EVANS BROS NIG. PUBLISHERS LTD V FALAIYE, (2003) 13 NWLR (PT. 838) 564 (CA)

BETWEEN

EVANS BROTHERS (NIG.) PUBLISHERS LTD. **APPELLANT**

AND

A. S. FALAIYE **RESPONDENT**

AKINTAN, JCA (Delivering the Lead Judgment):

This is an appeal from the judgment delivered on 22nd June, 1999 by Adeniran, J. sitting at Ibadan High Court in Oyo State. The present appellant was the defendant at the lower court while the respondent was the plaintiff. The plaintiff/respondent

was an employee of the defendant/appellant. The cause of action was the termination of the plaintiff/respondent's employment which was communicated to him in a letter (Exhibit G). The plaintiff/respondent was dissatisfied with the treatment meted out to him by the appellant. He therefore instituted the action in which he claimed as follows as set out in paragraph 33 of his statement of claim:

"(i) *Declaration* that the purported termination of the plaintiff's appointment as per letter dated 14th March, 1996 and the procedures adopted by the defendant were unlawful, invalid, null and void.

(ii) *A Declaration* the plaintiff is entitled to remain in the employment of the defendant until he attains the retiring age of 60 years.

(iii) *A Declaration* that the plaintiff is still in the employment of the defendant

(iv) *An Order* setting aside the purported termination of the plaintiff's appointment as per the said letter of 14th March, 1996.

(v) *An Order* reinstating the plaintiff to his position of Controller of Publishing Services or its equivalent which he held until 14th March, 1996.

IN THE ALTERNATIVE:

"An order compelling the defendant to pay the plaintiff his salaries and allowances being paid to him for the next 21 years when he would have attained the age of retirement."

Pleadings were filed and exchanged. The plaintiff filed a statement of claim and a reply to the defendant's further amended statement of defence. The case thereafter went for trial before Adeniran, J. At the trial, the plaintiff gave evidence in support of his claim while the case for the defence was presented by Suara Kolawole

Ariwoola, a Deputy General Manager (Administration) in the appellant company. A number of documents were tendered during the trial.

The plaintiff's case was that he was first employed by the defendant company as a Trainee Editor in 1981 and placed on the company's salary Group 5. The offer of appointment was communicated to him by the company in a letter dated 3rd April, 1981 (Exh. 1). He was with the company until 1983 when he resigned his appointment so as to pursue a post-graduate course abroad. The plaintiff's letter of resignation dated 30th September 1983 was admitted as exhibit 2. The company accepted the plaintiff's resignation in its letter dated 6th October, 1983 (Exh. 3). According to the letter, exh. 3, the resignation took effect from 31st October 1983.

The plaintiff however rejoined the company in 1985 and his new appointment was communicated to him in a letter from the company dated 13th November, 1985. The letter (Exh. 5) reads as follows: "Mr. A. S. Falaiye 133, Hospital Road P. O. Box 2048 Akure, Ondo State.

Dear Mr. Falaiye,

APPOINTMENT Further to the interview you had with us recently, we have pleasure in offering you appointment as a Senior Editor on a salary of ₦9,200.00 per annum on Group 7 of the company's salary structure.

In addition to the salary, you will be entitled to:

(i) Placement on the Group Personal Accident Insurance Scheme.

(ii) One month paid leave with ₦180.00 leave allowance.

(iii) Transport allowance of ₦420.00 per annum.

(iv) Housing allowance of ₦984.00 per annum.

(v) Guaranteeing you to the U.B.A. Limited for a car loan repayable in 48 equal instalments plus agreed interest on confirmation of appointment.

(vi) Free medical treatment for yourself only.

Details of your job description will be handed over to you by the Publishing Manager, who w ill be you r Head of Department, on resumption of duties.

This appointment is subject to satisfactory references from your former employers and a good medical report.

We hope you will be able to join us as soon as possible but not later than 2nd December, 1985. The appointment will be probationary for the first six months after which your appointment may be confirmed depending on your performance and recommendation from the Head of your department.

We enclose, herewith, our 'Conditions of Service' booklet which you should study carefully.

If you accept this offer, please sign the duplicate copy of this letter and return same along with your two recent passport photographs for our records.

Yours sincerely,

EVANS BROTHERS (NIGERIA PUBLISHERS) LTD.,

(Sgd.)

B. O. Bolodeoku Managing Director. enc."

The plaintiff accepted the offer of appointment made to him in the letter (Exh. 5) and resumed duties with the company. His appointment was later confirmed and this was communicated to him through the company's letter dated 30th June 1986 (Exh. B). The letter, (Exh. B) reads, *inter alia* , as follows:

“Mr. A. S. Falaiye

Evans Brothers (Nigeria Publishers) Ltd.,

Jericho Road, Ibadan.

Dear Mr. Falaiye,

Confirmation of Appointment

Our letter of appointment dated 13th November, 1985 refers. Based on the recommendation from your Head of Department, we are pleased to inform you that your appointment has been confirmed with effect from 30th June, 1986.

Wishing you all the best. Yours sincerely,

(Sgd.)

R.A. Oyewole Admin./Trade Director.”

The plaintiff contended that he performed his duties with the company efficiently. As a result of his excellent performance, the company gave him rapid promotions and a number of letters of commendations were written to him. One of such letters written to him was dated 31st August, 1995 (Exh. D). His designation was given in that letter as Deputy General Manager (Publishing) on basic salary (Grade 10) ₦126,636. His other entitlements were also set out in the same letter. The letter reads, *inter alia*, as follows:

“*SALARY INCREASE/BENEFITS* I am pleased to inform you that the Management has decided to increase your salary with effect from 1st July, 1995, while fringe benefits increase will also take effect from 1st September, 1995 as follows: Designation: DEPUTY GENERAL MANAGER (PUBLISHING) Salary: ₦126,636.00 (Grade 10) Housing Allowance: ₦30,000.00 p.a. Transport

Allowance: ₦42,000.00 p.a. Entertainment/Meal Allowance: ₦18,000.00 p.a. Leave Allowance: ₦2,500.00 p.a. Medical Allowance: ₦3,000.00 p.a. Domestic Allowance: ₦6,000.00 p.a. Furniture Allowance: ₦12,000.00 p.a. May I remind you that matters relating to your salary, i.e. grade, increases, etc. are kept strictly personal to you and the company in the interest of both parties. Furthermore, this increase is without prejudice to the staff rationalisation exercise that is due to come up in course of the current financial year.

Wishing you all the best.

Yours sincerely,

(Sgd.)

B. O. Bolodeoku Managing Director."

The plaintiff's designation of 'Deputy General Manager (Publishing)'

was later changed to Controller of Publishing Services. This was communicated to him in a company's house memorandum reference No. 15/94036/AOA of 14th January, 1994 (Exh. E) and signed by J. A. Ogunwuyi. The house memorandum reads, *inter alia*, as follows:

"As a result of the current restructuring in the company, you are now redesignated Controller of Publishing Services (CPS) with effect from 10th January, 1994.

It is hoped that the new nomenclature, which does not affect your role as Head of the Department, will continue to enhance greater productivity to achieve the goal of salvaging the company from its present economic problems..."

The relationship between the plaintiff and his employers remained for all purposes very cordial. This was the position until late in 1995 when the plaintiff had to proceed on vacation leave. While he was on leave, he received a house

memorandum, dated 5th January 1996 from the company's Managing Director, Mr. B. O. Bolodeoku, by which he was informed of an extension of his leave. The house memorandum reads thus:

"Ref: *ADM.14/96014/EOO*

To: Mr. A. S. Falaiye

EXTENSION OF YOUR OUTSTANDING LEAVE

Further to your leave approval form dated 13th November, 1995 by which you were allowed to proceed on your annual leave, you will recall that your resumption date is Monday, January 8, 1996.

Our records show that you still have seventeen weeks outstanding. By this memo, you are being advised to continue your leave until further notice.

Thanks

(Sgd.)

BOB."

The plaintiff continued his vacation leave as directed in the house memorandum (Exh. F). However, while he was still on his vacation leave he received a letter, reference No. MD/P.90/96024/SMG dated 14th March 1996 (Exh. G) signed by the Managing Director, Mr. Bolodeoku. The decision of the company to terminate the plaintiff's appointment with effect from 18th March, 1996 was communicated to him in the said letter. The letter reads as follows:

"Ref: MD/P.90/96024/SMG

14 March, 1996

Mr. Stephen Falaiye,

Evans Brothers (Nig. Publ.) Ltd., Jericho Road, Ibadan.

Dear Mr. Falaiye, A

CORPORATE RE-ORGANIZATION: DISENGAGEMENT

FROM SERVICE I write to inform you that following a recent corporate re-organization, your services will no longer be required, effective from Monday 18th March, 1996. All your entitlements inclusive of 3 months salary in lieu of notice as analyzed on the attached Final Entitlement Form, will be paid to you immediately you call on the Deputy General Manager (Finance) and surrender all Company's properties in your possession.

On behalf of the Company, I thank you for your past services and wish you fruitfulness in all your future endeavours.

Yours sincerely,

(Sgd.)

B. O. Bolodeoku

Managing Director

P/S Please find attached the Leaving Service Certificate form for your necessary action and return it to us to enable us commence the processing of your claims under the Staff Retirement Benefit Scheme."

The present action was instituted by the plaintiff as his reaction to the decision of the company to terminate his appointment. The case for the defence, as already mentioned above, was as given in evidence at the trial by the only witness for the defence, Mr. Suara Kolawole Ariwoola, the company's Deputy General Manager (Administration). The witness told the court that the plaintiff's appointment was

terminated as a result of a reorganisation carried out in the company. He confirmed that the terms of the plaintiff's employment are as set out in his letter of appointment and the company's Conditions of Service (Exh. N).

At the close of the case for the defence, learned counsel for each of the parties addressed the court and thereafter the learned trial Judge delivered his reserved judgment on 22nd June, 1999. The learned Judge held, *inter alia*, that the termination of the plaintiff's appointment was wrongful and therefore invalid. He then came to the following conclusions in the concluding paragraph of the judgment:

"In the circumstances, plaintiff's claims (i), (ii), (iii) and (iv) of paragraph 35 of the statement of claim succeed. I have carefully considered claim (v) of the statement of claim. I do not think that the prevailing circumstances of this case will meet its justice. Here is a case where for no apparent misdoing on plaintiff 's part he fell from grace to grass in the consideration of the very Managing Director of the defendant who made sure that he, Managing Director, placed the plaintiff easily above other workers but himself. This is not a case where equity supports the imposition of a worker on an unwilling employer. The plaintiff said in evidence that at termination he still had 21 years to go before reaching the 60 years of age of retirement is uncontradicted. I grant claim (iv) in the alternative to claim (v) as follows - as per Exh. D: Salary per annum ₦126,636 x 21 = ₦2,657,356

Entertainment etc. allowance per annum ₦18,000 x 21 = ₦378,000

Leave allowance ₦2,500 p.a. x 21 = ₦52,500 Housing allowance ₦30,000 x 21 = ₦630,000

Transport allowance ₦42,000 per annum x 21 = ₦882,000

Medical allowance ₦3,000 per annum x 21 = ₦63,000

Domestic allowance ₦6000 p.a. x 21 = ₦126,000

Furniture allowance ₦12,000 p.a. x 21 = ₦252,000

1.0 Subtotal = N5,042,856.00

According to table 16 of Exh. N, plaintiff is entitled to 18 months salary in gratuity = ₦189,154.00

Contributory pension scheme as in Exh. C. = ₦88,547.00

2.0 Grandtotal = N5,320,557.00

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And I give judgment accordingly along with claims in (i), (ii), (iii) and (iv). Claim (v) is dismissed."

The defendant was dissatisfied with the judgment and an appeal has been filed against it to this court. Three grounds of appeal were filed against the decision. But with leave of this court, nine grounds were filed in place of the three original grounds. The parties also filed their respective briefs of argument in this court.

The following four issues were formulated in the appellant's brief as arising for determination in the appeal:

"(i) Whether by virtue of the respondent's employment being pensionable, the appellant was contractually bound to retain the respondent in its employment until he attains the retirement age of 60 years (i.e. was his employment guaranteed until age 60?)

Whether by issuing the letter of termination, exh. G, the respondent validly and effectively terminated the respondent's employment.

If the answer to (ii) is in the negative, whether the court was correct to have awarded the reliefs (i) - (iv) and (vi).

Whether having awarded reliefs (i) - (iv) the court was correct to grant (vi) in addition."

The respondent, on the other hand, formulated five issues which I consider to be a mere repetition in all respects of those formulated in the appellant's brief. I therefore consider it unnecessary to reproduce the issues formulated in the respondent's brief.

It is submitted in the appellant's brief in issue No. 1 that the learned trial Judge was in error when he held that the fact that the respondent's appointment was confirmed and made pensionable, the appointment could not be terminated by the appellant. References are made to the respondent's letter of appointment (Exh. 5) and the company's conditions of service (Exh. N) and it is submitted that the fact that the respondent's appointment was confirmed and that he was entitled to pension, could in no way prevent the appellant from terminating the respondent's appointment at any time before he reached the age of 60 years prescribed as the retiring age for male employees in clause 15 of the conditions of service (Exh. N). Similarly, it is argued that the fact that the respondent was a participant in the staff retirement benefit scheme also had nothing to do with the right of the appellant to terminate the appointment. This is because the retirement benefit scheme is incorporated into his terms of employment (Exh. N) and how he would take any benefit due to him in the event of his early disengagement from the services of the company is provided for in clause 9 of the company's Staff Retirement Benefit

Scheme (Exh. 10). It is therefore submitted that the learned trial Judge was wrong when he held the view that the pension scheme had anything to do with guaranteeing the respondent's employment until retirement age. This is because the scheme has nothing to do with guaranteeing an employee's tenure of service.

The finding of fact made by the learned trial Judge that the appellant's employment was terminated because of redundancy is the point taken up in the appellant's issue No. 2. It is submitted that that finding of fact is not based on any evidence led before the court and it was also not contained in the pleadings. It is therefore submitted that even if such evidence was given by any of the witnesses, such evidence would therefore go to no issue since it was not pleaded. The termination of the respondent's appointment is therefore said to be proper having regards to the terms of his appointment, particularly the provisions of clause 9 of the Conditions of Service (Exhibit N).

The reliefs available to the respondent form the subject-matter discussed in issues 3 and 4 of the appellant's brief. It is submitted that the learned Judge was wrong when he held the view that the respondent's appointment was wrongly terminated and as such his employment was still subsisting. That view is said to be totally wrong having regard to judicial decisions on the point. The decisions of the Supreme Court in *Imoloame v. W.A.E.C.* (1992) 9 NWLR (Pt. 265) 303 and *Layade v. Panalpina World Transport Limited* (1996) 6 NWLR (Pt. 456) 544 are relied on in support of the submission. It is further submitted that granting claims (i) to (iv) and (vi) of the reliefs claimed by the plaintiff was therefore totally erroneous.

The appeal should therefore be allowed and the entire plaintiff's claim be dismissed.

It is submitted in reply in issues 1 and 2 of the respondent's brief that the appointment of the respondent was not validly terminated considering the overall circumstances of the case. It is argued that since the respondent's appointment was confirmed as per the letter written to him to that effect (Exhibit C), the respondent's appointment had been taken out of the ordinary master and servant relationship which can be determined by the master at will. Rather, it is argued that the appointment could only be determined in accordance with the provisions of the Company's conditions of service (Exhibit N). It is also argued that apart from exhibit N and the letter of appointment (Exhibit 5), the confirmation of appointment letter (Exhibit C) is also an important document which must be taken into consideration in determining the status of the respondent's appointment. Had all these documents been carefully considered, it is argued that the appellant would not have held on to the belief that the appointment was properly determined. The point raised in issue 3 relates to the reason given by the defendant that the termination of the plaintiff's appointment was due to reorganisation or redundancy. It is submitted that before an employer can declare a position redundant, the provisions of section 20(1) of the *Labour Act* (Cap. 198, Laws of Nigeria 1990) which require the employer to give the employee concerned the notice of the redundancy and the position of the employee concerned must cease to exist thereafter. This is said not to be the situation in the instant case. Having failed to comply with the provisions of section 20(1) of the Labour Act, the plaintiff's appointment was therefore wrongly terminated. It is submitted that in cases of wrongful dismissal, as in this case, award of damages is by calculating what the plaintiff would have earned had the employment continued according to contract. The decisions in *Imoloame v. W.A.E.C* . supra; *Nigerian Produce Marketing Board v. Adewumi* (1972) 11 SC 111; and *W.N.D.C. v. Abimbola* (1966) NMLR 381 are cited in support of this submission. This court is therefore urged to dismiss the

appeal. There seems to be no dispute between the parties in this case regarding the facts of the case. The facts, briefly, are that the appellant, a book publishing company, employed the respondent in 1985 as a Senior Editor. This was communicated to the respondent through a letter dated 13th November, 1985 written by the company to him. The letter, already reproduced above, was admitted at the trial as exhibit 5. The respondent's starting salary and other entitlements are set out in the said letter. Also stated in the letter is that the appointment would be probationary for the first six months after which it might be confirmed depending on the respondent's performance and recommendation from his head of department. Reference is also made in the letter to the company's 'Conditions of Service' booklet, a copy of which was also sent to the respondent along with the letter of appointment. The 'Conditions of Service' booklet was admitted as exhibit N.

The booklet (Exhibit N) sets out in details provisions about the conditions of service of the company's workers. The respondent's appointment was later confirmed and this was communicated to him by the company in its letter dated 30th June, 1986 (Exhibit B). Clause 9 of the company's Conditions of Service (Exhibit N) provides for termination of appointment of an employee of the company. The clause provides *inter alia*, as follows:

"Termination of appointment shall be on the basis of one month notice or as otherwise agreed either side except in the case of serious misconduct when an employee may be summarily dismissed ..."

There is also provision for redundancy in clause 10 of the same booklet (Exhibit N). The said clause 10 read as follows:

“Redundancy is an involuntary and permanent loss of employment, caused by reorganisation or liquidation. The company will endeavour to avoid terminating any employee’s appointment on grounds of redundancy. If however, through force of circumstances, it is necessary to reduce the workforce, the company will give as long a notice as possible to all employees whom it is intended to declare redundant. An *ex- gratia* payment shall be made to an employee who is declared redundant at the rate of one month’s salary for every year of service provided:-

That the employee is a confirmed staff of the company; That such payment does not exceed one year’s salary.”

There are also provisions for retirement age in clause 15 of the same booklet. It is provided therein that:

“The minimum retiring age shall be as follows, subject to physical fitness: Male staff - 60 years; Female staff - 55 years.”

Clause 16 of the same booklet provides for gratuity. It is provided in the clause, *inter alia*, that:

“Any member of staff who is leaving the company other than by dismissal, after meritorious service of not less than 10 years shall be paid gratuity as follows: ...”

The entitlements payable to employees leaving the company after putting in between 10 years and 25 years are set out in the table. Another provision of the booklet (Exhibit N) which needs to be mentioned is clause 27. It is provided in the said clause 27 as follows:

“The rules set out above form part of the terms of employment. Any change in such terms will be agreed in writing on appointment or subsequently. Every

member of staff is expected to consult these Terms of Employment regularly so that all the duties and rights quoted in them are known and clearly understood."

As already stated above, a copy of the booklet (Exhibit N) was sent to the respondent along with his letter of appointment (Exhibit 5). All the provisions of the Company's Conditions of Service set out in the booklet (Exhibit N) therefore form part of the terms of the respondent's employment by virtue of clause 27 of the booklet, exhibit N.

The respondent's appointment was terminated through the company's letter, exhibit G. It is stated in the letter, *inter alia*, that:

"I write to inform you that following a recent corporate re- organisation, your services will no longer be required effective from Monday, 18th March, 1996. All your entitlements inclusive of 3 months salary in lieu of notice as analyzed on the attached Final Entitlement Form, will be paid to you immediately you call on the Deputy General Manager (Finance)."

Two forms are attached to the letter, exhibit G: the final entitlement form and another one titled 'Great Nigeria Insurance Co. Ltd. Leaving Service Certificate'.

The reason given in the letter of termination of appointment is that the respondent's appointment was terminated "following a recent corporate re-organisation....." Clause 10 of exhibit N, which sets out the provisions relating to redundancy, starts with what looks like a definition of the word 'redundancy'. It says thus: "redundancy is an involuntary and permanent loss of employment, caused by reorganisation or liquidation." It follows therefore that since the reason given by the company for terminating the respondent's appointment is "following a recent corporate re-organisation", it is clear therefore that the respondent lost his appointment as a result of redundancy. The provisions of clause 10 of the

company's Conditions of Service (Exhibit N) will therefore be applicable to the respondent's case.

What the respondent would be entitled to therefore would be what he is required to be paid as stipulated in clause 10 of the booklet, exhibit N, which is made an integral part of his contract of employment, along with his other entitlements such as gratuity due to him etc. According to the provisions of the said clause 10, the respondent is expected to be given "as long a notice as possible" and "an *ex-gratia* payment...at the rate of one month's salary for every year of service..." he served the company. Although clause 16 of exhibit N which provides for gratuity sets out a schedule of gratuity payable to an employee leaving the company, I believe that the provision relating to what an employee leaving the company as a result of redundancy is in addition to whatever gratuity that may be due to the employee upon his leaving the company's service.

It has been suggested that the provisions of section 20(1)(a) of the Labour Act (Cap. 198), Laws of Nigeria 1990 were not complied with by the company before it declared the respondent's office redundant. Section 20(1)(a) of the Act provides as follows:

"20(1) In the event of a redundancy-

the employer shall inform the trade union or workers' representative concerned of the reasons for and the extent of the anticipated redundancy; ...."

But the provisions of that section are made applicable only to a 'worker' as defined in section 91(1) of the same Act. 'Worker is defined in the section as follows -

"'Worker' means any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is

expressed or implied or oral or written, and whether it is a contract of service or acontract personally to execute any work or labour, but does not include -

any person employed otherwise than for the purpose of the employer's business, or persons exercising administrative, executive, technical or professional functions as public officers or otherwise,...."

The respondent was employed as a Senior Editor in 1985 and as at the time his appointment was terminated by the company, he was the Company's Controller of Publications. He was therefore throughout his stay with the company a person exercising administrative/executive or technical functions. I therefore hold that the provisions of section 20(1)(a) of the *Labour Act* are not applicable to him.

The respondent's claims, *inter alia*, in legs (i) to (iv) and (vi) are for declaration that the purported termination of his appointment with the appellant company was unlawful, invalid, null and void.; declaration that he is entitled to remain in the appellant's employment until he attains the age of 60 years; declaration that he is still in the employment of the appellant. As an alternative to an order for reinstatement, he claimed the salaries and allowances payable to him for a total period of 21 years remaining for him before attaining the retiring age of 60 years. The learned trial Judge granted the declarations sought, set-aside the termination order and awarded a total sum of ₦5,320,557 representing the salaries and other entitlements which the respondent would have earned had he continued working in the company until he attains the retiring age of 60 years.

As already clearly stated above, the conditions governing the respondent's employment are set out in his letter of appointment (Exhibit G) and the company's Conditions of Service booklet (Exhibit N). It is clearly stated in clause 9 of the booklet (Exhibit N) that "termination of appointment shall be on the basis of one

month notice or as otherwise agreed either side." In other words, all that either party needed to do to terminate the employment was to give the other side a month's notice. In the absence of such notice, the payment of a month's salary in lieu will be satisfactory. The law is settled that apart from employments governed by statutory provisions or employments with statutory flavour as they are often described, where termination must follow the provisions of the relevant statutes, an employer in other cases can terminate the employment of an employee for good or bad reasons. He is in fact not bound to give any reason for terminating an employee's appointment. The only remedy open to an employee whose employment is terminated not in accordance with the terms of such employment is damages for such breach: See *Layade v. Panalpina World Transport Nig. Ltd* . (1996) 6 NWLR (Pt. 456) 544; *Olaniyan v. University of Lagos* (1986) 4 NWLR (Pt. 9) 599; and *Eperokun v. University of Lagos* (1986) 4 NWLR (Pt. 34) 162. An employment is said to enjoy statutory flavour when the conditions of such service are regulated or protected by a statute: see *Imoloame v. W.A.E.C.* supra; *Olaniyan v. University of Lagos*, supra; *Shitta-Bey v. Federal Public Service Commission* (1981) 1 SC 40; *N.E.P.A. v. Isieveore* (1997) 7 NWLR (Pt. 511) 135; and *Salami v. New Nigerian Newspapers Ltd.* (1999) 13 NWLR (Pt. 634) 315.

The question of restoring an employee whose appointment had been terminated to his employment does not arise in cases of employments without statutory flavour. This is because no servant can be imposed by the court on an unwilling master, even where the master's behaviour or motive for getting rid of the employee is wrongful, unjustifiable, unfounded or repulsive. All that the court could do in any of such situations would be to award appropriate damages if there is need to do so. See *Araromi Rubber Estates Ltd. v. Orogun* (1999) 1 NWLR (Pt.

586) 302; *Union Beverages Ltd. v. Owolabi* (1988) 2 NWLR (Pt. 68) 128; *Ajayi v. Texaco Nig. Ltd.* (1987) 3 NWLR (Pt. 2) 577; and *New Nigeria Bank Ltd. v. Obevudiri* (1986) 3 NWLR (Pt. 29) 387. In the instant case, it has not been shown that the employment of the respondent had any statutory flavour as discussed above. The appellant therefore, as the employer of the respondent, had the power and right to terminate the appointment for whatever cause. If, however, the termination is in breach of the terms of the respondent's employment, the only avenue open to the respondent would be in damages for the breach. The question of his being reinstated can therefore not arise.

The appellant was not under any obligation to give any reason for terminating the respondent's appointment. But where a reason is given, such will be examined with a view to determine if such reason comes within the terms of the contract of employment. In the instant case, it has been shown that the reason given by the appellant in the letter, exhibit G, is that the appointment was terminated "following a recent corporate re-organisation" as a result of which the respondent's appointment would no longer be required. That reason has to be considered along with the provisions relating to redundancy in clause 10 of the Conditions of Service (Exhibit N). As already discussed above, the company is required to give "as long a notice as possible to all employees" whose appointment would be terminated as a result of redundancy and make an *ex-gratia* payment to the affected employee" at the rate of one month's salary for every year of service provided:- (a) that the employee is a confirmed staff of the company; and (b) that such payment does not exceed one year's salary." As I have already stated earlier above, any payment made in compliance with the provisions of the redundancy clause stated above should be independent of all the other entitlements due to the respondent under the clauses of his contract of employment being terminated. Clause 10 of

exhibit N provides that the appellant should give "as long a notice as possible to all employees whom it is intended to declare redundant." What would amount to "as long a notice as possible" is not defined in the Conditions of Service booklet or in any other document in which the terms of the contract of employment are set out. However, the appellant gave three months salary in lieu of notice in its letter (Exhibit G) by which the employment was terminated. This is in place of the one month's salary ordinarily envisaged where the employment is terminated under clause 9 of exhibit N.

Parties are bound by the terms of their contract. In the instant case, the appellant has the power to terminate the respondent's appointment by giving a month's notice or in the case of such termination arising as a result of reorganisation or redundancy, by giving as long a notice as possible and making *ex-gratia* payment at a rate of one month's salary for every year served, subject to a maximum of one year's salary.

In the letter of termination of the respondent's employment (Exhibit G) the entitlements due to the respondent are referred to in the second paragraph as follows:

"All your entitlements inclusive of 3 months salary in lieu of notice as analysed on the attached Final Entitlement Form...." The appellant, however, listed the entitlements offered to the respondent on the said Final Entitlement Form attached to the letter. The total payment due to be paid to the respondent is given as ₦202,083.75.

There is however no mention of the amount due to the respondent as a result of his employment being terminated as a result of reorganisation under clause 10 of the Conditions of Service (Exhibit N). The respondent's gratuity is calculated therein

on 15 years service. In other words, he is entitled to one year's salary which is the maximum payable to anybody whose employment is terminated as a result of redundancy or reorganisation.

It is necessary at this juncture to state the position of the law relating to the damages due to an employee whose appointment is wrongly terminated in breach of his contract of employment. The position of the law is that the measure of damages recoverable for wrongful dismissal or termination is *prima facie* the amount the plaintiff would have earned during the period necessary for the lawful termination of the contract. If, therefore, the employment is for a specific period stipulated in the contract of employment, and the contract was wrongly terminated in breach of the period specified in the contract of service as the life span of the employment, then the measure of damages due would be payment of salaries due to the employee for the remaining period of the contract. In the case where the contract could be terminated by giving notice, the measure of damages due is the salary payable during the duration of the period of the notice. See *Western Nigeria Development Corporation v. Abimbola* (1966) 1 ALL NLR 159; *Araromi Rubber Estates Ltd. v. Orogun* supra; *N.P.M.C. Ltd. Adewunmi* (1972) 11 SC 111; *Union Beverages Ltd. v. Owolabi* (1988) 1 NWLR (Pt. 60) 128; and *P.Z. Co. Ltd. v. Ogedengbe* (1972) 1 ALL NLR (Pt. 1) 202.

The question of calculating damages due to a plaintiff wrongly dismissed from service of a defendant for a period spanning the entire service period of a plaintiff until the age of his retirement therefore does not arise unless such is specifically provided for in the written contract of employment. This is because the employer is totally under no obligation to retain an employee until he attains the age of retirement. In the instant case, the written contract does not provide for paying damages to the respondent amounting to the wages and allowances he would have

earned had he continued in the appellant's employment until he attained the retirement age of 60 years. All that is provided in the agreement is that the appointment could be determined by giving a month's notice or payment of a month's salary in lieu of such notice.

The learned trial Judge was therefore totally wrong to have made the awards he made to the respondent in the instant case. In fact, the appellant was not in breach of any of the provisions of the terms of the contract agreement it entered into with the respondent. The only omission discovered is its omission to include the entitlement accruable to the respondent in that his appointment was terminated as a result of reorganisation, which amounts to one year's salary.

In conclusion therefore, there is merit in the appeal in that the respondent's employment was rightly terminated by the appellant. The judgment of the lower court and all the awards made to the respondent are set aside. In their place, I hereby make an order dismissing the plaintiff's claim. It is however hereby ordered that the appellant is to amend the entitlements payable to the respondent as set out on the form for final payment attached to the letter of termination of the respondent's appointment, Exh. G, by adding one year's salary as the amount payable to the respondent because his appointment was terminated as a result of the reorganisation carried out by the appellant. I make no order on costs.

ONALAJA, JCA:

I read in advance the lead judgment of my learned brother, Akintan, JCA which matter was contract of service of employment. In addition to all the legal authorities considered in the lead judgment I add, rely and adopt the applicable attitude of the court on the issue of termination of employment of an employee by the employer. In *Chukwuma Hope Nwaubani v. Golden Guinea Breweries Plc.* (1995) 6 NWLR (Pt. 400) at 184, 187, 188-191 the *Court of Appeal* dealt exhaustively with the issue of contract of employment which was a restatement of the law on contract of service, applying the principles of law laid down therein to the instant appeal convinced me to adopt the reasonings and conclusions in the lead judgment as my own therefore leads me in full agreement with the lead judgment that the appeal is meritorious and also allowed by me. I abide with the consequential orders given in the lead judgment especially the issue of costs.

TABAI, JCA:

I had a preview of the leading judgment just delivered by my learned brother, Akintan, JCA wherein the facts are clearly set out and the applicable legal principles explicitly discussed.

The conditions governing the contractual relationship between the **[2003] F.W.L.R Evans Brothers (Nig.) Publishers v. Falaiye (Tabai, JCA) 37** parties are contained in the respondent's letter of appointment, exhibit 5 and the appellant's conditions of service, exhibit 'N'. There is nothing to show that these conditions were breached by the appellant. The evidence shows that the conditions were complied with.

Where in a contract of service provisions are made for the termination of the contract and the said provisions are followed, there can be no question of anticipatory damages such as awards up to retiring age. The amount of damages recoverable if any is limited to the amount the employee would have earned over the period of the notice. See *Beredugo v. College of Science and Technology, Port Harcourt* (1991) 4 NWLR (Pt. 187) 651; *Ajayi v. Texaco Nig. Ltd.* (1987) 3 NWLR (Pt. 2) 577 and *Calabar Cement Co. Ltd. v. Daniel* (1991) 4 NWLR (Pt. 88) 750.

There was therefore no basis for the awards made by the learned trial Judge. I agree entirely with the reasoning and conclusions in the leading judgment and I also allow the appeal. I adopt the consequential orders including the order as to costs in the leading judgment as mine also.

Appeal allowed