluntarily retired after putting in 15 years of service. The Appellants sought to work out her gratuity on, her terminal annual basic salary of N19,638.00 which she, disagreed with while contending that her entitlement should be calculated on her total emoluments which include her basic terminal salary, transport allowance of N1,903.20; housing allowance of N180.00; shift duty allowance of N5,810.00; totalling N33,312.00. Her gratuity allowance she said, should be 140% of N33,312.00 which comes to N46,636.80 while her monthly pension should be 40% of her annual total emolument which should be N1,110.40 monthly.

At the trial, the Appellants called one witness while the Respondent called two witnesses. A number of Exhibits ('A' - 'J') were tendered and admitted. Counsel for both parties addressed Court and in his considered judgment delivered on the 18th June, 1996, the learned trial Judge Sonoiki J. gave judgment for the Respondent in terms of reliefs 1, 3 and 4 while refusing relief 2. It is against this judgment that the Appellants have appealed to this Court. Appellants filed a Notice of Appeal dated the 6th August, 1996 and filed on the 12th August, 1996 consisting of three Grounds of Appeal. The said Notice and Grounds of Appeal are to be found at pages 21-23 of the Record of appeal. The Appellants subsequently brought a motion on Notice dated the 29th June, 2004 and filed on the 5th July, 2004 pursuant to Order 3 Rule 2(5) and Rule 4(1) of the Court of Appeal Rules 2002 which was then in operation praying for leave of this Court to amend the Grounds of Appeal dated the 6th day of August, 1996. The application was granted on the 17th October, 2005 and an Amended Notice of Appeal dated 18th October, 2005 was filed on the 28th October, 2005. The Amended Notice of Appeal consists of five Grounds of Appeal which are reproduced hereunder shorn of particulars viz -

"GROUNDS OF APPEAL

(i) That the learned trial Judge erred in law by interpreting that portion relating to the payment of pensions and gratuities in accordance with government regulations in isolation or in disregard of other decisions therein contained in Resolution A of Exhibit E.

(ii) The learned trial Judge erred in law when after interpreting the word 'comparable' in paragraph 22 of Exhibit G to mean 'near' or 'close' went further to apply Government Scale which the 1st P.W. gave in court as if the said meanings of 'near' or 'close' is now equal to or the same with the Government Scale as 'near' or 'close' envisages a little or slight difference.

(iii) The verdict of the court is against the weight of evidence.

(iv) The learned trial Judge erred in law by rewriting the agreement and/or contract for the parties.

(v) The learned trial judge erred in law when the lower court applied and resorted to religious sentiments to the case before him and thereby Occasioned a miscarriage of justice."

From these Grounds of Appeal, the Appellants have distilled the following three issues for the determination of this Court viz:

"(1) Whether the learned trial Judge was right in holding that Appellants shall pay to the Respondent gratuity and pensions ill accordance with Government regulations to all staff of the Appellants in spite of the Provisions of Clause 22 of Exhibit 'G' and the other decisions contained in Resolution A of Exhibit E.

(2) Whether the learned trial Judge was right in bringing Religion to the reasoning in jurisprudence.

(3) Whether it was proper for the lower court to rewrite the agreement for the parties."

These issues are contained in paragraph 2.00 at pages 1 and 2 of the Appellant's Brief of Argument dated the 28th November, 2005 and filed on the 29th November, 2005 but deemed properly filed on the 6th June, 2006 following the grant by this court of a motion dated the 17th January, 2006 and filed on the 18th January, 2006 and brought pursuant to Order 3 Rule 4 of the Court of Appeal Rules for an order of Court enlarging time within which the Appellants may file their brief of Argument and to deem the Appellant's Brief of Argument already filed and served as properly filed and served. The said Brief of Agreement as well as the Appellant's Reply Brief of Argument dated the 27th August, 2007 and filed on the 3rd September, 2007 but deemed properly filed and served on the 28th November, 2007 following the grant by this Court on the 28th November, 2007 of a motion on Notice dated the 28th August, 2007 and filed on the 3rd September, 2007 for extension of time to file and serve the Appellants' Reply Brief out of time and to deem the Reply Brief of Argument already filed and served as having been properly filed and served on the Respondent were adopted and relied upon by Prince P. A. Adesemowo of counsel for the Appellants on the 14th January, 2010 when this appeal came up for hearing.

The Respondent for her part has formulated two issues in paragraph 4.02 - 4.03 at page 6 of her Brief of Argument dated the 26th March, 2007 and filed same day but deemed properly filed and served on the Appellants on the 28th March, 2007 following the grant by this Court of a motion on Notice dated the 26th March, 2007 and filed same day for an extension of time for the Respondent to file her Brief of Argument, time allowed by the rules of this Court having expired and to deem the Respondent's Brief of Argument filed on the 26th March, 2007 as having been properly filed and served.

The two issues are as follows:

"(i) Whether the learned trial Judge was right in holding that the Appellants shall pay to the Respondent her gratuity and pension in accordance with government regulation based on Clause "A" of Exhibit E and paragraphs 4, 20 and 22 of Exhibit G.

(ii) Whether the style adopted by the learned trial Judge in writing the judgment in this case has occasioned a miscarriage of justice''.

As was earlier stated, this appeal came up for hearing on the 14th January, 2010 wherein Appellants' Counsel Prince P. A. Adesemowo adopted and relied on the Appellants' Brief of Argument and Reply Brief. There was proof that the Respondent was served with the hearing notice for that day on the 9th July, 2009 and despite the said service, the Respondent was not present in Court. Her counsel was also not present in Court. This Court however noted in its records that the Respondent's Brief of Argument already referred to had been filed and served and has herein invoked the provisions of Order 17 Rule 9(4) of the Court of Appeal Rules 2007 to hear this appeal. The said Order 17 Rule 9(4) provides as follows, "When an appeal is called and the parties have been duly served with the notice of hearing but if any party or any legal practitioner appearing for him does not appear to present oral argument even though briefs have been filed by all the parties concerned in the appeal, the appeal will be treated as having been duly argued."

By this provision, the appeal became ripe and ready for hearing and was accordingly heard.

Before going into the merits of the appeal proper, it is necessary to treat first what is described at page 5 of the Respondent's brief of Argument as 'preliminary matters'. The Court of Appeal Rules 2007 does not make any mention of 'preliminary matters' and if what was contemplated by the Respondent is a preliminary objection, the proper procedure for the filing of a notice on preliminary objection as provided by Order 10 Rule 1 of the Court of Appeal Rules 2007 has not been followed. A Notice of preliminary objection has to be so styled.

However, Appellants appear not to have raised any objection to this and have in fact conceded in paragraph 1.02 of their unpagenated reply brief of Argument a point raised in paragraphs 3.00-3.03 at page 5 of the Respondent's Brief of Argument that Ground 3 of the Amended Notice and Grounds of Appeal is incompetent and should be struck out having been abandoned. The said Ground 3 is accordingly struck out. The respondent went further in paragraphs 3.04 - 3.07 at page 5 and 3.08 at page 6 of her brief of Argument to raise a preliminary objection to the effect that Ground 1 of the Appellants' Amended Notice of Appeal be also struck out as being incompetent. It was the Respondent's submission that it is trite law that a ground of Appeal must be connected between the parties. Reliance was placed on SARAKI V. KOTOYE (1992)11/12 SCNJ (PART 1) 26 and EGBE V. ALHAJI (1990) 1 NWLR (PART 546) 590. It was further submitted that none of the parties raised the issue of the operationalisation of Clause 2 of Resolution A in Exhibit E upon the coming into effect of the other clauses contained in Resolution A of Exhibit E. A Plaintiff, according to the Respondent is bound by the case put forward in his writ of summons and pleadings just as the defendant is similarly so bound and since the point raised by the Appellants in Ground 1 of their Amended Notice of Appeal was never in issue between the parties at the lower court, it is a fresh issue which this Court will not allow to be raised at this appeal stage. Reliance was placed on AFRICAN CONTINENTAL BANK LTD. V. ATT. GEN. OF NORTHERN NIGERIA (1967) NMLR 231; ALHAJI ADISA & ANOR V. SOLEHBONNEH NIGERIA LTD (1975) 1 NMLR 59. The Appellants have countered this in the second paragraph of paragraph 1.02 of their unpagenated Reply Brief of Argument that Ground 1 of the Appellants' Amended Notice of Appeal is quite competent and should be sustained in this appeal not being a fresh issue and that what the trial court is being called upon to do is an ordinary interpretation to determine whether Respondent can rely on a detached or fragmented part of a document contained in Resolution A of Exhibit E captioned "Pension and Gratuity", the interpretation being a substantial point of law which Appellants can raise in this appeal as no fresh evidence is required to do so.

It is to be noted that Resolution A of Exhibit E was pleaded by the, parties in the court below. Indeed it was the Respondent who as PW2 in the court below tendered Exhibit E. (See page 4 of the Record of Appeal). Having pleaded the entirety of Resolution A of Exhibit E, the Respondent led evidence on only a part of what is contained in Resolution A and the learned trial court's judgment was based on this piece of evidence. The question now is, whether the trial Judge was right to have relied on this fragmented piece of evidence or the entirety of Resolution A of Exhibit E in coming to a decision? This is clearly not a new issue and the preliminary objection of the Respondent is baseless and is accordingly dismissed.

Having said this I think that the proper issues for determination in this appeal which are drawn from the issues formulated by both parties and cover all the grounds in the Amended Notice of Appeal with the exception of Ground 3 which has been struck out are as follows:

ISSUE 1 - Whether the learned trial Judge was right to re-write the agreement for the parties and to hold that the Appellants shall pay to the Respondent her gratuity and pension in accordance with government regulations based on Clause "A" of Exhibit "E" and paragraphs 4, 20 and 22 of Exhibit "G".

ISSUE 2 - Whether the learned trial Judge was right in importing religion into his reasoning and rewriting the agreement for the parties.

A good starting point will be to set out the provisions of Clause "A" of Exhibit "E" and paragraphs 4, 20 and 22 of Exhibit "G". Exhibit "E" is captioned or titled Board of Management of Sacred Heart Hospital Meeting on 22nd March, 1979'. Clause "A" of Exhibit "E" states as follows,

"In accordance with Government Regulations, Pensions and Gratuities will be paid to all staff at present working in the Hospital. We must take into account that National Provident Fund must be paid until we are officially exempt. Then all payments from 1966 must be reclaimed from Government with interest. Action will follow immediately with Headquarters, N.P.F. Lagos, After Signing of Agreement."

Exhibit 'G' is a small booklet or pamphlet captioned or titled "Sacred Heart Hospital (R. C. Archdiocese of Lagos) Lantoro, Abeokuta. Terms and Conditions of Service for employees." Paragraphs 4, 20 and 22 of exhibit 'G' provide as follows-  "Paragraph 4: Remuneration:- Remuneration payable shall not be less than that payable in Federal and State Government Services and payment shall be subject to deduction of P.AY.E. (Income tax) and other advances made to employee.

"Paragraph 20: Retirement: Three months notice of intention to retire shall be served on the board of management by an established and pensionable member of the staff. The compulsory retiring age shall be 60 for all categories of staff. A member of staff may retire voluntarily at the age of 45 but he/she must have worked for 15 years continuously."

"Paragraph 22: Retiring Benefits: An established member of staff who had served notice of intention to retire shall, at the appropriate age and having served for the requisite number of years be granted pension and gratuity calculated on the basis of length of service to the hospital and comparable to the award in States and Federal Government of the Federation of Nigeria."

Appellants are contending in this issue that the trial Judge failed to apply the correct principles or rules of interpretation of the real or true meaning or the true or correct intention of the parties by interpreting Clause "A" of Exhibit "E" to mean that Appellants shall pay Pensions and Gratuities to all staff working in the Hospital in accordance with, Government Regulations without taking into consideration other relevant clauses of Resolution A Exhibit E. Appellant went further to fully spell out Resolution A of Exhibit E. I had already done that earlier in this write-up and a repetition is unnecessary. It was then submitted by the Appellants that there was nowhere in the pleadings of the Respondent before the lower court to the effect that:

(i) Appellants have been officially exempted from the National Provident Fund now Nigeria Social Insurance Trust Fund (NSITF).

(ii) Payments from 1966 have been reclaimed with interest.

(iii) Appellants have actually signed any agreement with the headquarters of N.P.F. Lagos to discontinue any contribution to N.P.F.

These according to the Appellants are the three other clauses contained in Resolution A of Exhibit E. Appellants went further to say that the learned trial Judge's decision that Appellants shall pay pensions and gratuity in accordance with government regulations which is the first clause of Exhibit E failed to consider the impact and effect of Clauses (i)-(iii) mentioned earlier before arriving at a decision. It is the contention of the Appellants that Exhibit E of Resolution A ought to have been construed as a whole and not in parts or fragments. Reliance was placed on Halsburys Laws of England Vol. 12 (4th Edition) paragraph 1469 and to the following cases- (i) UNILIFE DEV. CO. LTD. V. MR. KOLU ADESHINGBIN & ORS (2001) 5 NSCQR 406 at 423 (ii) IBRAHIM V. MOHAMMED (2003) 13 NSCQR 647 at 664. Appellants therefore submitted that the trial Judge was in error to have taken the words, 'in accordance with government Regulations Appellants shall pay gratuity and Pensions to all its staff' in isolation and in complete disregard of any pleadings and evidence on the facts contained in the other three clauses of Resolution A of Exhibit E.  Appellants referred to section 15(2) of the Pensions Act Cap 346 Laws of the Federal Republic of Nigeria and submitted that Appellants are not an organization declared as a Public Service under Schedule II thereof and submitted that the trial Judge was in serious error to have held that Appellants shall pay pension and gratuity in accordance with government regulations at page 20 lines 14-20 of the Records in spite of the Evidence of 1st P.W. that no private medical institution is covered by Exhibit A - page 28 lines 7-10 of the Records. It was further contended that the sum of N46,636.80 as gratuity and N13,324.80 as annual pension which was based on the evidence of 1st PW as contained in page 28 lines 3-4 of the Record was based on the wrong interpretation of the relevant clauses of Resolution A of Exhibit E and cannot be grafted on Private Institution. Reference was made to the case of NIGERIAN SECURITY PRINTING AND MINTING COMPANY LTD. V. J. A. ADEKOYE & ORS (2003)16 NWLR PART 845 page 128 at pages 151-153. It was the Appellant's further submission that by S. 10(1)(a)(2) of the Nigeria Social Insurance Trust Fund Decree No. 73 of 1993, it is mandatory for the Appellants and Respondent to contribute to the scheme and Appellants are not exempted thereof pursuant to section 11(a) of Decree No. 73 of 1993 and by reasons thereof, Respondent cannot take advantage or benefits on retirement in accordance with Government Regulations, the Respondent being a person employed and retired with a private institution. Appellants went on further to submit that the persons exempted under the Nigeria Social Insurance Trust Fund are those who work in the public service of the Federation or of a State or Local Government and enjoy pensions on terms substantially similar to those prescribed by the Pensions Act. Appellants further submitted that they are still contributing to the Nigeria Social Insurance Trust Fund for and on behalf of all its staff including the Respondent who has claims under Social Insurance Trust Fund. Appellants have submitted that the Respondent is not a public servant and it was therefore wrong for the lower court to clothe the respondent with the toga of a public servant and to enjoy the pension rights of a public servant contrary to section 11(a) of Decree No. 73 of 1993 which has not exempted the Appellants from contributing to its fund. Appellants have gone on further to contend that Exhibit J. being the Appellant's Staff Pension Rules, Respondent cannot resile therefrom. What Respondent is entitled to has been duly paid to her and calculated on the basis of her nominal salary which is the practice with the Appellant as a private Missionary Hospital, Appellants further submitted. Appellants further contention is that the calculations of gratuity and pensions are made on the basis of Exhibits G and J which is comparable to what obtains in Government and not the same as in Government.

The learned trial judge according to the Appellants was therefore in error after interpreting the word 'comparable' in paragraph 22 of Exhibit G to mean "near" or 'close' and went further to apply Government Scale which PW1 gave in court. It is the contention of the Appellants that Exhibit G was pleaded by the Respondent and tendered by the Respondent who gave evidence on it and that paragraphs 4, 20 and 22 of Exhibit G regulate and govern the terms and conditions of service of the Respondent with the Appellants and that the Respondent cannot resile from Exhibit G as much as the terms therein are clear and unambiguous. Appellants went on to submit further that it is trite that where terms and conditions are clear, they should be given effect to and that Appellants were only to pay retiring benefits i.e. pensions and gratuity calculated on the basis of length of service to the hospital and comparable to the award in States and Federal Government of Nigeria. It is the Appellant's further submission that the learned trial Judge was wrong to have equated paragraph 22 with paragraphs 4 and 20 by making the amount of payment of benefits according to government regulation because conditions and terms of retiring benefits under paragraph 22 of Exhibit G are quite different from the terms and conditions under paragraphs 4 and 20. Reliance was placed on the following cases - A.P. V. OWODUNNI (2003) 15 NSCQR page 308 at 335: AFRICAN REINSURANCE CORP V. FANTAGE (1986) 1 NWLR PART 14 page 113 at page 115: ALLIED TRADING CO. LTD. V. G.B.N. (1985) 2 NWLR PART 5 page 74 at page 76. In her brief of argument, Respondent contended that issues are raised based on the pleadings before the court. Reliance was placed on MORINATU ODUKA & ORS V. KASUMU & ANOR (1968) NMLR 28 at 31.

Respondent's case it was contended is that the Appellants ought to have paid her, her gratuity and pension in accordance with government regulations based on Resolution A of Exhibit 'E'. Respondent referred to the following paragraphs of the statement of claim as being relevant in the determination of this issue viz paragraphs 7, 8, 9, 10, 11, 12, 13 and 14 to which the Appellants had reacted in their paragraphs 2, 5(a)-(g) and 6 of the statement of defence.. The Respondent also relied on paragraphs 2, 3, 4, 5, 6and 7 at pages 1-1a of the Record of Appeal in response to the statement of defence. The Respondent submitted that based on the pleadings before the lower court, the only issue for determination was whether the Respondent was entitled to be paid her pension and gratuity in accordance with government regulation. Respondent submitted that parties are bound by their pleadings and the contention of the Appellants that the learned trial Judge did not consider the impact and effect of clauses (i)-(iii) of Resolution A in Exhibit E was never raised or brought to the attention of the Court by the Appellants before the lower court. All the arguments proffered in this regard are therefore non-sequitur. Respondent went on to further submit that it would be wrong for a Judge to base his judgment on an interpretation of a transaction between the parties which neither of them had pleaded or tendered in evidence. Reliance was placed on SAMSON OCHONMO V. ASIRIM. UNOSI (1965) NMLR 321. Respondent further submitted that in resolving the only issue at the lower court in favour of the Respondent the learned trial Judge relied on clause 1 of Resolution A contained in Exhibit E which reads as follows: "In accordance with Government Regulations pensions and gratuities will be paid to all staff at present working in the Hospital," and paragraphs 4, 20 and 22 of Exhibit G which contains the terms and conditions of Service for employees of the Appellants' Hospital. It is the Respondent's further contention that there being no appeal by the Appellants of the learned trial judge's rejection of Exhibit "J" the holding of the lower court on Exhibit "J" is sound and proper. Respondent submitted that the learned trial Judge was right in its interpretation of the word "comparable" from two dictionaries.

Appellants have submitted in their Reply Brief on this issue that Exhibit "E" was pleaded by the Respondent in paragraphs 10, 11, 12., 13 and 14 of the statement of claim and so admitted by the Respondent in her Brief of Argument. The same Exhibit E was tendered by the Respondent. Exhibit "E" was equally pleaded by the Appellants in this appeal and which the Respondent admitted in paragraph 5.03 of her Brief particularly in sub-paragraph 6(a) thereof.Appellants therefore submitted that the issue was properly raised by the parties before the lower court and as such the Court of Appeal has a duty to look at Exhibit E and interpret "Resolution. A of Exhibit E on pension and gratuity" to enable the parties know whether or riot the Respondent will be allowed to rely on a detached or fragmented part of a document, albeit Resolution A of Exhibit E as the lower court did in this case. In doing so, clause 2 of Exhibit E need not be debated and no evidence need be called at all as it involves a substantial point of law as it touches on the interpretation of a document as to whether the lower court was right in arriving at the decision by merely relying on the 1st clause of Resolution A of Exhibit E and close its eyes on the other clauses in the same paragraph or content substantially on the same subject matter "pension and gratuity" which is relevant to the determination of the case.

Appellants went further to submit that no further evidence is required on this point as it is a matter of interpretation as all the materials for interpretation are before the Court. Appellant has contended that Respondent failed to plead and lead evidence on the 2nd clause of Exhibit E to mislead the trial court and thereby occasioned a miscarriage of justice as it is trite under the rules of interpretation that a court should not pronounce on a detached or fragmented part of a document like Resolution A of Exhibit E. The Appellants therefore urged this Court in the circumstances to allow the question to be raised and the points taken to prevent an obvious miscarriage of justice. The following cases were relied upon - ARAKA V. EJEAGU (2000) 4 NSCQR page 308 at 332-333; ATTORNEY GENERAL OF OYO STATE V. FAIRLAKES HOTELS LLTD. (1988) 5 NWLR (PART 92) page 1 at page 29; SHONEKAN V. SMITH (1965) 1 ALL NLR 168.

Appellants further submitted that the case of SAMSON OCHONWO V. ASIRIM referred to in paragraph 5.10 of the Respondent's brief of Argument does not apply in the instant case as that Court was not faced with the case where a party chose to rely on a detached part and ignored the other and deliberately failed to adduce evidence on the other part of the document that relates to or connects with the subject matter before the Court. Appellants submitted that in the instant case, all facts and evidence relating to pension and gratuity as contained in Resolution A of Exhibit E were deliberately ignored by the Respondent.

It is necessary to state at the outset that this issue relates to Grounds 1, 2 and 4 of the Amended Notice of Appeal dated the 18th October, 2005 and filed on the 28th October, 2005.

It is trite that issues are raised on pleadings and Respondent cannot be more right in this assertion. Much of the discussion under this issue will be centered on Exhibit 'E' and what can be garnered from it. Was Exhibit 'E' pleaded by the parties? Respondent as Plaintiff in the court below filed a statement of claim dated 6th March, 1995 and filed same day and which is contained at pages d-f of the Record of Appeal. Exhibit 'E' is titled "Board of Management of Sacred Heart Hospital Meeting of d March 1979". It is paragraphed into a number of resolutions as follows Resolution A deals with pension and Gratuity; Resolution B deals with Car Loans and Basic Allowance; Resolution C deal with in-service training; Resolution D deals with housing allowance; Resolution E deals with free treatment; and Resolution F deals with Promotion. For the purpose of this issue and indeed the entirety of this appeal, only Resolution A is relevant and provides as follows-

"In accordance with Government Regulations Pensions and Gratuities will be paid to all staff at present working in the hospital. We must take into account that National Provident Fund must be paid until we are officially exempted".

Then all payments from 1966 must be reclaimed from Government with interest.

Action will follow immediately with Headquarters, N.P.F. Lagos, After signing of Agreement."

It is not in doubt that at page e of the Record of Appeal Exhibit and more specifically Resolution A of Exhibit E was pleaded in paragraphs 10, 11, 12, 13, 14 and 17 of the statement of claim of the Respondent. A clearer illustration of this pleading is paragraph 10 which states as follows-

"The Plaintiff states that by a Resolution tagged 'A' arrived at by the Board of the Management of Sacred Heart Hospital at its meeting held on the 22nd March, 1979, the Board of Management of Sacred Heart Hospital resolved that "in accordance with government regulations, pension and gratuity will be paid to all staff at present working in the hospital."

In fact, Exhibit E which contains Resolution A was tendered by the Respondent in the lower court as PW2 on the 6th May, 2006. The Respondent's submission is that based on the pleadings before the lower court, the only issue for determination was whether the Respondent was entitled to be paid her pension and gratuity in accordance with government regulation? The learned trial Judge in his judgment at page 15 of the Record of Appeal would appear to have been won over by that argument when he said as follows-

"The relevant portion of Exhibit E which is a copy of the resolution reached at a meeting of the Board of Management of Sacred Heart Hospital on 22nd March, 1979 states that the Board agrees "in accordance with Government Regulations Pensions and Gratuities will be paid to all staff at present working in the Hospital."

But can that be correct? That cannot be said to be correct. Resolution A says more than what it is being portrayed as having said. The mere fact that the Respondent did not lead evidence on the latter part of Resolution A of Exhibit E does not mean that it was not pleaded. Indeed Appellants also pleaded Exhibit E and the proper position that the learned trial Judge would have taken is to take a look at Resolution A of Exhibit E and interprete same in its entirety rather than a fragmented interpretation which the learned trial judge did. HALSBURYS LAWS OF ENGLAND Vol. 12 (4th Edition) paragraph 1469 is specific on the position the learned trial Judge should have taken and states as follows,

"instruments must be construed as a whole in order to ascertain the true meaning of its several clauses and the words of each clause must be so interpreted as to bring them into harmony with the other provisions of the instrument... The best construction of deeds is to make one part of the deed expound the other and so make all the parts agree."

Thus, the learned trial Judge's decision that Appellants shall pay pensions and gratuity in accordance with Government Regulations failed to consider the impact and effect of the latter part of clause A of Exhibit E. For the avoidance of doubt what is left out of Resolution A of Exhibit E and which is not pleaded and upon which Respondent failed to lead evidence reads as follows-

"We must take into account that National provident Fund must be paid until we are officially exempt. Then all payments from 1966 must be reclaimed from Government with interest. Action will follow immediately after signing of Agreement."

A small fragment of Resolution A of Exhibit E cannot be fully interpretative of the entirety of Resolution A of Exhibit E. That certainly would be contrary to the principle of the correct interpretation of documents or statutes. Respondent has made heavy weather of the evidence of PW1 Akinleye Ademuyiwa Jacob as supportive of her claimed entitlements. His evidence is at page 2A of the Record of Appeal. He said of himself as follows-

"I am the Director of Pensions in the Bureau of Establishment and Training, Abeokuta. I process all the applications from civil servants and the teaching and non-teaching staff of secondary institutions and parastatal staff of corporations. In the discharge of my duties, I work under Pension Decree No. 102 of 1979 and all amendments by way of circulars etc. This is Pension Decree No. 102 of 1979"

This document i.e. Pensions Decree No. 102 of 1979 was tendered through this witness and marked Exhibit 'A'. This witness continued with his evidence as follows-

"If the Plaintiff worked for the Ogun State Government for 15 years her pension would be her annual terminal basic salary, annual rent, annual transport allowance, electricity and water allowances, and meal allowance. All these are for officers on level 01-09. A serving officer earns medical allowance but not on retirement. In its place, he takes the meal allowance of No.120. An officer who has served for 15 years is entitled to 140% of his total emolument i.e. Salary and all the allowances. This is for gratuity. For pension, he is entitled to 40% of his final total emolument per annum. If plaintiff's salary is N19,368 per annum; Transport allowance is N1,903.20, Medical allowance is N240; Utility allowance i.e. water and electricity is N180 per annum; shift duty allowance is 30% Basic allowance i.e. N5,810 per annum; total N33,312 per annum. Her pension would be N13,324.80 per annum. Her gratuity would be N46,630.80." (Underlining mine.)

PW1's evidence is that the package is for workers with the Ogun State Government which the Respondent clearly was not, having been a worker with Sacred Heart Hospital, Lantoro Abeokuta, a private missionary hospital. Under cross-examination, PW1 said as follows- "The organizations covered by the pension law are shown in the Schedule and Exhibit 'A'. No private medical institution is covered by Exhibit 'A'. There is nothing in Exhibit 'A' to make it applicable to a private medical institution. There is nothing in Exhibit 'A' to show its applicability to an institution like the Sacred Heart Hospital Abeokuta."

I shall now turn my attention to paragraphs 4, 20 and 22 of Exhibit 'G' which were earlier spelt out here as part and parcel of the argument in Issue 1. These contain the Terms and Conditions of Service for Employees of Sacred Heart Hospital, Lantoro, Abeokuta pleaded, tendered and relied upon by the Respondent. It is also the contention of the Appellants that paragraphs 4, 20 and 22 of Exhibit G regulate and govern the terms and conditions of service of the Respondent with the Appellants and which the Respondent cannot resile from. The bone of contention in Exhibit 'G' is the interpretation to be given to the word "comparable". Of the word 'comparable' the learned trial Judge had said in his judgment at page 18 of the Record of Appeal as follows,

"On retiring benefits at paragraph 22 of Exhibit 'G', I have set out the meaning of the word 'comparable' in the two dictionaries and my understanding of the examples given in Oxford Advanced Learner's Dictionary and Oldham's Dictionary make me understand the word 'comparable' to mean something like 'near' or 'close'. And if the remuneration i.e. salary and allowances shall not be less than that payable by the Government, why should the retiring benefit be less?"

The learned trial Judge went on and on-

"How can a man take just a little above half of all his emoluments as gratuity and be called upon to take just 30% of his salary as pension?."

See page 18 lines 22-24 and page 19 lines 25-27 of the Record of Appeal.

Appellants have submitted that by these statements, the learned trial Judge erred in law by rewriting the agreement and/or contract for the parties. The Respondent on her part contended that there is no particular scheme for the writing of Judgments and that what is expected of a Judge is constantly to bear in mind the case as presented by each party, the onus of proof and to weigh the case for each party on that imaginary scale as suggested in MOGAJI V.ODOFIN (1978) 4 S.C. 91 and LAWRENCE NWANKPU & ANOR. V. DENNIS EWULU & ORS (1995)7 SCNJ 197 at 209 and that learned trial Judge did just that.

It is necessary to shed some light on how the word 'comparable' came to assume such an important dimension. Exhibit 'J' is the Appellant's Staff Pension Rules which along with Exhibit 'G', Appellant's Claim calculations of gratuity and pensions of the Sacred Heart Hospital Lantoro Abeokuta are based. Respondent contended that it (Exhibit J) was never given to her when she was employed by that hospital and could not be bound by its contents, contending that she was bound by Exhibit G with which she was presented with upon employment. The learned trial Judge found for her on that score. Appellants had submitted earlier that if the Court ruled that she was not so bound, the Court should go into an interpretation of the word 'comparable' in paragraph 22 of Exhibit 'G'. The learned trial Judge consulting two dictionaries, Oxford Advanced Learner's Dictionary and Oldham's Dictionary came to the conclusion that the word 'comparable' meant something like 'near' or 'Close'. Does it not stand to reason that 'near' or 'Close' simply means 'not equal to'? If PW1 Akinyele Ademuyiwa Jacob was called by the Respondent to show that she was entitled to gratuity and pension in accordance with Government Regulation based on Clause 'A' of Exhibit 'E' and paragraphs 4, 20 and 22 of Exhibit G, her expectations would have been dashed because not only does the word 'comparable' show that she is not entitled to as much but also by the evidence of PW1 under cross-examination, the emoluments given by him in his evidence did not apply to private organizations and specifically to Sacred Heart Hospital Lantoro Abeokuta. Why the learned trial Judge held and went ahead to make an order at page 20 of the Record that 'pensions and gratuities payable to the plaintiff shall be in accordance with government regulations is a matter for conjecture, and most certainly not based on the totality of the documentary and oral evidence adduced in the trial at the court below. Judgments are arrived at based upon an impartial assessment and evaluation of facts and evidence adduced at the trial. The judgment of the lower court is replete with departures from this legal principle.

Agreements or Contracts are entered into by parties based upon what they intend should govern their transactions. A Judge's only duty is to interprete the intentions of the parties as embodied in the document that they intend should govern them With respect to that transaction. The learned trial Judge should never be seen to add or subtract or modify or express his own personal views different from what is contained in the document governing the parties transaction. The learned trial Judge did just that by the words earlier attributed to him as what he said amounted to re-writing a new agreement for the parties. I have no hesitation in resolving issue 1 in favour of the Appellants against the Respondent.

The best possible approach towards a discussion of issue 2 which is distilled from Ground 5 of the Amended Notice of Appeal is to reproduce so much of the religious and moral sentiments expressed by the learned trial Judge in his judgment. Page 19 of the Record of Appeal is replete with these words. The learned trial Judge had said as follows:-

"It does not stand to reason that a man who has been receiving his salary along with all the aforementioned allowance while in service will lose all these allowances immediately he retires after serving his employer faithfully...  that would be inhuman. It would not only be wicked but most unsympathetic, it seriously calls to question the missionary and humanitarian toga the hospital puts on. David's prayer in psalm 71 verse 8: "Cast me not away in my old age; forsake me not when strength faileth me," would be meaningless and turn the evening years of many into years of sorrow and penury. The defendants in their treatment of their employees must not only practise what they preach i.e. that the society should take care of the aged, the weak and the needy. They must set better examples for society and other employers in the treatment of retired employees. This is not only what the law expects of them. It is an appeal to their conscience by reason of their humanitarian outlook and their calling."

His Lordship may well have mounted a pulpit. A Judge should never allow sentiments to becloud his sense of Judgment. What more can one say other than that the learned trial Judge imported religion and morality into his judgment which may have occasioned a miscarriage of Justice. In SODEINDE V. AHMADIYA MOVEMENT IN ISLAM (1983) 2 SCNJ 284, the Supreme Court held per Kayode Eso at page 323 that matters of faith are hardly matters for a court of law but once there the Court should deal with them without passion but with justice according to law being the guide.

In the circumstance, I do also resolve issue 2 in favour of the Appellants against the Respondent.

The issues having been all resolved in favour of the Appellants, the Appeal succeeds and is allowed and the judgment of Sonoiki J. delivered on the 18th June, 1996 is hereby set aside. It is ordered that payment of pensions and gratuity to the Respondent shall be in accordance with Appellants Staff Pension Rules. There shall be N30,000.00 (Thirty Thousand Naira) costs in favour of the Appellants against the Respondent.

**KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN, J.C.A:**

I have had the opportunity of reading in draft the judgment of my learned brother, S. S. Alagoa, JCA just delivered. I agree entirely with his reasoning and conclusion. For the reasons, ably advanced therein, I also allow the appeal. I abide by the consequential orders made including the order on costs.

**SIDI DAUDA BAGE, J.C.A.:**

I was privileged to read in advance the lead judgment delivered by my learned brother, S. S. Alagoa, J.C.A. I agree with his reasonings and conclusions. The appeal is meritorious and is also allowed by me.

I entirely agree with the lead judgment. I also abide with the orders made therein.