**ATTORNEY-GENERAL OF CROSS RIVERS STATE**

**v.**

**ESIN**

COURT OF APPEAL (ENUGU DIVISION)

5TH DAY OF JULY, 1991

CA/E/42/88

**LEX (1991) - CA/E/42/88**

OTHER CITATIONS

2PLR/1991/54 (CA)

(1991) 6 N.W.L.R (Pt. 197) 365

**BEFORE THEIR LORDSHIPS**

IDRIS LEGBO KUT’IGI, J.C.A. (Presided)

ALOYSIUS IYORGYER KATSINA-ALU, J.C.A. (Read the Leading Judgment)

GEORGE ADESOLA OGUNTADE.J.C.A.

**BETWEEN**

1. ATTORNEY-GENERAL OF CROSS RIVER STATE

2. CROSS RIVER STATE JUDICIAL SERVICE COMMISSION

AND

HON. JUSTICE O. A. ESIN

**ORIGINATING COURT**

HIGH COURT OF CROSS RIVER STATE

**REPRESENTATION**

O. I. OKON, Solicitor-General, Ministry of Justice, Calabar - For the Appellants

JUSTICE O. A. ESIN - Appeared in person

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

EMPLOYMENT AND LABOUR LAW:- Removal of judge by Governor pursuant to recommendation of a State Judicial Service Commission in accordance with Section 256(1) (b) of the Constitution of the Federal Republic of Nigeria 1979 for misconduct – Where acts termed misconduct not judicially proved to be one – Effect

CONSTITUTONAL LAW - JUDICIARY: – Removal of judicial officers – What conduct amounts to a misconduct under Section 256(1)(b) of the 1979 Constitution

ETHICS – JUDGE/JUDICIAL OFFICER:- Misconduct – What constitutes – Whether proper to draw a line between the private and public lives of a judge – Whether merely reacting by writing a strongly worded letter to ward off an allegation of a scandalizing nature cannot amount to misconduct.

CHILDREN AND WOMEN LAW: *Women and Justice Administration* – Judge removed on account of crude letter written to a woman and acts done pursuant to an attempt to protect his wife from harassment at work – How treated

**PRACTICE AND PROCEDURE ISSUES**

COURT:- Interpretation of statute – Meaning of

INTERPRETATION OF STATUTES:- Ejusdem generis rule – Meaning of

**MAIN JUDGEMENT**

**KATSINA-ALU, J.C.A.** **(Delivering the Leading Judgment):**

The plaintiff (now respondent) was appointed a Judge of the High Court of Cross River State on the 12th day of July 1976. In a pre-emptive move, as a result of certain events, which will hereinafter be highlighted, the plaintiff on 28th day of March, 1983 filed this action against the 1st and 2nd defendants herein and Dr. Ekanem Ita Ekanem and Mr. Akpanika Nkpat Ukot asking for certain declarations against the defendants and reinstatement if the 2nd defendant or the Governor should remove him on the advice of the 2nd defendant. He also asked for injunction to restrain the 2nd defendant from taking any constitutional proceedings against him and an injunction restraining the incumbent Governor of the State Dr. Clement Nyong Isong from acting on the advice of the 2nd defendant. In the alternative the plaintiff claimed from the defendants jointly and severally N 10 million Naira special, general and aggravated damages for wrongful termination of appointment or dismissal. Meanwhile by a letter dated 4th May, 1983, Ref: GO/SSG/AD/5/2/vol. XXIII/502 (Exhibit D) addressed to the plaintiff the then incumbent Governor of the State Dr. Clement Nyong Isong removed the plaintiff from office as Judge of the High Court of Cross State. Exhibit D reads as follows:

“Removal from the Cross River State Judicial Service

On receiving the recommendation of the Cross River State Judicial Service Commission in accordance with Section 256(1) (b) of the Constitution of the Federal Republic of Nigeria 1979, the said Constitution enjoins me to act on the recommendation that you be removed as Judge from the Cross River State Judicial Service, and you are hereby removed as Judge from the Cross River State Judicial Service, with effect from the 4th day of May, 1983.

2. I thank you for your service to the State and do wish you success in all your endeavours.

(Sgd)

Chief (Dr.) Clement N. Isong

Governor of Cross River State”

Pleadings were ordered, filed and exchanged. In the course of proceedings and upon application by the plaintiff, the names of Dr. Ekanem Ita Ekanem and Mr. Akpanika Mkpat Ukot were struck out as 3rd and 4th defendants respectively. In their place the Attorney-General of the Federation and the Advisory Judicial Committee were joined as defendants. By leave of the trial court the plaintiff filed an amended statement of claim. The 1st and 2nd defendants also filed an amended statement of defence. The 3rd and 4th defendants also filed their statement of defence. Thereafter the case proceeded to trial before Udofia J.

After a review of the evidence and the applicable law, the learned trial judge entered judgment in favour of the plaintiff. He ordered that the plaintiff be reinstated as Judge of the High Court of Cross River State or Akwa Ibom State as the case may be. He also awarded N102,330.00 special damages to the plaintiff. Aggrieved by this judgment, the defendants appealed to this Court.

The 3rd and 4th defendants did not file their brief of argument within time as prescribed by Order 6 Rule 2 of the Court of Appeal (Amendment) Rules 1984. Nor did they apply for extension of time within which to file their brief. The appeal of the 3rd and 4th defendants was therefore dismissed by this Court under Order 6 Rule 10 of the Rules on 20th February 1991.

This judgment is in respect of the appeal of the 1st and 2nd defendants only. The appellants in their brief of argument formulated the following issues for determination in this appeal:

1. Whether there was sufficient cogent evidence adduced by the plaintiff respondent to support the learned trial judge’s decision that the “removal of the plaintiff/ respondent was politically motivated and ‘ not because he wrote letters to Mrs. Asaka and Captain Ntiaidem which letters were regarded as constituting misconduct.”

2. Whether in view of the finding of facts by the learned trial judge, his analysis on (1) the interpretation of ‘misconduct’ as contained in Section 256(l)(b) of the 1979 Constitution (2) whether or not the rules of natural justice were infringed in this case as stated at page 378 lines 20-32 is not obiter dictum, mere exercise in academics and does not form the ratio decidendi of this case.

3. And even whether in this exercise of academics it is a valid observation by the learned trial judge that the ground for removal of a judicial officer under S. 256(1) of the 1979 Constitution for misconduct, the said misconduct must be such as would relate to or affect his public office and consequently the said misconduct under Section 256(1)(b) must be interpreted ejusdem generis of other causes for removal of judges as stipulated under that Section.

4. Whether the issue of rules of natural justice being infringed was raised at the close of pleadings by the parties to entitle the learned trial judge to make analysis of the same in the judgment. And/or in the alternative whether the said analysis of infringement of rules of natural justice was mere obiter and observation on account of the earlier decision by his analysis of facts of the case.

5. Whether the learned trial judge, after making a finding at pages 390 to 391 to the effect facts which Exhibits W, Y, Z were supposed to be evidence of had not been pleaded nor the said Exhibits pleaded by the amended statement of claim of the plaintiff/respondent, the learned trial judge was entitled in law to admit and use the said Exhibits to make observations on infringement of natural justice whether or not the defendants objected to their admission or were not taken by surprise.

For his part, the respondent raised six issues for determination. These read as follows:

1. Whether in view of defendants/appellants refusal and or failure to adduce evidence in support of their statement of defence, and their election to rest their case on plaintiff’s case, the defendants have any grounds upon which to appeal against the judgment.

2. Whether in view of the provisions of Decree No. I of 1984, the Constitution (Suspension and Modification) Decree 1st and 2nd defendants have any standing as appellants in this suit.

3. Whether Exh. N2, plaintiff’s letter to Mrs. Asaka, constitutes misconduct within the context of Section 256(1) of the 1979 Constitution, given the facts and circumstances of this case, including, in particular, the facts (i) that the facts alleged in Exh. N2 are true, and (ii) are admitted by the defendants to be true, (iii) the letter was never published and or disseminated by the plaintiff, (iv) there is no evidence whatever that the plaintiff had uttered the contents of the letter to any other person than Mrs. Asaka, (v) Mrs. Asaka was never called as a witness by the defendants to refute or deny the letter, and (vi) PW3’s testimony in court confirming actionable defamation, and grave provocation, of the plaintiff, by the woman.

4. Whether in law any woman who attempts to seduce a respectably married man, who incidentally happens to be also a High Court Judge, but which woman, in spite of this fact and the fact that the attempt could have broken up the Judge’s marriage and home, several times in public turns round to falsely accuse the same man of having been the one who tried to seduce her, is entitled to any protection from the just wrath of the man in question.

5. Whether Exh. N1 was sent by Mrs. Asaka to the 2nd defendant as a petition against the plaintiff, or at all.

6. And whether the 1st and 2nd defendants had any business in law wading, uninvited, and in the utmost bad faith, into a private dispute between two citizens, only to use or abuse their authority and office so vindictively against one of the parties, the plaintiff.

Having regard to the facts of the case, I think the main issue for decision is whether the respondent’s conduct amounted to a misconduct under Section 256(l)(b) of the 1979 Constitution. Section 256(1)(b) provides as follows:

“A judicial officer shall not be removed from his office or appointment before his age of retirement except in the following circumstances:

(a) ...........................................................................................

(b) In any case, other than those to which paragraph (a) of this subsection applies, by the President or, as the case may be, the Governor acting on the recommendation of the Federal Judicial Service Commission or the State Judicial Service Commission that the Judicial Officer be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the code of conduct.”

What did the respondent do which the appellants say amounted to misconduct? The respondent was a judge of the Cross River State High Court. He was also at the material time the Chairman of the Board of Governors of Mary Hanney Secondary School, Oron. Mrs. Annie Asaka was the Principal of the School. Early in the beginning of the 1982/83 session, there were rumours of embezzlement of large amounts of P.T.A. funds by the bursar of the School. Mrs. Asaka confirmed it. The respondent wanted the Police called in to investigate. Mrs. Asaka did not. Police were however called in and when they arrived at the School, the Principal Mrs. Asaka chased them away. This soured the working relationship between the two. The respondent subsequently wrote to the Commissioner for Education suggesting that Mrs. Asaka be transferred away from Mary Hanney Secondary School to another school in order to facilitate police investigation of the alleged fraud. The Commissioner for Education in his reply expressed readiness to accept the suggestion but shortly after turned a volte-face by directing his Permanent Secretary to write to remove respondent as Chairman of the Board of Governors of the School.

Meanwhile it came to the knowledge of the respondent that Mrs. Asaka was saying dirty things in public of and concerning the respondent. The respondent tried in vain to meet with her. This was when he wrote her the letter complained of (exhibit N5) and delivered to her personally. It was Mrs. Asaka who made copies of exhibit N5 and sent to certain Government functionaries. The gist of Exhibit N5 was that Mrs. Asaka was a shameless liar for saying that the respondent called for her transfer because she refused to go to bed with him. It also reminded Mrs. Asaka of the numerous occasions on which she unsuccessfully solicited sexual favours - from the respondent.

Early in November, 1982, following a report by his wife who was a Higher Executive Officer (Accounts) at the Nautical College, Oron, that Capt. I. N. Ntiaidem, Director of Studies at the College and other persons in uniform, had entered her office and conducted themselves in a menacing manner, the respondent wrote a protest letter to Capt. Ntiaidem.

The two letters somehow found their way to the Cross River State Judicial Service Commission. The Commission called for respondent’s comments. He forwarded his comments to the Commission. After deliberations the Commission was not satisfied with the respondent’s explanation and in consequence called on him to resign. The respondent refused to resign or retire from service. The Commission met again to consider the respondent’s refusal. The outcome of this meeting was a resolution to advise the Governor of the State to remove the respondent from office of High Court judge of the State in accordance with Section 256(1)(b) of the 1979 Constitution. By a letter dated 25th April 1983 (Exhibit ‘R’) the Secretary to the State Government Dr. I. I. Ukpong informed the respondent of the Judicial Service Commission’s recommendation for his removal. Part of the letter reads as follows:

“I am directed by his Excellency the Governor to bring to your notice that pursuant to Section 256(1)(b) of the Constitution of the Federal Republic of Nigeria 1979, the Cross River State Judicial Service Commission has advised him, the Governor, to remove you, Honourable Mr. Justice O. A. Esin, from the Judicial Service of Cross River State with immediate effect. The Commission’s advice is based on its conclusion:

(i) That the letters you wrote on 27th October, 1982 to Mrs. Annie Bassey Asaka and on 22nd November, 1982 to Captain Ntiaidem of Nautical College, Oron, were so vile, depraved, morally debased and criminally outrageous respectively, and constituted a misconduct on your part as a judicial officer;

(ii) That your reaction to the Judicial Service Commission’s letters Nos. JSC/P/CON./76/26 of 17th February, 1983 was arrogant, non-penitent and bordered on blackmail and, if not checked, was capable of ruining the Cross River State Judiciary.”

The letter asked the respondent to show cause why the Governor should not accept the Commission’s advice as stated above and discipline him accordingly. In compliance, the respondent wrote Exhibit ‘S’ to the Secretary to the Government. As it turned out, the Governor found his explanation unsatisfactory and proceeded to remove the respondent from office.

Now, the question arises as to whether the respondent’s action amounted to a misconduct as envisaged by Section 256(1)(b) of the 1979 Constitution. I have earlier on reproduced this section. The learned trial judge, in the course of his judgment said: -

“An analysis of section 256(1)(6) of the Constitution shows that a Judicial Officer can be removed from his office or appointment before his age of retirement on the following grounds:

(a) For his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body).

(b) For misconduct.

(c) For contravention of the Code of Conduct.

The plaintiff was removed for what the 2nd defendant regarded as misconduct as contained in Exhibit N5 - a letter written by the plaintiff to Mrs. Asaka.

I again emphasize that the misconduct must be such as would relate to the plaintiff’s judicial functions and of the same type, that is, ejusdem generis the other causes of removal in paragraphs (a) and (c) of the above analysis. Even though some of the contents of Exhibit N5 might be regarded by the 2nd defendant as ‘vile, depraved and morally debased’, it cannot constitute misconduct as envisaged by section 256(1)(6) of the Constitution of the Federal Republic of Nigeria, 1979.”

The learned trial judge then declared the removal of the plaintiff from his office as - a Judge of the Cross River State High Court as unconstitutional, null and void and without effect whatsoever. The respondent agrees.

The appellants on the other hand say that the stance of the learned trial judge in the above passage with respect to section 256(1)(b) is erroneous. It was said that Section 256(1 )(b) created three different and separate situations whereby a judge upon recommendation by the appropriate body could be removed. The first situation namely, physical or mental disability deals with causes that are mainly not the making of the judge. The second and third situations deal with acts by the judge on which he has control. Having regard to the fundamentally different situations, it was submitted that the ejusdem generis rule could not apply to the interpretation of S. 256(1)(b) of the 1979 Constitution.

What then is the ejusdem generis rule? The doctrine of ejusdem generis is a familiar rule of construction. By this it is meant that general words coming after particular and specific words are confided to things of the same kind as those specified. See Attorney-General v. Brown (1920) 1 KB 773 at 797. The words in Section 256(1)(b) of the 1979 Constitution are clear and unambiguous. They mean what they say and that a judicial officer may be removed for his inability to discharge the functions of his office, or for misconduct or contravention of the Code of Conduct. That in my opinion, is the only view which the context clearly manifests. Unless there is a category, and there really is no category in the present case, there is no room for the application of the ejusdem generis doctrine. For this reason I agree with the appellants that the ejusdem generis rule cannot be applied to the construction of S. 256(1)(b) of the 1979 Constitution.

The question however is whether the misconduct is of such a nature as to render the respondent unfit to remain on the High Court Bench. The respondent admitted that he wrote the letters complained of but says that his conduct has no relation to his character as a judge; that what he did was not in relation to any matter concerning his office.

In Halsbury’s Laws of England 3rd Ed. Vol. 7 at p. 341 the learned authors state as follows:

“The grant of an office during good behaviour creates an office for life determinable upon breach of the condition, and behaviour means behaviour in matters concerning the office, except in the case of conviction upon an indictment for any infamous offence of such a nature as to render the person unfit to exercise the office, which amounts legally to misbehaviour though not committed in connection with the office.

Misbehaviour as to the office itself means improper exercise of the functions appertaining to the office, or non-attendance, or neglect of or refusal to perform the duties of the office.”

In our situation, Section 256 of the Constitution does not appear to restrict the misconduct to matters concerning the office. I think it envisages a much wider scope. Each case must however depend upon its peculiar facts, for there is no rule of law defining the degree of misconduct which will justify dismissal. The sufficiency of the justification for removal depends largely upon the degree of misconduct: See Clouston & Co. Ltd. v. Corry (1906) AC. 122 at 129. I also think that misconduct in his private life by a Judge of a nature which tends to erode his authority and confidence in his relations with the public amounts to misconduct which will justify dismissal. A judge must be above suspicion in the eyes of the public. He should be able to do his work in complete independence and free from fear. He is not to be plagued with allegations of malice or ill-will or bias or anything of the kind. He should give no cause for scandal.

Now the letters written by the respondent to Mrs. Annie Bassey Asaka and Capt. Ntiaidem were branded “vile, depraved, morally debased and criminally outrageous” by the appellants. But were the letters really so? The letter to Mrs. Asaka, as I have already indicated, was to the effect that she falsely told highly placed persons in the community that the respondent demanded sexual favours from her. Rather it was Mrs. Asaka who solicited for sexual favours from the respondent who spurned her. The letter gave instances of when and where these incidents took place and the respondent also threatened to go to court. The respondent gave a detailed account of the events leading to this state of affairs. His evidence in this regard was not challenged nor discredited. The letter to Capt. Ntiaidem simply asked the man to stop harassing the respondent’s wife. Now, where is the misconduct? Is it in cherishing his good name or the safety of his wife? He may have used harsh language but it was intended to bring home the message. I do not doubt that some people would have reacted differently to the situation. But experience has shown that it is not every situation that demands a civilized response. So having regard to the facts of the present case, I think the situation called for a recriminating response in a spiteful manner so long as it was confined to the combatants. I must recall here that Exhib:t N5 was written in long hand, sealed and delivered personally to Mrs. Asaka. I therefore find nothing unethical in the letters. This whole matter was nothing but a storm in a teacup. It needlessly generated a lot of sound and fury. It is inconceivable that these letters, having regard to the circumstances in which they were written, could have eroded the respondent’s authority and confidence in his relations with the public. I venture to say that some would have admired him as a no nonsense judge.

The question must be asked whether the respondent’s conduct would have prevented him from being appointed a judge of the High Court. Again I ask myself: what is intrinsically wrong in telling a person face to face, as it were, that he is a despicable liar? What is awfully wrong in a man trying to protect his wife from bullies? The conduct would not have negatively affected his chances of being appointed a judge. That being so, we are not bound to interfere after he has been appointed to the High Court Bench. We must judge his conduct upon the same principle as if we were considering whether or not he is a fit person to be appointed a High Court Judge. There cannot be two standards.

Lastly Section 256 of the Constitution imposes a punishment. It is dismissal which is a very serious matter. It is a rule of practice that care must be taken in construing a penal section. If there is a reasonable interpretation which will avoid the penalty in any particular case, that should be adopted. Where there are two reasonable interpretations, it has been the practice to adopt the more lenient one. See Tuck and Sons v. Priester (1887) 19 QBD 629. It is my considered view therefore that the respondent having regard to the facts, was not guilty of any misconduct under Section 256(I)(b) of the 1979 Constitution.

Having come to this conclusion it is not necessary for me to deal with the remaining issues raised by the appellants.

This appeal accordingly fails and is dismissed. I affirm the judgment of the court below given on 12th October, 1987. There shall be costs of N800.00 in favour of the respondent against the appellants.

**KUTIGI, J.C.A**.:

I read in draft the judgment of my learned brother Katsina-Alu J.C.A. just delivered. I agree with it. I think once technicalities are brushed aside, the single most important issue for determination in this appeal is clearly whether or not on the facts the conduct of the plaintiff/respondent amounted to a misconduct under section 256 subsection 1(b) of the 1979 Constitution as contended by the defendants/appellants. A striking feature of this case is that although the appellants filed a joint Statement of Defence they called no witnesses at the trial but merely rested their case on that of the respondent. So as it turned out the only evidence before the court was that of the respondent and his witnesses. Consequently and based on the facts before the court, l find no difficulty in agreeing with the learned trial judge that although the letter, Exhibit 5, which the respondent wrote to one Mrs. Asika might appear to the appellants as “vile, depraved and morally debased, “ it certainly did not constitute misconduct under section 256 subsection I (b) of the 1979 Constitution. 1 also agree with the same conclusion in the lead judgment that having regard to the facts the respondent was not guilty of any misconduct under the aforementioned section of the Constitution.

The appeal is dismissed. I endorse the order for costs.

**OGUNTADE, J.C.A.:**

This appeal raises a constitutional issue of some importance. What is the degree or quantum of misconduct that can lead to the removal of a Judge under Section 256(I)(b) of the Constitution of the Federal Republic of Nigeria 1979?

The Section provides:

“A judicial officer shall not be removed from his office or appointment before his age of retirement except in the following circumstances:

(a) ...................................................................................................

(b) In any case. other than those to which paragraph (a) of this subsection applies, by the President or, as the case may be, the Governor acting on the recommendation of the Federal Judicial Service Commission or the State Judicial Service Commission that the Judicial Officer be removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the code of conduct.”

There is no definition of misconduct given under the above provision of the 1979 Constitution.

In this case, the Cross River State Judicial Service Commission had recommended to the Civilian Governor of the State that the plaintiff/respondent be removed for the reason that he was found to have ‘misconducted’ himself.

Following the recommendation to the civilian governor, the Secretary to the State Government on 25-4-83 addressed a letter exhibit ‘R’ to the plaintiff/ respondent. The said letter reads:

“Hon. Justice O. A. Esin,

The High Court,

Oron.

ALLEGATIONS OF MISCONDUCT

I am directed by His Excellency the Governor to bring to your notice that pursuant to Section 256(1)(b) of the Constitution of the Federal Republic of Nigeria 1979, the Cross River State Judicial Service Commission has advised him, the Governor, to remove you, Honourable Mr. Justice O. A. Esin, from. the Judicial Service of Cross River State with immediate effect. The Commission’s advice is based on its conclusion:

(i) That the letters you wrote on 27th October, 1982 to Mrs. Annie Bassey Asaka and on 2nd November, 1982 to Captain Ntiaidem of Nautical College, Oron, were so vile, depraved, morally debased and criminally outrageous respectively, and constituted a misconduct on your part as a Judicial Officer,

(ii) That your reaction to the Judicial Service Commission’s letters Nos. JSC/P/CON/76/26 of 17th February, 1983 was arrogant, non-penitent and bordered on blackmail and, if not checked, was capable of ruining the Cross River State Judiciary.

2. In the circumstances, His Excellency the Governor has directed me to request you to show cause why he should not accept the Commission’ s advice as stated above and discipline you accordingly.

3. Your reply to this letter should please reach the undersigned on or before Friday, 29th April, 1983. If on that date no reply is received from you, it will be presumed that you have no defence to make.

SGD.

CHIEF (DR) I.I. UKPONG

SECRETARY TO THE GOVERNMENT.”

The plaintiff/respondent on 27/4/83 sent a reply exhibit ‘S’ to the above exhibit ‘R’. The reply reads:

“Chief (Dr) I. I. Ukpong,

Secretary to the Cross River State Government,

Office of the Governor,

P.M.B. 1056, Calabar.

ALLEGATION OF MISCONDUCT

1 refer to your letter GO/SSG/AD/S/2/VOL. 23/401 dated 25th April, 1983, and comment briefly as follows:

(i) I have not committed any disciplinary offence within the context of S. 256(1)(b) of the Constitution of the Federal Republic of Nigeria. (ii) The said section specifies the circumstances in, or offences for, which a Judicial Officer may be removed from his office or appointment, as follows:

(a) inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body, i.e. whether arising from bodily or mental ill health or disease) or

(b) Misconduct, or

(c) Contravention of the Code of Conduct.

(iii) The misconduct referred to in the said section must be of a gravity that is ejusdem generis with the other offences specified in the section, that is, with invalidating bodily or mental disease, or with one of the offences which constitute a violation of the Code of Conduct.

(iv) The offences which constitute misconducts that violate or contravene the said Code of Conduct are clearly set out in the 5th Schedule to the Constitution.

(v) A private letter by a Judicial Officer addressed by him in the strictest confidentiality to another, in justifiable circumstances, which letter has no bearing whatever, directly or remotely, on the Judicial Officer’s discharge or performance of his duties, cannot in our law, constitute a misconduct within the context of S. 256(1)(b) of our constitution.

(vi) My letters to Mrs. A. B. Asaka and Captain Ntiaidem, referred to in paragraph (i) of your letter, were private letters.

(vii) For the foregoing reasons, the opinion expressed by the J.S.C. in their advice to the Governor, to the effect that the aforesaid letters constitute a misconduct, is, I submit with respect, patently erroneous and misleading, and should be ignored and rejected by the Governor, to obviate the inevitability of bitter litigation and permanently embittered personal relationships.

SGD.

HON. JUSTICE O. A. ESIN. ‘

The civilian governor then wrote exhibit ‘D’ to the plaintiff/respondent. Exhibit ‘D’ reads:

“Honourable Justice O. A. Esin, High Court of Justice,

The Judiciary, Oron.

REMOVAL FROM THE CROSS RIVER STATE JUDICIAL SERVICE On receiving the recommendation of the Cross River State Judicial Service Commission in accordance with section 256(1)(b) of the Constitution of the Federal Republic of Nigeria 1979, the said Constitution enjoins me to act on the recommendation that you be removed as Judge from the Cross River State Judicial Service, and you are hereby removed as Judge from the Cross River State Judicial Service, with effect from the 4th day of May, 1983.

2. I thank you for your service to the State and do wish you success in all your future endeavours.

(SGD.)

CHIEF (DR) CLEMENT N. ISONG

GOVERNOR OF CROSS RIVER STATE.”

From the above, it is manifest that the misconduct imputed to the plaintiff/respondent arose from the two letters he wrote in his private capacity to one Mrs. Asaka and one Captain Ntiaidem. I do not have in the file a copy of the letter said to have been written to Captain Ntiaidem or its transcript in the record of proceedings. The letter written to Mrs. Asaka reads thus: (Exhibit N3)

27th October, 1982

Dear Mrs. Asaka,

So you’ve actually gone about telling people I reported you to the Commissioner for Education and called for your transfer because you refused to go to bed with me! SHAMELESS LIAR!

Everyone of those you told that white lie to could not of course, bring themselves to believe it. They know that I seek the company of beautiful and decent women and not that of FAT, GREASY, SHAPELESS, FILTHY PIGS like you. This is what they have told me, and they are correct. They even told me they knew you were lying, and that they rather felt the correct state of affairs was that you were the one who begged me to go to bed with you. Can you deny that? Can you deny that you came to my house several times and pleaded with me to lay you? Will you deny that you came to my chambers several times and that your husband had to come there once or twice to get you? Will you deny that you came with your husband to me at the hospital tennis court-on flimsy pretexts and on one such occasion you came to tell me your husband was travelling that very evening, and begged me to come to your house that evening and lay you? O, loose disreputable whore of a woman, can’t you even protect yourself from your wild indiscretions? Is your tongue as ungovernable as your passions? You told me you could fight anyone anywhere and I knew you could and actually did. What I could not bring myself to suspect was that you could also lie.

You told people you could not be my friend because you were my first wife’s friend at Nsukka. I have told them the correct version of what happened. I’ve told them that you have told me you were in love with me from the first day you set eyes on me at Nsukka, even though I cannot recall looking at you twice at the place.

I am writing to all the officials at Calabar to whom you have slandered or libelled me, giving the correct facts about your stories of course those of them who know me will treat your lies, with the contempt they deserve. Who by the way amongst them does not know you; and your reputation at Edgerley and Edem Ekpat, where you were physically chased out.

Let me tell you one thing. The fact that you have people somewhere to whom you scamper every so often whenever you’re in a fix will not save you from your problems at Mary Hanney. Right now we have a list of the properties of that school which are in your custody everyone of which you will return or refund before you leave, including school and P.T.A. funds.

You probably thought I did not know that you were the one who went and lobbied your godfathers at Calabar to appoint me to the Board of Governors of Mary Hanney. Of course everyone knew. I have since known that your modus operandi is lobbying with all its sinister implications!

You also told people I told you my family has a vested interest in Mary Hanney. So it does. If you had even a family, to say nothing of a great and proud family, you would appreciate the sentimental value of that interest. But of course you are a savage.

I know that one of those things you’ve gone to Calabar and elsewhere with is that I hate the Ibibios. But those Ibibios who know me know that I do not and cannot hate them, although I sometimes disagree with them on fundamentals or principles.

You will get my court SUMMONS for defamation of character soon.

SGD.

HON. JUSTICE O. A. ESIN.”

There is no doubt that the language employed by the plaintiff/respondent in above letter is crude and lurid. I think that the indignation felt by the plaintiff/ respondent at the allegation which he said Mrs. Asaka unjustifiably made against his person could be expressed through a better and more temperate language. But as human beings, we have different temperaments and different ways of behaving when under pressure. It must be borne in mind that the plaintiff/respondent was reacting to an allegation that could scandalize him and if unchecked render him unfit for his high office. Can the contents of the letter amount to misconduct? I do not think so. In so concluding, I am not impressed by the attempt to draw a line between the private and public lives of a judge. I think that the demands of the office of a judge are such that his private life is inseparable from his public life. His private life mirrors his public life. A judge must be as much careful as to what he says or writes in private as in public. He must be a model in his public and private life. But he is not a saint and cannot be one. He has his weaknesses and these include his temperaments. Merely reacting by writing a strongly worded letter to ward off an allegation of a scandalizing nature cannot amount to misconduct.

I therefore agree with the lead judgment of my learned brother Katsina-Alu, J.C.A. I would also dismiss this appeal with costs as in the lead judgment.

Appeal dismissed.