

**SHENA SECURITY CO. LTD. ::::::::::: PLAINTIFF/
APPELLANT**

AND

**1. AFROPAK (NIG.) LTD.
2. NIGERIAN INTERCONTINENTAL
MERCHANT BANK LTD.
3. ABIODUN AKINYEMI** } **::: DEFENDANTS/
RESPONDENTS**

S C .

368/2002

SUPREME COURT OF NIGERIA

Sylvester Umaru ONU, JSC.
Aloysius Iyorgyer KATSINA-ALU, JSC.
George Adesola OGUNTADE, JSC.
Walter Samuel Nkanu ONNOGHEN, JSC.
Ibrahim Tanko MUHAMMAD, JSC (*Delivered Lead Judgment*)

AT ABUJA, ON FRIDAY, 9TH MAY, 2008.

CONTRACT OF EMPLOYMENT - Contract of service and independent contractor - Dispute arising from same - Factors considered by court in resolving.

CONTRACT OF EMPLOYMENT - Contract of service - Mode of termination.

CONTRACT OF EMPLOYMENT - Contract of service for a fixed term - Mode of termination.

CONTRACT OF EMPLOYMENT - Contract of service for a fixed term - Whether this is where the term of service is pre-determined at the commencement of the contract - Whether the employee can be removed during the term of service - Mode of termination.

CONTRACT OF EMPLOYMENT - Contract of service based on performance of a specified duty or event- Mode of termination.

CONTRACT OF EMPLOYMENT - "Contract of hiring" - Meaning.

CONTRACT OF EMPLOYMENT - Contract of hiring - Mode of termination.

CONTRACT OF EMPLOYMENT - Meaning of "Contract of service".

CONTRACT OF EMPLOYMENT - Meaning of.

CONTRACT OF EMPLOYMENT - Reasonable notice - Its meaning - Factors to be considered.

COURT - Whether a charitable organisation or father Christmas.

DAMAGES - Damages arising from wrongful termination - How awarded by court.

WORDS AND MEANING - "Worker"- Meaning of.

ISSUES:

- “(i) Whether the Appellant needed to prove more by evidence than that the contract was one of general hiring (which could only be terminated with the current year)
- (ii) Whether the Court of Appeal was right to accept that one month's pay in lieu of notice was adequate to compensate the Appellant in the circumstance.
- (iii) Whether general damages should not have been awarded.”

FACTS:

A parol contract was entered between the appellant and the 1st respondent for the supply of six (6) security guards. The contract commenced according to the appellant from the 15th of November, 1991 and there was no fixed duration. The six security men comprised of four ordinary

security men, each at the rate of N420.00 per month and two supervisors each at the rate of N500.00 per month.

At the end of August, 1992, the parties yet agreed that the appellant would supply seven (7) ordinary guards each at the rate of N500.00 per month and two(2)supervisors each at N600.00 per month as from September, 1992. Here again, there was no fixed term, nor was the contract written, signed or sealed.

The appellant stated that apart from the fact that the 1st respondent did not settle the bill of the appellant as in Exhibit A, presented for September, 1992, it unilaterally, without any just cause and due process, terminated the contract on the 22nd October, 1992. The appellant instituted an action at the trial court.

After taking evidence from the parties and closing addresses, the learned trial judge found that the termination of the plaintiff's employment by the defendant was unlawful. He also found that the original contract was varied. He held that the plaintiff was only entitled to one month's notice to terminate the contract or one month's payment in lieu thereof. General damages was awarded, according to the plaintiff but a sum of N15,001.00 was awarded.

Dissatisfied with some aspects of the trial court's decision, the plaintiff appealed to the Ibadan Division of the Court of Appeal (court N15,913.00 below). The court below dismissed the appeal.

Further dissatisfied, the plaintiff, now appellant before us, appealed to this Court.

HELD: *(Unanimously Dismissing Appeal)*

1. *On the meaning of “a contract of employment”:*
A contract of employment means any agreement, whether oral or written, express or implied, whereby one person agrees to employ another as a worker and that other person agrees to serve the employer as a worker. That is by the definition of the Labour Act (Cap. 198) LFN, 1990 which applies to workers, strictly defined to the exclusion of the management

staff. At page 49FK.

2. *On the meaning of "a worker" AND on the meaning of "contract of service":*

A worker is defined by the Labour Act as any person who has entered into or works under a contract with an employer whether the contract is for manual or clerical work or is expressed or implied, oral or written and whether it is a contract of service or a contract personally to execute any work or labour (section 91 of the said Act).

This contract is commonly referred to as "Contract of Service." But where the contract allows the contractor to work for people other than the employer, on the other hand, these are persons referred to as independent contractors or self - employed. At page 49KP.

3. *On the factors considered by the court where there is a dispute as to which kind of contract the parties entered into:*

Where there is a dispute as to which kind of contract the parties enter, there are factors which usually guide a court of law to arrive at a right conclusion. For instance:

- (a) If payments are made by way of "wages" or "Salaries" this is indicative that the contract is one of service. If it is a contract for service, the independent contractor gets his payment by way of "fees". In a like manner, where payment is by way of commission only or on the completion of the job, that indicates that the contract is for service.**
- (b) Where the employer supplies the tools and other capital equipment there is a strong likelihood that the contract is that of employment or of service. But where the person engaged has to invest and provide capital for the work to progress, that indicates that it is a contract for service.**
- (c) In a contract of service/employment it is**

inconsistent for an employer to delegate his duties under the contract. Thus, where a contract allows a person to delegate his duties thereunder, it becomes a contract for services.

- (d) Where the hours of work are not fixed it is not a contract of employment/of service. See: *Milway (Southern) Ltd. v. Willshire (1978) 1 RLR 322*
- (e) It is not fatal to the existence of a contract of employment/of service that the work is not carried out on the employers premises. However, a contract which allows the work to be carried on outside the employers premises is more likely to be a contract for service.
- (f) Where an office accommodation and a secretary are provided by the employer, it is a contract of service/of employment. *At pages 49UJJ & 50AK.*

4. *On the mode of termination of a contract of service:*

Where a contract of services provides for termination by either party giving a specified and pre-agreed period of notice, this poses no problem at all as to how the contract comes to an end when either party exercises his right to give notice of intention to bring the contractual relationship to an end. This in fact, tallies with the stipulation of Section 11(I) of the Labour Act, Cap. 198 LFN, 1990 . *At page 58AF.*

5. *On the mode of termination of contract of service for fixed term:*

The 2nd situation is where the contract of service is for a fixed term. This is where the term of service is pre-determined at the commencement of the contract. Notice may or may not be in the contemplation of the parties. The proposition here is that in such a contract the employee cannot be removed during the period of the term contracted except for misconduct or where the employer dies. See: *Igbe v. Governor of Bendel State (1983) 2 SC 14*. Where the contract of an employee is determined before the expiration of the

term agreed, the employer shall be made to pay the employee the full salary he would have earned for the unexpired period of his fixed contractual term. See: *Swiss Nigeria Wood Industries Ltd. v. Bogo (1970) NCLR 423. At page 58UEE.*

6. *On the mode of termination of contract of service based on the performance of specified duty or event:*

The 3rd and last situation which poses no problem again in matter of notice is where the contract of service expires by performance or on the happening of a specified event. Here, performance of the specified duty or event within an indeterminate period brings the contract of service to an end. At page 59F.

7. *On the mode of termination of contract of service where no mode of termination is provided:*

Now, where there is no mode of termination of the contract of service by any form of notice, the common law rule will apply. That rule is that the court will imply a presumption that contract of service is to terminate by reasonable notice, given by either party. What amounts to reasonable notice will depend on the intention of the parties as revealed by the terms of the contract. In

(i) *Imoloame v. WAEC (1992) 9 NWLR (Pt. 265) 303;*

(ii) *Maiduguri Flour Mill Ltd. v. Abba (1996) 9 NWLR (Pt.473) Page 506*

There is support that where there is a contract of service which contains no provision for notice required for termination thereof, there is an implied term that the contract can only be terminated by reasonable notice. At page 59KP.

8. *On the meaning of “reasonable notice” and factors to be considered:*

What is reasonable notice is dependant upon (a) the nature of the contract and (b) the status of the

employee in the establishment. Thus, the higher the position held by the employee, the larger his salary, the longer will be the notice required to put his contract to an end. In *Daniels v. Shell B. P. Development Co. Ltd* (1962) *All NLR* 19, it was held that the period of notice could be determined from evidence offered by the servant as to the period of notice normally given to staff of similar status and that a custom or trade practice may be presumed to have been incorporated into the terms of contract where no provisions are agreed. At page 59UZ.

9. *On how damages are awarded for wrongful termination:*
The damages recoverable usually in cases of wrongful dismissal/termination have well been pronounced upon by our courts in several decided cases. Such damages are said to be the losses reasonably foreseeable by the parties at the time of the contract as inevitably arising if one breaks faith with the other. Certainly, they do not include or take account of speculative or sentimental values. The court in awarding damages will certainly not include compensation for injured feelings or the loss that may have been sustained from the fact that the employee having been dismissed makes it more difficult for him to obtain fresh employment. See: *Ajolare v. Kwara State College of Technology & Anor* (1980) *FNLR* 414. At page 64UEE.
10. *On whether a court of law is a charitable organisation or father Christmas:*
A court of law is not known or equated to a charitable organisation or father Christmas distributing largesse to all and sundry. At page 65K.
11. *On the meaning of “contract of hiring”:*
It is not in doubt that a contract of general hiring is a contract of hiring and service without limitation of time and that such a hiring/contract is presumed to be

a hiring for a year whether the contract is oral or is in writing. It should however, be noted that the above statement is a presumption which can be rebutted. "The presumption of a yearly hiring is capable of rebuttal - it is not an inflexible rule and must be considered in connection with the circumstances" - See Halsbury's Laws of England, Hailsham Edition Vol. 22 page 144 paragraph 235 as reproduced by the Supreme Court in the case of *I.D.C Co (Nig) Ltd vs Ajijala (1976) 10 NSCC 88 at 94. At page 68FK.*

12. *On the mode of termination of a contract of hiring:*
It is also good law that a contract of general hiring "can only be terminated with the current year unless there is a stipulation to the contrary or a custom or some other circumstance is established enabling the parties to determine the contract at some other date by notice or there is good ground for summarily ending the relation of master and servant" - See paragraph 943, page 489 of Vol. 22 of Halsbury's Laws of England, 3rd Edition as cited in *I.D.C (Nig) Ltd, vs Ajijala (1976) 2 S.C 64 Reprint;(1976) NSCC 88 at page 94. At page PU.*

NIGERIAN CASES REFERRED TO:

1. Ajolore v. Kwara State College of Technology & Anor (1980) FNLR 414.
2. Daniels v. Shell B.P. Dev. Co. Ltd. (1962) All NLR 19.
3. Enahoro v. I. B.W A. Ltd (1971) 1 NCLR 180.
4. Garabadia v. Jarma-kani (1961) 1 All NLR 177.
5. Intern. Drilling Co. (Nig) Ltd v. Ajijala (1976) 2 S.C 64 Reprint;(1976) NSCC 88.
6. Ifander v. Berius (1961) All NLR 40.
7. Igbe v. Governor of Bendel State (1983) 2 SC 14.
8. Imoloame v. W.A.E.C (1992) 9 NWLR (Pt. 265) 303.
9. Jos Steel Rolling Co. Ltd v. Bernestiele Nig. Ltd.(1995) 8 NWLR (Pt.412) 201.
10. Katto v. CBN (1999) 6 NWLR (Pt.607) 390.
11. Maiduguri Flour Mill Ltd. v. Abba (1996) 9 NWLR

- (Pt.473) 506.
- A** 12. Uhafe v. Khomo (1993) 8 NWLR (Pt.309) 58.
13. Orosanye v. E.C. N. (1969) NSCC, Vol. 6, 128.
14. Swiss Nigeria Wood Industries Ltd. v. Bogo (1970) NCLR 423.

F FOREIGN CASES REFERRED TO:

1. De Stempel v. Dunkels (1937) 2 All ER 215.
2. Hadley v. Baxendale 9 Exch. 354 or 156 E.R. 151.
3. Jackson v. Hayes Candy & Co. Ltd. (1938) 4 All E.R. 587.
4. Jefford v. Gee (1970) 2 W. L. R. 702.
- K** 5. Milway (Sourthern) Ltd. v. Willshire (1978) 1 RLR 322.

NIGERIAN STATUTE REFERRED TO:

Labour Act (Cap. 198) LFN, 1990 -S. 11(i).

P NIGERIAN RULE OF COURT REFERRED TO:

Supreme Court Rules, 1985 (as amended) Order 8 R.12(2).

FOREIGN BOOK REFERRED TO:

- U** Halburys Laws of England, Hailsham Edition Vol. 22 p. 144 para 235.

COUNSEL:

- Z** Chief O. T. Akinbiyi; with him; O. H. Oyajinmi, A. P. Adeniran, A. E. Audu; for the Appellants

O. A. R. Ogunde for the Respondent.

- EE** **MUHAMMAD, JSC (*Delivered Lead Judgment*):** In a writ of summons taken from the High Court of Justice of Ogun State holden at Oha Judicial Division (trial court for short), the plaintiff made the following claim against the defendant:

- JJ** "(i) A declaration that the unilateral termination by the Defendant of the plaintiff's contract for service with the Defendant on the 22nd October, 1992 is unlawful, null and void.
(ii) N35, 913. 00 (Thirty Five Thousand, Nine hundred and Thirteen Naira) special and general damages for

A unpaid services and unlawful termination of the contract of employment between the plaintiff and the Defendant and/or for breach of contract.

PARTICULARS OF SPECIAL DAMAGES

F (a) unpaid services for September, 1992 - N4,667.00
(b) unpaid services for October, 1992 - N2, 846. 00
(c) Expected earning for the rest of October, 1992, November, 1992 and December, 1992 - N8,400.00
N15,913.00

K In paragraph 21 of his statement of claim, the plaintiff "Claims as per the writ of summons."

The defendant denied the claims of the plaintiff in its entirety and maintained that the whole claim was misconceived, speculative gold-digging, vexatious and frivolous and a grand abuse of due process of court which should be dismissed with substantial costs.

P After taking evidence from the parties and closing addresses, the learned trial Judge found that the termination of the plaintiff's employment by the defendant was unlawful. He also found that the original contract was varied. He held that the plaintiff was only entitled to one month's notice to terminate the contract or one month's payment in lieu thereof. No general damages was awarded, according to the plaintiff but a sum of N15,001.00 was awarded.

Z Dissatisfied with some aspects of the trial court's decision, the plaintiff appealed to the Ibadan Division of the Court of Appeal (court N15,913.00 below). The court below dismissed the appeal.

Further dissatisfied, the plaintiff, now appellant before us, appealed to this court on three grounds of appeal.

EE The parties filed and exchanged briefs of argument on the appeal. In his briefs learned counsel for the appellant formulated the following issues:

- JJ**
- "(i) Whether the Appellant needed to prove more by evidence than that the contract was one of general hiring (which could only be terminated with the current year)
 - (ii) Whether the Court of Appeal was right to accept that one month's pay in lieu of notice was adequate

- A** to compensate the Appellant in the circumstance.
(iii) Whether general damages should not have been awarded."

Learned counsel for the respondent adopted the three issues formulated by the appellant, on behalf of the respondents. Before
F I go into the arguments proffered by the parties, permit me my Lords, to give a brief account of the facts leading to this appeal.

- A parol contract was entered between the appellant and the 1st respondent for the supply of six (6) security guards. The contract commenced according to the appellant from the 15th of
K November, 1991 and there was no fixed duration. The six security men comprised of four ordinary security men, each at the rate of N420.00 per month and two supervisors each at the rate of N500.00 per month.

- At the end of August, 1992, the parties yet agreed that the
P appellant would supply seven (7) ordinary guards each at the rate of N500.00 per month and two (2) supervisors each at N600.00 per month as from September, 1992. Here again, there was no fixed term, nor was the contract written, signed or sealed.

- The appellant stated that apart from the fact that the 1st
U respondent did not settle the bill of the appellant as in Exhibit A, presented for September, 1992, it unilaterally, without any just cause and due process, terminated the contract on the 22nd October, 1992. The appellant instituted an action at the trial court and made the following claim as per its amended writ of summons
Z and statement of claim:

- "1. N76, 004. 00, special and general damages for unpaid services and unlawful termination of the contract of employment between the plaintiff and the defendant and/or for breach of contract.
EE 2. A declaration that the unilateral termination by the defendant of the plaintiff's contract for service with the defendant on the 22nd October, 1992 is unlawful, null and void."

- Now in treating this appeal, I think the first thing to be determined
JJ is the nature of the contract entered by the parties to this appeal. Learned counsel for the appellant in his issue No. 1, submitted that the contract of employment which was terminated was a contract of general hiring and could only be terminated with the current

A year unless any of the exceptions to the principle was established. No such exception was established in this case. With the new contract entered by the parties on 1st of September, 1992, the contract could only be terminated on the 31st of August, 1993. This was the finding of the trial court.

F Thus, as the contract was unlawfully terminated in October, the 1st respondent was bound in law to make payment to the appellant up till 31st of August, 1993 not in lieu of notice as such but in lieu of forbearing till the legal end of the contract. Learned counsel for the appellant argued that the legal conclusions
K reached by the court below are contrary to the position of the law accepted by this court in several decided cases including: *International Drilling Co. (Nig.) Ltd v. Ajijala (1976) NSCC 88, 94 lines 5 - 12.*

On the length of Notice to be given, learned counsel for the
P appellant argued that the position is that of a contract of general hiring i.e. a general hiring which operates as a hiring for a year can only be terminated within the current year unless there is a stipulation or custom or some other circumstances to the contrary. He relied on the case of *International Drilling Co. (Nig.) Ltd. v. Ajiyala (supra)*. Learned counsel argued finally on this issue that
U the contract is a specie of contract of employment that could only be terminated with the current year and that as it was unlawfully terminated midstream the respondents are liable by implication of law to pay the appellant for the months remaining for that year, i.e.
Z November, 1992 to August, 1993.

Learned counsel for the respondents made his own submission on issue No.1 as follows:
That the trial court and the Court of Appeal were right in holding that the contract did not become a contract of general hiring
EE merely because it has no fixed duration. The nature of the contract was misconceived by the appellant. The contract was not a contract for services. The first respondent did not have a contract of employment with any of the security guards employed by the appellant. The contract was with the appellant to provide security
JJ services by supplying security guards.

Learned counsel for the respondents argued further that although the trial court and the Court of Appeal assumed that it was common ground between the parties that the contract in

A dispute was a contract of employment, he urges this court to apply Order 8 Rule 12(2) of the Supreme Court Rules 1985 (as amended) to hold that the proper inference to be drawn from the facts of this case is that the contract was not one of service or hiring, but a contract for services. He further urged that this court
F can make such a finding notwithstanding that the respondents did not file a notice of intention to affirm the decision of the Court of Appeal on grounds other than those relied on. He cited the cases of *Katto v. CBN* (1999) 6 NWLR (Pt.607) 390; *Omo Uhafe v. Ese Khomo* (1993) 8 NWLR (Pt.309) 58. He argued that the Jackson's
K case is completely inapplicable to the facts of this case.

Learned counsel for the respondent submitted that the appellant seemed to have overlooked the finding of the learned trial Judge that one month would be the reasonable notice for both parties for the termination of the contract. The appellant, he
P argued, did not attack this finding. The trial court and the Court of Appeal were right in holding that one month's notice was sufficient.

Now from the pleadings of the parties it is clear that in the plaintiff's amended statement of claim, the following averments
U were made:

"3. By an oral agreement between the plaintiff and the Defendant, the plaintiff was engaged by the Defendant to supply security guards at the Defendants factory at Sango - Otta, in addition to the security guards engaged by the
Z Defendant. "

In its statement of Defence, the defendant averred as follows:
"3. The Defendant denies paragraph 3 of the statement of claim and says that the security services of the plaintiff were contracted to take total control of the Defendants
EE factory and premises. "

The trial court made its finding on the nature of the contract between the parties in the following words:

"I have read the evidence as contained in this case I have no difficulty in coming to the following conclusion:

JJ (I) The valid contract was that of employment . "

The court below held as follows:

"The law is settled that in action for wrongful termination of appointment, as in the instant case, the onus is on the

A plaintiff to prove, among other, the terms of the agreement allegedly breached. He is therefore required to place before the court the Terms of the Contract of employment, and to prove in what manner the said terms were breached by the employer. "

F Thus, the two courts below found the contract entered by the plaintiff and the defendant to be that of employment.

K **A contract of employment means any agreement, whether oral or written, express or implied, whereby one person agrees to employ another as a worker and that other person agrees to serve the employer as a worker. That is by the definition of the Labour Act (Cap. 198) LFN, 1990 which applies to workers, strictly defined to the exclusion of the management staff. A worker is defined by the Labour Act as any person who has entered into or works under a contract with an employer whether the contract for manual or clerical work or is expressed or implied; oral or written and whether it is a contract of service or a contract personally to execute any work or labour (Section 91 of the said Act). This contract is commonly referred to as "Contract of Service." But where the contract allows the contractor to work for people other than the employer, on the other hand, these are persons referred to as independent contractors or self - employed.**

U Where there is a dispute as to which kind of contract the parties enter, there are factors which usually guide a court of law to arrive at a right conclusion. For instance:

EE (a) If payments are made by way of "wages" or "Salaries" this is indicative that the contract is one of service. If it is a contract for service, the independent contractor gets his payment by way of "fees". In a like manner, where payment is by way of commission only or on the completion of the job, that indicates that the contract is for service.

JJ (b) Where the employer supplies the tools and other capital equipment there is a strong likelihood that the contract is that of employment or of service. But where the person engaged has to invest and provide capital for the work to progress, that indicates that it is a contract for

- A** service.
- (c) **In a contract of service/employment it is inconsistent for an employer to delegate his duties under the contract. Thus, where a contract allows a person to delegate his duties thereunder, it becomes a contract for services.**
- F**
- (d) **Where the hours of work are not fixed it is not a contract of employment/of service. See: *Milway (Southern) Ltd. v. Willshire (1978) 1 RLR 322***
- (e) **It is not fatal to the existence of a contract of employment/of service that the work is not carried out on the employers premises. However, a contract which allows the work to be carried on outside the employers premises is more likely to be a contract for service.**
- K**
- (f) **Where an office accommodation and a secretary are provided by the employer, it is a contract of service/of employment.**
- P**

Now applying the above criteria to the appeal on hand, and, although the contract between the appellant and the respondent was not one reduced into a formal one i.e. by writing, signing and sealing, it appears to me to be a contract of service/employment. I easily find support in the pleadings and evidence of the parties.

Z In the amended statement of claim, the plaintiff claimed that:

EE “3. By an oral agreement between the Plaintiff and the Defendant, the plaintiff was engaged by the Defendant to supply security guards at the Defendant's factory at Sango-Otta, in addition to the security guards engaged by the Defendant.

5. The Plaintiff commenced the supply of security guards to the Defendant on the 15th of November, 1991 upon the aforesaid oral agreement.

JJ 6. From the commencement of the contract until the 31st of August, 1992 the Plaintiff supplied at least 4 ordinary guards and 2 supervisor guards to the Defendant at the rate of N420.00 (four hundred and twenty naira) per month per ordinary guard and N500.00 (five hundred

- A** naira) per month per supervisor guard.
7. At the end of August, 1992 the Defendant's agents orally instructed the plaintiff to supply additional guards, especially to cater for the newly erected warehouse which had no doors.
- F** 8. The plaintiff's Managing Director agreed to supply 3 additional ordinary guards but upon her insistence it was agreed with the Defendant's agents that as from September, 1992, every ordinary guard supplied would be paid N500.00 (five hundred naira) per month while every
- K** supervisor guard would be paid N600.00 (six hundred naira) per month.
- 8a. The Plaintiff avers further that the subsequent variation in terms of contract between itself and the Defendant marked the beginning of a fresh contract
- P** between them.
9. Thus in September, 1992, the plaintiff supplied 7 ordinary guards and 2 supervisor guards to the Defendant such that the money to be paid to the Plaintiff for that month amounted to N4,667.00 (four thousand, six hundred and sixty seven naira) after the appropriate deduction for absenteeism (for one guard for 2 days) was deducted.
- U**
10. In accordance with the practice between the plaintiff and the Defendant (with regards to the contract of employment in issue) the plaintiff caused its Fees Note for the sum of N4, 667. 00 (four thousand six hundred and sixty seven naira) as the payment due for September to be presented to the Defendant but the same was not honoured. The Defendant is hereby put on Notice(sic) to produce the original copy of the Fees Note No. 117 dated the 30th of September, 1992 which will be relied upon at the trial of this case.
- Z**
- EE**
11. In October, 1992 the plaintiff supplied 4 ordinary guards and 2 supervisor guards to the Defendant up till the
- JJ** 22nd of October, 1992 when the Defendant unilaterally and unlawfully terminated the contract.
12. The plaintiff avers that on the 22nd of October, 1992 the Defendant's Managing Director without any

- A** justification and due process of the law, unilaterally terminated the contract of employment by forcing the plaintiff's guards out of the Defendant's premises."
- Although the defendant denied most of the averments reproduced above, the plaintiff called evidence which, according to the learned
- F** trial Judge, afforded him to conclude that the valid contract entered by the parties was that of employment; it was varied and unlawfully terminated by the defendant (p.346 of the printed Record of Appeal). For the avoidance of doubt and for clarity sake, 1st PW; a Managing Director of the plaintiff/respondent
- K** stated in her examination in chief, as follows:
- "My Company was engage(sic) in providing security guards for the defendants company from 15th November, 1991 till 2nd October, 1992. The end of the contract was not arranged. We had an oral arrangement with the
- P** defendant. We prepared an agreement but it was not signed by the defendant. We were supposed to provide four guards and two supervisors from 15th November, 1991 till end of August, 1992 and we provided as such. At the end of the month of August for none guards we
- U** provided 3 (three) guards but no additional supervisors. From 15th November, 1991 guards were supplect(sic) at N420.00 per guard per month supervisors were supplied at N500.00 per one per month to the end of August, 1992. From August, 1992 the fees for guard were increased to
- Z** N500.00 per guard per month and N600.00 per Supervisor per month. All these arrangement were made with the General Manager of the Company.
- We were always paid by cheque but one or two times we were paid by cash.
- EE** At the end of the month my Company issue (sic) fees not to demand payment (sic) and we were paid by cheque."
- DW 2, Personnel Manager to the defendant stated under cross-
- "I am not aware of the time the plaintiff was flushed out of the premises. I am not aware of the time the contract
- JJ** between the plaintiff and the defendant was terminated. I am not in a position to tell the court the relationship between the parties. "
- DW 3, Financial Controller of the defendant stated, among others:

A "I know the plaintiff Company. We engaged them as security for our Company. The contract with the defendant was not in writing ."

All these have gone to show that the contract entered by the parties was that of service/employment.

F A contract of hiring and service, on the other hand, as learned counsel for the appellant submitted, that the contract entered by the parties is, is generally taken to be one without limitation of time. Where that is the case, the presumption is that the hiring is for a year whether the contract is oral or is in writing.

K It is noteworthy however that the presumption exists not only when the original contract was a general hiring, but also when, at the expiration of a contract for a definite period of service, the service is continued under a second contract which is indefinite as to time. See: Halburys Laws of England, Vol. 22 p. 144 para 235,

P Hailsham Edition; *Jackson v. Hayes Candy & Co. Ltd. (1938) 4 All E. R. 587; International Drilling Co. (Nig.) Ltd. v. Ajijala (1976) NSCC 88.*

Permit me, my Lords, to have recourse, once again, to the facts of this case as contained in the parties pleadings. The plaintiff

U averred as follows:

"5. The plaintiff commenced the supply of security guards to the Defendant on the 15th of November, 1991."

Z 6. From the commencement of the contract until the 31st of August, 1992 the Plaintiff supplied at least 4 ordinary guards and 2 supervisor guards to the Defendant at the rate of N420.00 (four hundred and twenty naira) per month per ordinary guard and N500.00 (five hundred naira) per month per supervisor guard.

EE 7. At the end of August, 1992 the Defendant's agents orally instructed the plaintiff to supply additional guards, especially to cater for the newly erected warehouse which had no doors.

JJ 8. The plaintiff's Managing Director agreed to supply 3 additional ordinary guards but upon her insistence it was agreed with the Defendant's agents that as from September, 1992, every ordinary guard supplied would be paid N500.00 (five hundred naira) per month while every supervisor guard would be paid N600.00 (six hundred

- A** naira) per month.
- 8a. The Plaintiff avers further that the subsequent variation in terms of contract between itself and the defendant marked the beginning of a fresh contract between them.
- F** 9. Thus in September, 1992, the plaintiff supplied 7 ordinary guards and 2 supervisor guards to the Defendant such that the money to be paid to the plaintiff for that month amounted to N4, 667. 00 (four thousand, six hundred and sixty seven naira) after the appropriate deduction for absenteeism (for one guard for 2 days) was deducted.
- K**
10. In accordance with the practice between the plaintiff and the Defendant (with regards to the contract of employment in issue) the plaintiff caused its Fees Note for the sum of N4, 667. 00 (four thousand six hundred and sixty seven naira) as the payment due for September to be presented to the Defendant but the same was not honoured. The Defendant is hereby put on Nitice(sic) to produce the original copy of the Fees Note No. 117 dated the 30th of September, 1992 which will be relied upon at the trial of this case.
- P**
- U**
11. In October, 1992 the plaintiff supplied 4 ordinary guards and 2 supervisor guards to the Defendant up till the 22nd s of October, 1992 when the Defendant unilaterally and unlawfully terminated the contract.
- Z**
12. The plaintiff avers that on the 22nd of October, 1992 the Defendant's Managing Director without any justification and due process of the law, unilaterally terminated the contract of employment by forcing the plaintiff's guards out of the Defendant's premises.
- EE**
13. By a letter dated the 19th November 1992 (written upon the instruction of the plaintiff while hoping for an amicable settlement of the matter), Seun Akinbiyi Esq. (as Solicitor) sent the plaintiff's Fees Note for October, 1992 to the Defendant and demanded payment of the sum of N7,513.00 (seven thousand, five hundred and thirteen naira) as sum due to the Plaintiff for supplying security guards to the Defendant in September and October (up to
- JJ**

- A** the 2nd October). The Defendant is hereby put on Notice to produce the original copy of Seun Akinbiyi's letter together with the plaintiff's Fees Note No. 126 dated the 3rd of November, 1992 which will be relied upon at the trial of this case.
- F** 14. The Defendant to accede to the demands contained in the aforesaid letter of Seun Akinbiyi Esq.
15. The Plaintiff contends that the Defendant is liable to pay not only for the remainder of October, 1992 but also for the next 10 months namely, November, 1992, to
- K** August, 1993 over which the contract was expected by the plaintiff to have lasted, or which would have served as a moderate notice to the plaintiff.
16. The average earning per month expected by the plaintiff from the Defendant is N3,200.00 (three thousand,
- P** two hundred naira). "
- The defendant denied and it averred as follows:
- "4. The Defendant denies paragraphs 4, 5, 6 and 7 of the statement of claim and specifically denies that at no time was there any instruction or demand made for additional
- U** security guards.
- Since the whole premises had been placed in the hands of the plaintiff, the plaintiff as a security company must know the number of guards it will engage for that purpose. There was no warehouse built on the Defendant premises
- Z** without doors.
5. The Defendant denies paragraph 8 of the statement of claim and maintains that it never agreed to additional guards being used or the contractual rate be increased.
6. The Defendant denies paragraph 9 and says that it was
- EE** not liable to pay for services not rendered and did not agree to increment in the contractual rate or three additional guards.
7. The Defendant says in respect of paragraph 10 that since the fee note did not reflect the contractual rate and
- JJ** more importantly, the services contracted for were not rendered but negated by the felonious activities of the plaintiff's employees, it refused to pay.
8. The Defendant denies averments contained in

- A** paragraphs 11 and 12 and strictly says that at no time was the Plaintiff under the Defendant's contract of employment.
- F** 9. The Defendant avers further to the foregoing paragraph that the contractual relationship between it and the plaintiff is independent of any employment, the plaintiff was merely an independent security contractor.
- K** 10. The Defendant denies paragraphs 13 and 14 and puts the plaintiff to the strictest proof of the liability contained therein.
11. In respect of the tenure of the contractual relationship, the Defendant denies that there was an agreed tenure for the security services contract to last, and further maintains that it was not liable to give "redundancy allowance" to the plaintiff as is implied under paragraph 15 of the statement of claim.
- P** 12. To the extent that the Defendant is not a Master to the plaintiff, but a mere contractual party, paragraphs 16, 17, 18, 19 and 20 are expressly denied and controverted and the plaintiff is put to the strictest proof thereof
- U** 13. The Defendant maintains that there was total failure of consideration in respect of the security contract and the parties were discharged.
- Z** 14. The Defendant says that since the plaintiff turns itself into wolves in sheep's clothing" rather than the keeper and guard of the Defendant's properties, the Plaintiff cannot be said to have earned the September/October, 1992 claim, as its agents and employees looted the Defendant's properties and negated its obligation to maintain security services by these conducts."
- EE** The learned trial Judge made his own findings as follows:
"It is in evidence in this case that there is no written agreement and therefore the parties orally agreed to supply the defendant numbers of guard and supervisors and until September, 1992, the defendant was paying at the end of every month after a demand by the plaintiff.
- JJ** When there is no written agreement parties can be taken to agree either on the practice of the trade or by conduct. In this case there is always a supply of guard at monthly and

- A** payments are made monthly. In that wise would be(sic) the reasonable notice for both parties for the termination of the contract In the presence case (sic) I am of the view that parties are to be judged by their conduct in the execution of the agreed contract As I have said earlier the
- F** reasonable notice in this case is only one month and cannot be more." .
- In affirming that decision, the court below, per Akintan, JCA (as he then was) stated, inter alia:
- K** "The position of the law as regards the length of notice required to terminate an employment when there is no express or specifically implied provision for the termination of an appointment by notice is that the common law will imply a presumption that the appointment can be terminated by giving reasonable notice
- P** by either side. See: *HONIKA SAWMILL NIG. LTD. v. HOFF* (supra). However, what will amount to reasonable notice in every case will depend on the facts of each case. In other words, there is definitely no laid down rule as claimed by the appellant, that in an unwritten contract of
- U** employment by which a worker would be paid a specified sum of money every month, has to be terminated by giving one year notice or by paying a year's salary in lieu of such notice in the event of a breach.
- Z** I therefore hold that the applicable principle is still that all that an employer or employee wishing to terminate an employment in this category, as in this case, is to give reasonable notice of his intention to the other side. As no specific period is prescribed as a reasonable period, I have no doubt in holding that the award of one month's pay in
- EE** lieu of the necessary notice made by the learned trial Judge is quite appropriate. There is therefore no merit in the appeal as it relates to that issue. "
- In view of the above findings of the two lower courts that the contract between the parties was that of service and that from all
- JJ** the material facts pleaded and the evidence led there is nothing to support that there is any stipulation or agreement as to the manner of termination or length of notice of termination required, the trial court had nothing more to do than to fall back to the normal

A practice of what happens when parties have made no provision governing notice of termination.

Where a contract of services provides for termination by either party giving a specified and pre-agreed period of notice, this poses no problem at all as to how the contract comes to an end when either party exercises his right to give notice of intention to bring the contractual relationship to an end. This in fact, tallies with the stipulation of Section 11(I) of the Labour Act, Cap. 198 LFN, 1990 which states:

K "Either party to a contract of employment may terminate the contract on the expiration of notice given by him to the other party of his intention to do so. The notice to be given for the purposes of subsection (1) above shall be:

P One day, where the contract has continued for a period of three months, or less, one week, where the contract has continued for more than three months but less than two years. Two weeks, where the contract has continued for a period of two years but less than five years and, one month where the contract has continued for five years or more."

U The above provision, it should be noted, is without prejudice to the common law right of an employer to dismiss without notice for certain gross misconduct of the employee.

The 2nd situation is where the contract of service is for a fixed term. This is where the term of service is pre-determined at the commencement of the contract. Notice may or may not be in the contemplation of the parties. The proposition here is that in such a contract the employee cannot be removed during the period of the term contracted except for misconduct or where the employer dies. See: *Igbe v. Governor of Bendel State (1983) 2 SC 14*. Where the contract of an employee is determined before the expiration of the term agreed, the employer shall be made to pay the employee the full salary he would have earned for the unexpired period of his fixed contractual term. See: *Swiss Nigeria Wood Industries Ltd. v. Bogo (1970) NCLR 423*. Thus, this kind of contract also poses no problem, although the trial court may consider taking into consideration some factors in determining the amount to be paid, such as the fact that the money is being paid in bulk and in advance and the employee has the opportunity of

EE

JJ

A investing it. See: *Ifander v. Berius* (1961) All NLR 40; *Garabadia v. Jarma-kani* (1961) 1 All NLR 177; *Orosanye v. Electricity Corporation of Nigeria* (1969) NSCC, Vol. 6, 128.

F *The 3rd and last situation which poses no problem again in matter of notice is where the contract of service expires by performance or on the happening of a specified event. Here, performance of the specified duty or event within an indeterminate period brings the contract of service to an end.*

K Now, where there is no mode of termination of the contract of service by any form of notice, the common law rule will apply. That rule is that the court will imply a presumption that contract of service is to terminate by reasonable notice, given by either party. What amounts to reasonable notice will depend on the intention of the parties as revealed by the terms of the contract. In *Imoloame v. WAEC* (1992) 9 NWLR (Pt. 265) 303; *Maiduguri Flour Mill Ltd. v. Abba* (1996) 9 NWLR (Pt.473) Page 506.

U There is support that where there is a contract of service which contains no provision for notice required for termination thereof, there is an implied term that the contract can only be terminated by reasonable notice. *What is reasonable notice is dependant upon (a) the nature of the contract and (b) the status of the employee in the establishment. Thus, the higher the position held by the employee, the larger his salary, the longer will be the notice required to put his contract to an end.* In *Daniels v. Shell B. P. Development Co. Ltd* (1962) All NLR 19, it was held that the period of notice could be determined from evidence offered by the servant as to the period of notice normally given to staff of similar status and that a custom or trade practice may be presumed to have been incorporated into the terms of contract where no provisions are agreed.

EE In the appeal on hand, the appellant did not in anyway attack or refute the above finding of the trial court which was affirmed by the lower court that acceptance of monthly payments by the appellants was an indication of the period of notice necessary to determine the contract.

JJ At this juncture, it is pertinent now to answer learned counsel for the appellants on the point he tenaciously held that the

- A** contract entered by the parties was that of general hiring which operates as a hiring for a year and can only be terminated with the current year unless there is stipulation of custom to the contrary. The case cited and relied upon by the learned counsel for the appellant is *International Drilling Co. Nig. Ltd. v. Ajijala* (1976) 2 S.C 64 Reprint;(1976) NSCC 88. The other authority relied upon by learned counsel for the appellants is the provision from the Halsburys Laws of England, Vol. 22, p.144 paragraph 235 which was applied in the English case of *Jackson v. Hayes Candy & Co. Ltd.* (1938) 4 All E. R. 587 paragraph 3 where it was stated:
- K**
- "If a contract of hiring and service is a general hiring, that is to say, without limitation of time there is a presumption that the hiring is for a year whether the contract is oral or in writing. This presumption exists not only when the original contract was a general hiring, but also when, at the expiration a contract for a definite period of service, the service is continued under a second contract which is indefinite as to time ."
- P**
- On the case of *International Drilling Co. Nig. Ltd. v. Ajijala* (1976) 2 S.C 64 Reprint;(1976) NSCC 88, learned counsel for the appellants would have given us the basic facts giving rise to that case and what this court said in relation to the principle of the law governing a contract which makes no provision for its termination during its tenure. The brief facts of Ajijala's case (*Supra*) are that
- Z** Mr. Ajijala (respondent) was employed as a camp Boss on a salary of £40.00 a month under a written service agreement, clause 6 of which provided that
- the agreement may be terminated at any time during its tenure by either party giving to the other two weeks notice of termination or
- EE** on the payment of 2 weeks wages in lieu of notice. Clause 5 puts the contract on yearly basis unless notice of termination is served by either party. The agreement which was operative from 16th January, 1971 was terminated without giving the 2 weeks notice or payment of salary in lieu of notice on 16th March, 1972. The respondent sued for £2,395 damages. The Appellant offered £44: 12s:3d special damages. The appellant appealed to the Supreme Court.
- JJ**

The Supreme Court held that the trial Judge erred by

- A** applying the principle of law governing a contract which makes no provision for its termination during its tenure. On a proper Construction of clause 6 of the agreement, all the plaintiff was entitled to was the amount already paid into court viz. two weeks salary plus leave entitlements. Obaseki, AG. JSC, stated:
- F** "In our view, as there are express provisions in clauses 5 and 6 of the written contract of service (Exhibit A) in the case in hand, that the contract should operate as a yearly contract of service until termination, by giving two weeks notice or by payment of two weeks salary in lieu of such
- K** notice, the presumption arising from general hiring does not arise. Indeed, it is outside the province of the learned trial Judge to look anywhere for terms of termination of the contract other than in the Agreement, exhibit A.
- P** The words "at any time" in the sentence - This Agreement may be terminated at any time during its tenure, cannot by any stretch of the imagination be construed to mean only the end of the year of contract.
- U** We are therefore satisfied with the contention of learned counsel for the defendants/appellants that clause 6 of the Agreement was not given its correct construction by the learned trial Judge."
- It is clear now that the contract of service involved in the case of Ajijala (*supra*) was not of general hiring.
- Z** The quotation drawn by learned counsel from the Halsbury's Laws as relied upon by DU PARCQ L. J. sitting as an additional Judge, at the Kings Bench Division, was in relation to a contract of hiring and service, i.e. one without limitation of time. DU PARCQ, L. J. stated *inter alia*:
- EE** "The law with regard to the duration of contracts between master and servant is set out in HALSBURY'S LAW OF ENGLAND, Hailsham Edn; Vol. 22, p. 144 para 235. The only words I need read from it are these:
- JJ** 'If a contract of hiring and service is a general hiring, that is to say, without limitation of time, there is a presumption that the hiring is for a year, whether the contract is oral or in writing. This presumption exists not only when the original contract was a general hiring, but also when, at the

- A** expiration of a contract for a definite period of service, the service is continued under a second contract which is indefinite as to time The presumption of a yearly hiring is capable of rebuttal; it is not an inflexible rule and must be
- F** considered in connection with the circumstances of each case..”
- The learned Lord Justice observed further.
- K** "These words are contained in an article for which I see that Hilbery, J. is one of the writers responsible. It is not, of course, authoritative, and I would not quote that passage at the beginning of my judgment but for the fact that it has been in terms approved by one of the members of the Court of Appeal very recently - that is to say, by SLESSER L. J; in *De Stempel v. Dunkels* (1937) 2 All ER 215. SLESSER L. J. said at p. 252:
- P** ‘.....there is no doubt in my mind that the law is correctly summarised in HALSBURY'S LAWS OF ENGLAND, Hailsham Edn, Vol. 22, p.144
- U** DU PARCQ L. J. was however of the view that there is no inflexible rule that a general hiring is a hiring for the year. There might be many circumstances which would rebut the presumption of yearly hiring apart from the question of whether or not a custom was proved, which would show that a yearly hiring could not be
- Z** intended. DU PARCQ L. J. concluded that the fact that the employee was to be paid by Commission calculated on a complete year rather supports the presumption of a yearly hiring, because unless he served the year, he would not have a chance of being paid commission, and he was to be paid not only an annual salary,
- EE** but also a commission, which is not payable yearly but also calculated on the whole year. This, in my view, puts to rest the issue of whether the contract of service entered by the parties is that of a yearly hiring or is a simple contract of service. This is because the difference has now been made clear. I am thus
- JJ** satisfied that the authorities cited by learned counsel for the appellants, i.e. the case of *International Drilling Co. Nig. Ltd. v. Ajijala* (1976) 2 S.C 64 Reprint; (1976) NSCC 88 and the English case of *Jackson v. Hayes Candy & Co. Ltd.* (1938) 4 All E.R. 587

A are materially distinguishable from the appeal on hand. The latter is found to be based on a simple contract of service. The former, particularly the case of *Ajijala* was, though a contract of service, but with specific clause relating to a period within which any of the parties can exercise his right to terminate the contract. The English

F case of *Jackson*, persuasive as it is, was decided on the principle of a contract of hiring. Thus, none of the authorities cited by the learned counsel for the appellant is on all fours with the current appeal. The trial court was right in my view to have applied the principle of reasonable notice, which, from the custom and mode

K of the operation of the verbal contractual terms of the parties, could only imply one month notice.

The line toed by learned counsel for the appellants in arguing issue No.1 is that he was of the forgone conclusion that the contract entered by the parties to this appeal was one of

P general yearly hiring or one with specified duration for notice of termination of the contract. My findings as above have now shown otherwise. I am together with the two lower courts in their decisions that one month's pay in lieu of notice is adequate in the circumstances presented in the appeal. This is in line with the

U common law principle that where no time duration is agreed upon within which to terminate a contract of service, the court shall fall back to the principle of reasonable notice taking some factors (mentioned earlier) into consideration.

I resolve issues 1 and 2 in favour of the respondents.

Z Appellants issue No.3 is on the award of general damages, that it should have been awarded to the appellant. Learned counsel for the appellant contended fervently that the appellant suffered a loss, which is not direct, specific or special but is general in nature and it is measurable by or comparable to the interest in monetary

EE quantum which the appellant could have earned. The loss is the fact that the appellant was deprived of the money which it had earned as well as money which it ought to have earned but the 1st respondent kept custody of and took advantage of the monies. The money which the appellant had earned was the payment for

JJ September and October, 1992. A demand for the payment was made but it was not honoured. The appellant, learned counsel argued, should not have been impoverished. Several English cases were cited among which are: *Hadley v. Baxendale* 9 Exch 354 or 156 E. R. 151; *Jefford v. Gee* (1970) 2 W. L. R. 702. Our own

- A** case of *Swiss Nigerian Wood Industries Ltd. v. Bogo* (1970) *NCLR* 423 was also cited.

Learned counsel argued further that the principle operated in such a way that the damages by way of interest is awarded whether it is specifically claimed or not. He strongly urged us to

- F** be persuaded by the Jefford's case (*supra*).

In his submission, learned counsel for the respondents argued that the appellant has been unable to establish that general damages ought to be awarded. If such award is not permitted by law, the question whether such general damages should be

- K** calculated by way of interest becomes irrelevant.

The learned trial Judge held in respect of the claim for damages as follows:

- P** "On the issue of failure of the lower court to award interest on the sum granted to the appellant, such an award cannot be made by the lower court because the appellant did not include a claim for interest in its claim before the court and as the court is not a charitable institution, the lower court was right by not granting such an award. This is particularly so because the claim for interest in the
- U** instant case is not one that the court ought to make as of right. See: *Enahoro v. I. B. W A. Ltd* (1971) 1 *NCLR* 180; and *Jos Steel Rolling Co. Ltd v. Bernestiele (Nig.) Ltd.*(1995) 8 *NWLR* (Pt.412) 201."

- Z** **The damages recoverable usually in cases of wrongful dismissal/termination have well been pronounced upon by our courts in several decided cases. Such damages are said to be the losses reasonably foreseeable by the parties at the time of the contract as inevitably arising if one breaks faith with the other. Certainly, they do not include or take account of speculative or sentimental values. The court in awarding damages will certainly not include compensation for injured feelings or the loss that may have been sustained from the fact that the employee having been dismissed makes it more difficult for him to obtain fresh employment. See: *Ajolare v. Kwara State College of Technology & Anor* (1980) *FNLR* 414.**
- EE**
- JJ**

It is to be noted as well that the contract of service between the parties in this appeal was a simple contract with no fixed period of notice. The learned trial Judge found as a matter of

- A** fact that apart from the one month salary paid in lieu of notice, the appellants were entitled to payments for the work they did in the months of September and October, 1992. These were part of the total sum payable to the appellants. I think the learned trial Judge was correct. I also think that the court below was justified in
- F** affirming that decision and refusing to endorse the request on interest payment. I hold the same view also. I venture to add that when such new propositions of law which can hardly find a resting place in the prevailing law as it is presently advocated by learned counsel for the appellants that is substituting damages which is the
- K** known and acceptable method of classifying a wrongfully dismissed employee with claim for interest, a lot of incalculable damage will be done to the law. After all, no claim for interest was made in the appellants pleadings. **A court of law is not known or equated to a charitable organisation or father Christmas**
- P** **distributing largesse to all and sundry.** I think the awards made by the learned trial judge and affirmed by the court below are in order. I too affirm same.

In the final result, I find no merit in this appeal and I dismiss it. I order each party to bear its own costs in this appeal.

- U** **ONU, JSC:** Having been privileged to read before now the judgment of my learned brother Muhammad, JSC, I am in entire agreement with him that the appeal lacks merit and I too dismiss it with an order that each party do bear its own costs.

- Z** **KATSINA-ALU, JSC:** I have read before now, in draft the judgment delivered by my learned brother I. T. Muhammad JSC in this appeal. I agree with it. I also find no merit in this appeal. Accordingly, I dismiss it. I make no order as to costs.

- EE** **OGUNTADE, JSC:** I have had the advantage of reading in draft a copy of the lead judgment by my learned brother Muhammad JSC. I agree with him that this appeal has no merit. I would also dismiss it. I abide by the order on costs made in the lead judgment.

- JJ** **ONNOGHEN, JSC:** This is an appeal against the judgment of the Court of Appeal holden at Ibadan in appeal No.CA/1/36/99 delivered on the 9th day of July, 2002 in which the court dismissed

A the appeal of the appellant against the judgment of the High Court of Ogun State holden at Ota in Suit No.HCT/4/93 on the 4th day of July, 1996 in favour of the appellant who was the plaintiff in the case by awarding the plaintiff two (2) months arrears of wages and one month salary in lieu of notice as damages.

F The plaintiff was dissatisfied with that judgment and consequently appeals to the Court of Appeal, which dismissed same resulting in the instant appeal before this court.

The plaintiff's claim against the defendants, as indorsed in the amended writ of summons, is as follows:-

K "1. A declaration that the unilateral termination by the defendant of the plaintiff's contract for service with the defendant on the 22nd October, 1992 is unlawful, null and void.

P 2. N76, 004. 00 (Seventy-six Thousand, Four Naira) special and general damages for unpaid services and unlawful termination of the contract of employment between the plaintiff and the defendant and/or for breach of contract.

PARTICULARS OF SPECIAL DAMAGES:-

U (a) Unpaid services for September, 1992 N4,667.00
(b) Unpaid services for October, 1992 N4,667.00
(c) Expected earnings for the period November, 1992 to August, 1993 or payment in lieu of notice N46,670.00
N56,004.00

Z In the appellant's brief of argument deemed filed and served on 7/6/2005, learned counsel for the appellant, O.T Akinbiyi Esq, identified the following three issues for determination:

EE "(i) Whether the Appellant needed to prove more by evidence than that the contract was one of general hiring (which could only be terminated with the current year).

JJ (ii) Whether the Court of Appeal was right to accept that one month's pay in lieu of notice was adequate to compensate the Appellant in the circumstances.

(iii) Whether general damages should not have been awarded. "

However, it should be noted that only two issues were put

A before the Court of Appeal for determination in the appeal giving rise to the judgment being appealed against; the issues are:-

"(i) Whether the appellant was not entitled to more than one month's notice (or payment in lieu thereof) for the determination of its employment with the respondent.

F

(ii) Whether the appellant was not entitled to general damages in the circumstances ".

K Secondly, from the reliefs claimed by the appellant before the trial court and issue (1) before the Court of Appeal, it is very clear that appellant's claim for damages is based on termination of its contract of employment by the respondent, though claim (1) talks of termination of contract for service.

P On issue 1, learned counsel for the appellant cited and relied on the case of *Jackson vs Hayes Candy & Co. Ltd (1938) 4 ALLER 587; International Drilling Co (Nig) Ltd Vs Ajijala (1976) 10 NSCC 88 at 94; Halsbury's Laws of England, Hailsham Edition, vol. 22 page 144 paragraph 235* and submitted that the contract between the appellant and the 1st respondent was a contract of general hiring as the same was a contract of unlimited duration and as such it is regarded in law to be a contract for one year which can only be determined within the current year; that since the contract in issue commenced on 1st September, 1992 any termination of same must bring it to an end on 31st August, 1993; that anything short of that makes the termination wrongful.

Z On the otherhand, it is the submission of learned counsel for the respondents that the lower courts were right in holding that the contract did not become one of general hiring simply because it has no fixed duration; that the contract was not a hiring or service contract but a contract for services; that the 1st respondent did not have a contract of employment with any of the security guards employed by the appellant; that the contract was with the appellant to provide security services by supplying security guards; that the lower courts found as a fact that payments for the supply of the security guards was made by the 1st respondent on monthly basis upon demand and that the mode of payment is an indication of the period of notice needed to terminate the contract; that it is not correct that the Supreme Court in the case of *I.D.C (Nig) Ltd vs Ajijala (1976) 2 S.C 64 (Reprint)* accepted the principle on

EE

JJ

A general hiring stated in the Jackson's case as it is clear that the Supreme Court actually held that the trial Judge was in error when he applied the principles in Jackson's case in that clauses 5 and 6 of the service agreement, which was Exhibit A in the case, rebutted that presumption.

F **It is not in doubt that a contract of general hiring is a contract of hiring and service without limitation of time and that such a hiring/contract is presumed to be a hiring for a year whether the contract is oral or is writing. It should however, be noted that the above statement is a presumption which can be rebutted. "The presumption of a yearly hiring is capable of rebuttal - it is not an inflexible rule and must be considered in connection with the circumstances" - See Halsbury's Laws of England, Hailsham Edition Vol. 22 page 144 paragraph 235 as reproduced by the Supreme Court in the case of *I.D.C Co (Nig) Ltd vs Ajijala (1976) 10 NSCC 88 at 94.***

U *It is also good law that a contract of general hiring "can only be terminated with the current year unless there is a stipulation to the contrary or a custom or some other circumstances is established enabling the parties to determine the contract at some other date by notice or there is good ground for summarily ending the relation of master and servant" - See paragraph 943, page 489 of Vol. 22 of Halsbury's Laws of England, 3rd Edition as cited in *I.D.C (Nig) Ltd vs Ajijala (1976) 2 S.C 64 Reprint;(1976) NSCC 88 at page 94.**

EE The two (2) passages supra confirm the fact that there is nothing rigid or sacrosanct about a contract of general hiring either in its nature or the consequences of its breach. A stipulation in the contract to the contrary will defeat the contention that the contract is of general hiring just as a custom or some other circumstance enabling the parties to determine the contract at some date by notice or summarily for good ground. The question is whether the instant case falls within the context of general hiring as contended by the learned counsel for the appellant.

JJ To answer the question, it is necessary to take a look at what the trial court found as a fact in that regard.

At page 34b of the record of appeal the trial court made the following findings of fact:

A “It is in evidence in this case that there is no written agreement and therefore the parties orally agreed to supply the defendant nos. of guard and supervisors and until September, 1992, the defendant was paying at the end of every month after a demand by the plaintiff.

F When there is no written agreement parties can be taken to agree either on the practice of the trade or by conduct. In this case, there is always a supply of guards monthly and payments are made monthly. In that wise, one month would be the reasonable notice for both parties for the termination of the contract ”.

K It has to be noted that the appellant has not attacked this specific finding by the trial court which was also affirmed by the lower court. Both courts thus found as a fact that acceptance of monthly payments was an indication of the period of notice required for the termination of the contract between the parties.

P I have to state that the case of *I.D.C (Nig) Ltd vs Ajijala (1976) 2 S.C 64 Reprint;(1976) NSCC 88* does not apply to this case at all. In that case, the respondent was employed as a Camp Boss on a salary of £40 a month under a written service agreement, clause 6 of which provided that the agreement may be terminated at any time during its tenure by either party giving to the other two (2) weeks notice of termination or on the payment of two (2) weeks wages in lieu of notice. Clause 5 puts the contract on yearly basis unless notice of termination is served by either party. The agreement which was operative from 16th January, 1971 was terminated without giving the two (2) weeks notice or payment of salary in lieu of notice on 16th March, 1972.

U The respondent sued claiming £2,395 damages but the appellant offered £44.12s : 3d made up of two (2) weeks wages and leave entitlements. The trial Judge held that two (2) weeks wages in lieu of notice should be added to the entitlements in salaries and allowances up to 15th January, 1973 and awarded £535.6:3 special damages. Upon appeal to the Supreme Court, this court allowed the appeal holding that the measure of damages in an action for wrongful dismissal depends on the terms of the contract of employment or service and that by clause 5 of the agreement the respondent was entitled to two (2) weeks notice or payment of two (2) weeks wages in lieu of notice.

EE

JJ

- A** In the instant case, it is my considered view that the lower courts are correct in their holding that having regards to the fact that the contract was for the supply of security guards and supervisors on monthly basis and the appellant demanded for payment for same on a monthly basis coupled with the payment by
- F** the 1st respondent to the appellant at such monthly intervals all gave an indication of the length of notice required to bring the oral contract to an end even though the said contract was without specific duration. I hold the further view that a presumption of general hiring cannot be made in the instant case as urged by the
- K** learned counsel for the appellant in view of the findings by the lower courts.

It is for the above and the more detailed reasons contained in the lead judgment of my learned brother MUHAMMAD, JSC that I too agree that the appeal is without merit and should be

P dismissed. I order accordingly and abide by all the consequential orders contained in the said lead judgment including the order as to costs.

(Appeal Dismissed)