



IN THE COURT OF APPEAL
ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

ON FRIDAY THE 6TH DAY OF MARCH, 2026

BEFORE THEIR LORDSHIPS

BILKISU BELLO ALIYU

JUSTICE, COURT OF APPEAL

DONATUS U. OKOROWA

JUSTICE, COURT OF APPEAL

OYEJOJU OYEBIOLA OYEWUMI **JUSTICE, COURT OF APPEAL**

APPEAL NO.: CA/ABJ/CV/830/2024

BETWEEN:

1. ISMALIA OLUWATOSIN GIZALI
2. CHIBUEZE FRANCIS ONAH
3. SULEIMAN AMINU MUHAMMAD
4. MARRY-ANNE EFEOSI MOMOH
5. CHIAZOR ADAOBI NWAFOR
6. OLUWAFEYIKEMI OMOTOWA
7. MUSTAPHA SADIQ
8. BENITA ENEY NYIAM
9. JADESOLA WURAOLA GOODLUCK
10. ONYINYE NGOZI OBEAGU
11. ZUBAIRU ZAKARIYA
12. IBRAHIM ABDUMALIK
13. MALEGHEMI LINDA TIMEHIN
14. AGBO EGWU AGBO
15. TOLULOPE OLURUNMILOLA OGUNLADE
16. ADEBOLA LAWAL

APPELLANTS

17. MICHAEL OKEBUGWU AMUZIE
18. ABUBAKAR MOHAMMED A.
19. OLUWASEYI OGUNEYE
20. OLAKUNLE OJO OLESHIN

APPELLANTS

AND

1. NATIONAL PENSION COMMISSION
2. THE CHAIRMAN, NATIONAL PENSION COMMISSION

==RESPONDENTS

JUDGMENT

(DELIVERED BY OYEJOJU OYEBIOLA OYEWUMI, JCA)

1. This Appeal is against the Judgment of the National Industrial Court Abuja, in suit no: NICN/ABJ/188/2022 delivered on the 13th June, 2023. The learned Trial Judge in his Judgment dismissed the Claims of the Claimants/Appellants in its entirety. Unsatisfied with the decision of the Trial Court, the Appellants propelled their grievances before this Court by launching a four ground Notice of Appeal dated the 28th May, 2024, praying this Court to set aside the earlier finding of the Trial Court.

2. BRIEF SUMMARY OF FACTS

The Appellants were issued with letters of employment by the 1st Respondent subject to compliance with the conditions as enumerated in the letters of employment. The Appellants resumed office on the 2nd May, 2017 as contained in their letters of employment. Upon resumption to office they were

directed by the Head of Human Capital of the 1st Respondent to tarry, for further directives for deployment to departments and assignment to desk duties. The Appellants tarried from 2017 till date and there were no further directives from the 1st Respondent till date on the employment even though the Appellants have written several letters to the Respondents.

3. According to the Appellants most of the conditions enumerated in the letter of employment are conditions that require the participation of both parties in the contract of employment they further stated that some of the conditions even require the Appellants to resign from their former place of work. Appellants continued that the Respondents never replied to any of their letters and that the Appellants had to resign from their former place of work because of the employment letters issued to them.

4. **ARGUMENT OF APPELLANTS:**

The Appellants through their Counsel Samuel Ogala Esq. distilled the following issues for determination to wit:

- a. *Whether the Respondents having frustrated the satisfaction of the conditions stated on the letter of employment by the Appellants can take benefit of their own wrong.*
- b. *Whether having regards to condition (p) stated on the letter of employment issued to the Appellants the parties are not bound by the condition of service governing the staff of the National Pension Commission for the purpose of Sections 28 and 29 of the Pension Reform Act 2014.*

5. The Appellants submitted respecting issue one, whilst reiterating what happened at the Trial that the Respondents prevented them from resuming office they argued that paragraph 8 of the Respondents Counter Affidavit before the Trial Court admitted that the Respondents prevented the Appellants from resuming office, the Appellants submits that fact admitted needs no proof, relying on Section 75 of the Evidence Act and the case of ***Amadiume v. Ibok (2006)6 NWLR (PT 975)158***, the Appellants further argued that the Trial Court failed to properly evaluate the evidence before it. The Appellants submits that the letters of employment has no deadline for compliance of the condition stated and that the conditions are for both parties to comply with and not only the Appellants.
6. It is the Contention of the Appellants that condition (C) could only be archived through the Appellants. They further contended that condition (B) could only be achieved by the Appellants if the Appellants resigned from their work. That condition (G) could only be achieved during probation period. That Condition (I) require the Appellants to take instruction from the Respondents.
7. It is the case of the Appellants that the 1st to 11th Appellants resumed office on Tuesday 2nd May, 2017 while the 12th to 20th Appellants resumed office on Monday 5th June 2017 as contained in their respective letters of employment. That upon resumption they were briefed by the Head of Human Capital management. Thereafter, they were directed by the Head Human capital

Management to wait at home for further directives from the Respondents for deployment to departments and assignment to desk duties. To the Appellants, the Respondents haven frustrated the fulfillment of the above conditions and as such they should be allowed to benefits from their own wrong, reliance was placed on ***Alade v. Alic (Nig) Ltd (2010) 19 NWLR (PT. 1226) 111*** and also ***Nwakhoba v. Dumez (Nig.) Ltd. (2004)3 NWLR (PT.861) 461.***

8. It was further argued that paragraphs (H), (M) and (P) provide the conditions for the termination of the Contract of employment and that none of the conditions were complied with. The Appellants submit that the Court should apply the ordinary interpretation of contract they referred to ***Daodu v. U.B.A. Plc [2004]9 NWLR (PT.878) 276.*** Appellants submitted that the Respondents by their conduct caused the Appellants to believe the existence of a contract of employment. Cited in support is the case of ***Great (Nig) Insurance Plc v. Zeal Trust Ltd (2020) LPELR-53107 (CA).*** In arguing the doctrine of Estoppel by conduct the Appellants submits that the doctrine operates to ensure that a party does not back out of an agreement or promise made to another which have made the other party to take a step that ordinarily he would not have taken if not promised. They cited in support of their assertion; ***Odua Investment Co. Ltd. v. Talabi (1991) 1 NWLR (PT.170)76.*** They finally submitted that the law is trite that the Court has the duty to prevent inJurisdiction and to void rendering a decision that enables a party to

escape from his obligation under contract by his failure, default, refusal, own wrongful act howsoever. Pointing towards ***Stallion (Nig) Ltd v. Adejo [2021] PELR-53258(CA), Mudasiru v. Onyearu [2013] 7 NWLRPT.1354)419.***

9. Next on issue two, the Appellants submitted that by condition (P) the conditions of service of the National Pension Commission bind the parties. It is the Appellants contention that an operative incorporation Clause is a clear manifestation of the intention of the parties that the terms of one document be incorporated into by reference in the other document. Relying on ***Awolaja v. Seatrade G. B. V. (2002) 4NWLR (PT.758) 520;*** he finally urged this Court to so hold.

10. The Appellants argued that where there is a condition of service between an employer and an employee such condition of service is binding on both parties. The Appellants through their learned counsel submits that the learned Trial Judge failed to take cognizance of paragraph P of the letter of employment when he held that the Appellants are not employers of the Respondents. The Appellants further argued that there is no any evidence whatsoever to show that the Appellants employment were terminated its their submission that contract of employment entered into in writing can only be terminated in writing.

11. Relying on Sections 28 and 29 of the Pension Reform Act the Appellants submits that they are Civil servants entitled to the benefits as prescribed by law.

RESPONDENTS PRELIMINARY OBJECTION:

12. The Respondents filed a Notice of preliminary objection on the 6th November, 2024, their argument in respect of same is at pages 5-19 at paragraphs 3.0- 3.30 of the 1st and 2nd Respondents' brief of argument filed on 6th November, 2024. A sole issue was framed viz-

Whether the appellants suit is statute barred having been filed outside the 3 months period provided by the Public Officers Protection Act for the institution of the instant action against a Public Officer and if so whether a trial Court has Jurisdiction to entertain same.

13. On this issue the Respondents reiterated that Jurisdiction is a prerequisite for adjudication, they submits that issues of Jurisdiction can be raised at any stage of the proceeding including Appeal. Learned Counsel to the Respondents submitted that Section 2(a) of the Public Officers Protection Act, Cap P41, Laws of the Federation of Nigeria, 2004. Prohibits instituting an action against the Public Officer outside 3 months.
14. The Respondents contended that the Trial Court misapplied the decision of ***Oluremi Obasanjo & Anor v.***

Wuro Bogga Nig Ltd & Ors [2023] 2 NWLR (PT.1868) 253. It is the Respondents further contention that a decision is an authority for what it decides and each case must be considered with its peculiar facts. It was further submitted that the authority is predicated on recovery of land and not Contract of service.

15. It was argued that the decision of ***Oluremi Obasanjo & Anor v. Wuro Bogga Nig Ltd & Ors (supra)*** did not repeal the decision of ***Idachaba v. University Of Agriculture, Makurdi [2021] 11 NWLR(Pt. 1787)209*** and urged this Court to rely on it as good law.
16. The Respondents finally submitted that failure of the Appellants to strictly comply with Section 2(a) of the Public Officers Protection Act, Cap P41, Laws of the Federation of Nigeria, 2004 deprive the Trial Court and by implication this Court of the Jurisdiction to entertain this suit, and submitted that the Appellants are without right of action.

THE APPELLANTS REPLY TO THE PRELIMINARY OBJECTION:

17. The Appellants Response to the Notice of Preliminary Objection was filed on the 5th May, 2025 and was deemed properly filed on the 7th May, 2025. The Appellants started by arguing that the Respondents preliminary objection is incompetent and should be struck out. According to the Appellants, this same issue was raised at the lower Court

and the Court ruled against them. Reference was made to pages 318-321 of the Record of Appeal. It was stressed that the Respondents who apparently are not happy with that position of the lower Court ought to have filed a Notice of Cross Appeal and that failure to do so is fatal to the Respondents Preliminary Objection. In support they cited the case of ***Kperanisho v. Aloko***[2015] 14NWLR (PT. 1478) 153; Also cited is the cases of ***Osamwonyi v. Osamwonyi*** [2011] 8 NWLR (PT. 1249); wherein that case the Court held that where a party seeks to set aside part of a Judgment the Respondents should file a notice of Cross Appeal. The Appellants argued that the Respondents submission that issues on matters of Jurisdiction can be raised at any point is inaccurate and submits that the cases cited by the Respondents are misapplied and urged this Court to dismiss the Appellants Objection.

RESPONDENTS ARGUMENTS ON THE MAIN APPEAL

18. The Respondents formulated two issues for determination to wit:

- a. ***Whether the Trial Court was right when it held that the failure of the Appellants to fulfill the conditions stipulated in the offer of probational appointment rendered the said probational employment inchoate, non-binding and unenforceable? (Grounds 1, 3 and 4 of the Notice of Appeal)***

b. Whether, having regards to the facts of the case and the evidence on record, the Trial Court was right when it found that the Appellants are not employees of the 1st Respondent and can therefore not be regarded as public servants/officers for the purpose of Section 28 and 29 of the Pension Reform Act, 2014? (Ground 2 of the Notice of Appeal).

19. The Respondents argued that in seeking declaratory reliefs the Appellants must succeed on the strength of its own case and not the weakness of the defence even where there are admissions by the adverse party. They referred this Court to the decision in ***Ani v. Out [2023] 8 NWLR (PT. 1886) 301 @ 355-356, PARAS. G-C.***

20. The Respondents argued that the crux of this case is on letter of probational appointment which is subject to the Occurrence of some conditions Counsel submits that where a contract is predicated on the occurrence of a condition the contract is not binding unless the conditions where complied with he referred to ***Takori v. Matawalle (2019) 17 NWLR (PT. 1752) 165 @ 187, Parag. H and Oyewusi v. Olagbami [2018] 14 NWLR (PT. 1639) 297 AT 317, PARAS. C-D.***

21. The Respondents submit that the Trial Court rightly held that the failure to fulfill the conditions stipulated in the Contract of employment makes the entire transaction inchoate *moreso*, that the Appellants have admitted that they did not fulfilled the Conditions.
22. The Respondents posited that there was no any evidence to show that the Appellants have complied or attempted to comply with the conditions in the Contract of employment. The Respondents argued that nothing in condition B made it mandatory for the Appellants to resign from their offices, They stressed that even conditions A, B, C which need no input from the Respondents were not complied with.
23. The Respondents posit that Exhibits PENCOM 12-16 show that the Respondents clearly suspended the Appellants probational employment even before the Appellants resumption dates. They submitted that there is no existing valid contract of employment between the parties and urged this Court to so hold and resolve issue one in their favour.
24. It is the argument of the Respondents on issue two that the appointment of the Appellants being indefinitely suspended before the resumption date, coupled with the fact that the Appellants have not complied with the condition in the letter of employment, it has made the contract inchoate and capable of being unenforceable. He

further submits that such contract couldn't have made the Appellants public servant and urged this Court to so hold. They relied on ***Ihezukhwu v. University of Jos (1930) 4NWLR (PT 146). The 1st and 7th Appellants in Exhibit PENCOM 12*** and Exhibit PENCOM 13 (pages 69-71 of the Record of Appeal), which are letters written for and on behalf of the Appellants, the Respondents submits that the Appellants have admitted that they had been informed prior to their scheduled dates of resumption, of the indefinite postponement/suspension of the recruitment exercise. They submit that this fact having been admitted by the Appellants cannot be controverted and need no further proof.

25. It was argued that the Appellants failed to address certain issues raised by the Respondents and submitted that it is by implication deemed an admission. The Respondents further argued that the crux of their issue one which is predicated on the Respondents prevention of the Appellants from complying with the conditions was neither contravened nor denied hence it meant admission by the Appellants.
26. The Appellants in their reply on this issue, contended that the Respondents failed to understand the Appellants argument on condition P in the letter of employment. They reiterate that condition P incorporated the terms of the conditions of service governing the staff of the National Pension Commission. The Appellants argued that

the Respondents cannot cherry pick which condition to abide by and submit that all the conditions bind them.

27. The Appellants relying on ***F.M.C., Ido-Ekiti v. Alabi [2012]2 NWLR (Pt. 1285) 411*** submits that the Appellants being on probation cannot be the yardstick for not complying with the statutory provision of termination. They reiterated the superiority of the statute over procedure rules. The Appellants finally repeated their argument that they are Civil Servant and urged this Court to so hold.

RESOLUTION OF PRELIMINARY OBJECTION:

28. Before delving into the main Appeal it is incumbent upon the Court to first and foremost deal with the Notice of Preliminary Objection, before proceeding to determine the Appeal on the merits, if at all necessary, I take solace in our elder brothers position at the Apex Court, in ***APC v. Umar & Ors [2019] LPELR-47296(SC); (Pp. 7 paras. A)***

It is well settled law that where a notice of preliminary objection is filed or argued in the Respondents' brief challenging the Jurisdiction of the Court or the competence of an appeal, the Court is duty bound to consider the preliminary objection first and determine same, before considering the appeal on the merit if the need arises.

29. Flowing from the above and in resolving this issue, I will adopt the single issue framed by the Objector to wit:

Whether the Appellants' suit is statute-barred, having been filed outside the three months period provided by the Public Officers' Protection Act for the institution of the instant action against a public officer and if so, whether the Trial Court has Jurisdiction to entertain same?

30. It is a notorious fact in law that Jurisdiction is the pillar of adjudication. In the recent case of ***Aribisala v. AMCON [2025] LPELR-80536(SC); @ (Pp. 14-15 paras. C);*** the Supreme Court aptly captured the essence of Jurisdiction thus-

There is no gainsaying that Jurisdiction plays a foremost role in the adjudicatory process. The undeniable importance and fundamental nature of Jurisdiction is why it can be raised at any stage of proceedings, even on appeal to this Court, and it can also be raised by a Court suo motu. Nevertheless, once it comes to the attention of any of the parties or the Court itself that Jurisdiction may elude the Court, the party who notices same or the Court ought to raise the issue straightaway so that the anomaly can be brought to an end immediately. This is to avoid a situation where parties, counsel and the Court would have expended fruitless time and effort over a matter, only to realise subsequently that the Court is bereft of Jurisdiction, Where a Court conducts a case in the absence of Jurisdiction, the entire proceedings conducted, including the judgment or ruling, if any, would amount to nothingness, a nullity and an exercise in futility, no matter how brilliantly

conducted. See IFEANYI V. OGBA & ORS (2022) LPELR - 58787 (SC); KAYILI V. YILBUK & ORS (2015) LPELR - 24323 (SC); AJAYI V. ADEBIYI & ORS (2012) LPELR - 7811 (SC)."

31. Now, it is of paramount importance to note that generally because of the peculiarity of issues regarding Jurisdiction parties are at liberty to raise any issue that borders on Jurisdiction at any point of the proceeding even on Appeal. The circumstances of this case is that the Respondents filed this same application at the Trial Court, see page 117 of the Record of Appeal Ruling was delivered on same together with the main Judgment at page 318 of the Record of Appeal. On the face of the Ruling made by the lower Court, the Respondents did not Appeal against the Ruling of the lower Court. What they have done here is to raise the issue again outside the focus and circumference of the Appeal on the decision of the lower Court as if it is being raised on Appeal for the first time. Let me make the point clear here that the fact that the law indulges a party to raise an issue of Jurisdiction up to the Supreme Court even for the first time ever does not mean that when the issue has been raised and settled at the lower Court, it should be freshly raised again and again without filing a Notice of Cross Appeal against the decision of the lower Court on the issue. Once a Trial Court makes pronouncements or takes decision on any issue and the parties do not challenge it, it means the parties have accepted the situation and they are bound by that decision. If an issue of Jurisdiction was not raised and pronounced upon, parties can go ahead and raise it

freshly on Appeal that is the unambiguous position of the law. However, where it has been raised and settled, what the parties need do if aggrieved by that decision, is to call for a review of it on Appeal by filing a Notice of Appeal which is the originating process before this Court or if a Respondent, a Cross Appeal to initiate a review of the decision of the lower Court on it.

32. It is settled law and well grounded that a decision of the Court not appealed against is deemed accepted by the party against whom the decision was entered and therefore binding. See ***Iyoho v. Effiong (2007) NWLR (Pt. 1044) 31; Biariko & Ors v. Edeh - Ogwuile (2001) 12 NWLR (Pt. 726) 235; FCDA v. Naibi (1990) 3 NMLR (Pt. 138) 270.*** It is definite and apparent on record of Appeal that the issue of Jurisdiction determined by the lower Court was excluded from this Appeal as a ground of Appeal. Since there is no Appeal on it, I believe the parties have accepted the Ruling of the lower Court on it and that decision binds them. Raising the issue by way of a preliminary objection herein after the lower Court has determined and delivered a Ruling on it is an afterthought. See the case of ***Okafor & Anor v. CBN [2024] LPELR-62978(SC) (Pp. 6-7 paras. A); where the Apex Court puts the issue in the right perspective thusly-***

Although the issue of Jurisdiction can be raised at any time, even on appeal for the first time, it is not

when a matter of Jurisdiction has been considered that it will be re-litigated. A Counsel is forbidden to raise or reconsider on appeal, even before the Supreme Court, an issue of Jurisdiction that has been heard and decided by the Trial or appellate Court. Actually, to do that is an abuse of Court process and the Court will become a beast of burden. There must definitely be an end to an issue even if it borders on Jurisdiction of Court, and a party is not at liberty to approbate and reprobate on issue of Jurisdiction as he wants. The appellate Court does not have the Jurisdiction to consider a preliminary objection decided by a lower Court except it comes on appeal, and not fresh or new after it has been considered and decided upon. As far as I am concerned, since the issue of the Jurisdiction of the Trial Court has been decided vide the preliminary objection before the Trial Court and remains unappealed by the Respondents, the issue is res judicata! The rule is that a final judgment rendered by a Court of competent Jurisdiction on the merit is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action. See Per TOBI, JSC, in NTUKS V. NPA (2007) LPELR-2076(SC) (PP. 25 PARAS. C).[Emphasis mine].

33. The Supreme Court has consistently upheld and reiterated the above position on raising issues bothering on issues already decided upon at the lower Court, constitutes a bar or Res judicata to a subsequent action involving the same issue, demand or cause of action as expounded by the Apex

Court in the above cited case law authority. The Supreme Court held out such attitude or action by a party as an abuse of the process of Court.

34. The decision of the Trial Court on the preliminary objection in view of the decision of the Apex Court as captured supra is deemed to have been accepted by the Respondents, thus raising it herein without a notice of Cross Appeal on same is discountenanced for being an abuse of the process of this Court. The notice of preliminary objection raised by the Respondents is accordingly overruled in view of the reasons stated supra and thus dismissed.

RESOLUTION OF MAIN APPEAL

35. In considering this Appeal, I will adopt the issues distilled by the Appellants with little modification for the just determination of this Appeal. these are viz-

- a. Whether the Respondents having frustrated/suspended the satisfaction of the conditions stated on the letter of employment by the Appellants can take benefit of their own wrong.*
- b. Whether having regards to conditions and terms of the contract stipulated in Appellants letters of employment, the Appellants are entitled to payment salaries and allowances.*

RESOLUTION OF ISSUE ONE:

36. Now, regarding issue one, it is evident on record that the 1st Respondent advertised for various job vacancies which included the post for which the Claimants/Appellants applied for ranging from the position of Assistant Manager, Executive Assistant, Senior Executive Assistant, Deputy Manager. They averred that they participated in the aptitude test and interview conducted by the 1st Respondent. The Appellants were issued letters of offer of employment on probational status which will only culminate into contract of employment upon fulfillment of some conditions listed as (a)-(t). The letters were dated 1st March, 2017 and they were expected to assume duty on the 2nd May, 2017 at the Headquarters of the Office of the 1st Respondent. Paragraph (t) requested each of them to accept the Offer by signing a duplicate copy of the letter and return to the Head of Human Resources of the 1st Respondent and they did. See page 63 of the Record of Appeal, Exhibit PENCOM 10. This Court in *Enemchukwu v. Okoye & Anor [2016] LPELR - 40027 (CA); OGUNWUMIJU, JCA; now (JSC)* at page 12-13 paras E-A held thus:

"...a contract is an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. According to Blacks' Law Dictionary 8th edition, contract is defined as a set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.

37. In the case of *Iyere v. BFFM Ltd [2008] 18 NWLR (Pt 1119) 300@325-326, Paras G-A*, the Apex Court held that legal basis of employment (by whatever means) remains the contract of employment between employer and

the employee. The Court reasoned that a contract of employment connotes a contract of service or whether express or implied and if it is express whether it is oral or in writing. The Court in that case further held that an employee except where a different meaning is given in the context of employment is an individual who has entered into or works under or worked under a contract of employment.

38. The most germane question that requires an answer here is whether or not there was a contract of employment between the parties in this case? In the case of ***Board of Management of FMC, Makurdi v. Kwembe [2015] LPELR-40486(CA) 21-22, Para. D***, this Court held *inter alia* thus;

I consider it trite at this juncture to reiterate that in Nigeria, the law that governs employment, that is, the relationship between an employer and employee is basically a law received under that of contract of service which is a specie of contracts, a law received under the English Common Law, therefore, the general law of contract is equally applicable thereto...[Emphasis Mine]

39. From the foregoing, it is thus apparent that the general law of contract applies to contract of employment. The case at hand which bothers on contract of employment will not be an exception. In other words a contract of employment is not different from a normal contract under the law of contract as stated *supra*. Hear the Supreme Court in the case of ***Nneji v. Zakhem Cons (Nig) Ltd [2006]12 NWLR (Pt. 994)297@311, Para H;*** on employment contract; the Apex Court held that an offer must be accepted in order to crystallize into a contract. The ingredients of a valid contract are; a). Offer; b). Acceptance

and; c). Consideration. See also the cases of *Oteri Holdings Ltd v. H.B Co Ltd* [2021]1 NWLR (Pt 1756)29@65-66, Paras F-A; *Cannitec Intl Co Ltd v. Solel Boneh (Nig) Ltd* [2017]10 NWLR (Pt. 1572)66@81, Para C; *Abba v. S.P.D.C.N Ltd* [2013]11 NWLR (Pt 1364)86@114, Para G; *Idufueko v. Pfizer Products Ltd* [2014]12 NWLR (Pt 1420)96@ 116-117, Paras H-A *Akinyemi v. Odua Inv. Co Ltd* [2012]17 NWLR (Pt. 1329)209@236, Paras A-B; *Tanarewa (Nig) Ltd v. Arzai* [2005] 5 NWLR (Pt. 919)593@632, Paras D-E.

40. In the case of *Mekwunye v. WAEC* [2020]6 NWLR (Pt 1719)1@31, Paras B-C, the Supreme Court unequivocally held that a contract matures where offeree signifies a clear and unequivocal intention to accept the offer. The Court went further at page 40, Paras B-C of the Judgment to hold that a contract is formed once there is an offer which is accepted by the offeree. The Court in the case of *Mudiaga-Odje v. YPS (Nig) Ltd* [2014]5 NWLR (Pt. 1400)413@430-431, Paras F-B, held inter alia that a contract may be formed by the conduct of the parties as well as by their words or by documents that have passed between them. See also the case of *UBN Plc v. Ogunsiji* [2013]1 NWLR (Pt 1334)1@ 13, Paras E-F and; *Obayuwana v. Ede* [1998]1 NWLR (Pt 535)670. It is deducible from all said and same is equally trite as held in litany of cases as well as those cited hereinbefore, that an employment contract is any agreement, whether oral or written, express or implied, whereby one person agrees to employ another as an employee and that other person agrees to serve the employer. The Claimants/Appellants exhibited their various letters of employment to the affidavit

in support of the Originating Summons to evince that there was a valid contract between them and the 1st Defendant/1st Respondent. The Court in the case of *Mekwunye v. WAEC, supra@ P.38, Paras C-D*; held that where contract consists of series of documents, the Court has a duty to scrutinize and examine closely all contractual documents admitted as exhibits to determine the existence or otherwise of a contract between the parties and the issues in controversy; the documents must be read together. It is in this regard that I will consider the letters of Offer of Probational employment holistically, hereunder captured for ease of reference thus-

PenCom/ADM/HCM/HR/26

1 March, 2017

**Ismalia Oluwatisin Gizali
Flat 4, Plot M332
Dr. D. K. Olukoya Street
FCDA Kubwa
Abuja.**

Dear Mr. Gizali,

OFFER OF EMPLOYMENT AS ASSISTANT MANAGER

I write with reference to your recent interview for employment with National Pension Commission

Following your success at the interview, I am pleased to inform you that the National Pension Commission is offering you a probational appointment as Assistant Manager subject to the following condition.

A) Police finger-print clearance.

- B) Satisfactory referee reports from your last employer or educational institution and two individuals who are not your relations.**
- C) Successful medical report from a medical institution appointed by the National Pension Commission.**
- D) Readiness to serve the Commission in any part of Nigeria.**
- E) Non-transfer of service from any other previous employment in the Unified Public Service.**
- F) You are to obtain the details of your Salary and Allowances from the Head (Human Capital Management), National Pension Commission.**
- G) You would be employed first for a probationary period of six months, and your appointment would be confirmed at the end of the probationary period, subject to the receipt of satisfactory references from your referees as well as satisfactory work and conduct.**
- H) During the probationary period, your employment may be terminated by either the National Pension Commission or yourself by giving one month notice or payment of one month salary in lieu of the notice of termination. After the probationary period, the notice of termination shall either be three months or three months salary paid in lieu of the notice of termination.**
- I) You are required to devote the whole of your official time to reasonable instructions given to you by any of your superior officers promptly.**
- J) You will not undertake any professional engagement or assignment for remuneration outside your official duties without first seeking and obtaining, re permission Commission.**
- K) Any information concerning the affairs of the National Pension Commission which might come to your knowledge, shall always be regarded as resolutely confidential and must not in any way be divulged to any unauthorized person or persons.**

- L) You are expected to adhere to a high standard of personal conduct to avoid/damage to serve the National Pension Commission faithfully and diligently and carry out all the image and/or reputation of the National Pension Commission.**
- M) The National Pension Commission reserves the right to dismiss you from employment at any time on grounds of theft, corrupt or fraudulent practices, or other grounds as specified in the Staff Conditions of Service.**
- N) The National Pension Commission operates a five-day working week: Monday to Friday, 8.00 a.m. to 5.00 p.m. with an hour lunch break between 12.00 noon and 3.00 p.m. However, you may be required to work extra hour(s) as may be necessary, without extra pay.**
- O) You will diligently observe the Code of Conduct for the staff of the National Pension Commission.**
- P) Other conditions will be as per the approved Conditions of Service governing the employment of staff in the National Pension Commission.**
- Q) Your service will be governed by the Commission's regulations in force from time to time. You should in particular, note that the Commission will not entertain any petition(s) and/or request(s) regarding the review of grade or salary offered, once accepted.**
- R) You are expected to assume duty with the National Pension Commission on Tuesday 2 May, 2017 at the above address.**
- S) On your assumption of duty at the National Pension Commission, you are to report to the Head (Human Capital Management Department).**
- T) Once you accept this offer, the Commission shall not entertain any agitation on the review of any aspects of this offer including the grade you have been offered.**

U) If this offer is acceptable to you, please sign the duplicate copy of this letter and return same to the undersigned, not later than seven (7) days from the date of this letter.

Thank you.

Your sincerely,

SIGNED:

Hadiza Wall Oniyangi

For: Head (Human Capital Management)

41. It is well settled in law that documents legally speaking speak for themselves. See the cases of *Okutemi v. Airtel Networks Ltd* [2021] 2 NWLR (Pt 1761) 499 @546, *Paras E-G*; *Ezeanochie v. Igwe* [2020] 7 NWLR (Pt 1724) 430; *Eze v. APGA* [2020] 3 NWLR (Pt 1712) 413; *Ibrahim v. Abdallah* [2019] 17 NWLR (Pt 1701) 293 @ 310, *Para F*; 316-317, *Paras H-A*. This is because the proof of content of a document is done by the document itself. See Section 128(1) of the Evidence Act and the case of *Ashakacem Plc v. A.M. Inv. Ltd* [2019] 5 NWLR (Pt 1666) 447@459, *Paras G-H*. It is clear on the face of the employment letters PENCOM Exhibit series, a copy of which has been highlighted supra, that it is a formal offer of employment made to the Appellants as equally admitted by the Respondents in their Counter affidavit. Certain terms of the contract of employment was stated on the letter, effective start date was equally stated as 2nd May, 2017. The type of notice either party shall give during the probationary period of Six Month was stated as one month notice of termination; time of resumption and closing is stated

therein. The Post for which each Appellant was employed was stated as clearly on the letters. Time of resumption at work and closing time was also included in the letter. The letters incorporated other terms and conditions into their employment the condition of service applicable to PENCOM staff.

42. The above terms of the offer of employment were clearly stated on the face of PENCOM Exhibit series. It is clear as crystal that the major immediate condition in the terms of the offer is an acceptance of the Offer, which is that each Appellant must sign on the duplicate of the Offer letter signifying their acceptance of the Offer of employment, which was immediately complied with by each of the Appellants as evinced on record of Appeal. In ***Wende v. Governor of Benue State & Ors [2019] LPELR-46869(CA)11, Para C***, this Court held that there must be an acceptance of an offer in order to crystallize into a contract. See also the case of ***Tsokwa Oil Marketing Co (Nig) Ltd v. Bank of the North Ltd [2002] LPELR-3268(SC)28, Paras F-F***. The question whether there was an acceptance of an offer or not is a question of fact. The Appellants posited that they accepted the offer of employment and the Respondents never denied it. Other conditions stated therein are to be produced by the Appellants at a date not specified as opposed to the 7 days specified for acceptance of the offer apparently written on the letter. It is therefore, reasonably presumed that the period or date of submission of other documents that were not specifically stated implies that they can produced same at a later date or not later than their resumption date which was stated as 2nd May, 2017. Or 2nd June, 2017 for others. The Apex Court in the case of ***N.R.M.A & F.C v. Johnson***

[2019]2 NWLR (Pt 1656)247@263, Paras E-G; held while considering a similar situation that indeed there existed a valid contract of service between parties therein before the communication of letter of withdrawal of offer of appointment since the offer of employment made by the Appellants to the Respondents therein was accepted. It is thus safe to say as same is rooted in law that once an offer of employment is accepted, it crystallizes into a contract of service. It is equally clear from the facts and circumstances of this instant case that the elements for the creation of a valid contract are all present in this case. There is therefore no doubt that there was a valid probationary employment relationship between the Appellants and the 1st Respondent. I so find and hold.

43. The Respondents by paragraphs of their Counter affidavit alleged that the employment was subject to conditions that have not been met and thus the employment was inchoate. The import of this assertion is that the Appellants employment is subject to fulfillment of the conditions specified in the letter which they failed to comply with. The lower Court unfortunately agreed with their position and held that the Appellants employment was subject to the above listed conditions failing which the employment was held to be inchoate. Now, a pertinent question that agitates my mind in respect of this instant Appeal are first, are those conditions disjunctive or conjunctive and secondly, if the answer to question one is that the conditions are conjunctive, meaning the Appellants shall fulfill all the conditions upon resumption; then who truncated or frustrated the fulfillment of the condition?

44. As stated supra, a document speaks for itself, a party is not allowed to import or subtract from a document what is not contained therein. This was succinctly stated by Owoade JCA (Rtd) in *Nwegbu v. Nwegbu* [2017] LPELR-42680(CA) thusly-

There is no gain saying that by canons of interpretation documents like words are to be construed in their ordinary and grammatical meanings. To this end, the words used in a document must be given their ordinary meaning in the context in which they appear and in no circumstance may new and extraneous words be imported into the text of the document except the document would be incapable of meaningful interpretation without the additional words being incorporated into the text. NWANGWU VS. NZEKWU 3 FSC 36 AT 37 Indeed, the Court must give full interpretation to the portion of the document relating to the issue before it. As it is the cardinal principle of interpretation of documents that parties are presumed to have intended what is contained in a document to which they have subscribed. See: MAXIMUN INSURANCE COY. LTD VS. OWONIYI (1996) 1 NCLC (NIGERIAN COMMERCIAL LAW CASES) (PT. I) 141 AT 145. This is because, it is not the function of the Court to make a contract between the two parties or to rewrite the one already made by them, but it is the Court's duty to construe the surrounding circumstances including written and oral statements to effectuate the intention of the parties. See: OMEGA BANK (NIG.) PLC VS. OBC LTD. (2005) ALL FWLR (PT.249) 1965 at 1967, OYENUGA VS. PROVINCIAL COUNCIL OF THE UNIVERSITY OF IFE (1965) NMLR 9, STANDARD (NIG) ENGINEERING COY. LTD. VS. NIG BANK FOR

COMMERCE AND INDUSTRIES. (2006) ALL FWLR (PT. 316) 255, BAKER MARINE (NIG.) LTD VS. CHEVRON NIG. LTD. (2006) 13 NWLR (PT. 997) 276 at 287 -288."

45. I am afraid there is nothing in the offer of employment letter to support the Respondents' assertion. I have read through the offer of employment and there is nothing in the document stipulating a time lapse for the fulfillment of those conditions as stated earlier except with regards to the date of acceptance of the offer. My lords, I wish to reiterate the advice of our Senior Brothers at the Apex Court in the case of *Ogbe v. Asade* [2009] 18 NWLR (Pt 1172)106@131, Para F; [2009]12 SCNJ 288, which is to the effect that where the integrity or authenticity of a document is not attacked, it is capable of being believed. See also the cases of *Gwacham v. Ilondu & Anor* [2016] LPELR-42095(CA)24-25, Para E and; *Ilondu v. Ilondu & Anor* [2016] LPELR-42093 (CA)23-24, Para F. In the instant case, the Respondents did not attack the authenticity of the letters of employment earlier captured. The gamut of their position is that the Appellants are not employees of the 1st Respondent in that they failed to fulfill the conditions listed in their respective letters of offer of probationary employment and thus remains inchoate and unenforceable. To the Appellants on the other hand, the Respondents frustrated the satisfaction of the itemized conditions by the indefinite suspension or postponement of the date of their resumption. The Respondents admitted at paragraph 8 of their Counter affidavit that they suspended and postponed the Appellants resumption. I have stated earlier that the conditions itemized in the letter must be read together and not disjunctively. Thus, reading the whole conditions

together evince that specifically certain conditions cannot be fulfilled by the Appellants without the directive or access granted by the Respondents, id est item (C), Medical test must be done at the Medical institution appointed by the 1st Respondent, the Respondents did not deny this and there is nothing on record to show that they appointed a Medical institution for the Appellants to conduct a medical test but they failed to access the facility; there is equally no iota of evidence on record by the Respondents to show that the Appellants were allowed to resume on the date specified in their letters but they failed or refused to resume, hence they were asked not to resume by the Respondents. I can go on and on my lords. As espoused supra, the items or conditions listed also constitutes the terms of the employment, e.g. items (d) –(t) are all terms of the employment which are binding on all parties to the contract and not only on the Appellants to comply with.

46. Generally, the position of the law is that the letter of employment is the bedrock or the foundation of an employment relationship, though it admits of exceptions. For instance where parties by conduct, or orally creates an employment relationship as espoused earlier in this Judgment. See ***Shena Security Co. Ltd v. Afropak (Nig) Ltd & Ors [2008] LPELR- 3052 (SC)***. Item (p) of the conditions has infact incorporated the terms of and approved conditions of service governing the employment of Staff in the National Pension Commission. What more, it has thus become so clear as the day break that the Appellants are actually by their various letters of employment, employees of the 1st Respondent whose employment is first and foremost a probationary one for 6 months but their resumption to duty was truncated/frustrated by the 1st Respondent who

suspended their resumption date till a date yet to be announced by the Respondents. Issue one is thus resolved in favour of the Appellants against the Respondents. 1 so hold.

RESOLUTION OF ISSUE TWO

47. I find it plain on record that having issued the Appellants' letters of offer of employment and the Appellants in turn accepted same as admitted by the Respondents. The law is that facts admitted need no further proof, therefore, the Respondents having admitted that the Appellants accepted the offer there is no need to prove same. By *NRMA & FC v. Johnson & Ors*[2019] 2 NWLR (PT. 1656) 247; for a contract or agreement to exist, there must be offer made by one party to another and an acceptance of the offer by the party to whom the offer is made. In other words for a contract to come into existence, there must be a clear and precise offer made by an offeror and an unconditional acceptance of the terms of the offer by an offeree. There is no doubt about the acceptance of the offer of employment by the Appellants in this case as stated supra. Consequent upon which a binding contractual relationship has been created and parties are bound by the contract. It is the law as enshrined that the sanctity and bindingness of the terms and conditions of a contract shall be upheld by Courts. The Respondents by suspending the resumption of the Appellants since 2017 when the Head of Human Capital Management directed them to wait at home for further directive and has up till date not issued any further directive to resume work for no just cause or reasons given to them is an unfair labour practice to say the least. The Respondents left the fate of the Appellants hanging. They are neither here nor there. Some of the Appellants acted on the employment

and tendered resignation letters in their former employment to take up the new employment at the 1st Respondent's having received employment letters and accepted same. One of such resignation letters is hereunder reproduced for ease of reference thus-

"Internal – Memo

**To: Head, Human Capital Management
Department**

Thru: Ag. Head, Investigation Department

From: Chiazor Adaobi Nwafor. (04939)

Date: 30th March, 2017

**Re: APPLICATION FOR RESIGNATION OF MY APPOINTMENT
WITH THE BANK**

***I wish to resign my appointment with the bank, effective 24th
April, 2017.***

This is to enable me explore other opportunities in life.

***I really gained a lot of worthwhile experiences throughout
the period I worked in the bank and will always appreciate
the management for the wonderful opportunity granted to me.***

***It is prayer that the bank will continually grow to become a
brand name in every household in Nigeria.***

Once again, I remain very grateful.

Thank you.

Mrs. Chiazor Adaobi Nwafor. (04939)

48. It is deducible from the above resignation letter Exhibit PENCOM 18 seen at page 84 of the Record of Appeal, written by the 5th Appellant who was employed by the 1st Respondent as Senior Executive Assistant by the 1st Respondent; that she resigned from her former employment Unity Bank. Also, on record of Appeal at page 85 is another resignation letter written by the 1st Appellant who was employed as Assistant General Manager by the 1st Respondent resigning his appointment from UBA. The frustration or suspension of the Appellants employment must have shattered their expectation to put in their service to their fatherland through their engagement by the 1st Respondent. In the current World of Work, there is a new regime of rights recognizable in labour jurisprudence and upheld by labour Courts. NICN (The lower Court), being a specialized Court in employment and labour adjudication has in series of its decisions recognized and acknowledged that expectation interest is recoverable by an employee against his employer. In litany of cases NICN has awarded general damages for breach of expectation interest creating vested rights ditto entitlement to employees, one of such cases is the case of ***Captain Benedict Olusoji Akanni (Rtd) v. The Nigerian Army & 3 Ors, an Unreported Suit No. NICN/ABJ/125/2018, a judgment delivered on 27th May, 2020,*** the NICN held thus-

There is no gainsaying that the refusal of especially the 1st defendant to restore the claimant to his employment shattered the claimant's expectations. And this Court has acknowledged in a number of cases that expectation interest is recoverable by an

employee against his employer. For instance, in Medical and Health Workers Union of Nigeria & ors v. Federal Ministry of Health unreported Suit No. NICN/ABJ/238/2012, the judgment of which was delivered on 22nd July 2013, this Court acknowledged that the practice of skipping of salary grade levels by Government can create an expectation interest, which in turn is capable of creating an entitlement or vested right in favour of the complainants who have all the while been beneficiaries of the practice..." [Emphasis Mine].

49. The Trial Court in *Captain Olusoji Akanni's case* supra, awarded damages in the sum of N75M to the Claimant in that case as compensation for failure of the defendants in that case to restore the Claimant to his employment, if I may use the language of the Court Per Kanyip B.B. The Hon. The President of NICN who held inter alia thus- "*the failure of the defendants to restore the Claimant to his employment as an Officer of the 1st defendant must accordingly be recompensed especially in terms of the failed expectations of the Claimant in that regard*" [Emphasis mine]
50. My lords this Court is not just a Court of law but also a Court of equity. This Court by the dint of Section 15 of the Court of Appeal Act can assume the position of the Trial Court in arriving at a just decision where the Trial Court failed to do so. By Section 13 of National industrial Court Act, 2006, the Trial Court can apply law and Equity

concurrently in ensuring that Jurisdiction is done in a cause or matter that comes under its Jurisdiction. In resolving this Appeal, it will not be out of place to consider the principles of equity in advancing the cause of justice. Now, one of the basic maxim of equity is "Equity acts *in personam*". The import and application of this maxim of equity in relation to contract was decided by the Apex Court in the case of ***MTN (Nig) Comm. Ltd v. Corporate Comm Inv. Ltd [2019]9 NWLR (Pt. 1678)427@466, Paras E-G.*** In that case, the Apex Court held that equity acts *in personam* and therefore takes as done that which ought to be done from the conduct of the parties such inference can be drawn. The Court went further to hold that equity acting *in personam*, looks at the intent of the parties and substance and not the form. According to the Apex Court in that case it was clear from the conduct of the parties, facts abound on which trial Court and the Court of Appeal both rightly held that parties therein intended to be bound by exhibit A which was the basis of the mutual transaction between parties, whether or not the document was formerly executed. The Court equally held that the insistence on compliance with all formalities of executing the written agreement would be oppressive to the Respondent therein and thus found in favour of the Respondent in that case.

51. Applying the above sound and firm position of the Apex Court to this instant case, the whole process of writing aptitude test and participating in an interview culminating in the issuance of employment letters to the Appellants evince that there was a valid employment relationship between the Appellants and the 1st Respondent once they

accepted the offer given to them. It also means that parties intended to create and thus created an employment relationship with each other by the issuance of the letters of employment to the Appellants. This expectation was heightened by the acceptance of the Offer by the Appellants and the terms stated on the letters until their expectation, hope, trust, anticipation to start work on the 1st May, 2017, was shattered by the Respondents when they were asked to wait for further directive which has since failed to come to be. The Respondents should not be allowed to take advantage of the Appellants by their own act of withholding or truncating or suspending or frustrating the employment of the Appellants, while at the same time they gave the Appellants hope and an impression that they would be called upon at a later date. Equity will never close its eyes to such an insensitive act of the Respondents, equity will come to the aid of the Appellants and look on that as done which ought to be done, because from the conduct of parties herein and from the position of PENCOM Exhibits, id est letters of employment, the Respondents did infact raise the hope of the Appellants and kept them in a state of high expectation that they would be called upon to resume work, some of them having resigned from their previous employment.

52. Again, by the conduct of the Respondents the Appellants believed that they have been employed as staff of the 1st Respondent and acted upon it by resigning from their previous employment to their detriment. The Respondents would be estopped from changing the rules of the game at the time it did, having made the Appellants to believe that they are staff of the 1st Respondent and have acted

upon that believe by their consequential act of resignation. See Section 169 of the Evidence Act, 2011. The Supreme Court when faced with a similar situation held inter alia in ***Skyebank Plc v. Adegun [2024] LPELR- 62219(SC)***; thus-

I agree with the Court below and share the view that the Appellant was estopped from changing the status quo at the point it did. The Respondent had been made to believe that he had been left off the hook and told to sin no more. Even if he had been given fair hearing by the Integration Committee, it would be unconscionable and too late in the day to "rediscipline" the Respondent for the same offence on the same facts. The law is that a party cannot be allowed to mislead another person into believing in a state of affairs and then turn around to say to that person's disadvantage that the state of affairs which he represented does not exist at all. That is the doctrine of estoppel. See ALIERO v. SAIDU & ORS (2023) LPELR-59951 (SC).[Emphasis mine].

53. This Court in ***J.P. v. INEC (2004) 12 NWLR (Pt. 886) 140 (CA) 158, D-E***; held that:

Past decisions in matters wherein similar facts and laws to the subsequent ones

should inform the eventual decision of the court.

54. In ***NRMA & FC & Ors v. Johnson & Ors cited*** Supra in this Judgment, the facts of which is that the Respondents in that case were amongst those invited for interview for employment as staff of the 1st Appellant. The Respondents were later offered appointment by the 1st Appellant via exhibits 2, 2(a), 2(b), 2(c), 2(d), 2(e) and 2(f). By their respective letters of appointment, the Respondents were each required to submit medical certificate of fitness given by a government medical officer. Upon acceptance of the offer of appointment, each of the Respondents was required to sign and return the duplicate copy of the letter of appointment attached to the said letter as in this present case. When the Respondents reported for work after accepting their offer of appointment, they were addressed by the Director of Personnel of the 1st Appellant who asked them to wait for further directive. The Respondents continued to report at the headquarters of the 1st Appellant until they were orally asked to stay away from work as there was said to be a directive from the then new government to stop all appointments made in the month of May, 1999. Consequent upon the said directive, the 1st Appellant wrote to the Respondents to withdraw their appointments. The letters of withdrawal were exhibits D5, 06, D7 and D8 respectively. Consequent upon the forgoing, the Respondents commenced the action leading

to the Appeal. The Appellants' main defence to the Respondents' claim was that the contract of employment between the parties was frustrated by the directive of the new Government of the Federal Republic of Nigeria, suspending all the appointments made from January - May, 1999. In its judgment, the Trial Court found that the Respondents' claim succeeded in part. Reliefs 1 and 3 were dismissed while relief 2 was granted. The Appellants; (NRMA & FC) were held liable to pay the Respondents all their salaries and emoluments for the period between 26 May 1999 and 6th December 2000. Both parties were dissatisfied with the decision of the trial Court, so they appealed and cross-appealed to the Court of Appeal. In its judgment, the Court of Appeal dismissed the Appellants' Appeal, but allowed the Respondents' appeal in part. Both parties were still dissatisfied with the decision, hence they appealed and cross-appealed to the Supreme Court. The Supreme Court held that where there is a subsequent impossibility of performance of contract, it brings to an end a valid contract and that the Respondents are entitled to payment of salary. In fidelity to the doctrine of stare decisis I wish to follow the footsteps of our learned Senior Brothers at the Apex Court in Johnson's case supra, in making a finding that the suspension of the Appellants employment by the Respondents has frustrated the valid contract of employment at no fault of the Appellants they are therefore, entitled to damages which is the consequence of the breach.

55. The Appellants by their relief (d) seeks for mandatory payment of their salaries arrears, allowances and entitlement from the date of their employment and same to be calculated by the Respondents and be paid to them. The Appellants did not specify what these entitlements are; hence they are asking that the Respondents be mandated to calculate it and pay them. On the other hand I find that the 1st Respondent infact, failed to specify in the Appellants letters their salary or other entitlement, the letter directed the Appellants by item (f) of the letter of employment to obtain the details of their salary and allowances from the Head (Human Capital Management) National Pension Commission. Specifically, **items (g) and (h) state that the Appellants are to be on 6 months' probation and either party can terminate the employment by giving one month notice or one month salary in lieu of notice.** Consequently, relief (d) is grantable and thus granted. The 1st Respondent is to calculate 6 months salaries and allowances of each of the Appellants, from the 1st of March, 2017 the date of resumption for the 6 months probationary period plus one month salary in lieu of notice they were supposed to be given by the 1st Respondent for unlawful constructive termination of the Appellants' employment. The 1st Respondent having frustrated and thus breached the Appellants probational employment contract without any just cause as stated earlier and without any notice of termination, I accordingly award 6 months' salary the

Appellants would have earned if the contract was not breached by the Respondents for the probationary period, and one month salary in lieu of notice by the dint of items (g) and (h) of the contract of employment. Accordingly, reliefs (a), (b), (c) and (d) succeed. However, reliefs (e) and (f) are refused and thus dismissed.

56. Courts have in plethora of cases, one of which is the case of ***UMTHMB v. Dawa***[200] 16 NWLR (PT. 739) 424; cautioned public bodies not to abuse or arbitrary exercise their powers in employment matters. This Court went on to enjoin public bodies to act in good faith, reasonably and fairly towards employees. Accordingly, by allowing the Appellants to expend time, energy, mental, psychological and financial resources in the process leading to their employment and later suspending or frustrating the employment, is a breach of their contract and expectation interest of the Appellants. Equity and good conscience will not allow the 1st Respondent to avoid liability for altering the position of the Appellants. The action of the Respondents (PENCOM), have indeed injured the Appellants in so many ways, such as their means of livelihood, expected salary, reputational injury, and as stated earlier in this Judgment the expectation Right of the Appellants all breached. In all the Appellants have been injured and the law is that where there is right there is a remedy, the "ubi jus ibi remedium". Would it be right considering the facts and circumstances of this case and the fact that the Appellants did not ask for damages,

except in the area of payment of salary and allowances which I have granted in the light of the reasons given above to still grant damages for the expectation interest or rights of the Appellants?

57. In answering this question, I will like to call in aid one of our most erudite and avuncular legal icon on the bench, Aboki JSC (Rtd) to enlighten us more; on the inherent powers of Superior Courts of record to make consequential orders while applying the ubi jus ubi remedium doctrine in ***Okeke v. Nwigene & Anor [2021] LPELR-58170(SC)***; He stated thus-

According to the learned senior counsel for the appellant, the Court is not a Father Christmas to grant what was not asked for. That indeed is the position of the law. However, and as rightly submitted by learned counsel for the respondents, it is an established principle of law that the powers of a Court of law to make consequential orders is inherent and flows from its Jurisdiction to try the case. All superior Courts of record possess inherent powers not necessarily derivable from any law. It is embedded in a Court to ensure and enhance a free flow of Jurisdiction to end users. A consequential order is therefore an order which gives effect to the judgment already given by the Court. It is not granted as a fresh, unclaimed or unproven relief. See: APC & Ors v. Karfi & Ors (2017) LPELR 47024 SC; (2017) 16 NWLR (Pt. 1592) 457; Governor, Ekiti State & Ors v. Olubunmo & Ors (2016) LPELR-48040SC; (2017)

3 NWLR (Pt. 1551) 1. In *Karaye v. Wike & Ors* (2019) LPELR 49382, this Court, per Eko JSC, held as follows: " ... A consequential order is the one which flows directly and naturally from the decision or order of Court made on the issues in litigation. It is inevitably consequent upon it. The Courts make consequential orders to protect the judgment, particularly declaratory or the non-executory judgments, in favour of the plaintiff. Every Court has inherent powers to make consequential orders to give effect to its judgment. Even when the relief for consequential order was not specifically asked for from the Court, the Court has the power to grant such relief as a consequential relief to give effect to its judgment or declaration which it follows, once from the facts, it is incidentally necessary to protect established rights. The refusal to grant the consequential order sought would potentiate the respondents, against whom the declaratory relief was made, to flout the declaration made by the trial Court with impunity. It would tantamount to preventing the appellant from reaping the fruits or full benefits of the declaratory judgment he had obtained from the Court. On the principle of Ubi Jus Ibi remedium, Courts do not make judgments that are in vain. It is, beyond doubt that an injunctive order is necessary to give bite to and to make enforceable the declaratory relief the trial Court made in favour of the appellant..." [Emphasis is Mine].

58. The Trial Court by Section 19(d) of the National Industrial Court Act, 2006, has power to award compensation or damages, the law provides thus-

19. The Court may in all other cases and where necessary make any appropriate order, including-

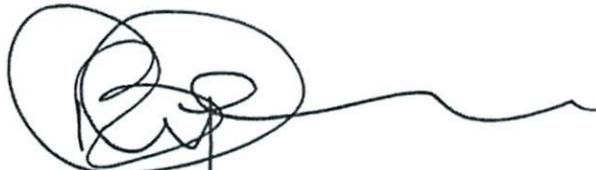
(d) an award of compensation or damages in any circumstance contemplated by this Act or any Act of the National Assembly dealing with any matter the Court has Jurisdiction to hear;

59. Apparently, the above Section of the NIC Act, donates to the Trial Court the power to make consequential Orders or award of general damages. This Court in ***P. Z. Cussons (Nig) Plc v. Bello [2025] LPELR-81656(CA) and Adegboye v. UBA [2022]LPELR-58778(CA)***; whilst placing reliance on the provisions of Section 19(d) of the NIC Act, 2006, affirmed the power of the NIC to make award of compensation or damages where it deems necessary and I equally affirm same.
60. I have earlier invoked the provision of Section 15 of the Court of Appeal Act as amended in assuming the position of the Trial Court, I am tempted to equally invoke the provision of Section 19(d) of NICA, 2006 and armed by the decision of the Supreme Court in Okeke's case Supra, to make a consequence order for award of general damages or compensation to the Appellants for lost of expectation, lost of means of livelihood, lost of reputation and so on. In Captain Olusoji Akanni's case supra, the Claimant sought for general damages and he was

awarded the sum of N75m general damages by NICN for loss of expectation right in 2020, in this instance however, having granted relief (d), which is the payment of 6 months' salary and one month salary in lieu of notice to the Appellants the amount they would have earned on probation if their expectation was not suspended, I would not award further damages just so that it would not amount to double compensation. One thing is certain and that is the fact that the action of the Respondents was an unfair labour practice, breach of contract of their employment and expectation right of the Appellants for which the Appellants are entitled to damages and cost. Having awarded payment of salary and allowances to the Appellants as damages, I will thus restrain myself from awarding further damages in whatever name is called. I so hold.

61. It is in the light of all said, that I find merit in this Appeal and allow same. Consequently, the Judgment of the National Industrial Court delivered on the 13th June, 2023, Coram Obaseki J. in ***Suit No. NICN/ABJ/188/2022, Oluwatosin Gizali & Ors v. National Pension Commission & Anor;*** is hereby set aside.
62. Cost of N10,000,000.00 (Ten Million Naira) Only is awarded to the Appellants for cost attendant upon

putting the Appellants to unnecessary and unwarranted rigors of litigation since 2022.



HON. JUSTICE OYEJOJU O. OYEWUMI
Justice, Court of Appeal.

APPEAL NO. CA/ABJ/CV/830/2024

BALKISU BELLO ALIYU, (JCA)

I have had the privilege of reading the draft of the judgment just delivered by my learned brother **Oyejoju O. Oyewumi, JCA.** His Lordship has competently dealt with the two issues presented for the determination of the appeal, and I adopt the entire reasoning and conclusion reached in therein. I allow the appeal in terms of the lead judgment and abide by the consequential orders made therein.



BALKISU BELLO ALIYU
Justice, Court of Appeal

APPEAL NO.: CA/ABJ/CV/830/2024
DONATUS UWAEZUOKE OKOROWO JCA

I had the opportunity to read before now the draft of the Judgment just rendered by My Learned Brother **OYEJOJU OYEBIOLA OYEWUMI JCA**. I agree with the reasoning and conclusion therein and adopt them as mine. I agree that the Appeal has merit and should be allowed. In the same token the Judgment of the National Industrial Court, Abuja in suit no: NICN/ABJ/188/2022 delivered on the 13th June, 2023 is hereby set aside.

I abide by the order of cost made by My Learned Brother in the Lead Judgment.



DONATUS UWAEZUOKE OKOROWO
JUSTICE, COURT OF APPEAL