IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, THE HONOURABLE JUSTICE V.O. EBOREIME, JUDGE
SITTING IN HIGH COURT NO. 10 BENIN CITY
ON FRIDAY THE 23RD DAY OF MAY, 2014

SUIT NO.B/513/2011

B E T W E E N

MR. PETER ONI é CLAIMANT

AND

1. D. N. TYRES AND RUBBER (DUNLOP NIGERIA PLC)
2. DR. K. A. POPOOLA é DEFENDANTS
3. MR. F. G. OBI
4. O. O. BABAYEMI (MRS.)

J U D G M E N T

This action was instituted vide a Writ of Summons filed on the 20th day of July, 2011. In the Claimantôs Amended Statement of Claim dated 7th day of June, 2013 and filed the same date, he prayed this Honourable Court in his paragraph 18 for the following reliefs:

> ñ18. Whereof the Claimant Claims against the Defendants jointly and severally as follows:
>
> (a) A declaration that the Claimant is still in the employment of the 1st Defendant as a management staff (Regional Manager) until he is properly and lawfully retired in

accordance with the rules of company or he attains the retirement age of 60 years or 35 years of service with full pay. In the alternative, (i) the Claimant is entitled to be paid his benefit as calculated at ₦12,835,346.56 up to and including the 19th September, 2009 and thereafter ₦4,071,900.00 per year (for two years now is N8,143,800.00) until he is properly retired or judgment is given. (ii) 1 year housing allowance plus 30 days in the hotel ₦10,000 per day calculated at ₦1,050,000.00 (iii) Pension entitlement ï ₦4,512,356.90

TOTAL ₦26,541,503.46.

(b) **General Damages as against the Defendants jointly and severally.**

The sum of ₦50,000,000.00 general damages jointly and severally for the 2nd to the 4th Defendants wrongful and malicious application of the rules and regulations of the 1st Defendantôs company to frustrate the Claimantôs proper retirement from the services of the 1st Defendant and unlawfully withholding his entitlements as contained in this Claim.

GRAND TOAL ₦76,541,503.46ò.

The Defendantsô extant Statement of Defence is their ñJoint Statement of Defenceò dated 19th April, 2013 and filed the same date.

The Claimant opened his case on the 21st day of May, 2013 by testifying as P.W.1. He adopted his witness Statement on Oath deposed to on the 22nd day of February, 2013 as his evidence before this Honourable Court. This evidence is found at pages 111-122 of the case file.

Through the P.W.1, the following Exhibits were admitted in evidence:

Exhibit A ï 1st Defendantôs letter to the Claimant dated 26th June, 2009 and titled: ñTRANSFERò

Exhibit A1 ï 1st Defendantôs letter to the Claimant dated 23rd December, 2010 and titled: ñRe: E.E. NNACHETAôS ACCOUNT/IYEREôS TRANSACTIONSò

Exhibit A2 ï 1st Defendantôs letters to the Claimant dated 9th February, 2011 and tilted: ñRE: RESIGNATION OF APPOINTMENT ï CLEARANCEò

Exhibit A3 ï 1st Defendantôs letter to the Claimant dated 26th February, 1990 (offer of employment).

Exhibit A4 ï 1st Defendantôs Staff Handbook.

Exhibit A5 ï 1st Defendantôs letter to the Claimant dated 13 August, 1999 and titled: ñVOLUNTARY DISENGAGEMENT.ò

Exhibit A6 ï 1st Defendantôs Internal Memo from NSDM to the Claimant dated January 30, 2006 titled: ñRISKY DEBT PORTFOLIOò.

Exhibit A7 ï 1st Defendantôs Letter to the Claimant dated October 07, 2009 and titled: ñRE: TRADE DEBTò.

Exhibit A8 ï 1st Defendantôs Letter to the Claimant dated 24th September, 2007 and titled: ñRESTRUCTURING AND REVIEW OF RENUMERATION PACKAGEò.

Exhibit A9 ï Claimantôs Letter to the 3rd Defendant dated the 27th December, 2010 and titled: ñRE: E. E. Nnaechetaôs Account/Iyereôs Transactionsò.

Exhibit A10 ï 1st Defendantôs undated Letter to the Managing Director, Iyere Motors, Benin but signed on 16/5/11 and titled: ñCONFIRMATION OF TRADING BALANCEò.

Exhibit A11 ï Printout showing Egholor Nigeria Ltd of 30/10/09.

Exhibit A12 ï Printout of Statement of Account of E. E. Nnaecheta & Sons Nig. Ltd for the period between 01/01/2000 and 13/09/2010.

Exhibit A13 ï 1st Defendantôs Letter to the Managing Director, Iyere Motors, Benin City dated October 07, 2009 and titled: ñRE: TRADE DEBTò.

Exhibit A14 ï 1st Defendantôs Letter to Claimantôs Counsel, S. O. Omere, Esq. dated 15th March, 2011 and titled: ñRE: MR PETER ONI ï CLEARANCE FOR TERMINAL ENTITLEMENTSò.

Exhibit A15 ï 1ST Defendantôs correspondence from IRPM to the Claimant dated 04 December 2000 and titled: ñLONG SERVICE AWARDò and another correspondence of similar heading dated 8th December, 2005ò.

Exhibit A16 ï Printout of 1st Defendantôs and ARM Pension Managersô Dealings for the period of 2006 and 2007.

Exhibit A17 ï Photocopies of Claimantôs NSITF Membership Record Update with Trustfund Pensions Plc.

Exhibit A18 ï 1st Defendantôs Letter to the Claimant dated 19/06/91 and titled: ñ1991 MERIT INCREMENTò.

Exhibit A19 ï 1st Defendantôs Memo from IRPM to ñCirculation Listò including the Claimant dated 8th September 2004 and titled: ñAWARDS INTERVIEWò.

Exhibit A20 ï ñMEMOò from Eghota P. Oni (Claimant) to DTD dated 8th October, 2010 and titled, ñCOMPANY PROPERTYò.

Exhibit A21 ï Claimantôs Counselôs Letter to the Group Finance Controller of the 1st Defendant dated 28/02/2011 and titled: ñRe: Mr. Peter Oni (Withholding of Clearance for Terminal Entitlements).

Exhibit A22 ï 1st Defendantôs Letter to the Claimant dated 13th September, 2010 and titled, ñSTOPPAGE OF LOCAL TYRE MANUFACTURINGò.

Exhibit A23 ï Claimantôs Counselôs letter to the 1st Defendant dated 4/04/20(sic) and titled: ñRE: MR. PETER ONIò.

The P. W. 1 was cross-examined by Learned Counsel to the Defendants, A. S. Osim, Esq. after which he closed his case calling no other witness.

The Defendants opened their defence on the 10th day of June, 2013 by calling the D.W.1, Adegbenga Oluwafemi Shofule, who adopted his witness Statement on Oath of 19th day of April, 2013 as his evidence before this Honourable Court.

The D.W.1 was accordingly cross-examined by the Learned Counsel to the Claimant, S. O. Omere, Esq. who continued his cross-examination on the 22nd day of July, 2013. On this date, the Defendants closed their case.

On the 13th day of February, 2014, the Counsels for the two parties adopted their final written addresses. While the Defendantsô written address is dated the 10th day of February, 2014 and filed the 11th day of February, 2014, the Claimantôs written address and additional written address were dated 22nd February, 2013 and filed same date and 17th day of January, 2014 respectively.

In the Defendantsô written address which the Learned Counsel to the Defendants, A. S. Osim adopted as his argument before this Honourable Court on the 13th day of February, 2014, he canvassed two issues for the determination of this Court which are reproduced below:

> ñ1. Whether the Claimant has been able to establish with credible evidence his Claim for declaration that he is still in the service of the 1st Defendant or in the alternative his Claim for the sum of ₦26,541,503.46 as retirement benefit and pension, being special damages after his appointment was terminated by letter dated 13th September, 2010.
>
> 2. Whether the Claimant is entitled to his Claim for ₦50,000,000.00 as general damages jointly and severally against the Defendants when he was duly terminated by the 1st Defendant in accordance with condition of service.ò

ON ISSUE ONE, Learned Counsel submitted that it is a trite law that he who asserts must prove. He cited Sections 131-134 of the Evidence Act, 2011; that the Claimant has failed to establish his case on credible evidence as he did not state

how he got the figures in his amended claim. He also cited the case of **BUHARI VS. INEC** (2009) Vol. 167 LRCN 1 page 93 paragraphs F ï P.

Learned Counsel further submitted that an employer is not bound to give reasons for terminating the appointment of his employee, relying on the Supreme Court case of **SPDC LTD VS OLAREWAJU** (2009) 171 LRCN 255 page 270 FKJ (sic) that the *onus* is on the employee to prove that his employment has been wrongfully terminated, citing **ZIIDEEH VS RIVERS S.E.S.C.** (2007) Vol. 145 LRNC 530 page 541 PU. He submitted that an employer has an unfettered right to terminate or dismiss the servant, citing the case of **DUDUSOLA VS NIGERIA GAS COMPANY LIMITED**, (2004) ALL FWLR part 713 page 1902, page 1912 and paragraphs E ï F. Finally on ISSUE ONE, Learned Counsel submitted that where a Claimant fails to establish his case with credible evidence, his case must be dismissed, citing **LARMIE VS. D.P.M.S** (2006) Vol. 133 LRCN Page 1 page 33 EE.

On his ISSUE TWO, Learned Counsel to the Defendant submitted that the Claimant is not entitled to any damages as his appointment was duly terminated on notice and Claimant has not suffered any damage for which he is Claiming compensation. He cited the case of **MR. KUNLE OSISANYA VS. AFRIBANK NIG. PLC** (2007) Vol. 149 LRCN at 1586 page 1602 J.J AND 1603 AFK; **ATIVIE VS. KABELMETAL NIG. LTD.** (2008) (sic) 164 page 71 and page 84 A.P. Learned Counsel urged this Honourable Court to dismiss the Claimantôs Claim in its entirety.

The Learned Counsel to the Claimant, S. O. Omere, Esq. in his written address filed on the 22nd day of February, 2013 did not canvass any issue for determination but submitted that ordinarily, the Court would not foist a servant on an unwilling employer or master, citing the case of **GABRIEL ATIVIE VS KABELMETAL NIGERIA LTD.** (2008) 5 KLR 2253 Ratio 3 (2) 2256. He argued that the instant case is different from the general rule as the Defendantsô actions after Claimantôs purported retirement amounted to reassignment and clearly a new employment or a reversal of his retirement letter for which the Claimant is entitled to his full pay until Judgment is given or he attains a retirement age or he is properly retired by the 1st Defendant. He submitted that this is an exception (special circumstance) to the rule against reinstatement or award of damages. He cited the cases of **IFETA VS. SHELL PET. DEV. CO. LTD** (2006) 7 MJSC 121 Ratio 4 at 124; **UDO V. CRS NEWSPAPER CORPORATION LTD.** 2001 22 WRN 53 Ratio 17 at 66; **CHUKWUMA VS. SHELL PETROLEUM DEV. CO.** 1993 4 NWLR PT. 289 512 AT 537; **OLANIYAN AND OTHERS VS. THE UNIVERSITY OF LAGOS** (1985) 2 NWLR PT. 9 599.

Learned counsel submitted that the Claimant was retired from service and not terminated and as such, entitled to be paid his retirement benefit. He cited **EKEAGWU VS. NIGERIAN ARMY** (2010) KLR/PT 288/3251. Learned counsel further submitted that no handbook or terms of employment was made available to the Claimant; that the 1st Defendantôs Staff Handbook of 1st January 2000 applied to junior and senior staff only which did not affect the Claimant; that the terms and

conditions of service for management staff scheme which applied to those of the Claimantôs status was not given to him; that under this scheme, the following conditions were used: Claimant can only be retired at the head office and a group staff is usually granted three months leave with full pay. He cited **SHENA SECURITY CO. LTD VS. AFROPAK LTD** (2008) 5 KLR 2125 Ratio 2 at Page 2128-2129.

Learned counsel urged court to look at the nature of contract, evidence of the parties and status of the employee. He cited **DANIELS VS. SHELL B. P. DEV. LTD.** 1962 ANLR 19; **IMOLOAME VS. WAEC** (1992) 9 NWLR Part 265 303 and **MAIDUGURI FLOUR MILLS LTD VS. ABBA** (1996) 9 NWLR Part 473 506.

Learned Counsel to the Claimant submitted that the damages resulting are to be presumed to be fairly and reasonably within the contemplation of the defendants (parties) in the circumstance. He cited the case of **OKONKWO VS. NNPC (**1998) 7 S. C. Part 1 127; 1989 4 NWLR Part. 115 296 at 315.

On the whole, Learned Counsel submitted that he has presented and proved an unshakeable case on the preponderance of evidence and is entitled to judgment as Claimed.

As stated earlier, the Learned Counsel to the Claimant, with the leave of this Court filed additional final written address on the 17th day of January, 2014. It was adopted on the 13th day of March, 2014. Therein, the Learned Counsel submitted that it is trite law that parties are bound by the terms of their agreement (contract of

employment) which is in writing; that any variation of such a contract or agreement must also be in writing. He cited the cases of **BALIOL NIGERIA LIMITED VS NAVCOM NIGERIA LIMITED** (2010) 5 KLR part 282 at 1703 ratios 1, 2 and 3 pages 1704 ï 1705 and **ALADE VS ALIC NIG. LTD.** (2010) 12 KLR (part 287) at 2843. Learned Counsel argued that the Defendantsô pleading in their paragraphs 4, 12, and 19 and admitting to the fact that Claimant is entitled to his retirement benefits of ₦6,284,372.02 but subject to a clearance from E. E. Nnachetta Company Limited was contrary to the terms of the contract of employment and the letter by which the Claimant was retired from service. Learned Counsel to the Claimant therefore asked for judgment in terms of paragraph 18 of the Amended Statement of Claim, particularly 18 (a) (i).

COURT:

I have looked at the extant Amended Statement of Claim of the Claimant, the Joint Statement of Defence of the Defendants, the evidence led in this case, the diverse exhibits admitted in this case and the final written addresses of the Learned Counsel to the parties. I believe the resolution of the two issue canvassed by the Defendantôs Counsel in their rephrased form would be sufficient to determine this case. I hereby adopt them as my issues in determining this case and I rephrase them as follows:

ISSUE ONE

ñWhether the Claimant has been able to establish with credible evidence his Claim for declaration that he is still in the service of the 1st Defendant or in the alternative whether he is entitled to his Claim for the sum of ₦26,541,503.46 (Twenty Six Million, Five Hundred and Forty One Thousand, Five Hundred and Three Naira, Forty Six Kobo) as retirement benefit and pension.ò

ISSUE TWO

ñWhether the Claimant is entitled to his Claim for N50,000,000.00 (Fifty Million Naira) as general damages jointly and severally against the Defendants.ò

ISSUE ONE

Since the first limb of this ISSUE ONE borders on declaratory reliefs, it is paramount at the outset for me to state the trite position of the law that the grant of same is at the discretion of Court to be exercised judicially. See **OWODUNMI VS. REGISTERED TRUSTEES OF CELESTIAL CHURCH OF CHRIST AND ORS** (2000) 79 LRCN 2406 at 2452 paragraph C where Ogundare, J.S.C (as he then was) held thus:

ñIt is trite that the grant of a declaration of right is at the discretion of the Court but it is a discretion that must be exercised judicially.ò

In doing the above, the Judge is bound to give thorough consideration of all the facts before the Court. This is the view of the Supreme Court in the case of

FASESIN VS OYERINDE (1997) 54 LRCN 2692 at 2703 paragraph D where Belgore, J.S.C (as he then was) said:

> ñIt is true much discretion is required in declaratory judgment. In itself discretion is part of equity and must be granted judiciously having regard to the facts and equity of the case. All declaratory reliefs must be granted on a thorough consideration of all the facts before the Court including Defence and objections advanced by the parties.ò
>
> (Emphasis supplied by me)

It is also trite that declaratory reliefs cannot be granted by admission; the *onus* is always on the Claimant to prove his case. See **BELLO VS EWEKA** (1981) 1 S.C 101.

It is not in doubt that the Claimant was employed by the 1st Defendant vide an ñoffer of employmentò on the 26th February, 1990. See Exhibit A3. The Claimant enjoyed this employment from 26th February, 1990 until the 1st Defendant purportedly terminated his employment on the 13th September, 2010, more than twenty years later vide Exhibit A22. In-between these periods, the Claimant had a couple of awards from the 1st Defendant. See Exhibit A15. The Claimant is now of the view that Exhibit A22 should not be seen as terminating his appointment; that if anything at all, it should be construed as a retirement document. The contents of Exhibit A22 are reproduced below:

ñ13th September, 2010

Mr. Peter Oni

DN Tyre & RubberPlc,

Ikeja, Lagos

Dear Mr. Oni,

STOPPAGE OF LOCAL TYRE MANUFACTURING

Due to stoppage of local tyre manufacturing and reduction in trading activities in our company, I wish to inform you that your services with the company will no longer be required with effect from the 20th September, 2010.

Your terminal entitlements are as stated below:

- Your pay up to and including 19th September, 2010;
- Your 3 months basic salary, being notice pay,
- Your 1 month basic salary; being ex-gratia,
- Your benefits under the Pension and Gratuity Schemes;
- Commutation to cash of your outstanding leave entitlement if any.

Please hand over all company property in your possession to your Divisional Head and obtain a clearance note to this effect to enable the company give instruction for the payment of your terminal benefits.

A copy of this letter has been forwarded to the Group Finance Controller requesting him to calculate and pay your entitlements as stated above less any amount of money that you may be owing the company.

I sincerely thank you for the services that you have rendered to the Company and wish you success in your future endeavours.

Yours sincerely,

For: DN TYRE & RUBBER PLC

M. J. YINUSA

Group Managing Director

Cc: DTD, GFC.ò

The Defendants relied on the above document as effectively bringing to an end the Claimantôs engagement with them when the D.W.1 testified in paragraph 4 of his evidence on Oath thus:

ñThat the Claimant was formally disengaged by the 1st defendant company by a letter dated the 13th day of September, 2010.ò

The Claimant did not cross examine the D.W.1 on the above evidence thereby accepting it as true. Furthermore, when Exhibit A22 was handed over to the Claimant, I cannot see anywhere in the evidence before me that he protested that that was not the way or mode of disengaging him from the services of the 1st Defendant.

As rightly submitted by the learned counsel to the Claimant, the courts will not ordinarily foist a willing servant on an unwilling employer or master. See the case of **ATIVIE VS KABELMETAL NIG. LTD.** (2008) 164 LRCN 1 at 88 paragraph EE per Akintan, JSC (as he then was):

> ñThe law is settled that the court will not compel an unwilling employer to retain any worker. Similarly, an employer is not bound to give any reason for terminating the appointment of a servant where such employment is not one with statutory flavour.ò

Was the appointment/employment of the Claimant one that is tainted with statutory flavour? What is a contract of service with statutory flavour? It is one set up by a statute which makes express provisions regulating the employment. The Supreme Court has held in the case of **IDONIBOYE-OBU V. NNPC** (2003) 105 LRCN 280 AT 311 per Iguh, JSC (as he then was) paragraphs Z-EE thus:

> ñTwo of the vital ingredients that must co-exist before a contract of employment may be said to import statutory flavour include the following:-
>
> 1. The employer must be a body set up by statute.
> 2. The stabilising statute must make express provisions regulating the employment of the staff of the category of the employee concerned especially in matters of discipline.ò

An employment outside the above provision will be treated on the basis of the common law principle of master and servant. That was the reasoning of the

Supreme Court when Igu, JSC (as he then was) in the same case of **IDONIBOYE-OBU** (Supra) in page 310 paragraphs K-P said:

> ñBefore an employment can have statutory flavour the statute must expressly make it so. Otherwise the employment will have to be treated on the basis of the common law principle of master and servant.ò

(Emphasis supplied by me).

From the evidence before me, the contract of service of the Claimant with the 1st Defendant is not one that has statutory flavour. And I so hold. As such, his employment can be determined at the will of his employer for any or no reason at all. In **IDONIBOYE-OBU'S** case (Supra), Uwaifo, J.S.C (as he then was) has this to say at page 304 paragraph Z:

> ñUnder the common law, an employer is entitled to bring the appointment of his employee to an end for any reason or no reason at all as long as he acts within the terms of the employment, his motive for doing so is irrelevant.ò

The case of **IFETA VS SHELL PET. DEV. CO. LTD** *(supra)* will not help Claimantôs case. The ratio 4 he cited is reproduced hereunder:

> ñWhere there are special circumstances such as where the contract of employment has a legal or statutory flavor thus putting it over and above the ordinary master and servant relationship or where there is a special legal status such as where a tenure of public officer is attached to the employment,

the court may decree specific performance of the Contract and reinstate an employee whose employment has been terminated.ò

Having held that the employment of the Claimant was not tainted with statutory flavour, was Exhibit ñA22ò purporting to disengage the Claimant from the 1st Defendantôs employment wrongfully done? A cursory review of the argument of the learned counsel to the Claimant, S. O. Omere, Esq. on this point will be apposite. Learned counsel has argued in line with the evidence of the Claimant who testified as PW1 that the Claimant was written several letters that governed his relationship with the 1st Defendantôs, relying particularly on the 1st Defendant Handbook of 1st January, 2000 and 1st Defendants letter dated 13th day of August, 1999. It will be expedient for me to look at these two documents. While the 1st Defendantôs Staff Handbook was admitted as Exhibit A4 in this case, its letter of 13th day of August, 1999 including the attached schedule was admitted in evidence as Exhibit A5.

Exhibit A5 being relied on by the Claimant, with due respect, has become nugatory as it is headed. ñVOLUNTARY DISENGAGEMENTò. This document was aimed at re-engineering the operations of the 1st Defendant to make it more effective and efficient by looking at the human resource factor through a rationalization programme. As such a reproduction of paragraphs 2, 3 and 4 of Exhibit A5 is mandatory:

> ñ2. In order to make the exercise as painless as possible, as a first step, any employee who so desires is being requested to apply to

exercise the option of VOLUNTARY DISENGAGEMENT from the service of the company.

3. Therefore, you are requested to study the contents of this circular on voluntary disengagement carefully. If you require any clarification whatsoever, please feel free to discuss with your Departmental Manager, Divisional Manager, the Personnel Department or an Executive Director of the company.

4. Thereafter, if you wish to be considered for the voluntary disengagement, you are to signify your decision on the attached form. The completed form should reach this office not later than Monday, 23rd August, 1999.ò

It is therefore obvious that the decision of the 1st Defendant to disengage the Claimant from its employment vide Exhibit A22 was not based on Exhibit A5. As such, I hold that Exhibit A5 is not applicable in determining the status of the Claimant.

Now, I turn to the Staff Handbook of the 1st Defendant (Exhibit A4). The effective date of this Exhibit A4 is stated to be 01 January, 2000. A reproduction of paragraphs 1.3 and 4.1 at pages 1 and 2 of it is necessary:

ñ1.3 **Purpose of the Handbook**

This handbook is to intimate ALL employees with the companyôs human resource management policies and practices. It is designed as a communications tool for employees to help

clarify policies and practices, thereby preventing morale problems, complaints and grievances. The handbook is to prevent problems which lack of knowledge of personnel policies may bring about as a result of unwritten and inconsistent policy and lack of proper communication.

1.4 The handbook covers ALL personnel policies and practices of the company in operation during a given period. The policies apply to ALL categories of employees in ALL operational locations of the company.ò

(Emphases supplied by me)

Paragraph 7 which covers Cessation of Employment in Exhibit A4 provides for termination/resignation in paragraph 7.3 which is reproduced hereunder:

ñ7.3 **Termination/Resignation**

Either the employee or the company reserves the right to terminate an employment without assigning any reason whatsoever. However, the party terminating the appointment must abide with the terms of the contract of service entered into by both parties. These conditions include giving the appropriate notice.ò

Exhibit A22 earlier reproduced which was dated 13th September, 2010 was to take effect from 20th September, 2010. This is a period of exactly 7 days. I am of the strong belief that this 7 days serves as the appropriate notice to the Claimant of the stoppage of his employment and I so hold. The 3 months salary in lieu of notice

given by the 1st Defendant to the Claimant in Exhibit A22 was an act of magnanimity. The question worthy of note is: does this Exhibit A22 serve as a retirement or a termination of appointment, because of the effect it would have on the Claimant? I shall address this in the course of this Judgment but suffice to say that Exhibit A22 effectively and efficiently brings to an end the employment of the Claimant with the 1st Defendant.

In the light of the foregoing, I therefore hold that the declaration sought by the Claimant to the effect that he is still in the employment of the 1st Defendant as a Management Staff (Regional Manager) until he is properly and lawfully retired in accordance with the rules of company or he attains the retirement age of 60 years or 35 years of service with full pay is contrary to the evidence before me and I accordingly refuse to grant it.

Now, on the second limb of ISSUE ONE which is an alternative to the first limb as to whether the Claimant is entitled to ₦26,541,503.46 (Twenty Six Million, Five Hundred and Forty One Thousand, Five Hundred and Three Naira, Forty Six Kobo) as his retirement benefit and pension, it is necessary to establish the effect of Exhibit A22. Did it amount to termination or retirement of the Claimantôs appointment with the 1st Defendant?

The Claimant referred to his stoppage from the employment of the 1st Defendant as ñretirementò or ñretiredò as seen in paragraphs 11 line 6; 12 line 2 of his extant Amended Statement of Claim. The P.W.1 testified on Oath on the above averments in his paragraphs 11 and 12 of his Deposition on Oath. The Defendants

also referred to the act of the 1st Defendant stopping the service of the Claimant as ñretirementò as pleaded in their Joint Statement of Defence vide paragraph 4 therein. It is trite law that parties are bound by their pleadings. See **ODI AND ORS VS IYALA AND ORS** (2004) 116 LRCN 3271; **EHIMARE VS EMHONYON** (1985) 1 NWLR (part 2) 117; **ABAYE VS OFILI** (1986) 1 NWLR (part 15) 134; **OWOADE VS OMITOLA** (1988) 2 NWLR (part 77) 413 amongst so many other authorities.

It is my view that the understanding of the contents of Exhibit A22 by both Claimant and the Defendants as shown in their pleadings is that it serves as a retirement and not as termination of appointment. Even the same said Exhibit A22 is self-explanatory. Having stated the terminal entitlements to the Claimant, it went ahead to say in paragraph three thus:

> ñPlease hand over all companyôs property in your possession to your Divisional Head and obtain a clearance note to this effect to enable the company give instruction for the payment of your terminal benefits.ò

After Exhibit A22, there were various correspondences between the Claimant and the 1st Defendant. In these correspondences, what was of central discourse was the issue of the ñretirement benefitsò of the Claimant and not whether the Claimant was still an employee in the service of the 1st Defendant. Some excerpts of these correspondence are worthy of being reproduced at this juncture. The 1st Defendant wrote to the Claimant (which is admitted as Exhibit A2 herein) on the 9th day of

February, 2011. The 3rd Defendant signed that letter. Paragraphs four and five of this Exhibit A2 say:

> ñIn order to obtain your clearance therefore kindly obtain and submit the following urgently:
>
> i. The written Statement of Mrs. Nnacheta stating the total money due to her at the time of your resignation. Please have her sign this Statement in the presence of the current *Regional Manager, East* Philip Ikebudu and certify that her position is true to the best of your knowledge.
>
> ii. The Statement of Mr. Iyere of Iyere Motors admitting what he owes to the Company. Please have him sign this Statement in the presence of the current *Regional Manager, East* Philip Ikebudu and certify that this position is true to the best of your knowledge.ò
>
> These Statements will go a long way in assisting us in reconciling Nnaechetaôs account and recovering money owed to this Company. Thereafter you will be given clearance to collect your terminal entitlement.ò
>
> (Emphasis supplied by me.)

The Claimant in Exhibit A21 ï a letter written on his behalf by his Counsel on the 28th day of February, 2011 on the subject: ñRe: Mr. Peter Oni (withholding of Clearance for Terminal Entitlements), concluded in the last paragraph thus:

ñTake Notice that if within seven days from the date of this letter, clearance for his benefits is not given to him our client will be forced to change his position and may go to Court not only for his entitlements but ask for exemplary damages for your action without further notice. We have equally advised our client that those who have brought their personal feelings and opinions into this matter should be sued in their personal capacity.ò

The above letter was responded to by the 1st Defendant in its letter of 15th March, 2011 which is marked as Exhibit A14 herein. In the concluding paragraph of Exhibit A14, the 1st Defendant wrote thus:

ñManagement wishes to resolve this matter as amicably and as quickly as possible. We do not desire to keep your Clientôs terminal benefit from him and indeed have paid such benefit to other whose entitlement was even larger than his. Due process however has to be observed (as it was with previous retirees) to abide by the laid down rules of corporate governance. Kindly advise your client therefore to agree the extent of the relevant customersô obligations to the Company with them so that this matter can be concluded speedily.ò

From the above, it is simple enough to deduce that the bone of contention between the Claimant and the Defendants is his terminal benefit. While the Claimant Claims a total of ₦26,541,503.46 as his terminal benefit, the Defendants

pleaded that he is entitled to ₦6,284,372.02 in paragraph 19 of their Joint Statement of Defence thus:

> ñ19. The Defendants in compliance with Company policy and practice, are ready to pay the Claimant terminal benefits calculated as ₦6,284,372.02 upon his clearance by the 1st Defendant after reconciling the accounts of E. E. Nnaecheta Company Limited on (sic) A. O. Iyere Motors. The Defendants have repeatedly told the Claimant to reconcile accounts in order to get his entitlement.ò

Surprisingly, the above averment was not put in evidence. I have perused the 17-paragraph witness Statement on Oath of the D.W.1, one Mr. Olufemi Sofuye, I cannot find anywhere he testified on the above averment. He was neither cross-examined on it. As it is trite, pleadings do not constitute evidence. Any pleadings without evidence is deemed abandoned. See the Supreme Court case of **NIGERIAN ADVERTISING SERVICE LTD. VS. UBA PLC** (2005) Vol. 129 LRCN 1636 at 1648 where Akintan J.S.C (as he then was) held at paragraphs F ï K thus:

> ñThe law is settled that an averment in pleadings is no evidence and cannot be so construed. They are mainly to set out the evidence that a party is likely to present so that the other side would not be caught unaware or unprepared. The averments in pleadings must be proved

by evidence except, however, where they are admitted by the other party.ò

Furthermore, the Learned Justice held at page 1649 paragraph F in **NIGERIAN ADVERTISING LTD VS. UBA PLC** (Supra) thus:

ñAs already declared above, pleadings could not replace evidence. Any pleaded fact which is not given in evidence is therefore deemed abandoned.ò

See the following cases. **AKANMU VS ADIGUN** (1993) 7 NWLR (part 304) 218 at 231; **HONIKA SAWMILL NIG. LTD. VS HOFT** (1994) 2 NWLR (part 326) 252 at 260; **ADEMESO VS OKORO** (2005) Vol. 128 LRCN 1417; **NATIONAL INVESTMENT AND PROPERTIES CO. LTD VS. THE THOMPSON ORGANISATION AND ORS** (1969) 1 ALL N.L.R 138.

The learned Counsel to the Claimant who failed to cross examine the D.W. 1 on this sum of ₦6,284,372.02 which he did not plead has however addressed this Court on this point in his Additional Written Address. It is trite that a written address, no matter how brilliant and logical, cannot take the place of evidence. See the Supreme Court case of **SALZGITER STAHL GMBH VS TUNJI DOSUNMU INDUSTRIES LIMITED** (2011) Vol. 192 at 216 paragraph Z, per Chukwuma-Eneh, JSC:

ñ. . . it is trite law that counselôs address cannot, however brilliant and logical, constitute evidence in a matter; and so any submission on facts not pleaded goes as to no issue.ò

On the quantum of the terminal benefit to the Claimant therefore, I reject the sum of ₦6,284,372.02 conditionally being put forward by the Defendants as they effectively abandoned that averment when they did not supply any evidence to buttress it; neither did the Claimant throw any question at the D.W.1 under cross-examination on this point.

The Claimant on his own has pleaded and testified and Claimed the total sum of ₦26,541,503.46 as his retirement benefits on the following parameters:

(i) Retirement benefit as calculated at ₦12,835,345.56 up to and including the 19th September, 2009 (sic) and thereafter ₦4,071,900.00 per year (for two years now is ₦8,143,800.00) until he is properly retired or judgment is given.

(ii) 1 year housing allowance plus 30 days in the hotel at ₦10,000 per day calculated at ₦1,050,000.00.

(iii) Pension entitlement ï ₦4,512,356.90

TOTAL ₦26,541,503.46.

The Claimant however did not show how he arrived at the above quantum. The Defendant have pleaded and testified on Oath that the Claimant is not entitled to this quantum, it being arbitrary.

I have held earlier in this Judgment that Exhibit A4, the 1st Defendantôs Handbook, applies to all categories of employee in all operational locations of the Company. The Claimant rejected this Exhibit A4 as binding on him. I do not agree with the Claimant at all on this point. The Defendant referred to pages 26 ï 27 of

Exhibit A4. I agree with them. A reproduction of paragraph 7.9 (a) and (b) of Exhibit A4 will suffice:

ñ7.9

(a) Pension Benefits

The company maintains a contributory pension scheme into which the company and the employee contribute $17^1/_2$ % and $7^1/_2$% of the employeeôs total emolument respectively.

The pension benefit is calculated as below:

2% x Final Total Emolument x No of Years under the Pension Scheme x Actuarial Factor

Total Emolument (TE) is defined as Basic Salary, Housing and Transport Allowances

The Actuarial Factor is used to discount the benefits of those employees who leave the service of the company before the normal retirement age of 55 years.

(a) Gratuity

05 to under 10 yearsô service ï $4^1/_2$ weeks pay for each year served.

10 to under 15 yearsô service ï 5 weeks pay for each year served.

15 to under 25 yearsô service ï 6 weeks pay for each year served.

20 to under 25 yearsô service ï 7 weeks pay for each year served.

25 yearsô service and above ï 8 weeks pay for each year served.ò

During cross-examination, the Claimant testifying as PW1, said:

ñI have worked for D. N. Tyres alias Dunlop for 20 years plus. Terminal Benefits are computed by the Finance Department but the employee confirms if there is any error. It is the handbook they use. Employees do not compute Terminal Benefits for the company. Pension is not computed by 1st Defendant but they have an input. The Pension Fund pays pension. I have a Pension Scheme where 1st Defendant and I contribute money for my pension.ò

(Emphasis supplied by me).

The Defendants through the D.W.1, under cross-examination on the 10th June, 2013 said:

ñThe company contributes its own to Trust Fund apart from the contribution of the Claimant. I donôt know how much my company is to pay as contribution to the Trust Fund. It is not correct to say my company has not been contributing anything to the Trust Fund. The Claimant opened his account two weeks ago when he filled his form and I had to submit it. It will take time for the Trust Fund to update his account. It is true the form was supplied to Claimant two weeks ago by our Company three years after he exited the company.ò

Even in Exhibit A22 where the Claimantôs service was stopped by the 1st Defendant, what the Claimant was entitled to under paragraph two therein is as follows:

ñYour terminal benefits are as stated below:

- Your pay up to and including 19th September, 2010;
- Your 3 months basic salary, being notice pay,
- Your 1 month basic salary; being ex-gratia,
- Your benefits under the Pension and Gratuity Schemes;
- Commutation to cash of your outstanding leave entitlement if any.ò

It is my view therefore that the Claimant is entitled to benefits under the Pension and Gratuity Scheme effectively covered at pages 26 and 27 of Exhibit A4. I however, find it difficult to believe the Claimant that he is entitled to the quantum he claims as it seems to me to be an arbitrary figure manufactured by him for the purpose of this litigation. Can this court help the Claimant compute his entitlement under the Pension and Gratuity Scheme as envisaged by Exhibit A4? The Claimant has not proved how much his salary was at the point of retirement; neither has he proved in monetary value his Housing and Transport Allowances as this piece of information is required to know his Total Emolument (TE) defined in Exhibit A4 as ñBasic Salary, Housing and Transport Allowances.ò Above all, he has not joined the Pension Fund or Trust Fund which has a vital role to play in determining how much gratuity and pension is due to him as co-Defendant in this action. I cannot descend into the arena of conflict to fish for evidence which is not available before me. See the following cases: **AJUWON VS AKANNI** (1993) 9 NWLR (Part 316) 422; **OLORUNFEMI VS ASHO** (1999) 1 NWLR (PT. 585) 1; **ADELAJA VS ALADE** (1999) 6 NWLR (Part 608) 544.

Having said all the above, it would not serve the interest of justice for this court to pay blind eye to the undeniable fact that the Claimant worked for the 1st Defendant for the periods of 26th February, 1990 to 13th September, 2010 when he was retired and his Terminal Benefits/Entitlements are still being withheld by the Defendants. The reason for the withholding of these benefits has been tied to the non-clearance of the Claimant. The condition for his clearance which was to ñhandover all company property in your possession to your Divisional Headò as contained in paragraph two of Exhibit A22 has metamorphosed to the following in paragraph 3 of Exhibit A2 thus:

> ñIn order to obtain your clearance therefore kindly obtain and submit the following urgently:
>
> i. The written Statement of Mrs. Nnacheta stating the total money due to her at the time of your resignation. Please have her sign this Statement in the presence of the current *Regional Manager, East* Philip Ikebudu and certify that her position is true to the best of your knowledge.
>
> ii. The Statement of Mr. Iyere of Iyere Motors admitting what he owes to the Company. Please have him sign this Statement in the presence of the current *Regional Manager, East* Philip Ikebudu and certify that this position is true to the best of your knowledge.
>
> These Statements will go a long way in assisting us in reconciling Nnaechetaôs account and recovering money owed to this Company. Thereafter you will be given clearance to collect your terminal entitlement.ò

(Emphasis supplied by me.)

Nnaecheta and Iyere Motors which have now become a clog in the wheel of the clearance procedure of the Claimant were also mentioned in Exhibit A1. One is tempted to ask: what is the relationship between the Claimant and these two customers of the 1st Defendant to warrant the tenacious refusal of clearance of the Claimant for his terminal benefit as contained in paragraph 2 of Exhibit A22? From the evidence led by both parties in this case, it is on record that these two were some of the 1st Defendantôs customers under the control of the Claimant who was the Zonal Manager at the time of his retirement where these customers were resident. Could the Claimant be righty held responsible for the indebtedness of these two customers to the 1st Defendant as done by the Defendants in this case? I now review some of the evidence led by the Defendants. The D.W.1 under cross-examination testified thus:

> ñWhen Claimant took over in Benin, the debt he inherited was about ₦18 Million. Exhibit A22 is reproduced by my company. When he left service the debt was reduced to ₦4.7 Million. <u>The Divisional Head of Claimant, K. Popoola is to clear the Claimant based on my advice and that of the Group Controller</u>. There is a suspected fraud in the account of the customer and that is why we are here.ò
>
> (Emphasis supplied by me).

The D.W.1 was the Marketing and Sales Controller of the 1st Defendant. From the evidence garnered under the heat of cross-examination above, if the

Claimant inherited more than N18 Million when he took over in Benin and left service with a reduced debt of ₦4.7 Million, can the Claimant be held liable for this debt? My answer is an emphatic No!

Still under cross-examination, the D.W.1 said:

> ñClaimant took over from me in Aba, December, 2005 and January, 2006 and not in Benin. The regional seat was overseeing Benin and other Depots. At the level of the Region, Claimant took over from me in respect of Benin Depot. The Regional Debt was over N45 Million and in Benin, only one customer was owing less than a Million. The Regional Debt was inherited by me and after me the Claimant inherited them and some are still pending. I was not issued with any query in respect of the debts.ò
>
> (Emphasis supplied by me).

If the D.W.1 who inherited debts and also transferred debt to the Claimant before the latter was retired is not being held accountable for the debts, why will it be justiceable and justifiable for the Claimant to be held liable for such debts?

Besides, the D.W.1 has testified that fraud was suspected in the account of the customer upon which the Claimant was not cleared for his terminal/retirement benefit. If that is the case, than criminal act has been brought into the picture which would have involved the police. But the Defendants never involved the police which make it difficult for me to believe the D.W.1 on this point. I can only come to the conclusion that the withholding of the clearance for the Claimant to enable

him get his terminal benefits was done *mala fide* by the alter ago of the 1st Defendant, that being the 2nd, 3rd and 4th Defendants.

On the totality of evidence before me, I therefore hold on ISSUE ONE that the Claimant has effectively been retired from the service of the 1st Defendant by Exhibit A22 and he is therefore no longer a staff of the 1st Defendant from the 20th day of September, 2010. On the 2nd limb of ISSUE ONE, I hold that the Claimant has not proved by evidence that he is entitled to the sum of ₦26,541,503.46 as his retirement benefit but only entitled to be paid his benefits as envisaged in Exhibit A22 as follows:

> ñi. His pay (known by the parties herein) up to and including the 19th day of September, 2010.
>
> ii. His 3 months basic salary, being notice pay.
>
> iii. His 1 month basic salary, being ex-gracia.
>
> iv. His benefit under the Pension and Gratuity Schemes under the Rules ï Exhibit A4.
>
> v. Commutation to cash of his outstanding leave entitlement, if any.ò

ISSUE TWO:

This issue is on whether the Claimant is entitled to his Claim of N50,000,00.00 (Fifty Million Naira) as general damages. The Learned Counsel to the Claimant, S. O. Omere, Esq. addressed Court on this point and relied on the case of **OKONGWU VS N.N.P.C** (1989) 7 Supreme Court (part 1) 127; (1989) 4

NWLR (part 115) 296 at 315. These authorities, with the greatest respect to the Learned Counsel, do not help his case as they deal with breaches of contract of employment. The Learned Counselôs argument can be seen in his own words at page 9 of his written address dated 22nd February, 2013 thus:

> ñGeneral Damages as Claimed in this suit is not for anything done as to the length of or the appropriateness of the Notice of Disengagement or retirement but for the TORTIOUS ACTS of the 1st to the 4th Defendants after the Claimants had been stopped from work, in order to unlawfully and unreasonably withholding his entitlements, they gave him impossible assignments and conditions as if he was still in their employment and expected him to carry them out at his own expense thus resulting in great expense, pain, suffering and loss to him.ò

The Learned Counsel however failed to supply any authority for the above submission.

On his own part, the Learned Counsel to the Defendants, A. S. Osim, Esq. in his own submission on this point relied on various judicial authorities which are as follows: **OSISANYA VS AFRIBANK (NIG.) PLC** (2007) Vol. 149 LRCN at 1586; **BANKOLE VS N.B.C** (1968) 2 ALL NLR 371; **OSAKWE VS NIGERIAN PAPER MILL LTD**. (1998) 7 SCNJ 22; **KATTO VS CENTAL BANK OF NIGERIA** (1999) 6 NWLR (part 607) 390; **CHUKWUMAH VS SHELL PETROLEUM DEVELOPMENT CO. OF NIGERIA LTD.** (1993) 4 NWLR

(part 289) 512 at 560; (1993) 12 LRCN 459; **OLAREWAJU VS AFRIBANK NIG. PLC** (2001) 13 NWLR (part 73) 691 at 705; ATIVIE VS. KABE/METAL NIG. LTD. (2008) (sic) 164 page 71; **WESTERN NIGERIA DEVELOPMENT CORPORATION VS ABIMBOLA** (1966) 4 N.S.C.C 172; **NIGERIA PRODUCE MARKETING BOARD VS ADEWUNMI** (1972) 7 N.S.C.C 622; **MOBIL OIL NIGERIA LTD VS AKINTOSILE** (1969) NMLR 217 and **INTERNATIONAL DRILLING COMPANY VS AJIBOLA** (1972) 2 Supreme Court 115 at 119 ï 120. A careful perusal of the above cases would reveal that they are centered on where the contract of any employee was unlawfully or wrongly terminated or where the employer refused to give the required notice before terminating the employment of the employee. In any of these cases, damages would not be appropriate. But what was the Claim of the Claimantôs on this point of damages. I quote paragraph 18 (b) of his Amended Statement of Claim:

> ñ(b) General Damages as against the Defendants jointly and severally:
>
> The sum of ₦50,000,000.00 general damages jointly and severally for wrongfully and maliciously applying companies rules and regulations to frustrate my proper retirement from the services of the 1st Defendant and unlawfully withholding my entitlements as contained in this Claim
>
> **GRAND TOTAL ₦76,541,503.46**.ò

I have held under ISSUE ONE that the retirementô of the Claimant by Exhibit A22 was not wrongful. On this ISSUE ONE, I have also held that the withholding of the clearance for the Claimant to enable him get his Terminal Benefits was done *mala fide* by the alter ago of the 1st Defendant, that being the 2nd, 3rd and 4th Defendants. Can these wrongful acts of the 2nd ï 4th Defendants ground an award of general damages?

It is a trite law that general damages are usually awarded to assuage loss suffered by a Claimant from the acts of a Defendant. This award is at the discretion of the trial Court. See **UBA VS BTL IND. LTD.** (2007) Vol. 148 LRCN 1189 at 1250 paragraph EE per Tabai, J.S.C:

> ñIt is settled law that general damages, usually awarded to assuage loss suffered by a Plaintiff from the acts of a Defendant, is a matter of inference based on the trial Courtôs discretion.ò

After the Claimant was retired by Exhibit A22 dated 13th September, 2010, there have been various correspondences between the retired Claimant and the Defendants to enable the retired Claimant get his Terminal Benefits from the 1st Defendant, a company he served for more than twenty years meritoriously. Amongst such correspondences, outside oral correspondences, include the following:

i. Exhibit A1 dated 23rd December, 2010 (Defendants letter requesting information from Claimant on E. E. Nnaechetaôs Account/Iyereôs Transactions);

ii. Exhibit A9 dated 27th December, 2010 (Claimantôs response to Exhibit A1);

iii. Exhibit A2 dated 9th February, 2011 (Defendantsô letter to the Claimant on ñRe: Resignation of Appointment ï Clearanceò) where the Defendant requested a written Statement of indebtedness of Nnaecheta and Iyere Motors from the Claimant);

iv. Exhibit A21 dated 28th February, 2011 (Claimantôs letter to the 3rd Defendant on the subject of withholding of clearance for Terminal Entitlements of the Claimant);

v. Exhibit A14 dated 15th March, 2011 (a response to Exhibit A21) and

vi. Exhibit A10 signed on the 16th day of May, 2011 being a confirmation of trading account balance of Augustine Iyere.

The accounts of Nnaecheta and Iyere Motors having not been issues of dispute before Exhibit A22 was made, I think raising them through Exhibits A1, A9, A2, A21, and A14 above were of no moment as they are designed by 2nd ï 4th Defendant, the alter ego of the 1st Defendant, to frustrate the clearance of the Claimant to enable him get his Terminal Benefits. This act of the 2nd ï 4th Defendants was done in bad faith upon which the Defendant has suffered pains expense and loss which can be compensated by the award of damages especially when the DW1 testified under oath to the effect of exculpating the Claimant of the indebtedness of these two customers of the 1st Defendant thus:

ñWhen Claimant took over in Benin, the debt he inherited was about ₦18 Million. Exhibit A22 is reproduced by my company. When he left service the debt was reduced to ₦4.7 Million. The Divisional Head of Claimant, K. Popoola is to clear the Claimant based on my advice and that of the Group Controller. There is a suspected fraud in the account of the customer and that is why we are here.ò

AND

ñClaimant took over from me in Aba, December, 2005 and January, 2006 and not in Benin. The regional seat was overseeing Benin and other Depots. At the level of the Region, Claimant took over from me in respect of Benin Depot. The Regional Debt was over N45 Million and in Benin, only one customer was owing less than a Million. The Regional Debt was inherited by me and after me the Claimant inherited them and some are still pending. I was not issued with any query in respect of the debts.ò

The Claimant who inherited more than ₦18 Million when he took over from DW1 and reduced the company debt to ₦4.7 Million on retirement has now been made to suffer the acts of the 2nd ï 4th Defendants by not clearing him for his Terminal Benefits. This wrong committed against the Claimant after his contract of service was duly and legally brought to an end by Exhibit A22 can only be compensated by the award of general damages which I assess at ₦3,000,000.00 (Three Million Naira) jointly and severally against the Defendants.

Cost of ₦50,000.000 (Fifty Thousand Naira) only is therefore awarded against the Defendants jointly and severally by me.

HON. JUSTICE V. O. EBOREIME
(JUDGE)
23rd May, 2014

COUNSEL:

S. O. Omere Esq. for Claimant.

A. S Osim for Defendant.