**FEDERAL POLYTECHNIC BAUCHI & ANOR**

**V.**

**ABDULFATTAH ABOABA & ANOR**

IN THE COURT OF APPEAL OF NIGERIA

ON FRIDAY, THE 31ST DAY OF MAY, 2013

CA/J/230/2006

**LEX (2013) - CA/J/230/2006**

**OTHER CITATIONS**

3PLR/2013/64

(2013) LPELR-21916(CA)

**BEFORE THEIR LORDSHIPS**

OYEBISI FOLAYEMI OMOLEYE, JCA

JUMMAI HANATU SANKEY, JCA

PETER OLABISI IGE, JCA

**BETWEEN**

1. FEDERAL POLYTECHNIC BAUCHI

2. THE GOVERNING COUNCIL, FEDERAL POLYTECHNIC, BAUCHI - Appellant(s)

AND

1. ABDULFATTAH ABOABA

2. ISIAKU NDA ELUJA - Respondent(s)

**ORIGINATING STATE**

BAUCHI STATE: High Court (H. M. Tsammani J- Presiding)

**REPRESENTATION**

Mr. N. BALAN MALAM Esq. - For Appellant

AND

Mr. S. O. D. WURNO Esq. - For Respondent

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

CONSTITUTIONAL LAW:- Courts with jurisdiction to hear and determine allegations of the contravention of Fundamental Rights – Whether restricted to those spelt out under Section 46(1) and (2) of the Constitution – Whether State High Courts and Federal High Courts are conferred with concurrent jurisdiction to adjudicate upon matters of the enforcement of fundamental rights of the citizens of Nigeria

CONSTITUTIONAL AND PUBLIC LAW:- Enforcement of fundamental human rights and freedom of applicants as enshrined in Chapter IV of the Constitution – Right to fair hearing, pursuant to Order II of the Fundamental Rights (Enforcement procedure) Rules, 1979 [now Fundamental Rights (Enforcement procedure) Rights, 2009 as guaranteed by Section 36 of the Constitution] - Objectives – Rules made pursuant thereto to aid speedy consideration and determination of allegations of the infractions of the enshrined and guaranteed rights of citizens – Duty of court to ensure exercise of the rights ought not to be unduly fettered, derogated from nor frustrated – Relevant considerations

EMPLOYMENT AND LABOUR LAW:- Rule that there is a difference in status between contracts of personal service and contracts of service which enjoy statutory protection - Whether contract of service can only be terminated in the manner prescribed by the governing statutory provision – Whether a breach of the statutory provision cannot result in a unilateral repudiation nor can the contract agreement be discharged on the agreement of the parties without compliance with the enabling statutory provision

ADMINISTRATIVE AND GOVERNMENT LAW:-Breach of Fundamental Right to Fair Hearing – Whether can arise through improper administrative procedure used to effect the termination

ADMINISTRATIVE AND GOVERNMENT LAW:- Statutory employment – Termination of – Use of process not envisaged in the applicable statute – Validity thereof – Relevant considerations

ADMINISTRATIVE AND GOVERNMENT LAW:- Termination of employment with statutory flavour – Validity – Duty to ensure that procedure used complies with applicable statute – Whether it is a defence that the employer exercised his right to terminate because services were no longer required

PUBLIC LAW AND JURISPRUDENCE:- Mandatory rules of court - Whether are not as sacrosanct as mandatory statutory provisions and therefore, a rule of court, cannot override statutory provisions of the law – Effect

EDUCATION AND LAW:- Tertiary education centers established by statute – Employment of senior members of – Misuse of institutional facility – Dereliction of duties - How investigated – Termination arising therefrom – Duty to ensure fair hearing rights in administrative process pursuant thereto

EDUCATION AND LAW:- Statutorily established polytechnic – Academic and non-academic staff – Bodies established by institution - Duty to act within donated powers under the statute establishing the institution – Actions deemed ultra vires those statutes – Validity - Section 12 of the Federal Polytechnic Act – How interpreted

**PRACTICE AND PROCEDURE ISSUES**

ACTION - COMPETENCY OF AN ACTION: Complaint that an action is statute barred – Import – Whether amounts to a complaint against the competence of the action and consequently, the jurisdiction of the court to adjudicate upon it – Nature of complaint – Whether the fact that an action is statute barred is a matter of mixed fact and law

ACTION - CONSOLIDATED SUIT:**-** Consolidated suits/appeals though heard at the same time – Whether retain their distinct and separate identities for the purpose of determination and so the law requires that there be separate pronouncements by the court on each of them – Requirement that at the end of a common but consolidated proceedings, that judgment be given in respect of each suit – Whether the court cannot determine one suit and ignore the other

ACTION – FINAL ADDRESS:– Address of counsel – Whether cannot be used to raise issues which do not emerge from the pleadings and evidence – Whether it is improper to raise issues of fact in counsels final address - Whether statute of limitation does not confer any right on a defendant, but only imposes a time limit on a plaintiff

ACTION - ORIGINATING SUMMONS:- Use of - Whether inappropriate in the originating of any suit where there are disputes as to facts – Whether it is required that the disputed facts be of a hostile nature and substantial - Order II Rule 2 of the Rules – An application for the enforcement of the fundamental right – Whether may be made by any originating process

ACTION – ORIGINATION/COMMENCEMENT OF ACTION:- Whether it is not the law that once there is dispute on facts, the matter should be commenced by writ of summons – Requirement that the said disputes on facts must be substantial, material, affecting the live issues in the matter – Justification - Whether there is hardly a case without facts and dispute of same giving rise to the litigation in the first place

ACTION – PLEADINGS AND ADDRESS OF COUNSEL:- Address of counsel – Whether cannot be used to raise issues which do not emerge from the pleadings and evidence – Whether in order to determine whether an action is statute barred or not, the court must be involved in the arithmetic exercise of calculation of years, months, and days to the minutest detail

ACTION – STATUTE OF LIMITATION – AND FUNDAMENTAL RIGHTS ENFORCEMENT:- Order III Rule 1 of the Rules – Whether an application for the enforcement of fundamental right is precluded from the operation of any limitation statute, whatsoever

ACTION – STATUTE OF LIMITATION:- Defence founded on limitation – Whether can be raised in limine without evidence in support provided the dates of accrual of cause of action and filing of writ are disclosed in the writ of summons and statement of claim - The fact that an action is statute barred – Whether is a matter of mixed fact and law - Determination of whether an action is statute barred or not – Duty of court to delve into the arithmetic exercise of calculation of years, months, and days to the minutest detail

ACTION – STATUTE OF LIMITATION:- In the event of the appellants' failure to specifically plead the facts of the defence of limitation – Duty of Court thereto

ACTION:– It is settled law that for the purpose of determining whether a court has the requisite jurisdiction to entertain a matter before it, it is the duty of the court to look at the statement of claim where one is required and had been filed and take the documents therein contained as true ex facie. See Adeyemi v. Opeyori (1976) 9 - 10 SC 31.

APPEAL – FRESH POINT:- Rule that a court will not as a matter of course grant an application to raise and argue new points arising from grounds not covered in an earlier notice of appeal – Justification - Certain requirements that must be first fulfilled – Where the points are substantial, weighty, arguable and would not necessitate the taking of fresh evidence – How treated

APPEAL - GROUND OF APPEAL:- Rule that questions for determination must arise and be framed from grounds of appeal and that grounds of appeal must be connected with the controversy between parties which arose from the judgment of the lower Court - An aspect of the decision of a lower court which has not been appealed against - Whether subsists and will not be allowed to be submitted upon

APPEAL - INTERFERENCE WITH DECISION OF TRIAL COURT: Attitude of appellate court to invitation to interfere with evaluation of evidence by trial court - Where a trial court fails to properly evaluate evidence – Duty of an appellate court to intervene and interfere with such decisions of the trial court

APPEAL - JURISDICTION:- Whether an issue of jurisdiction cannot be raised for the first time in an appellate court unless and until leave has been sought and obtained by an applicant – Whether the issue of jurisdiction can be raised by a party anyhow, anywhere and anyhow, for as long as the other party is not caught by surprise but given an opportunity to react to same

APPEAL - RAISING FRESH ISSUE ON APPEAL: Where a party intends to raise a fresh issue on appeal – Need to seek and obtain the leave of the appellate court for the issue to be validly raised and entertained – Whether an appellant will not ordinarily be allowed to raise on appeal a question which was not raised, tried or considered by the trial Court, but where the question involves substantial points of law and it is plain that no further evidence would have to be adduced, the court will allow it, to prevent a miscarriage of justice

COURT - COMPETENCY OF COURT:- Rule that a defendant is entitled to raise issues pertaining to jurisdiction – Justification – When a a court is deemed competent – Need for court to be properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or another; for the subject-matter of the case to be within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction; and that case comes before the court initiated by the due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction - Defect in competence of either the action or court – Whether fatal and the proceedings thereof however well conducted are a nullity

COURT - JURISDICTION - ISSUE OF JURISDICTION: Rule that a question of jurisdiction can be raised at anytime or stage of the proceedings or even on appeal at the Supreme Court for the first time, as a substantive point of law – Justification – Whether any defect in the jurisdiction of court is fatal to adjudication and the whole proceedings and the judgment obtained therefrom a nullity

COURT - JURISDICTION: Courts vested with jurisdiction to hear and determine allegations of the contravention of any of the fundamental human rights provisions under Chapter IV of the Constitution – Whether restricted to the courts spelt out in Section 46(1) and (2) of the Constitution and Order II Rule 1 of the 2009 Rules

COURT:- Mandatory rules of court - Whether are not as sacrosanct as mandatory statutory provisions and therefore – Whether a rule of court, cannot override statutory provisions of the law – Effect

EVIDENCE - EVALUATION OF EVIDENCE:- Rule that evaluation of evidence and ascription of probative value thereto is the primary function and duty of a trial Court – Duty of appellate court thereto

JURISDICTION:- In determining the jurisdiction of a court – Need for the enabling law vesting jurisdiction to be considered in the light of the relief(s) sought - In determining whether a court has the requisite jurisdiction to entertain a matter before it – Whether it is the duty of the court to look at the statement of claim where one is required and had been filed and take the documents therein contained as true ex facie

**MAIN JUDGMENT**

**OYEBISI FOLAYEMI OMOLEYE, J.C.A. (Delivering the Leading Judgment):**

This appeal is against the judgment of the High Court of Justice of Bauchi State holden at Bauchi, (hereinafter referred to as the trial Court) delivered on the 4th day of March, 2004, per H. M. Tsammani J.

The 1st and 2nd respondents as applicants severally sought and obtained the leave of the trial Court to apply for the enforcement of their fundamental rights to fair hearing, pursuant to the provisions of Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (hereinafter referred to as the Constitution). They subsequently by way of originating summons filed their respective complaints against the appellants as respondents, in line with the provisions of Order II Rule 1(1) of the Fundamental Rights (Enforcement Procedure) Rules, 2009 (hereinafter referred to as the Rules). By consent of both sides, the respondents' learned counsel applied for and the trial Court granted the consolidation of the two suits of the respondents. Thereafter, the two respondents filed a kind of joint originating summons and Statement pursuant to Order II Rules 1, and 3 of the Rules, respectively. These are contained in pages 18 to 24 of the record of appeal. In furtherance of the application, the respondents submitted five (5) questions for determination by the trial Court, thus:

1. Whether the Appointments and Promotions Committee of the Snr. Staff of the Federal Polytechnic Bauchi created by paragraph 3(2) (a) of the second schedule to the Federal Polytechnic Act, Cap. 139 has powers to make recommendations for the termination of the applicants' appointments to the Governing Council of the Polytechnic.

2. Whether the Appointments and Promotions Committee of the Senior Staff of the Federal Polytechnic Bauchi which is statutorily required to make recommendations to the Governing Council was constituted in such a way as to secure its independence and impartiality, when five of its seven members were also members of the Governing Council, which recommended to the Council disciplinary action against the applicants, and later sat as Council members to approve their own recommendation.

3. In the light of the provisions of Section 12(1)(a) and (b) of the Federal polytechnic Act, Cap. 139, whether the Governing Council of the Federal Polytechnic, Bauchi could remove the applicants being academic and senior staff of the Polytechnic without the council itself giving prior notice of reasons for their removal and affording them opportunity to make representations to the council in person.

4. If the answer to the third question is in the negative, whether the termination of the appointments of the plaintiffs by the 2nd respondent is not an infringement of their right to be heard guaranteed by Section 36(1) of the Constitution and amplified by Section 12(7) (a) & (b) of the Federal Polytechnic Act.

5. In the light of answers to the above questions, has the applicants' fundamental right to fair hearing not been breached by the 2nd respondent's termination of their appointments:-

i. When the Appointments and Promotions Committee exceeded its statutory powers by recommending the termination of the applicants' employment to the 2nd respondent.

ii. When five of the members of the Appointments and Promotions Committee that investigated the applicants recommended disciplinary action against them, later sat as Council members to approve their own recommendations, meaning that the same group of people investigated, recommended, and approved their own recommendations.

iii. When the statutory right of applicants to be informed by the 2nd respondents of reasons for the intended removals and their right to be afforded opportunity of making representations in person to the 2nd Respondent were clearly denied them.

Consequent upon the determination of the above questions, the respondents sought for the following reliefs:

a. AN ORDER setting aside the termination of the applicants' employment with the 1st respondent, the process having violently breached their fundamental rights to fair hearing.

b. AN ORDER of payment of the applicants' salaries and allowances from the date of termination till date.

c. AN ORDER deeming the applicants as being still staff of the 1st respondent, and being entitled to all the rights and privileges of their positions.

d. AND FOR SUCH ancillary or further orders as may be deemed appropriate.

The appellants in opposing the respondents' application, filed a counter affidavit of twelve (12) paragraphs, contained in pages 33 to 36 of the record of appeal. For clarity and easy reference,, the salient paragraphs 4 to 11 of the said counter affidavit are reproduced thus:

4. That I have been informed by the Registrar of the 1st respondent, Mal. Labara Ibrahim in his office on the 26th November, 2003 at about 12:00 noon which information I verily believe to be true as follows:

a) That the 1st applicant was not employed by the 1st respondent on the 10th April 1997 as Technologist II and his appointment was not regularized on the 20th May, 1998.

b) That sometimes in June 2002, the 1st applicant in whose care and control a Bus 1414 Mercedes Benz model was released for a trip to and from Lagos allowed and facilitated the commercialization of the Bus.

c) That during the same period, the 1st applicant even though he collected money officially for the purpose of fuel charged and carried passengers unlawfully.

d) That the 1st applicant collected undisclosed sum of money from the passengers for themselves and their goods, which he confirmed in his written reply to the query, issued to him by the 1st respondent's Registrar.

e) That the 1st applicant not only collected money from the passengers but had a misunderstanding with a passenger as a result of which he detained his tyres, and thereafter sold them in recovery of the fare. The aggrieved passenger petitioned the Rector of the 1st respondent.

f) That the 1st applicant's answer to the query issued him by the 1st respondent dated 25th December, 2002 was not satisfactory and that the Senior Staff Appointments and Promotions Committee did not recommend the termination of his (1st applicant) appointment to the 2nd respondent.

g) That the following persons are not members of the Senior Staff Appointments and Promotions Committee for the 1st respondent who recommended the termination of the 1st applicant's appointment with the 1st respondent:

i. Alh. Ibrahim Jahun (Rector)

ii. Mr. Eteng (Dep. Rector)

iii. Mr. Yila M. Maikano

iv. J. A. Alerege

v. Chia Surma

vi. Mrs. Orazuluke

vii. Abdullahi Gambo

h. That the Chairman of the Senior Staff Appointments and Promotions Committee, and the under listed persons are not members of the 2nd respondent:

1. RECTOR, Federal Polytechnic Bauchi

2. Y. M. Maikano, Registrar

3. Mr. Eteng

4. Mr. Chia Surma

5. Mr. J.A. Alerege

i) That not all the five persons mentioned in (g) above are members of the 2nd respondent and not all of them participated in the Appointments and Promotions Committee or recommended the termination of the applicant's appointment. Neither did any nor all of them consider and or approve the recommendation for the termination of the applicants' appointment with the 1st respondent. Annexed herewith is a copy of the relevant portion of the minutes of meeting of the Senior Staff Appointments and Promotions Committee set up by the 2nd respondent held on 27th January, 2003 and marked Exhibit 'B' and the minutes of the 55th Ordinary Meeting of the 2nd respondent held on 29th and 30th January, 2001 are also annexed and marked Exhibit 'B1'

j) That the 1st applicant was not only informed of the allegation against him by the 2nd respondent, he was equally invited before the ad-hoc Committee and subsequently a query was issued to him before the termination of his appointment.

k) That on the 14th October, 2002, the 2nd applicant refused to perform his duties as a Lecturer when he absented himself from Economics lecture to DPAA regular student at the New School of Business Studies.

l) That a team of Inspectors went round the school and inspected all the classes, workshops and mechanical lecture theatres to ensure that classes, were conducted promptly but the 2nd applicant was absent up till the time the inspectors left the venue at 4:30pm even though the lecture was to commence at 4:00pm.

m) That the Registrar of the 1st respondent issued a query to the 2nd applicant and his reply was not satisfactory so also his oral submission before the Appointments and Promotions Committee of the senior staff of the 1st respondent.

n) That the Senior Staff Appointments and Promotions Committee did not recommend the termination of the 2nd applicant to the 2nd respondent.

o) That the termination of the 2nd applicant's appointment by the 2nd respondent was not based on the recommendation of the Senior Staff Appointments and Promotions Committee.

p) That the 2nd applicant was not only given notice of his absence from lecture on the 14th October, 2002 but he was invited before an ad-hoc Committee subsequent to which he was issued with a written query to defend himself.

q) That the underlisted persons were not members of the Senior Staff Appointments and Promotions Committee that allegedly recommended disciplinary measures against the 2nd applicant:

1. Alh. Ibrahim Jahun (Rector)

2. Mr. Eteng

3. Mr. Yila M. Maikano

4. J. A. Alerege

5. Ohia Surma

6. Mrs. Orazuluke

7. Mrs. R. B. Arabi

r) That not all members of the Senior Staff Appointments and Promotions Committee of the 1st respondent were also members of the 2nd respondent. In fact the underlisted persons are not all members of the 2nd respondent:-

1. Rector

2. Mr. J. A. Alerege

3. Registrar

4. Chia Surma

5. Mr. Eteng

t) That the persons named in (q) above are not all members of the 2nd respondent and did not participate in the Committee's proceedings that recommended termination of the appointment of the 2nd applicant neither did they sit as the 2nd respondent to consider any recommendation. Annexed herewith is the relevant portion of the minutes of meeting of the Senior Staff Appointments and Promotions Committee held on 3rd & 4th of October, 2002, marked Exhibit 'C' and the minutes of the 54th Ordinary Meeting of the 2nd respondent held on 6th and 7th November, 2002, is also annexed and marked Exhibit 'C1' .

u) That adequate notice and fair hearing were accorded the 2nd applicant both orally and in writing before the termination of his appointment by the 2nd respondent.

5. I know that the applicants were never treated unfairly and neither did any of their guaranteed fundamental rights violated nor breached in any way by the respondents.

6. I know that as a matter of fact this application was heard and struck out by the Bauchi State High Court presided over by His Lordship Justice Abdulhamid Adamu, a copy of the ruling is annexed herewith and marked Exhibit 'A'.

7. That the termination of the appointment of the 1st and 2nd applicants was lawful as their conduct was scandalous and of a disgraceful nature, which the 2nd respondent considered to be such as to render them unfit to continue to hold their respective offices.

8. That the 1st applicant not only commercialized the school Bus from Lagos to Bauchi but confiscated and detained some vehicle tyres belonging to one of the passengers who allegedly failed to pay the appropriate charge.

9. That the said passenger petitioned the 1st respondent about the 1st applicant's conduct and demanded the release of his tyres.

10. That the 2nd applicant's conduct for failing to honestly deliver lecture to his students promptly which is his basic duty was considered by the 2nd respondent to be failure or inability to discharge the functions of his office or to comply with the terms and conditions of his service.

After hearing counsel for both parties, the learned trial Judge in a judgment delivered on 4th March, 2004, found in favour of the respondents and pursuant to Section 46(2) of the 1999 Constitution ordered as follows:

1. AN ORDER is granted setting aside the termination of the applicants' employment with the 1st respondent, as the process of termination violated the Fundamental Rights of the applicants under Section 36 of the 1999 Constitution of the Federal Republic of Nigeria and Section 12(1) of the Federal Polytechnic Act (Cap. 139) Laws of the Federation of Nigeria, 1990.

2. Accordingly it is declared that the applicants are still deemed as staff of the 1st respondent, and entitled to all rights and privileges of their Positions.

3. The respondents are ordered to pay the applicants all their salaries and allowances from the date their employment was purported to be terminated to the date of judgment.

Dissatisfied with the said judgment of the trial Court, the appellants filed their appeal against it, to this Court. And by the leave of this Court, the appellants filed an Amended Notice and Grounds of appeal, containing six (6) grounds of appeal. The said grounds of appeal with their particulars state thus:

GROUND ONE

The decision of the learned trial Judge is against the weight of evidence.

GROUND TWO

The leaned trial Judge erred in law when he heard and determined the respondent's claim in the absence of jurisdiction.

PARTICULARS

a) The subject matter of the action at the lower Court is issue of employment between the respondents and the appellants.

b) The appellants are agencies of the Federal Government of Nigeria.

c) The decision to terminate the appointment of the respondents was purely an administrative decision by the appellants.

d) By the provision of Section 25(1) of the Constitution of the Federal Republic of Nigeria, 1999, it is only the Federal High Court that has exclusive jurisdiction to hear and determine the claims of the respondents.

(e) The trial Court has no jurisdiction to hear and determine the claims of the respondents.

GROUND THREE

The learned trial Judge erred in law when he allowed the respondents to commence and eventually determine the matter by way of originating summons when there are irreconcilable dispute on the facts put forward by both parties.

PARTICULARS

(a) In the verifying Affidavit of the respondents, it was deposed that the 1st respondent was employed by the appellants on 10th April, 1997 as a Technologist II and his appointment was regularized on the 10th May, 1998 whereas by paragraph 4 (a) of the Counter Affidavit dated 17th December, 2003 and filed the same day, the appellants denied the deposition.

(b) In paragraph 3 (k) the respondents deposed to the facts that the Senior Staff Appointments and Promotions committee had the following persons as members:-

i. Alhaji Ibrahim Jahun Rector (Chairman)

ii. Mr. Eteng Deputy Rector

iii. Mr. Y. M. Maikano Registrar

iv. Mr. J. M. Alerege

v. Mr. Chia Surma

vi. Mrs. Orazuluke

vii. Abdullahi Garba

And in paragraph 3(1) the respondent further deposed that the chairman of the senior staff Appointments and Promotions Committee and the following members are also members of the Polytechnic Governing Council:-

(i) Rector, Federal Polytechnic Bauchi

(ii) Y. M. Maikano Registrar

(iii) Mr. Eteng

(iv) Mr. Chia Surma

(v) Mr. J. M. Alerege

On the other hand the appellants as respondents in the trial court denied the names of members of the senior staff Appointments and Promotions committee in their paragraph 4 (g) (h) and further stated in sub-paragraph (i) that the persons mentioned were not members of the Council and they did not consider and approve the recommendation of the termination of the 1st applicant's appointment:

(c) The appellants have also joined issues with the respondents as to membership of the Governing Council when it considered and approved the termination of the appointment of the 2nd respondent in paragraph (a) (t) of the Counter Affidavit.

(d) The above contradictions formed the basis of respondents' claim at the lower Court.

(e) Without resolving these issues there is no way the trial Court could come to a just determination of the case.

GROUND FOUR

The learned trial Judge erred in law when he heavily relied on Exhibits B, C, B1 and C1 attached to appellants, counter Affidavit to hold as follows:-

"Upon careful consideration of the termination letters issued to the applicants, "Exhibits F and J, which are amply corroborated by Exhibits B, C, B1 and C1 clearly show that the A and P committee recommended the termination of the applicants' employments". And this error occasioned a miscarriage of justice.

PARTICULARS

(a) Exhibits F and J are the instruments which severed the relationship between the appellants and the respondents.

(b) Exhibits F and J merely terminated the respondents' appointments on the grounds that the respondents' services were no longer required.

(c) There is nothing in Exhibits F and J to suggest that the appellants relied on Exhibits B, C, B1 and C1 to its counter Affidavit in terminating the appointments of the respondents.

(d) Right of termination of employment is available to both parties in a contract of employment.

(e) The trial Judge has no right to bring extraneous matters and read them into Exhibits F and J.

GROUND FIVE

The learned trial Judge erred in law when he allowed for the consolidation of the two suits and eventually gave a lump sum judgment.

PARTICULARS

(a) The learned trial judge held that "the suit now before this court the subject matter of this judgment is Abdulfattah Aboaba and Isiaku Nda Eluja v. Federal Polytechnic Bauchi and Governing Council, Federal Polytechnic Bauchi and is titled suit NO.BA/95/2003."

(b) That the two suits were filed before the learned trial Judge by way of originating summons on the 28th day of October, 2003 as Abdulfattah Aboaba V. Federal Polytechnic Bauchi, suit No.BA/95/2003 and Isiaku Nda Eluja v. Federal Polytechnic Bauchi, suit No.BB/95/2003.

(c) After the applicants/respondents sought and obtained leave to commence the action by way of originating summons, counsel to the applicants applied for the consolidation of both suits and same was granted.

(d) The evidence tendered in one suit is not "ipso facto" evidence of another.

(e) That in a consolidated suit, judgments are given separately and distinctively, based on the evidence adduced by each party.

GROUND SIX

The learned trial Judge erred in law when he accepted the applicants' claim and determined it when there is no verifying affidavit and same is defected in law.

PARTICULARS

a. By virtue of order 1 Rule 2(3) of the Fundamental Human Rights (Enforcement Procedure) Rules, 1999, every application under the Rules must be accompanied by a verifying affidavit.

b. That by virtue of section 88 of the Evidence Act the verifying affidavit must state the name of the informant whose reasonable particulars shall be given in respect of the information and the time, place and circumstances of the information. On a close look at the verifying affidavit, it falls short of that legal requirement.

c. The trial Court ought to discountenance the affidavit or at least decline to attach any probative value to it.

In accordance with the Rules of this court, briefs of argument were filed and exchanged by learned counsel for both parties. With the leave of this court, the amended appellants' brief of argument dated 25th June, 2012 was filed on the 28th June, 2012. The respondents' brief of argument dated 12th July, 2012 was filed on 23rd July 2012.

At the hearing of the appeal on 12th February, 2013, learned counsel for the appellants, Mr. N. Balan Malam informed this court that he would be abandoning ground six (6) of the amended notice and grounds of appeal. Ground six (6) is consequently struck out. He adopted the amended appellants' brief of argument, urged this Court to allow the appeal and set aside the judgment of the trial Court.

The learned counsel for the respondents, Mr. S. O. D. Wurno abandoned grounds four (4) and six (6) of the amended notice and grounds of appeal as no issues were formulated from them. He adopted the respondents' brief of argument, and urged the Court to dismiss the appeal and affirm the judgment of the trial Court.

In the amended appellants' brief of argument, four issues were formulated for the determination of the appeal. They read as follows:

1. Whether the learned trial Judge was right to have assumed jurisdiction, considering the nature and circumstances of the case?

2. Whether the learned trial Judge was right to have allowed the respondents to commence and eventually determine the matters by way of originating summons when there are irreconcilable dispute on the facts put forward by both parties?

3. Whether the appointments of the respondents were terminated for any reason other than, that their services were no longer required?

4. Whether the learned trial Judge was right when he delivered a single judgment and not two separate judgments in the consolidated cases?

On his part, the learned counsel for the respondents also presented four issues for the resolution of the appeal. These are:

i. Whether the issue of weight of evidence arises in this appeal?

ii. Whether the trial High Court had jurisdiction to entertain the suit?

iii. Whether or not originating summons was a suitable procedure taken by the trial High Court?

iv. Whether the consolidation of the two suits and delivery of one judgment on them was wrong and led to a miscarriage of justice?

I have examined the issues formulated by both counsel and l am satisfied with the issues formulated by the learned counsel for the appellants, as these, in my strong view, would determine the real grievance in the appeal. I shall now consider the four issues presented by the appellants' counsel, take issues one and two together and the rest seriatim.

ISSUES ONE AND TWO

Whether the learned trial Judge was right to have assumed jurisdiction, considering the nature and circumstances of the case?

Whether the learned trial Judge was right to have allowed the Respondents to commence and eventually determine the matters by way of originating summons when there a irreconcilable dispute on the facts put forward by both parties?  
For the appellants, their learned counsel submitted that the main claim of the respondents before the trial Court is for wrongful termination of appointment founded on contract of service and brought under the Fundamental Rights (Enforcement procedure) Rules. And that the alleged breach of the right to fair hearing contrary to Section 6(1) of the Constitution, complained of by the respondents, is a mere ancillary prayer to that main claim. Accordingly, the action of the respondents ought ordinarily to have been instituted by way of writ of summons under the High Court, (Civil Procedure) Rules of Bauchi State. Learned counsel for the appellants rested his submission in this regard on the case of: Abdulhamid v. Akar (2006) 13 NWLR (Pt. 996) p. 127 at p. 150, paras. B **-** E. He went further to argue that by the provision of Section 251 (1) of the Constitution, the jurisdiction of the Bauchi State High Court is ousted but vested in the Federal High Court, since the appellants are agents of the Federal Government and the principal claim has to do with the common law principle of unlawful termination of a contract of service. He stated that, the position would have been different if the main claim were to be for the enforcement of the fundamental rights of the respondents in which case, the State High Court and the Federal High Court would have concurrent jurisdiction, whether or not one of the parties is a Federal Government Agency. It was his conclusion that, the main claim of the respondents being for redress for the wrongful termination of their employment, the trial Court has no jurisdiction to adjudicate upon same, what is more, that the appellants are agents of the Federal Government. On this, reference was made to the case of: Ibrahim v. JSC Kaduna State (1998) 64 LRCN p.5044 at p. 5069.

Further under this issue, it was contended for the appellants that, by reason of exhibits F and J, the suit of the respondents at the trial Court was in violation of Section 2(a) of the Public officers Protection Act. That the suit is statute barred not having been commenced within three months of the alleged wrong complained of, incompetent and consequently, the trial Court lacks jurisdiction to adjudicate upon it.

In response to this issue, the learned counsel for the respondents submitted that, the claim of the respondents at the trial Court is predicated on the breach by the appellants of their fundamental right to fair hearing, which is guaranteed by Section 36(1) of the Constitution. And that pursuant to Section 46(1) of the Constitution, and Order 5(1) of the Fundamental Rights (Enforcement procedure) Rules, both the trial High Court of Bauchi State and the Federal High Court have concurrent jurisdiction to entertain allegations and complaints of breach of the fundamental rights of citizens of this country, Nigeria. He relied on this point, on the cases of: (1) Zakari v. IGP (2000) NWLR (Pt.670) p.666 and (2) Akwuego v. Kagoma (2000) 6 NWLR (Pt. 660) p.262.

Continuing, learned counsel for the respondents submitted that, being based on contract of service between them and the appellants, the respondents' claim is immuned to the said statute limitation. Hence, Section 2 (a) of the Public Officers protection Act, is not applicable to the action of the respondents and consequently the trial Court possesses the requisite jurisdiction to adjudicate upon the claim.

I have gone through the record of appeal and fail to find where the issue of the competence of the respondents' action, jurisdiction of the trial Court was challenged by the appellants as contained in ground two of their amended notice and grounds of appeal and submitted upon under issue one in their amended appellants' brief of argument. Albeit it is the law generally that, where a party intends to raise a fresh issue on appeal, he/she must first seek and obtain the leave of the appellate court for the issue to be validly raised and entertained. Hence, an appellant will not ordinarily be allowed to raise on appeal a question which was not raised, tried or considered by the trial Court, but where the question involves substantial points of law and it is plain that no further evidence would have to be adduced, the court will allow it, to prevent a miscarriage of justice. On this point, I refer to the cases of: (1) Olagunju v. P.H.C. (Nig.) Plc. (2011) LPELR - 2556 and Supreme Court in the case of: International Bank Plc. v. Olam (Nig.) Ltd. (2013) 6 NWLR (pt. 1351) p. 613 at p.476, paras. F - H and p.477, paras. A-C, held thus:

...in the decision of this Court in: Zacheus Abiodun Koya v. United Bank for Africa Ltd. (1997) 1 NWLR (Pt. 481) 251 at 266 - 267, paras. G - B Ogundare, JSC. "The law on the propriety of allowing a question or ground not raised or considered at the trial Court to be argued on appeal as was stated by this Court in Akpene v. Barclays Bank of Nigeria Ltd. (1977) 1 SC 47 (Per Obaseki, JSC) at pages 47 - 48 is: "The general rule adopted in this Court is that an appellant will not be allowed to raise on appeal a question which was not raised or tried or considered by the trial court (Shonekan v. Smith (1964) All NLR 168, 173) but where the question involves substantial points of law, substantive or procedural and it is plain that no further evidence could have been adduced which would affect the decision of them, the court will allow the question to be raised and the points taken (Shonekan v. Smith (supra); Stool of Abinabina (1953) AC 205 at 215) and prevent an obvious miscarriage of justice." This principle has been followed consistently by this Court in such cases as: (1) Fadiora v. Gbadebo (1978) 3 SC 219 at 247; (2) Skenconsult (Nig.) Ltd. v. Ukey (1981) 1 SC 6 at 18; (3) Enang & Ors. v. Adu (1981) 11 - 12 SC 25; (4) Ladunni v. Kukoyi (1972) S SC 31."

As can be gleaned from the printed record of appeal in the instant matter, the appellants did not seek and obtain the leave of this Court to raise this issue of jurisdiction. However, the apex Court has gone further to lay it down, even in the face of this solid and about half a century long legal principle, that a question of jurisdiction can be raised at anytime or stage of the proceedings or even on appeal in this Court and the Supreme Court for the first time, as a substantive point of law. The reason is that any defect in the jurisdiction of court is fatal to adjudication and the whole proceedings and the judgment obtained therefrom a nullity. See the cases of: (1) Onyema v. Oputa (1987) 3 NWLR (Pt.60) p. 259; (2) Madukolu v. Nkemdilim (1962) 1 All NLR (Pt.4) p.587 and recently in the case of: Nasir v. C.S.C., Kano state (2010) 6 NWLR (Pt.1190) p.253 at p.276, paras. A - E, the Supreme Court per Ogbuagu, JSC., stated as follows:

...in the case of Mr. Popoola Elabanj & Anor. v. Chief (Mrs.) Ganiat Dawodu (2006) 15 NWLR (Pt.1001) 76; (2006) 6 SCNJ 204; (2006) 607 SC 24; (2006) All FWLR (Pt.328) 604; (2006) vol.27 NSCQR 318; (2006) 6 JNSC (Pt.22) 81; (2006) 10 - 11 SCM. 267, this court, dealt with the issue as to when an objection as to jurisdiction, can be raised. I note that the crux of the objection of the respondents in this suit reading to this appeal, was in respect of jurisdiction. In this regard, it is now firmly settled that issue of jurisdiction or competence of a court to entertain or deaf with a matter before it, is very fundamental. It is a point of law and therefore, a rule of court, cannot dictate when and how, such point of law, can be raised. Being fundamental and a threshold issue of jurisdiction, it can be raised at any stage of proceedings in any court including this Court. An appellate court can even raise it suo motu. See the case of Anyah v. Iyayi (1993) 7 NWLR (Pt.305) 290 and Kotoye v. Saraki (1994) 7 NWLR (Pt.357) 414 at 466. I need emphasize as it is also settled that mandatory rules of court, are not as sacrosanct as mandatory statutory provisions and therefore, a rule of court, cannot override statutory provisions of the law. See the case of Katto v. Central Bank of Nigeria (1991) 9 NWLR (Pt.214) 126. (The underlined is mine for emphasis)

Therefore, it is safe to state that, the issue of jurisdiction can be raised by a party anyhow, anywhere and anyhow, for as long as the other party is not caught by surprise but given an opportunity to react to same. See also cases of: (1) Alh. J. B. Hassan v. Dr. M. B. Aliyu (2010) 17 NWLR (Pt.1223) p.547; (2) Jov v. Dom (1999) 9 NWLR (Pt.620) p.538; (3) Kwajaffa v. B.O.M. Ltd. (2004) 13 NWLR (Pt.889) p.146 and (4) Alawiye v. Ogunsanya (2013) 5 NWLR (Pt.1348) p.570. In the case of: International Bank Plc. v. Olam (Nig.) Ltd. (supra), Peter- Odili, JSC at p.478, paras. E - F, had the following to say:

It needs no saying that granting of an application to raise and argue new points arising from grounds not covered in the earlier notice of appeal would not be given as a matter of course. This is because certain requirements must be first fulfilled as in this case, where the points are substantial, weighty, arguable and would not necessitate the taking of fresh evidence especially as the respondent has an opportunity of reply in his brief and is not shut out. It cannot be rightly said that the rights of the respondent is being compromised or jeopardized. I see no injury that would be occasioned to the respondent.

It is on this note that I hold that, even at this stage of the instant matter, the appellants are on course to raise the issue of jurisdiction as they did in their amended notice and grounds of appeal and their counsel's submissions thereon in the amended appellants' brief of argument.

Now, before going into the consideration of the competence or otherwise of the trial Court to adjudicate upon the claim of the respondents, I want to straightaway resolve the point raised in the brief of argument of the appellants by their learned counsel. According to counsel, pursuant to Section 2(a) of the Public Officers protection Act, the respondents' claim at the trial Court not having been commenced within three months of the alleged wrong complained of by the respondents, is incompetent and consequently, the trial Court lacks jurisdiction to adjudicate upon the claim. The learned counsel for the respondents on the other part submitted that, the claim of the respondents being that of breach of contract of employment, the said Act is inapplicable thereto. He relied on this position, on the case of: CBN v. Adedeji (2004) 12 NWLR (Pt.890) p.226 at p.245.

The import of a complaint that an action is statute barred amounts to a complaint against the competence of the action and consequently, the jurisdiction of the court to adjudicate upon it. In essence the effect of a statute barred action is the loss of the right to enforce the action. See the cases of: (1) Araka v. Ejeagwu (2000) 15 NWLR (Pt.692) p.648 and (2) Eboigbe v. N.N.P.C. (1994) NWLR (pt.342) p.649. In the case of: Omotosho v. Bank of the North Ltd. (2006) 9 NWLR (pt.986) p.573, this court, per Ogunwumiju, JCA held inter alia that:

... a defence founded on limitation can be raised in limine without evidence in support provided the dates of accrual of cause of action and filing of writ are disclosed in the writ of summons and statement of claim, see P. N. Udoh Trading Co. Ltd. v. Sunday Abere (2001) 11 NWLR (Pt.723) pg.114 ... the fact that an action is statute barred is a matter of mixed fact and law. Address of counsel cannot be used to raise issues which do not emerge from the pleadings and evidence. See Odubeko v. Fowler (1993) 7 NWLR (Pt.308) pg. 637. In fact, it is improper to raise issues of fact in counsels final address. See Buraimoh v. Bamgbose (1983) 3 NWLR (Pt.109) pg. 352. Niki Tobi, J.C.A. as he then was in Aina v. Jinadu (1992) 4 NWLR (Pt.233) pg. 91 at pg. 110 said: "In order to determine whether an action is statute barred or not, the court must be involved in the exercise of calculation of years, months, and days to the minutest detail.

It is really an arithmetic exercise, which needs a most accurate answer'"

From the above, it is my very firm belief that, in the instant matter, although the defence of limitation of statute which touches on jurisdiction is an issue of law which can be raised in limine, there are no necessary facts or evidence-base to enable this Court determine whether or not the respondents' action before the trial Court is statute-barred. See the case of: Jones v. Bellgrove Properties Ltd. (1949) 2KB Div. p.700, where it was held that, the statute of limitation does not confer any right on a defendant, but only imposes a time limit on a plaintiff. In the event of the appellants' failure to specifically plead the facts of the defence of limitation, this Court in the circumstances of the instant matter is not well-equipped to determine same. What is more, by Order III Rule 1 of the Rules, it is unambiguously provided that, an application for the enforcement of fundamental right "shall not be affected by any limitation statute, whatsoever." Hence, the submission of the appellants' counsel that the respondents' action was caught by the statute of limitation because it was commenced outside the three month period stipulated by the Public Officers (Protection) Act, thereby stripping the trial Court of the garment of jurisdiction to adjudicate upon the suit, is terribly misconceived. Therefore, I agree with the stance of the respondents' counsel that the statute of limitation is not applicable to the respondents' claim which is an action hinged on breach of contract. See also the case of: Osun State Govt. v. Dalami (Nig.) Ltd. (2007) 9 NWLR (Pt. 1038) p. 66, where the Supreme Court referring to the case of: Nig. Ports Authority v. Construzioni General Farsura Cogefar Spa & Anor. (1974) 1 All NLR (Pt.2) p.463, held that, the law is settled that, Section 2 of the Public Officers (Protection) Act does not apply to cases of contract.

The contention of the appellants is that, the action of the respondents is an issue of termination of employment which in their opinion has to do with a common law principle, coupled with the fact that they, that is, the appellants are agents of the Federal Government of Nigeria, it is the Federal High Court and not the trial Court, a State High Court, that is clothed with jurisdiction to adjudicate upon the said action, pursuant to Section 251(1) of the Constitution. Contrariwise, the respondents' counsel submitted that, the claim of the respondents is for redress for the breach of their right to fair hearing which is guaranteed by Section 36(1) of the Constitution. That pursuant to Section 46(1) & (2) of the Constitution and Order 6(1) of the Fundamental Rights Enforcement Procedure Rules, the trial Court is empowered to determine the complaint of the respondents. As I stated earlier on in this judgment, it is trite law that a defendant is entitled to raise issues pertaining to jurisdiction, whether it is cause of action jurisdiction or adjudicatory jurisdiction, at any stage of the proceedings, whether before or after the exchange of pleadings or even for the first time, on appeal. See amongst a plethora of authorities, the cases of: (1.) Elabanjo v. Dawodu (2006) 15 NWLR (Pt.1001) p.76 and (2) Bessoy Ltd. v. Honey Legon (Nig.) Ltd. (2008) LPELR - 8329.

The law is now settled beyond per adventure that, a court is only competent when:

(1) It is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or another, and

(2) The subject-matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction, and

(3) The case comes before the court initiated by the due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction. See the cases of: Macfoy v. U.A.C. Ltd. (1962) AC p.152 and Madukolu v. Nkemdilim (1962) NSCC p.374 at pgs . 379 - 380.

See also the cases of (1) Anyaoke v. Dr. Adi (1985) 1 NWLR (Pt.2) p.342; (2) A. - G. Ogun State v. Coker (2002) 17 NWLR (Pt.796) p. 304; (3) Peretu v. Gariga (2013) 5 NWLR (Pt.1348) p.415 and (4) Alawiye v. Ogunsanya (2013) 5 NWLR (pt.1348) p.570.

Therefore, a defect in competence of either the action or court is fatal and the proceedings thereof however well conducted are a nullity. See the cases of: (1) Ojokolobo v. Alamu (1998) 9 NWLR (Pt. 565) p. 226 and (2) Ogedengbe v. Balogun (2007) 9 NWLR (Pt.1039) p.380.

I agree with the submission of the respondents' counsel that although the issue of jurisdiction can be raised at any stage of proceedings as well as on appeal for the first time, prior leave of the appellate court must still be sought and obtained by the applicant. In the case of Alawiye v. Ogunsanya (supra), the Supreme Court held that, it is not acceptable to raise an issue of jurisdiction for the first time in an appellate court unless and until leave has been sought and obtained by an applicant.

In determining the jurisdiction of a court, the enabling law vesting jurisdiction has to be taken in the light of the relief(s) sought. See the cases of: (1) Eribene v. Ug (2007) LPELR - 417 and (2) A-G., Anambra v. A.-G., Federation (2007) 12 NWLR (Pt.1047) p.4. In the latter case, the Supreme Court per Onnoghen, JSC, held that:

It is settled law that for the purpose of determining whether a court has the requisite jurisdiction to entertain a matter before it, it is the duty of the court to look at the statement of claim where one is required and had been filed and take the documents therein contained as true ex facie. See Adeyemi v. Opeyori (1976) 9 - 10 SC 31.

In the instant matter, no statement of claim is required and none was filed. The relevant documents or processes therefore that must be looked at in determining the issue of jurisdiction of the trial Court to adjudicate upon the suit of the respondents before it are, the originating summons, statements and the affidavit in support of same.

I have perused the entirety of the record of appeal in this matter. There is no doubt in my mind, for it is actually very clear as a bell that, the suit taken by the respondents before the trial Court was for the enforcement of their fundamental right to fair hearing, pursuant to Order II of the Fundamental Rights (Enforcement procedure) Rules, 1979, now, Fundamental Rights (Enforcement procedure) Rights, 2009 as guaranteed by Section 36 of the Constitution. Indeed, this is reflected in the captions of the respondents' originating summons at pages 18 and 21, the Verifying Affidavit in support thereof at page 2 and the respondents' Statement pursuant to Order 1 Rule 2(3) of the Rules at page 10, all of the record of appeal.

With due respect, the submission of the appellants' counsel that, the claim of the respondents is simpliciter for the wrongful termination of their employment of service by the appellants, is misconceived. The alleged wrongful termination of the employment of the respondents is one of the questions submitted for determination by the trial Court in pursuit of the enforcement of their constitutionally guaranteed right to fair hearing before their employment could be terminated and the reliefs sought for the wrongful termination.

The courts vested with jurisdiction to hear and determine allegations of the contravention of any of the fundamental human rights provisions under Chapter IV of the Constitution are as spelt out in Section 46(1) and (2) of the Constitution and Order II Rule 1 of the 2009 Rules. Section 46(1) and (2) of the Constitution provide thus:

46. - (1) Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.

(2) Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within that State of any right to which the person who makes the application may be entitled under this Chapter.

Order II Rule I of the Rules states as follows:

1. Any person who alleges that any of the Fundamental Rights provided for in the Constitution or African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being, or is likely to be infringed, may apply to the Court in the State where the infringement occurs or is likely to occur, for redress:

Provided that where the infringement occurs in a State which has no Division of the Federal High Court, the Division of the Federal High Court administratively responsible for the State shall have jurisdiction. Form No. 1 in the Appendix may be used as appropriate.

Accordingly, by the combined effect of the above set out provisions of the 1999 Constitution and the Rules, the State High Court and the Federal High Court are conferred with concurrent jurisdiction to adjudicate upon matters of the enforcement of fundamental rights of the citizens of Nigeria. In the case of; Nnabuchi v. I.G.P. (2006) LPELR - 9312, the Supreme Court's earlier decision in the case of: Jack v. University of Maiduguri (2004) 5 NWLR (Pt.865) p.208 was cited as having laid down the legal principle that, both the State and Federal High Courts have concurrent jurisdiction in fundamental human rights enforcement actions irrespective of category parties. In summary, I hold that the respondents who alleged that their fundamental right to fair hearing had been infringed, has properly applied to the trial Court for the appropriate redress. This being the case, the learned trial Judge was very well in line to assume adjudicatory jurisdiction over the suit of the respondents. To put it in other words, the cause of action of the respondents was well within the jurisdiction of the trial Court.

Another grouse of the appellants is that, the respondents ought not to have been allowed to commence and have determined their suit by way of originating summons, in view of the irreconcilable dispute on the facts put forward by both parties. Generally, an action could be brought by originating summons if the issues involved are not in dispute or controversy or likely to be in dispute or in controversy. And usually an action could be brought by originating summons where the sole or principal question in issue is or is likely to be one of the construction of a statute or of any deed, will, contract or other document or questions of law. In the case of: Pam v. Mohammed (2008) 16 NWLR (Pt.1112) p.1, the supreme court per Tobi, JSC. (Rtd.) had the following to say:

It is not the law that once there is dispute on facts, the matter should be commenced by writ of summons. No. That is not the law. The law is that the disputes on facts must be substantial, material, affecting the live issues in the matter. Where disputes are peripheral, not material to the live issues, an action can be sustained by originating summons. After all, there can hardly be a case without facts. Facts make a case and it is the dispute in the facts that gives rise to litigation.

Therefore, my next consideration is whether the facts in dispute in this matter are substantial or not? I am of the strong view after a thorough perusal of the record of appeal that, the crux of the action of the respondents at the trial court is the alleged breach of their fundamental human right to fair hearing before their respective employment was terminated by the appellants. This is very patent in the originating processes filed by the respondents before the trial court' as well as the counter affidavit evidence of the appellants. That is the principal action, the dispute between the parties. While it is the case of the respondents that their contract of employment was not properly determined, it is the case of the appellants that, the respondents were given fair hearing before their services were dispensed with, this is not a violently disputed fact. That is, there is no dispute about whether or not the respondents were employees of the 1st appellant before the action, the subject-matter of this appeal. In view of this, originating summons procedure employed by the respondents is appropriate. With respect, I do not share the view of the appellants' counsel that the disputed facts between the parties are of a hostile nature. What is more, by order II Rule 2 of the Rules, an application for the enforcement of the fundamental right may be made by any originating process. It is pertinent to state here that, the overriding objective of the Rules if the protection, advancement and realization of the fundamental human rights and freedom of applicants as enshrined in Chapter IV of the Constitution, which rights shall be unto freedom and never restrictions. And I dare add that the purport of the Rules is that of speedy consideration and determination of allegations of the infractions of the enshrined and guaranteed rights of citizens. Hence, being a very important constitutional right, its exercise ought not to be unduly fettered. The right must neither be derogated from nor frustrated.

On another alternative contention of the appellants' counsel, as they are want of in this matter, he is unhappy that the supporting verifying affidavit of the respondents' originating summons was not personally deposed to by the respondents and that this is a contravention of Order 1 Rule 2(3) of the old Rules, now Order II Rule 4 of the new Rules. And also that the deponent failed to state the particulars of the source of her information as required under Section 115(a) of the Evidence Act. The learned counsel for the respondents rightly noted that, at the trial Court, the issue of verifying affidavit was raised by the appellants, but the objection was overruled by the learned trial Judge. The law is long settled that questions for determination must arise and be framed from grounds of appeal.

See the cases of: Idika v. Erisi (1988) 2 NWLR (Pt.78) p. 563; (2) Dada v. Dosunmu (2006) 18 NWLR (pt.1010) p. 134 and (3) M.B.N. Plc. v. Nwobodo (2005) 14 NWLR (pt.945) p.379. Just as grounds of appeal must be connected with the controversy between parties which arose from the judgment of the lower Court, issues or questions though connected with the controversy between parties, must have been brought to the fore in the grounds of appeal, lest the court lacks judicial power to adjudicate upon them. An aspect of the decision of a lower court which has not been appealed against, subsists and will not be allowed to be submitted upon. See the cases of: (1) Duru v. F.R.N. (2013) 6 NWLR (Pt.1351) p.441; (2) F.I.B. Plc. v. Pegasus Trad. Office (2004) 4 NWLR (Pt. 863) p. 369; (3) Govt. of Gongola State v. Tukur (1989) 4 NWLR (Pt.117). p.592 and (4) Atanda v. Iliasu (2013) 6 NWLR (Pt.1351) p.529. It is on this note that I agree with the respondents' counsel that, this point having not arisen from any of the grounds of appeal, it goes to no issue and is hereby discountenanced. However, it is noteworthy to state that, by Order II Rule 4 of the Rules, albeit an applicant in the place of the respondents herein is required to make a verifying affidavit, where the applicant is "for any reason" unable to swear to the affidavit, "the affidavit shall be made by a person who has personal knowledge of the facts or as in the instant matter, by a person who has been informed of the facts".

I have no hesitation in adjudging that the respondents complied substantially with the requirements of the Rules regarding the commencement of their action before the trial Court.

Consequent upon the above, I have no hesitation in and resolve issues one and two in favour of the respondents and against the appellants.

**ISSUE THREE**

Whether the appointments of the respondents were terminated for any reason other than for services no longer required?

The learned counsel for the appellants under this issue appears to me to be much more concerned with the contents of exhibits F and J, the letters of termination of the employment of the 1st and 2nd respondents respectively, rather that the procedure employed in the termination. It is the latter and not the former that the respondents' action before the trial Court challenged. To put it in other words, the crux of the respondents' action and consequently, this appeal is the procedure employed by the appellants in terminating their employment. The appellants, counsel has equally made a heavy weather of the case of: Adeniyi v. Governing council, Yaba College of Technology (1993) 7 SCNJ p. 304, alleging that the learned trial Judge wrongfully relied on same in finding in favour of the respondents, However, it was the learned counsel for the appellants that actually called on the learned trial Judge to distinguish the Adeniyi's case from the instant matter. It is evident in the record of appeal that, the learned trial Judge actually did just that before he drew his conclusions and made the pronouncements in respect thereof, At this juncture, I believe it is apposite to bring to the fore some of the very germane and legally sound fine of reasoning and conclusions in the judgment of the trial Court thus:

In the case of Adeniyi Governing Council of Yaba College Tech. (Supra) at pp. 336 and 337, ... the Supreme Court held that there is an important difference in status between contracts of personal service and contracts of personal service and contracts of service which enjoy statutory protection....That contract of service can only be terminated in the manner prescribed by the governing statutory provision.....a breach of the statutory provision cannot result in a unilateral repudiation nor can the contract agreement be discharged on the agreement of the parties without compliance with the enabling statutory provision... Mr. M. H. Yakubu is however of the opinion that the Adeniyi case supra should be distinguished from the case under consideration, in the sense that the position of Registrar of the Polytechnic is statutorily provided for under Section 7(4) of the Federal Polytechnic Act, but that the Appellants position in this case is not statutory but that they are common staff of the 1st Respondent ... it is not in doubt that the Applicants were staff of the 1st respondent. The 1st Applicant was a Technologist II See exhibit B), while the 2nd Applicant was Lecturer in the Accountancy Department of the 1st Respondent...Section 7(4) of the Federal Polytechnic Act (supra) makes provision for the appointment of among other officers, academic and senior administrative staff on the recommendation of the "Appointments and Promotions Committee" set up under the provision of paragraph 3(2) (a) of the second schedule to the Act. It is therefore clear that the appointment or promotion of the Applicants enjoy statutory protection.

I have perused the provisions of the Federal Polytechnic Act (supra). Section 7(4) gives power to the A and P Committee to make recommendations to the council ... for the appointment of the category of the officers contained therein. This committee is set up pursuant to paragraph 3(2) (a) of the second schedule to the Act. The composition and powers of the committee are enshrined in paragraph 3(2) (a) (i) and (ii) of the second schedule. The committee is therefore established by the council and it (council) may delegate some of its powers to it, but such powers of the A and P committee as its name suggests is limited to issues of promotions and appointments of academic and other senior staff of the Polytechnic only. Equally, nowhere in the Polytechnic Act is the A and P Committee vested with power to recommend disciplinary actions against any academic or senior staff. That power is specifically vested personally in the council.

Upon a careful consideration of the termination letters, the A and P Committee recommended the termination of the Applicants' employment. That recommendation is ultra-vires the powers of the A and P Committee. I accordingly hold that the A and P acted ultra - vires it powers in recommending..... the termination of the Applicants' appointments. Equally the 2nd Respondent was in breach of Section 12 of the Federal Polytechnic Act (supra) when it acted on the recommendation of the A and P committee to terminate the Applicants employment.

As I stated earlier on in this judgment, the action of the respondents is in challenge of the procedure employed by the appellants before the respondents were relieved of their employment of service "vide" exhibits F and J. The import of the further reference by the learned trial Judge to exhibits B, C, B1 and C1 is that the latter set of exhibits lend strength and credence to the fact that the respondents were indeed in the employment of the appellants. And that the A and P Committee that is, Appointments and Promotions Committee actually recommended to the 2nd appellant the termination of the employment of the respondents, which recommendation is "ultra vires" the powers of the said Committee. Among other things in support of this stance, I find the evaluation, deductions, conclusions and findings of the learned trial Judge very sound, impeccable and unimpeachable. Again, I have to and resolve issue three against the appellants and in favour of the respondents.

**ISSUE FOUR**

Whether the learned trial Judge was right when he delivered a single judgment and not two separate judgments in the consolidated cases?

According to the learned counsel for the appellants, the two applicants, that is, the respondents herein, were separately employed by the appellants at different times under two different grade levels and the cause of action that gave rise to their suits arose differently. Learned counsel therefore argued that the position of the law is that the trial court ought to have given two separate and distinct judgments in the consolidated actions of the 1st respondent and 2nd respondent. He is of the opinion that the learned trial Judge was in grave error for delivering one judgment in respect of the two actions. On this position, he relied on the cases of; (1) Orji v. Ugochukwu (2009) 14 NWLR (Pt.1161) p.207; (2) ANPP v. Usman (2008) 12 NWLR (pt.1100) p.1 and (3) Iloabuchi v. Ebigbo (2000) 77 LRCN p.965.

It is indeed trite that where suits are consolidated, each suit still retains its individual and separate existence nonetheless. Accordingly, at the end of a common proceedings, judgment should be given in respect of each suit. For, the court cannot determine one suit and ignore the other. In the case of: I.N.E.C. v. Nyako (2011) 12 NWLR (Pt.1262) p.439 at p. 489, para. H and p. 490, paras. A - C, Garba, JCA had the following to say on the status of the rules and procedure governing consolidated suits:

Although there are no rules of court which provide for consolidation of appeals, it is an established and accepted judicial practice to consolidate actions or as the case may be, appeals in which the same issues are raised by parties that are substantially the same against one or same decision of a lower court for convenience and also save time in arguing them piece meal or separately. For that reason, consolidated appeals though heard at the same time, would retain their distinct and separate identities for the purpose of determination and so the law requires that there be separate pronouncements by the court on each of them. Jinadu v. Esurombi-Aro (2005) 14 NWLR (Pt.944) 142 at 175; Abana v. Obi (2004) 16 NWLR (Pt.881) 319; Haruna v. Modibbo (2004) 16 NWLR (Pt.900) 487.

In the earlier case of Machika v. K.S.H.A (2011) 3 NWLR (Pt.1233) p.15, Garba, J.C.A, at p, 40, paras. A - C and p. 41, paras. D - H, captured the essence and purport of this procedure which is aimed at quick disposal of cases and at a reduced cost, thus:

Speaking generally, the law is settled that where two or more cases or suits are consolidated and heard or tried together by a court or tribunal, each of them would retain its distinct and separate identities for the purposes of determination of the issues canvassed therein. A court or tribunal is required to render or give judgment separately for each of the consolidated cases because consolidation is merely ordered for convenience and to save time in the process of trial. See Iloabuchi v. Ebigbo (2000) 8 NWLR (Pt. 668) 197; Ume v. Ifediorah (2001) 8 NWLR (Pt.714) 35; Olayiwola v. F.R.N. (2006) All FWLR (Pt. 305) 667 at 697; Uba v. Etiaba (2008) 5 NWLR (Pt.1082) 154 at 187.

In my firm view, the learned trial Judge fully, properly and on the merit considered the cases put forward by the parties in their respective originating processes before arriving at the decisions contained in the judgment under scrutiny. The two suits were simultaneously considered and determined on the affidavit evidence and statements in support of both suits said to have been filed by each of them because, the contents of the affidavits, statements in support of and the reliefs sought in the two suits or applications were substantially the same, the only difference was in names of the applicants. Since the judgment made reference to the two applicants and not the appellants or just one of the applicants alone, in the determination of the issues canvassed in the applications, the single judgment has effectively, completely, competently and finally determined the two suits for all legal and practical purposes. It was therefore quite unnecessary to expect the trial court to have written the same judgment twice merely for the purpose of putting the different names of the applicants respondents herein on one and on the other. I am of the view that the appellants here are definitely not suggesting that the delivery of a single judgment by the High court had in any way or manner whatsoever prejudiced them or caused any miscarriage of justice in the determination of their own suits. Hence, the appellants have no real and sincere basis to complain or attack the judgment of the trial court on the ground that it was a single judgment, and not two separate judgments. Being an issue of procedure which has not been shown to have caused or resulted in genuine disadvantage to the appellants in this appeal, its assumed breach would have no consequence on the validity of the judgment appealed against. What is more, the appellants themselves responded to the different processes of the respondents in a single counter affidavit, see pages 33 to 35 of the record of appeal.

In the result, I also resolve issue four against the appellants and in favour of the respondents.

The law has long been settled that evaluation of evidence and ascription of probative value thereto is the primary function and duty of a trial Court, in the determination of the relevant issues before it. See the cases of (1) Fagbenro v. Arobadi (2006) All FWLR (pt.310) p. 1575 and (2) Odogwu v. The State (2009) LPELR - 8506.

It is the law as well that, where a trial court fails to properly discharge that primary duty or the evaluation or value ascribed to and inference or findings made thereon cannot be supported by the evidence adduced before that court, then an appellate court has the legally bounding duty to intervene and interfere with such decisions of the trial court. See the cases of: (1) Njemanze v. Njemanze (2006) All FWLR (Pt.302) p.101; (2) Oroke v. Ede (2004) NMLR p.118 and (3) Layinka v. Makinde (2002) 10 NWLR (Pt.775) p. 358.

Where a trial court has unquestionably and properly evaluated the evidence adduced before it, as in the instant matter, an appellate court, such as this Court, has no business and is usually slow in interfering with the decision arising from such an exercise. See the cases of: (1) Orufosoye v. Olorunfemi (1989) 1 NWLR (Pt.95) p. 26. (2) Iwah v. Okugbe (1998) 12 SCNJ p. 59 and (3) Zaga v. Amaw (2006) All FWLR (Pt.293) p.339.

I have meticulously studied the record of appeal, especially the proceedings and the judgment under fire, I am unable to find any fault with the said judgment.   
The evidence placed before the trial Court was brilliantly appraised, assessed and reasons clearly advanced for the weight or probative value ascribed to the evidence in support of the findings made. I am confident in my resolve not to disturb the judgment of the trial Court, including the orders made therein.  
In conclusion, the appeal is adjudged to be devoid of merit and consequently dismissed. The judgment of the trial Court in this matter is hereby affirmed. The respondents are entitled to the costs of this appeal which I assess in their favour at thirty thousand naira and against the appellants.

**JUMMAI HANNATU SANKEY J.C.A.:**

I had the honour of reading in advance the Judgment of my learned lord, Omoleye, J.C.A., with which I entirely agree. For the same reasons so lucidly set out, and which I adopt as mine, I too dismiss the Appeal and abide by the order for costs as assessed in the aforesaid judgment.

**PETER OLABISI IGE, J.C.A.:**

I agree.