

**INSTITUTE OF HEALTH, AHMADU BELLO UNIVERSITY HOSPITAL  
MANAGEMENT BOARD :::::::::::::::::::::::::::::::  
APPELLANT**

**AND**

**MRS. JUMMAI R. I. ANYIP :::::::::::::::::::::::RESPONDENT**

**SC.119/2003**

***SUPREME COURT OF NIGERIA***

Dahiru MUSDAPHER, JSC.  
Christopher Mitchell CHUKWUMA-ENEH, JSC.  
Muhammad S. MUNTAKA-COOMASSIE, JSC (*Delivered Lead Judgment*).  
John Afolabi FABIYI, JSC.  
Suleiman GALADIMA, JSC.

**AT ABUJA, ON FRIDAY, 13<sup>TH</sup> MAY, 2011.**

APPEAL - Issues formulated for determination - When no argument is proffered - Legal consequence of.

DAMAGES - Special damages - Whether must be pleaded and strictly proved.

EMPLOYMENT - Measure of damages - Whether unreasonable for it to be liquidated where parties by mutual agreement have on their own set out the measure of damages payable in the event of terminating a contract of employment.

EMPLOYMENT - Where an employee has a contract of service with an employer determinable by agreement of the appointment - Whether such an employee can be said to enjoy an appointment with statutory flavor.

EMPLOYMENT - Whether an employer is obliged to give any reason for firing his servant - Where the employer has proffered any reason - Whether he is obliged to satisfactorily prove the same - Failure to so do - Effect of.

MASTER/SERVANT RELATIONSHIP - Measure of damages  
- Whether unreasonable for it to be liquidated where parties by mutual agreement have on their own set out the measure of damages payable in the event of terminating a contract of employment.

MASTER/SERVANT RELATIONSHIP - Where an employee has a contract of service with an employer determinable by agreement of the appointment - Whether such an employee can be said to enjoy an appointment with statutory flavor.

MASTER/SERVANT RELATIONSHIP - Whether an employer is obliged to give any reason for firing his servant - Where the employer has proffered any reason - Whether he is obliged to satisfactorily prove the same - Failure to so do - Effect of.

PRACTICE AND PROCEDURE - Issues formulated for determination - When no argument is proffered - Legal consequence of.

PRACTICE AND PROCEDURE - Measure of damages - Whether unreasonable for it to be liquidated where parties by mutual agreement have on their own set out the measure of damages payable in the event of terminating a contract of employment.

PRACTICE AND PROCEDURE - Special damages - Whether must be pleaded and strictly proved.

PRACTICE AND PROCEDURE - Where an employee has a contract of service with an employer determinable by agreement of the appointment - Whether such an employee can be said to enjoy an appointment with statutory flavor.

PRACTICE AND PROCEDURE - Whether an employer is obliged to give any reason for firing his servant - Where the employer has proffered any reason - Whether he is obliged to satisfactorily prove it - Failure to so do - Effect

of.

**ISSUES FOR DETERMINATION:**

**APPELLANT'S ISSUES:**

1. Whether from the peculiar circumstances of this matter, the court below was right when it held that the appellant's dismissal was founded on an unproven allegation of theft and thus rendering the dismissal null and void.
2. Whether the appellant was deprived of her right to fair hearing in the Disciplinary Committee's proceeding.

**RESPONDENT'S ISSUE:**

Whether in the entire circumstances of this appeal, the respondent has admitted or has been found guilty of the offence of theft as to warrant her dismissal from service by the appellant on the basis of the alleged offence.

**FACTS:**

The respondent herein, Mrs. Jummai R. I. Anyip, was an employee of the appellant and was interdicted by the appellant on an allegation of theft of expired drugs. In exhibit 3, the appellant clearly stated that the respondent's fate would be determined by the outcome of the report of an Administrative Disciplinary Committee which was set up to investigate the allegations against her. The committee went into action and conducted investigations into the allegation made against the respondent. In its report which was tendered as Exhibits 5 and 6, the respondent was exonerated and recommended to be reinstated to her employment. Nonetheless, the appellant dismissed the respondent from its employment.

Dissatisfied with the action of the appellant, the respondent instituted this action against the appellant at the Kaduna State High Court, herein referred to as the trial court.

After the closure of the pleadings, both parties called their respective witnesses after which the counsel addressed the

court. In its judgment, the trial court dismissed all the plaintiff's claims.

Dissatisfied with the trial court's decision, the plaintiff successfully appealed to the Court of Appeal, Kaduna Division, herein called (lower court). The lower court found merit in the appeal and allowed same.

The appellant being dissatisfied with the judgment of the lower court has appealed to this Court.

**HELD:** (*Unanimously Dismissing Appeal*)

*1. On the legal consequence of issue on which no argument is proffered:*

As earlier pointed out in this Judgment, the appellant in its brief of argument formulated two issues for our consideration, out of which only issue 1 was argued in the brief. Having failed to proffer any argument in respect of the second issue, the legal consequences is quite clear that the said issue has been abandoned. As a result, issue No. 2 in the appellant's brief of argument is hereby struck out. I am fortified by the decisions in the cases of:

- (i) *Odedo v. INEC* (2008) 17 NWLR (Pt.1117) 554 at 630 and;
- (ii) *Biariko v. Edeh-Ogwunke* (2001) 12 NWLR (Pt.726) 235 at 266.

*Page 61EP.*

*2. On the need for an employer to satisfactorily prove the reason for firing his servant where he has proffered any reason:*

Although it is trite that an employer is not obliged to give any reason for firing his servant, all the same, it is settled law that where he has proffered any reason at all, he is obliged to satisfactorily prove the same as the onus is on him in that regard otherwise, the

termination/dismissal may constitute a wrongful dismissal without more. *Page 65UZ.*

3. *On when a contract of service can be said to be one without statutory flavor:*

Where an employee has a contract of service with an employer determinable by agreement of the parties to the contract as here as per chapter 2, section 3 of the conditions of appointment of the Institute of Health Staff Regulations, it is quite clear without more that an employee under such a contract of service cannot be said to enjoy an appointment with statutory flavour as to give the employee an appointment with any special security of tenure. *Pages 65EEJJ & 66A.*

4. *On need for measure of damages to be liquidated when set out in a contract agreement:*

It is not unreasonable for the measure of damages to be liquidated where the parties by mutual agreement as per the abstract above as in the instant matter have on their own set out the measure of damages payable in the event of terminating a contract of employment as contemplated in chapter 2, section 3 of the conditions of appointment of the Institute of Health Staff Regulations. See: *Archibong v. Duke (1921) 4 NLR 92*. The measure of damages has not therefore changed since the case of *Hadley v. Baxendale (1854) Exch. 341*. *Pages 66JJ & 67A.*

5. *On whether special damages must be pleaded and strictly proved.*

The law is trite that unless pleaded and strictly proved, the court is not obliged to make any awards in that regard for special damages. *Page 67K.*

**NIGERIAN CASES REFERRED TO:**

1. Afribank Nigeria Plc. v. Nwueze (1988) 6 NWLR (Pt. 553) 286
2. Archibong v. Duke (1921) 4 NLR 92
3. Biariko v. Edeh-Ogwunke (2001) 12 NWLR (Pt.726) 235
4. College of Medicine v. Adegbite (1973) 5 SC
5. Dangote v. C.S.C. Plateau State (2001) 9 NWLR (Pt. 717) 132; (2001) 86 LRCN 1204
6. F.C.S.C. v. Laoye (1989) 2 NWLR (Pt.106) 652
7. G.B. Ollivant (Nig.) Ltd. v. Agbabiaka (1972) 2 SC (Reprint) 127
8. Nigeria Airways Ltd. v. Ahmadu (1991) 6 NWLR (Pt. 198) 493
9. Nigerian Broadcasting v. Adeyemi (SC.45/1969) delivered on 8/10/71
10. Obe v. Nigersol Construction Co. Ltd. (1972) 2 UILR (Pt.2)
11. Odedo v. INEC (2008) 17 NWLR (Pt.1117) 554
12. Olanrenwaju v. Afribank (2001) FWLR (Pt.72) 2008
13. Sofekun v. Akinyemi (1981) 1 NCLR 121; (1980) 5 - 7 SC 1
14. Taiwo v. Kingsway Store Ltd. (sic) 19 NLR 122
15. Uzendu v. U.B.N Plc. (2009) 5 NWLR (Pt. 1133) 1
16. Yusuf v. U.B.N. Plc. (1996) 6 NWLR (Pt.459) 632

**NIGERIAN STATUTES REFERRED TO:**

1. A.B.U. Institute of Health Staff Regulations, Chap. 2 Section 3; Chap. 8, S. 811
2. Constitution of the FRN, 1999 - S. 36(1)
3. Supreme Court Act - S. 22

**FOREIGN CASE REFERRED TO:**

Hadley v. Baxendale (1854) Exch. 341.

**COUNSEL:**

D.C. Enwelum for the Appellant.

S. Atung for the Respondent.

**A MUNTAKA-COOMASSIE, JSC (*Delivered Lead Judgment*):**

- A** The respondent herein, Mrs. Jummai R. I. Anyip, was an employee of the appellant and was interdicted by the appellant on an allegation of theft of expired drugs. In exhibit 3, the appellant clearly stated that the respondent's fate would be determined by the outcome of the report of an Administrative Disciplinary Committee which was set up to investigate the allegations against her. The committee went into action and conducted investigations into the allegation made against the respondent. In its report which was tendered as Exhibits 5 and 6, the respondent was exonerated and recommended to be reinstated to her employment.
- K** Nonetheless, the appellant dismissed the respondent from its employment.

Dissatisfied with the action of the appellant, the respondent instituted this action against the appellant at the Kaduna State High Court, herein referred to as the trial court.

- P** The respondent as plaintiff claimed against the appellant thus:-

- "(a) AN ORDER declaring the purported dismissal of the plaintiff's appointment by the defendant as null, void, and of no effect.
- U** (b) AN ORDER declaring the appointment of the plaintiff by the defendant as valid and subsisting.
- (c) Payment of all arrears of salaries, allowances and other benefits to which the plaintiff has been entitled from the 11<sup>th</sup> of June, 1995, being the date of her interdiction from duty until the determination of this suit.
- Z** (d) AND IN THE ALTERNATIVE to (a) (b) and (c) above, the sum of ₦350,000.00 as damages for wrongful dismissal."

- EE** After the closure of the pleadings, both parties called their respective witnesses after which the counsel addressed the court. In its judgment, the trial court dismissed all the plaintiff's claims.

- Dissatisfied with the trial court's decision, the plaintiff successfully appealed to the Court of Appeal, Kaduna Division herein called (lower court). The lower court found merit in the appeal and allowed same. The lower court unanimously held thus:-
- JJ**

‘The condition of appointment of the Institute, as contained in Chapter 2, Section 5 of the Institute of Health

- A** Staff Regulations includes the following:  
‘The Institute may at anytime for good course terminate your engagement by two months salary in *lieu* of notice’  
No provision is made in the said condition of service for dismissal on an unproved allegation of stealing which
- F** charge is generally in a contractual relationship, an employer is not bound to state the reasons why an employee's appointment is terminated. See *Taiwo v. Kingsway Store Ltd. (sic)* 19 NLR 122; *Obe v. Nigersol Construction Co. Ltd. (1972)* 2 *University of Ife Law Report (Pt. 2)*.
- K** The appointment and termination of an employee is a matter strictly between the parties. However, the dismissal of the appellant by the respondent which is the fact in issue is subject to intervention of the court since the Disciplinary
- P** Committee has no jurisdiction to try the appellant for a criminal offence. There is therefore no hesitation in holding that the dismissal of the appellant's appointment on the ground of stealing is null and void.
- U** The court will rule that the appellant is entitled to claim her salary and allowances from the date of interdiction to the date of the ceasing of the appointment, not dismissal. The court has no jurisdiction to impose a servant on an unwilling master, unless the appointment has a statutory flavour. In the case, the onus will be on the employee who
- Z** alleged that he was wrongly removed from the appointment to so show. See *College of Medicine v. Adegbite (1973)* 5 SC. See also *Nigeria Airways Ltd. v. Yahaya Ahmadu (1991)* 6 NWLR (Pt. 198) at 493; *Afri-Bank Nigeria Plc. v. Christopher Obi Nwuaeze (1988)* 6 NWLR (Pt. 553) at 286.
- EE** There is no right of re-instatement for the appellant. In sum, I find issues 1, 2 and 4 in favour of the appellant and I allow the appeal in part.” See pp. 109 - 110, per Victor Oimage, JCA.
- JJ** The appellant being dissatisfied with the judgment of the lower court has appealed to this Court. In accordance with the provisions of the Rules of this Court, both parties filed and exchanged their respective briefs of argument. The appellant in its



- A** amended brief of argument dated 30/10/2009 and filed on 19/2/2010 formulated two (2) issues for determination as follows:-
- "1. Whether from the peculiar circumstances of this matter, the court below was right when it held that the appellant's dismissal was founded on an unproven allegation of theft and thus rendering the dismissal null and void.
- F**
2. Whether the appellant was deprived of her right to fair hearing in the Disciplinary Committee's proceeding."
- K** Whilst the respondent in her brief of argument dated 30/6/2010 and filed on 5/8/2010 distilled a sole issue for our consideration as follows:-
- "Whether in the entire circumstances of this appeal, the respondent has admitted or has been found guilty of the offence of theft as to warrant her dismissal from service by the appellant on the basis of the alleged offence."
- P**
- At the hearing of this appeal before us, the learned counsel to the appellant adopted his amended brief of argument and urged this Court to allow the appeal and set aside the judgment of the lower court and also to restore the decision of the trial court.
- U**
- On the first issue for determination, it was submitted by the appellant's counsel that the matter was fought on whether the respondent's dismissal from service was right for her participation in the unauthorized removal of drugs and that parties were *ad idem* that the respondent removed the said drugs. It was therefore submitted that the conduct of the respondent amounted to gross misconduct in accordance with Section 811, Chapter 8 of the Rules and Regulations of the Institute of Health. The appellant's counsel contended that the respondent made a voluntary admission of removing the said drugs and as a result where an employee has committed acts involving criminal offence, the employer can treat same as gross misconduct and liable to dismissal. Learned counsel continued and submitted that the employer is at liberty not to insist on prosecution of the employee for commission of crime before dismissing him or her particularly where such an employee admits the commission of the crime. The following authorities were cited in support of the above submissions:-
- EE**
- (i) *Olanrenwaju v. Afribank* (2001) FWLR (Pt.72)
- JJ**

- A** 2008;
- (ii) *Yusuf v. U.B.N. Plc. (1996) 6 NWLR (Pt.459) page 632* and;
- (iii) *Uzendu v. U.B.N Plc. (2009) 5 NWLR (Pt. 1133) 1 at 13.*

**F** Learned counsel to the appellant further submitted that the issue of confession and compliance with the Judge's rules does not apply to this case as it is not a criminal trial. It was the contention of the learned counsel to the appellant that what transpired before the Disciplinary Committee is a mere matter of investigation of the

**K** removal of drugs without authorization which the respondent in her written statement admitted.

Now, learned counsel to the respondent adopted his brief of argument at the hearing before us and urged this Court to dismiss the appeal. In support of the sole issue formulated by the

**P** respondent, the learned counsel submitted that the following facts are not in dispute, i.e

- "(a) That the allegation of the theft against the respondent is a criminal offence.
- (b) That the appellant set up an Administrative Disciplinary Committee to investigate the allegation of the theft against the respondent and which committee issued its report, and
- (c) That the appellant purports to dismiss the respondent from her employment based on the allegation of theft."
- U**
- Z**

Learned counsel contended that the appellant set up an administrative panel of investigation to investigate the allegation of theft of expired drugs against the respondent and the panel at the end of its investigation exonerated the respondent and recommended that she be recalled from interdiction and re-instated to her employment. Nonetheless, the appellant dismissed the respondent. Learned counsel referred to the finding of the lower court to the effect that the appellant is not competent to overturn the recommendations of its administrative panel when it did not

**EE** have the benefit of hearing the respondent. It was further submitted that once the disciplinary panel exonerated the respondent of the allegation of theft against her, the proper venue to establish her guilt rests not on the appellant or the panel but on

**JJ**

**A** a court of competent jurisdiction, he relied heavily on the case of *Dangote v. C.S.C. Plateau State* (2001) 9 NWLR (Pt. 717) p. 132; (2001) 86 LRCN 1204.

**F** **As earlier pointed out in this Judgment, the appellant in its brief of argument formulated two issues for our consideration, out of which only issue 1 was argued in the brief. Having failed to proffer any argument in respect of the second issue, the legal consequences is quite clear in my view, that the said issue has been abandoned. As a result, issue No. 2 in the appellant's brief of argument is hereby struck out. I**  
**K** **am fortified by the decisions in the cases of *Odedo v. INEC* (2008) 17 NWLR (Pt.1117) 554 at 630 and *Biariko v. Edeh-Ogwunke* (2001) 12 NWLR (Pt.726) 235 at 266.**

**P** The issues for determination formulated by the parties in their respective briefs of argument are inter-related and inter-woven, and in the determination of this appeal, I will prefer the issue No.1 formulated by the appellant and I shall utilize same in determining this appeal.

**U** The appellant has strongly submitted that once the respondent has admitted the commission of the crime, the appellant could summarily dismiss the respondent without having recourse to a court for the determination of whether she was guilty or not. While the respondent submitted that it was only a court of competent jurisdiction that could determine whether the respondent was guilty of the allegation or not.

**Z** On the reversal of the recommendations of the Disciplinary Committee by the appellant, the lower court held as follows:-

**EE** "The disciplinary committee received the evidence of the appellant and that of the respondent, the committee did not recommend the dismissal of the appellant, it is therefore not competent of the respondent who did not have benefit of hearing the appellant to reverse the findings of the disciplinary committee which it has constituted. I have written above that the dismissal of the appellant for unproven allegation of theft was wrongful. The evidence  
**JJ** before the court below shows that the appointment of the appellant was made subject to certain terms and conditions contained in the letter of appointment dated 11<sup>th</sup> August, 1989." Per Omege, JCA at page 109 of the record.

**A** There was no ground of appeal, in my view, challenging the later findings of the lower court. It is my candid view therefore, that the said finding is still valid and subsisting. I refer to *Odedo v. INEC (supra)* at 630.

**F** My Lords, with this finding of the lower court which is subsisting, the lack of competence of the appellant to reverse the decision of the Disciplinary Committee has been decided and this would have put an end to this appeal. However, the question that is agitating my mind is, if the respondent in fact admitted the commission of the crime alleged, why did the appellant proceed to set up a "disciplinary committee" to investigate the allegation? The **K** appellant, in the letter of interdiction given to the respondent, clearly stated that the respondent's fate would be determined by the outcome of the investigation by the "disciplinary committee".

**P** It is therefore obvious that the appellant itself did not believe in the respondent's guilt, that was why it submitted the matter to the "disciplinary committee" to investigate. Thus, having investigated the matter and found the respondent not culpable, the respondent ought to have been re-instated to her job. However, if the appellant strongly believed in the respondent's guilt, the proper **U** thing to do is to submit the matter to a court of competent jurisdiction to determine since the allegation of crime or commission of crime is allegedly involved. See *Dangote v. C.S.C. plateau State (supra)* at P. 156. The respondent ought to be granted fair hearing. I refer to the statement of Fatayi Williams, **Z** CJN in the case of *Sofekun v. Akinyemi (1981) 1 NCLR 121* or (1980) 5 - 7 SC 1 thus: -

"Once a person is accused of a criminal offence, he must be tried in a court of law where the complaints of his accusers can be ventilated in public and where he would be **EE** sure of getting a fair trial."

**JJ** It is necessary for a prior judicial determination before further disciplinary action could be meted out on a person accused of the commission of criminal offence to be heard. The Supreme Court has this to say in *F.C.S.C. v. Laoye (1989) 2 NWLR (Pt.106) p.652 at 706 - 707*, per Oputa, JSC thus:-

"Our system arrogates to the court the burden or some duty of pronouncing his guilt in an open court, where the facts are subjected to the acid test of effective

**A** cross-examination. To do otherwise will constitute an unwarranted attack on our system of criminal justice. ..."

It is to be noted my Lords that the 'disciplinary committee' heard both the appellant and the respondent before concluding that the respondent herein was not culpable. The only authority, I dare

**F** say, that could hold otherwise when an issue of criminality is involved is a court of competent jurisdiction.

In the circumstances, this appeal lacks merit and is accordingly dismissed. The judgment of the lower court is affirmed.

**K** I must say, with tremendous respect, that the judgment of the lower court is a little bit confusing, and as it is, it may be very difficult for the respondent to execute the judgment and orders of the Court of Appeal. That being the case and this Court being the final court of the land, something must be done to correct the

**P** situation. I invoke my powers under Section 22 of the Supreme Court Acts to correct the judgment of the lower court thus:

Judgment is hereby entered in favour of the respondent. General damages for wrongful dismissal is awarded to the respondent in the sum of one hundred thousand naira (×100,000.00).

**U** The respondent is entitled to fifty thousand naira (×50,000.00) costs to be paid to her by the appellant.

**MUSDAPHER, JSC:** I have seen the draft of the judgment of my Lord, Muntaka-Coomassie, JSC just delivered in this matter. I agree with the conclusion arrived at that this appeal is unmeritorious and I, too, dismiss it. I abide by the order for costs proposed in the aforesaid judgment.

**EE CHUKWUMA-ENEH, JSC:** The plaintiff (respondent herein) at the trial court had as per paragraph 17 of the Statement of Claim filed in this matter claimed against the defendant (appellant herein) for wrongful dismissal as follows:

**JJ** "(a) An order declaring the purported dismissal of the plaintiff's appointment by the defendant as null and void and of no effect.

(b) An order declaring the appointment of the plaintiff by the defendant as valid and subsisting.

- A** (c) Payment of all arrears of salaries, allowances and other benefits which the plaintiff has been entitled to from the 11<sup>th</sup> of June, 1993 being the date of her interdiction from duty.
- F** And in the alternative to (a), (b) and (c) above, the sum of ×350,000.00 (Three Hundred and Fifty Thousand Naira) as damages for wrongful dismissal."
- The parties have filed and exchanged their respective pleadings, after which the matter has been set down for trial. The trial court in its judgment has dismissed the plaintiff's claim *in toto*.
- K** Being dissatisfied with the trial court's decision, the plaintiff had appealed to the lower court which had allowed the appeal. I think it is only right here to say that the appeal has been allowed on resolving in the respondent's favour the crucial issue that it is wrong to have discharged the respondent from the appellant's employ for an alleged unproven crime of stealing of expired drugs without having been tried and convicted of the crime of stealing by a court of competent jurisdiction. And therefore as held by the lower court and I quote, "the dismissal of the appellant's appointment on the ground of stealing is null and void".
- P** Having found that the trial court's decision is perverse because of its misapprehension and misapplication of the law, the lower court has been justified to intervene to make its own findings of fact in this matter. In this regard, the lower court has further proceeded to hold that "the Court will rule and hereby rule that the appellant is entitled to claim her salary and allowances from the date of interdiction to the date of the ceasure of the appointment not dismissal." And also as rightly concluded that "the court has no jurisdiction to impose a servant on an unwilling master, unless the appointment has a statutory flavour", meaning that there is no right of reinstatement of the respondent where it is found that her appointment has no statutory flavour.
- EE** I have adverted to the above facts and circumstances as per the above abstracts of the lower court's judgment so as to enable me make the salient points including that the relationship between the parties as borne out by the facts of this matter is one of a simple contract of employment under master/servant at Common Law. In other words, the instant contract of employment has no statutory flavour to ground it so as to sustain the respondent's
- JJ**

- A** claim of security of tenure hereof and so, there is no basis for granting any declaration that her (respondent) employment has been valid and still subsisting even on its having been found that her dismissal is, all the same, wrongful. The lower court has also rightly in my view reasoned that the aforesaid relationship of the
- F** parties herein is truly one of master/servant at Common Law and so determinable in accordance with the terms and conditions of the said contract of employment as per the said Institute of Health Staff Regulations. As found by the lower court, and I agree, the terms and conditions of the respondent's letter of appointment of
- K** 11/8/89 have incorporated chapter 2, section 3 of the Conditions of Appointment of the Institute of Health Staff Regulations including particularly the provisions as follows:
- "The institute may at any time for good cause terminate your engagement by two months' notice in writing or by
- P** payment of two months' salary in lieu of notice."
- Although it is trite that an employer is not obliged to give any reason for firing his servant, all the same, it is settled law that where he has proffered any reason at all, it is obliged to satisfactorily prove the same as the onus is on him in that regard otherwise, the termination/dismissal may constitute a**
- U** **wrongful dismissal without more.**
- The lower court has found that the appellant has failed to justify the dismissal hence it has been found to be wrongful. It does not require resorting to any authorities to assert that **where**
- Z** **an employee has a contract of service with an employer determinable by agreement of the parties to the contract as here as per chapter 2, section 3 of the Conditions of Appointment of the Institute of Health Staff Regulations, it is quite clear without more that an employee under such a**
- EE** **contract of service cannot be said to enjoy an appointment with statutory flavour as to give the employee an appointment with any special security of tenure.**
- The respondent's situation in the employ of the appellant as per Exhibit 1 in this case does not contain any provision tending
- JJ** to give such security of tenure. And so the respondent's representations on this issue in that regard are not tenable. It therefore has become necessary to make this point clear as the fact that the instant employer as a corporate body cannot by that fact

A alone translate the instant agreement of the parties herein to one with statutory flavour.

Furthermore, the appellant has failed as found by the lower court and rightly for that matter, to discharge successfully the onus on him in this respect hence the finding that the respondent's dismissal is wrongful. In that vein, the respondent is entitled to damages for wrongful dismissal.

F The next question I have to deal with relates to assessing the damages, due to the respondent on the peculiar facts and circumstances of this matter. This has arisen from the nature of the order of the lower court that the respondent is entitled to the claim for salaries, allowances and other benefits. The decisions of this Court on such matters are galore. However, I have to be guided by the principle set out in the case of *Nigerian Broadcasting v. J. O. Adeyemi* (SC.45/1969) delivered on 8/10/71 and cited in the body of this Court's decision in *G. B. Ollivant (Nig.) Ltd. v. I.B. Agbabiaka* (1972) 2 SC (Reprint) 127 at 134 as follows:

P "...As a general principle in law in an action for wrongful dismissal, the normal measure of damages is the amount the employee would have earned under the contract for the period until the employer could lawfully have terminated it less the amount the employee could reasonably be expected to earn in other suitable employment because the dismissed employee like any innocent person following a breach of contract by the other party must take reasonable steps to minimize the loss."

Z Even then, **it is not unreasonable for the measure of damages to be liquidated where the parties by mutual agreement as per the abstract above as in the instant matter have on their own set out the measure of damages payable in the event of terminating a contract of employment as contemplated in chapter 2, section 3 of the Conditions of Appointment of the Institute of Health Staff Regulations. See: *Archibong v. Duke* (1921) 4 NLR 92. The measure of damages has not therefore changed since the case of *Hadley v. Baxendale* (1854) Exch. 341.**

JJ I must observe in regard to this matter that the respondent with regard to her pleadings has neither pleaded satisfactorily her special damages, to wit, the salaries, allowances and other benefits



**A** that is accruable to her as pronounced by the lower court in its judgment nor have these items of special damages been specifically proved. Nonetheless, **the law is trite that unless pleaded and strictly proved, the court is not obliged to make any awards in that regard for special damages.** This aspect of the lower court's judgment should be set aside and I so hold.

**F** The respondent has claimed the sum of ₦350,000.00 in the alternative. Since flowing from my reasoning above, the respondent's entitlement to special damages as awarded by the lower court is imprecise and granted in error, this Court is obliged to award the sum of ₦100,000.00 in general damages to the respondent. In this regard, I am in agreement with the lead judgment in so awarding the same.

**K** For the above reasons and the reasons ably given in the lead judgment of my learned brother, Muntaka-Coomassie, JSC, the draft of which I have read before now, I also agree with him that the appeal lacks merit and should be, and I so dismiss it. I abide by the orders contained in the lead judgment.

**P** **FABIYI, JSC:** I have read before now the judgment just delivered by my learned brother, Muntaka-Coomassie, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal is devoid of merit and should be dismissed.

**U** The respondent herein was interdicted by the appellant on an allegation of having stolen expired drugs vide Exhibit 3 which states that her fate would be determined by the outcome of a report of an Administrative Disciplinary Committee. The Committee which was set up by the appellant, in its report in Exhibits 5 and 6, found in favour of the respondent and even recommended that she should be reinstated. The appellant, on the contrary, dismissed the respondent without a charge on a purported admission of the offence of theft. The respondent's suit for reinstatement and other reliefs at the trial court was dismissed.

**EE** The Court of Appeal, Kaduna Division (the court below) reversed same. The appellant has decided to try its chance by appealing to this Court.

**JJ** In this Court, briefs of argument were filed and exchanged by the parties. The two (2) issues formulated in the appellant's amended brief of argument read as follows:-

**A** "1. Whether from the peculiar circumstances of this matter, the court below was right when it held that the appellant's dismissal was founded on an unproven allegation of theft and thus rendering the dismissal null and void.

**F** 2. Whether the appellant was deprived of her right to fair hearing in the Disciplinary Committee's proceedings."

The lone issue formulated by the respondent is more apt and in tune with the reality of this appeal. It reads as follows:-

**K** "Whether in the entire circumstances of this appeal, the respondent has admitted or has been found guilty of the offence of theft as to warrant her dismissal from service on the basis of the alleged offence."

It is clear that parties are *ad idem* that the allegation  
**P** against the respondent is one of theft of expired drugs which relates to the criminal realm. The appellant set up an Administrative Disciplinary Committee which investigated the allegation of theft and exculpated the respondent in its report in Exhibits 5 and 6. The committee even recommended the  
**U** respondent's reinstatement. This notwithstanding, the appellant still served the respondent with a letter of dismissal as if there was more to it than meets the ordinary eye.

It is clear to me that the Disciplinary Panel having exonerated the respondent of the allegation of theft against her,  
**Z** the proper venue to establish her guilt for the commission of the same offence as to warrant her dismissal from service is a court of competent criminal jurisdiction. The appellant was not imbued with the power to nail the respondent, as it were. By so doing, the respondent's right to fair hearing as guaranteed under the provision  
**EE** of section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 was invaded by the appellant. It crossed the line.

On behalf of the respondent, the case of *Dangote v. C.S.C. Plateau State* (2001) 9 NWLR (Pt. 717) 132 at 156; (2001) 86 LRCN 1204 was cited. It is of moment herein. There was an  
**JJ** allegation of the commission of criminal offences which was denied by the accused. This Court pronounced forcefully that:-

"In such situations, the respondent making the accusation of the commission of criminal offences must satisfy the

**A** constitutional requirement by establishing the guilt of the accused according to law."

I have no doubt in my mind that the action of the appellant was not proper as it did not establish the guilt of the respondent according to law. Same cannot be allowed to stand.

**F** For the above reasons and those carefully adumbrated in the judgment of my brother, I too, feel that the appeal lacks merit and should be dismissed. I order accordingly. I endorse all consequential orders as contained in the lead judgment, that relating to costs inclusive.

**K**  
**GALADIMA, JSC:** I have had the privilege of reading in advance the draft of the lead judgment just delivered by my learned brother, Muntaka-Coomassie, JSC. I am in complete agreement with his reasoning and conclusions. This appeal is bereft of merit and I will  
**P** also dismiss it. I abide by the consequential order made in the lead judgment.

*(Appeal Dismissed)*