DR. AJEWUMI BILI RAJI V.

V

1. **UNIVERSITY OF ILORIN**
2. **THE GOVERNING COUNCIL, UNIVERSITY OF ILORIN).**
3. **STAFF DISCIPLINARY AND APPEAL COMMITTEE, UNIVERSITY OF ILORIN**
4. **PROFESSOR SHUAIB OBA ABDULRAHEEM**

(Vice Chancellor, University of Ilorin)

5. **MR. MURTALA TUNDE BALOGUN**

(Registrar and Secretary, Governing Council, University of Ilorin)

COURT OF APPEAL

(ILORIN DIVISION)

CA/IL/53/2005

ABOY1 JOHN IKONGBEH. J.C.A. (Presided)

TIJJANI ABDULLAH], J.C.A.

HELEN MORONKEJI OGUNWUMIJU. J.C.A. (Read the- Lending Judgment)

WEDNESDAY. 31ST MAY. 2006

ADMINISTRATIVE LAW -Disciplining of University staff-Statutory-disciplinary powers - Body exercising - Whether and when such power can be delegated.

AGENCY - University Council and University Registrar - Whether agents of the University - Section 3(2) of the University of Ilorin Act construed.

CONTRACT - Contract of employment -Allegation of misconduct against an employee - Right of employer to set up investigating panel.

CONTRACT- Contract of employment- disciplining of employee- procedure thereof – where governed by law, rules and regulation – needs for employer therewith.

LABOUR LAW- Disciplining of employee procedure therefor - Where governed by laws, rules and regulation - Need employer to comply therewith.

LABOUR LAW - Misconduct - Allegation of misconduct against cm employee - Right of employer to set up investigating panel

LABOUR LAW - Employment with statutory flavour - Termination of - procedure therefor - Need to comply with statutory rules and regulation.

LABOUR LAW - Disciplining of university staff- Statutory disciplinary powers - Body exercising - Whether can be delegated.

NOTABLE PRONOUNCEMENT- On need for an employee to keep the rules and regulations of his employment.

STATUTE – Statutory provisions - Whether can he waived

UNIVERSITY - university Council and university Registrar-Whether agents of the University.

Issue:

> Whether the trial court was right to have held that neither the provisions of the University of Ilorin Act relating to disciplinary procedure nor the provisions of the 1999 Constitution relating to fair hearing were breached by the respondents in terminating the appointment of the appellant.

Facts:

The appellant joined the service of the 1st respondent in 1991 and as at the year 2000 he was a senior lecturer in English in the department of Modern European Languages. Faculty of Arts of the University of Ilorin. He was thus a Senior Academic Staff of the university. The appellant, sometime in February 2000, was awarded the Alexander Von Humboldt Research Fellowship by Western Germany. The appellant applied for study leave from the authorities of the University. He was supposed to resume in Germany by 29th march. 2000. As a result of time constraint, he later sought executive approval from the 4th respondent - the Vice Chancellor. He left the country for the fellowship programme before and without approval from the 1st respondent or the 4th respondent.

The 1st respondent promptly slopped his salary and issued the query exhibit 4. The appellant replied on 8/5/2000 in exhibit 5. The Governing Council asked the appellant to appear before the 3rd respondent in exhibit Bili 7. The appellant wrote back from Germany giving reasons why could not return back to Nigeria within the time stipulated to appear physically before the 3rd respondent. The 2nd respondents instructed the appellant to report back at the University not later than 21/12/2000 or regard his appointment as having been terminated. The appellant was unable to return. The 2nd respondent wrote exhibit l terminating the appellant's appointment.

Consequently, the appellant by way of originating summons taken on the 25/9/01 sued the respondents and submitted for determination by the Federal High Court, llorin the question whether the trial of the appellant in absentia by the Senior Staff Disciplinary and Appeals Committee (SDAC) for misconduct, the consideration of the report of the trial and the decision thereon taken by the Governing Council of the University of llorin conveyed to the appellant vide a letter dated 14th December, 2000. Leading to the purported voluntary termination of the employment of the appellant as u staff of the University of Ilorin was not ultra vires the respondents, unconstitutional, illegal, null and void having regard to the provisions of section 36(1) of the Constitution of the Federal republic of Nigeria. 1999, and the provisions of the University of Ilorin Act. Cap. 455. Laws of the Federation of Nigeria, 1990, in particular section 15 of same.

The appellant also claimed the following reliefs:

"1. A declaration that the purported consideration of the allegations of misconduct levelled by the defendants against the plaintiff and the report made and submitted to the 2nd defendant in respect thereof by the Senior Staff Disciplinary and Appeals Committee are illegal, unconstitutional, null and void as same violates the right of the plaintiff hearing as guaranteed by section 36(1) of the constitution of the federal republic of Nigeria, 1999.

2. a declaration that the consideration of the said report and the decision taken thereon by the 2nd defendant, directing the plaintiff to return to the university unfailingly and not later than 21st December, 2000 failing which he would be deemed to have voluntarily terminated his appointment is illegal, unconstitutional null and void as same violate the plaintiffs right to-fair hearing as guaranteed by section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999.

3. A declaration that the defendants are biased against the plaintiff.

4. An order removing before this Honourable Court for quashing and quashing the report of the said Staff Disciplinary and Appeals Committee as it relates to the plaintiff and the decision taken thereon by the 2nd defendant communicated to the plaintiff vide a letter dated 14th December. 2000 for violating the principles of natural justice.

5. An order reinstating the plaintiff back to his office in the 1st defendant as a Senior Lecturer in the Department of Foreign Languages. Faculty of Arts with all his rights and privileges attached thereto."

The trial court found from the affidavit evidence that the appellant was not denied fair heaving under section 5 of the University of llorin Act or under section 36(1) of the 1W) Constitution. It accordingly dismissed the appellant's claims.

Dissatisfied, the appellant appealed to the Court of Appeal. The appellant contended that the respondents did not comply with the statutory steps as provided for in section 15 of the University .of llorin Act. 1990 in purporting to terminate his appointment. He maintained that the 2nd respondent did not give the requisite notice of misconduct to the appellant to provide the legitimate Inundation for the subsequent disciplinary proceedings against the appellant.

In determining the appeal, the Court of Appeal considered the provisions of section 15(1) of the University of llorin Act which provides:

"S. 15(1) If it appears to the Council that there are reasons for believing that any person employed as a member of the academic or administrative or professional staff of the University, other than the Vice-Chancellor, should be removed from his office or employment on the ground of misconduct or of inability to perform the functions of his office or employment, the Council shall:

(a) Give notice of those reasons to the person in question;

(b) Afford him an opportunity of making representations in person on the matter to the Council: and

(c) if he or any three members of the Council so request within the period of one month beginning with the date of the notice, make arrangements:

(I) for a joint committee of the Council and the Senate to investigate the matter and to report on it to the Council, and

(ii) For the person in question to be afforded an opportunity of appearing before and being heard by the Investigating Committee with respect to the matter.

And if the Council, after considering the report of the Investigating Committee, is satisfied that the person in question should be removed as aforesaid, the Council may so remove him by an instrument in writing signed on the directions of the Council.

Held (unanimously dismissing the appeal):

1. On Termination of employment with statutory flavour –

   Where the terms of employment are governed by laws, rules and regulations - that is, having statutory flavour, the employee's employment cannot he terminate except in accordance with such rules and regulation? In the instant case, section 15 of the University of llorin Act confers on the University staff a special status over and above the normal contractual relationship of master and s Consequently, the only way to terminate such contract of 'service with statutory flavour is to adhere strictly to the procedure laid down in the statute i.e. Unilorin Act. [F.C.S.C v Laoye (1989) 2 NWLR (pt 106) 652; Olaniyan v. Unilag (1985) 2 NWLR (Pt.9) 599; Iderima v. Rivers State civil Service Commission (2005) 16 NWLR (Pt. 951) 378 referred to.] (p 275 paras. C-F)

2. On Whether statutory provision cart be waived –

   Statutory provisions cannot be waived. [Menakaya v. Menakaya (2001) 16 NWLR (Pt. 738) 203 referred to.] (P. 275, para. E)

3. On Whether statutory disciplinary power can be delegated -

   The power of the Governing Council under section 15(1) of the University of llorin Act is a statutory disciplinary power. It is the power to remove and discipline an earring academic, administrative and professional staff of the University. A statutory disciplinary power cannot be delegated. Even though the Staff Disciplinary and Appeal Committee (SDAC) is a Committee created by the Act, the Governing Council cannot delegate its powers of discipline to it. [Bamgboye v. unilorin (1999) 10 NWLR (Pt. 622) 290 referred to.] (p. 276, paras. D-E).

4. On Whether and when statutory disciplinary power can be delegated -

   The person to whom an office or duty is delegated cannot lawfully devolve the duty upon another unless he is expressly authorized to do so. The power of Council lo discipline Senior Administrative, Academic and Professional Staff of the University under section 15(1) of the Unilorin Act was delegated to it by that section of the Act, the Council cannot delegate it to another i.e. the S.D.A.C. (P. 276, paras, E-F)

5. On Whether the University Council and University Registrar are agents of the University -

   By virtue of section 3(2) of the University of llorin Act, the University Council set up under section 5(1) of the Act is an agent of the University. So also is the Registrar who by his appointment is the Chief Administrative Officer of the University. [Bamgboye v. Unilorin (1999) 10 NWLR (Pt. 622) 290 referred to.] (P. 276, paras. G-H)

6. On Right of employer to set up investigating panel where misconduct is alleged against an employee -

   Where an allegation of misconduct has been made against an employee, the employer is entitled to set up a panel to investigate the allegation or as in the instant case refer the allegation to a Committee established for such purpose. In the instant case, exhibits Bill 6 and Bili 7 showed clearly that the Council delegated its powers to investigate the allegation of misconduct on the Staff Disciplinary and Appeal Committee (SDAC). Exhibit Bili 9 was the Council's deliberation on the report of the S.D.A.C., it showed that the Council deliberated on the report and made its decision. The final disciplinary decision was made by the Council and not the delegated body. Thus, the SDAC merely made recommendations to the Council. There was no delegation of the actual power of discipline which was exercised by the Council through the Registrar vide exhibits Bili 10 and Bili 1.[Edet v. Chief of Air Staff (1994) 2 NWLR (Pt. 324) 41; Baba v. N.C.A.T.C.. Zaria (1991) 5 NWLR (Pt. 192) 388 referred to.] (P. 277, paras. A-E)

7. NOTABLE PRONOUNCEMENT:

   On Need for an employee lo keep the rules and regulations of his employment-

   Per IKONGBEH, J.C.A. at pages 282-284, paras. B-C:

"The sheer bravado with which the appellant has pursued this matter through the High Court and this court is amazing. Instead of addressing the real facts, of which he is abundantly aware, and admitting that he was in the wrong and seeking to make amends, the appellant and his legal adviser have been pursing technicalities and make-believe. They want everyone to believe that the appellant had committed no wrong at all and that he is only being victimised by the 4th respondent, who, he claims, harbours personal animosity towards him.

They want everybody to ignore the fact that the appellant admits that he did leave his duty post and travel overseas, to pursue a course for which he had won an award, without permission from his employers. They want everybody to ignore the fact that he admits that he needed such permission to travel but travelled without it anyway. They want everybody to buy his explanation that he travelled without permission because he was confident that the permission was only a matter of time in coming. They want everybody to forget that he admits that be does not dispute that it is in the absolute discretion of the 1st respondent or it's duly authorised official to grant or refuse permission. They want everybody to forget that he admits that soon after the respondents discovered that he had travelled overseas without permission they expressed their displeasure and issued him a query to explain why disciplinary action should not be taken against him. They want everybody to ignore the fact that he admits that they wrote to him more than once requiring him to return home and resume his duties. Everybody should forget that he himself revealed in one of his arrogant replies that instead of complying and returning home, he made arrangements and moved his family from Nigeria to join him overseas and fixed them in schools there and seeks to use this very act of insubordination as the reason for his inability to comply with the directive to him to return home. From March 2000, when he travelled out up till date he has not shown his face at his duty post. He has prosecuted this case by proxy through his friend. Professor .J. Adepoju Akinyanjn. Who, on his own admission, receives instructions on the phone and by email? What further evidence could there be that the appellant has indeed abandoned his duty post with no intention of returning to it?

Now he wants to blame all his travails on the 4th respondent. He says that the latter had deliberately withheld the grant of permission because of the hatred he (4th respondent) has for him (appellant). The question, however, is, does this cancel out the fact that the appellant abandoned his duty post and traveled out of the country without the permission that he himself acknowledges he needed before travelling? Does it cancel out of the fact that he has persistently refused to return to it despite repeated demand by the respondents that he return to it? One would have thought that the fact that the 4th respondent had animosity towards him was the more reason for him to be careful

enough not to take any rash or foolish step in contravention of the rules and regulations that would give his enemy the opportunity to exercise his acknowledged disciplinary powers under the law against him. A popular local adage warns that one should not dance in front of a naked furnace soaked in highly inflammable oils with one's enemies completely surrounding the place: enemies who have legitimate cause and powers to feed him into the furnace. The appellant should ha\e heeded this warning by endeavouring to keep within the rules and regulations instead of playing into his perceived enemy's hands.

His reason for travelling without the requisite permission was that he would have lost some time from his study period had he waited beyond 29th March. 2000 to obtain the permission before travelling. But is that good enough reason for him to refuse to return when it became abundantly clear that his employers were not willing to give him permission to remain away from his duty post?

I do not think so. That might be a reason sympathise with the appellant, but it certainly does not suffice as a reason for forcing the respondents to condone the appellant's action taken in contravention of the rules and regulations governing his employment. By the proceedings before the High Court and before us the appellant is seeking to force the respondents to condone his breach of the rules that forbid an employee to abandon his duty post. He has no moral ground on which to stand and make such a claim.

He had a choice in the circumstances to either return to his job, and forget the course he had won an award to pursue, or forget the job and pursue the course. The facts as disclosed mostly by the appellant himself show that he chose the latter option. The respondents did no more than respect his choice and accept that he had himself brought an end to the employer/ employee relationship that had existed between them.

Therefore, in my view, the appellant had no moral justification for dragging the respondents through the courts. Indeed he should have been grateful to them for the many opportunities they put in his way to retain his job with them, even though he was undeserving of the kind gesture, considering his arrogant disregard for authority. He should have been pleading with the respondents for mercy. But no, he wants the courts to penalise the respondents for exercising their acknowledged legal powers. He wants the court to force the respondents against their wish to grant permission to him to stay away from his duty post on his own terms and still retain him in their employment."

Nigerian Cases Referred to in the Judgment:

Akujinwa v. Nwaonnuma (1998) 13 NWLR (Pt.583) 632

Annum v. K.S.J.S.C. (2006) All FWLR (Pt.296) 843

Baba v. N.C.A.T.C. Zaria (1991) 5 NWLR (Pt.192) 388

Bumaiyi v. A.-G., Fed. (2001) 12 NWLR (Pt.727) 468

Bamgboye v. Unilorin (1999) 10 NWLR (Pt. 622) 290

Darma v. Oceanic Bank Int'l (Nig.) Ltd. (2005) 4 NWLR (Pt.915)397

Edet v. Chief of Air Stuff (1994) 2 NWLR (Pt.324) 41

F.C.S.C. v. Laoye (1989) 2 NWLR (Pt. 106) 652

Fed. Poly Mubi v. Yusuf (1998) 1 NWLR (Pt. 533) 343

Iderima v. Rivers State C.S.C. (2005) 16 NWLR (Pt. 951) 378

Jibrin v. N.E.P.A. (2004) 2 NWLR (Pt.856) 210

Menakaya v. Menakaya (2001) 16 NWLR (Pt. 738) 203

Noibi v. Fikolati (1987) 1 NWLR (Pt.52) 619

Ogbonna v. A.-G., imo State (1992) 1 NWLR (Pt.220) 647

Olaniyan v. unilag (1985) 2 NWLR (Pt. 9) 599

Olatunbosun v. N.I.S.E.R. (1986) 3 NWLR (Pt.29) 435

Osawe v. Osawe (2003) FWLR (Pt. 1 83) 975

Romaine v. Romaine (1992) 4 NWLR (Pt.238) 650

U.N.T.H.M.B. v. Nnoli (1994) 8 NWLR (Pt. 363) 376

Nigerian Statutes Referred to in the Judgment:

Constitution of the Federal Republic of Nigeria, 1999, S. 36(1). University of llorin Act. Cap. 455, Laws of the Federation of Nigeria. 1990. Ss. 3(2); 5(l) (a) and 15(1) (a). (b) & (c)

& 3(d). University of llorin Act. Cap. 117. Vol. 15. Laws of the Federation of Nigeria. 2004, S. 16

Appeal:

This was an appeal against the decision of the Federal High Court dismissing the appellant's claims. The Court of Appeal, in a unanimous decision, dismissed the appeal.

History of the Case:

Court of Appeal:

Division of the Court of Appeal lo which the appeal was brought: Court of Appeal. Ilorin

Names of Justices that sat on the appeal: Aboyi John Ikongheh. J.C.A. (Presided): Tijjani Abdullah:. J.C.A.:

Helen Moronkeji Ogunwumiju. J.C.A. (Read the Leading Judgment)

Appeal No.: CA/1L/53/2005

Date of Judgment: Wednesday. 31st May. 2006

Names of Counsel: Dayo Akinlaja (with him, Temitope Odedele) -for the Appellant

Mr. K. K. Eleja (with him, Nnenna Uregbulam) -for-the Respondents

High Court:

Name of the High Court: Federal High Court, Ilorin

Name of the Judge: P. F. Olayiwola. J.

Date of the Judgment: Friday, 18th March. 2005

Counsel:

Dayo Akinlaja (with him, Temitope Odedele) -for the Appellant

Mr. K. K. Eleja (with him, Nnenna Uregbulam) - for the Respondents

OGUNWUMI. J.C.A. (Delivering the Leading Judgment):

This is an appeal against the judgment of Hon. Justice P.F. Olayiwola of the Federal high court sitting at Ilorin delivered on 18th March, 2005. The appellant herein was the plaintiff at the High Court and the respondent', herein were the defendants.

The appellant joined the service of the 1st respondent in 1991 and as at the year 2000 he was a senior lecturer in English in the department of modern European language, faculty of arts of the University of Ilorin. He was thus a Senior Academic Staff of the University. The appellant sometime in February 2000 was awarded the Alexander Von Humboldt Research Fellowship by Western Germany. The appellant applied for study leave from the authorities of the University. He was supposed to resume in Germany by 29th March. As a result of time constraint, he later sought executive approval from the 4th respondent - the Vice Chancellor. He left the country for the fellowship programme before and without approval from the 1st respondent or the 4th respondent. The 1st respondent promptly stopped his salary and issued the query exhibit 4. The appellant replied on 8/5/2000 in exhibit 5. The Governing Council asked the appellant to appear before the 2nd respondent in exhibit Bili 7. The appellant wrote back from Germany giving reasons why he could not return back to Nigeria within the time stipulated to appear physically before the 4th respondent. The 2nd respondent instructed the appellant to report back at the University not later than 21/12/2000 or regards his appointment as having been terminated. The appellant was unable to return. The 2nd respondent wrote exhibit terminating the appellant's appointment.

The appellant filed a suit at the Federal High Court, Ilorin by of way of originating summons on 25/9/2001 as follows:-

LET THE DEFENDANTS all of the University of Ilorin, Nigeria in the Ilorin Judicial Division of the Federal High Court within eight days after the service of this summons on them, inclusive of the day of such service cause an appearance to be entered for them to this summons, which is issued upon the application of the above - named plaintiff of the University of Ilorin. Nigeria who claims that his employment has been unlawfully/wrongfully terminated by the defendants from the university, for the determination of the following question:-

Whether the trial of the plaintiff in absentia by the Senior Staff disciplinary and Appeals Committee (SDAC) for misconduct, the consideration of the report of the trial and the decision thereon taken by the Governing Council of the University of Ilorin conveyed to the plaintiff vide a

letter dated 14th December, 2000, leading to the purported voluntary termination of the employment of the plaintiff as a staff of the University of Ilorin is not ultra vires the defendants. Unconstitutional, illegal, null and void having regard to the provisions of Section 36(1) of the constitution of the Federal Republic of Nigeria 1999, and the provisions of the University of Ilorin Act. Cap. 455 Laws of the Federation of Nigeria. 1990, in particular section 15 of same?

AND THE PLAINTIFF SEEKS THE FOLLOWING RELIEFS:-

1. A DECLARATION that the purported consideration of the allegations of misconduct levelled by the defendants against the plaintiff and the report made and submitted to the 2nd defendant in respect thereof by the Senior Staff Disciplinary and Appeals Committee are illegal, unconstitutional, null and void as same violates the right of the plaintiff to fair hearing as guaranteed by section 36(1) of the Constitution of the Federal Republic of Nigeria. 1999.

2. 2. A DECLARATION that the consideration of the said Report and the decision taken thereon by the 2nd defendant, directing the plaintiff to return the University unfailingly and not later than 21st December 2000 failing which he would be deemed to have voluntarily terminated his appointment is illegal, unconstitutional, null and void as same violate the plaintiff's right to fair hearing as guaranteed by sea
36(1) of the constitution of the Federal Republic of Nigeria, 1999.

3. A DECLARATION that the defendants are biased against the plaintiff.

4. AN ORDER removing before this Honourable Court for QUASHING the report of the said Staff Disciplinary and Appeals Committee as it relates to the plaintiff and the decision taken thereon by the 2nd defendant communicated to the plaintiff vide a letter dated 14th December, 2000 for violating the principles of natural justice.

5. AN ORDER reinstating the plaintiff back to his office in the 1st defendant as a Senior Lecturer in-the Department of Foreign Languages, Faculty of Arts with all his rights and privileges attached thereto.

In a considered judgment, the learned trial Judge found that from the affidavit evidence before him, the plaintiff was not denied fair hearing under section 15 of the University of Ilorin Act or under section 36(1) of the 1999 Constitution. He then dismissed the appellant's claims.

The appellant being dissatisfied filed this appeal. The appellant's brief dated 25/10/05 was filed on *261*10/05 and deemed field on 1/2/06. A reply brief was dated 23/3/06 and filed on the same day. Mr. Dayo Akinlaja urged the court to allow the appeal. The respondents' brief dated 13/3/06 was filed on 14/3/06. Mr. Eleja respondents' counsel urged the court to dismiss the appeal.

The appellant's counsel Mr. Dayo Akinlaja, Esq. settled only one issue for determination in this appeal and it is stated as follows:-

> "Whether the learned trial Judge was not wrong to have dismissed the case of the plaintiff/appellant regard being had to the circumstances of the case."
>
> - Grounds 1-9

Dauda, Esq. also identified one sole issue for determination. Stated below:

> "Whether the trial court was not right to have dismissed the appellant's case having regard to the provisions of the University of llorin Act, the provisions of the Constitution on fair hearing and the totality of the facts of this case?"

Simply put, the issue on which this appeal turns is whether the trial Judge was right to have held that neither the provisions of the University Ilorin Act relating to disciplinary procedure nor the provisions of the 199 Constitution relating to fair hearing were breached by the respondents in terminating the appointment of the appellant.

On this issue, Mr. Akinlaja submitted that in the circumstances this case, the crux of the responsibility of the lower court was to determine whether or not the respondents took the appropriate statutory steps in purporting to terminate the appointment of the appellant. He submitted that the respondents did not comply with Section 15 of the University of Ilorin Act. 1990 (it is now section 16 Cap. 117. Vol. 15. Laws of the Federation, 2004).

He postulated that the 2nd respondent did not give the requisite justice of misconduct to the appellant to provide the legitimate foundation for the subsequent disciplinary proceedings against the appellant. He argued that Section 15(1) provides for a mandatory procedure to be followed by the University. He cited *Bamaiyi v. A.*-V *Fed.* (2001) 12 NWLR (Pl.727) pg. 468 at 497. He argued that the learned trial Judge had held that it was the Committee - Staff .'Disciplinary and Appeals Committee that issued the query thus contravening the provisions of the law stipulating that queries can only be issued by the council. He submitted that the council had no power to delegate its disciplinary powers to any authority of the diversity. He cued *Bamgboye v. Unilorin* (1999) 10

NWLR (Pt. J22) 290: (1999) 6 SCNJ 295 at 327: Id*erima v. River Slate C.S.C.* [2005) 16 NWLR (Pt. 951) 378: (2005) 7 SC (Pt. lll) pg.135 at 140-140.

He argued that the finding of facts by the trial court that the query exhibit Bili 4 was issued by the S.D.A.C. is erroneous since there was no indication of that on the fact of the query itself nor was it copied to Council. He submitted that even if the council could have rightly delegated its powers, it could not delegate it to the S.D.A.C. as that Committee was unknown to the Act.

Learned respondents' counsel in his brief submitted on the question of the proper authority issuing the notice or query exhibit Bili 4 was issued from the office of the Registrar who is a member of council and the Secretary to Council. He did not complain against the notice but replied with exhibit 5. He cannot now turn
around to make any complaint about it. He cited *Ogbonna v.* A-Ufa *Imo State* (1992) 1 NWLR (Pl.220) Pg. 647 at Pg. 676. He that adequate notice as required by Section 15 (a) of the University of Ilorin Act was given to the appellant by exhibit Bili 4.

Learned respondents' counsel distinguished this case from the case of *Iderima v. Rivers State C.S.C. supra*. He argued that the facts herein are different. In *Iderima v. Rivers State C.S.C.*, there was a complete departure from the Rivers Slate Civil Service Rules which was frown upon by the Supreme Court. He submitted that a party that look pan in irregular procedure cannot turn around to complain about it. He cited *Noibi v. Fikolati* (1987) 1 NWLR (Pt.52) Pg. 619 at 632. Learned respondents" counsel argued that once the
appellant had replied the notice or query and admitted travelling or absconding from his duty without authorization vide exhibit Bili 5 and Bili 8, all the appellant's counsel's complaint about lack of fair hearing is mere academic exercise. He cited *Jibrin v. N.E.P.A.* (2004) 2 NWLR (Pt.856) 210 at 229 - 230.

Section 15 of the University of Ilorin Act stales as follows:-"15(1) If it appears to the council that there are reasons for believing that any person employed as a member of the academic or administrative or professional staff of the University, other than the vice-chancellor, should be removed from his office or employment on the ground of misconduct or of inability to perform the functions of his office or employment, the council shall:

(a) give notice of those reasons to the person in question:
(b) afford him an opportunity of making representations in person on the matter to the council: and

if he or any three members of the council so request within the period of one month beginning with the date of the notice, make arrangements:

i. for a joint committee of the council and the senate to investigate the matter and to report on it to the council, and

ii. for the person in question to be afforded an opportunity of appearing before and being heard by the investigating committee with respect to the matter and , after council, after considering the report of the investigating committee, is satisfied that the person in question should be removed as aforesaid, the council, remove him by an instrument in signed on the directions of the council."

On this aspect of the issue, it is now well established that where the terms of employment are governed by laws, rules and regulations that is having statutory flavour. The employee's employment cannot be terminated except in accordance with such rules and regulations see F.C.S.C. v. Olaoye (1989) 2 NWLR (Pt. 106) 652 at 714; Olaniyan v. Unilag (1985) 2 NWLR (Pt. 9) 599; Iderima v. Rivers State Civil Service Commission (2005) 18 NWLR (Pt. 951) 378; (2005) 7 SC (Pt. III) 135 at 144. The reply of learned respondents' counsel that the appellant cannot turn around to complain after consenting to wrong procedure is tom my mind in this case is off the mark. It is well settled that statutory provisions cannot be waived. See Menakaya v. Menakaya (2001) 16 NWLR (Pt. 738) 203; (2001) 9 SCNJ 1 at 19.

Section 15 of the Unilorin Act confers on the University staff a special status over and above the normal contractual relationship of master and servant. Consequently, the only way to terminate such a contract of service with statutory flavour is to adhere strictly to the procedure laid down in the statute i.e. Unilorin Act. This case has been fought purely on affidavit evidence. The onus is on the appellant to prove that the termination of his appointment was unlawful.

On this issue the learned trial Judge had this to say:

> "I take judicial notice of the fact that functions of the I University are usually performed by the officials of the University, therefore T.A. Adeyemi was competent to sign exhibit Bili 4 on behalf of the defendants; just as Mrs. Ololade was competent to sign exhibit Bili 7. Furthermore, the Governing Council had never denounced the action of T.A. Adeyemi. I also reject the contention of the plaintiff that it was the Appointment Promotion Committee that masterminded" disciplinary action against the plaintiff. Paragraph *2$* exhibit Bili 4 clearly slated that: *'information hi readied the administration* that you have left the country without waiting for the Appointment & Promotions Committee to consider your application." (Italics mine)

It is common ground that the notice of allegation of misconduct is the query exhibit Bili 4.1 agree with the learned trial Judge that the functions of the University are performed by officers of the University and that the Registrar of the University who is also the-Secretary to the Council of the University should be able to execute instructions of the Council. The case of *Bamgboye v. Unilorin supra* is very instructive on this aspect of the issue. The facts and the issues are almost on all fours with this case. The learned Justices of the Supreme Court in considering the various sections of the University of Ilorin Act held that the power of Council under section 15(1) of the University of Ilorin Act is a statutory disciplinary power. It is the power to remove and discipline an erring academic, administrative and professional staff of the University. A statutory disciplinary power cannot be delegated. See page 326 of the *Bamgboye v. Unilorin.* Also in that case, the status of the S.D.A.C. was considered, and it was held that even though it was a Committee created by the Act the Council could not delegate its powers of discipline to it.

The principle of law is that the person to whom an office or duty is delegated cannot lawfully devolve the duty upon another unless he be expressly authorized to do. The power of Council to discipline Senior Administrative. Academic and Professional Staff of the University under section 15(1) of the Unilorin Act was delegated to it by that Section of the Act the Council cannot delegate it to another i.e. the S.D.A.C.

In the light of the above, we must look at the disciplinary procedure adopted in respect of the appellant's case by the respondents. Exhibit Bili 4 is a query written by the Registrar of the University. The Registrar did not refer or purport to take authority from the S.D.A.C. - the disciplinary Committee. In *Bamgboye v. Unilorin.* the Supreme Court upheld the finding of the trial court that by virtue of section 3(2) of the Unilorin Act, the University Council set up under section 5(1) of the Act is an agent of the University. So also is the Registrar who by his appointment is the Chief Administrative Officer of the University.

Exhibit Bili 4 was written by the Registrar - as Chief administrative officer and Secretary to Council. Exhibit Bili 6 and 7 show clearly that the council delegated its powers to investigate ; allegation of misconduct on the S.D.A.C. Exhibit Bili 9 is the council's deliberation on the report of the A.C., it showed that the council deliberated on the report and/ made its decision. The final disciplinary decision was made by the council and not the delegated body. Thus, the S.D.A.C. merely made commendations to the Council. There was no delegation of the actual power of discipline which was exercised by the council rough the Registrar vide exhibit Bili 10 and exhibit Bili 1

Thus, I am of the firm view that the initiation of disciplinary proceedings was done by the Registrar through whom the University cited. By exhibit Bili 6 dated 7/9/2000, the Registrar's office wrote the appellant, its decision to refer the matter to the S.D.A.C.

It only stands to reason, that where an allegation of misconduct as been made against an employee, the employer is entitled to set a panel to investigate the allegation or in this case to refer the allegation to a committee established for such purpose. See *Edet v Chief of Air Staff (1994)* 2 NWLR (Pt.324) 41 at 59; *Baba v 'V.C.A.T.C. Zaria* (1991) 5 NWLR (Pt.192) 388 at 418. See Nnaemeka-Agu, JSC in *Baba* v. *N.C.A.T.C. Zaria suvra.*

Exhibit Bili 10 dated 14th December. 2000 states as follows-

"Dear Dr. Raji

Unauthorized Absence from Duty Post You will recall that your case was considered in absentia by the Staff Disciplinary and Appeals Committee (SDAC) using available evidence in respect of an allegation of misconduct leveled against you. The Governing Council at its meetings of 14th December. 2000 has carefully considered the report of the staff Disciplinary and Appeal's Committee and directed that you be advised to return to the University unfailingly, but not later than 21st December. 2000 failing which you will be deemed to have voluntarily terminated your appointment.

Accordingly, you are hereby advised to return to your duly post as directed."

Exhibit Bili 1 dated 8th Jan. 2001 stales as follows:

"Dear Dr. Raji,

Voluntary Termination of appointment

You will recall that by our letter dated 14th December 2000 Council's decision that you should return to the University by 21st December, 2000 was communicated to you. It has been observed that as at 21st December 2000 you have failed to comply with this directive. Sequel to the above, we have been directed convey council's directive to you that having failed return to your duty post as at 21st December, 2000, are deemed to have voluntarily terminated appointment with effect from the date you abandoned your duly post without due approval i.e. 29th March, 2000.

You are required to hand over all University property, including your identity card to the University Authority."

The wordings of both exhibit Bili 1 and exhibit Bili 10 show that the writer was conveying the disciplinary decision of the council to the appellant. It was not the decision of the S.D.A.C. and the S.D.A.C. did not presume to convey any disciplinary decision to the appellant. I am of the view that the council did not delegate its powers of discipline to any subordinate or other body and it properly exercised its powers over the appellant.

Exhibit Bili 10 did not even implement all the various disciplinary measures recommended by the S.D.A.C. in exhibit Bili 3. It only instructed the appellant to return to his duty post within a certain time. Exhibit Bill 11 written on the 26th of June. 2001 treated him as having voluntarily terminated his employment and stated his consequential entitlements.

In my view, the Governing Council of the University was more than generous. The appellant cannot eat his cake and have it. He cannot be holding down two different positions on two continents without the consent of his employers. The University Council rightly in my opinion terminated his employment in accordance with S. 15(3)(d) of the Unilorin Act. The affidavit evidence show that up till 23 June. 2004 three years after the appellant was supposed to be back at his duty post, affidavits were still being sworn to on his behalf on the understanding that he would be back in the Country soon". See page 83 - 84 of the Record.

The second point argued by learned appellant's counsel is that matter of discipline could only be referred to the joint committee , council and the senate after the council had given notice of conduct 10 the erring staff. The respondent only afforded the 2llanl an opportunity to make representation to the S.D.A.C. and the appropriate authority which is the council. Thus he was denied Opportunity of being heard in accordance with section 15(l)(b) l(c)of the Act.

Learned respondents' counsel replied on this point that the appellant had failed to take the opportunity provided by Section of the Unilorin Act to request for a joint Committee of the senate and Council, therefore he cannot be heard to complain that was denied the opportunity. He cited *Menakaya* v. *Menakaya* 001) 16 NWLR (Pl.738) 203 at 263 On this the learned trial Judge held:-

"I have looked at Section 15 of the Act, it provides for a joint committee where there was a request for it either from the plaintiff or the Disciplinary Committee. There was not such request in exhibit Bill 5 and in exhibit Bili 8 plaintiff urged the defendants to lake his representations in Billi 8 as his position on the matter." I am of the view that appellant's counsel's argument on this issue is completely misconceived. The appellant had made all ^presentations to the S.D.A.C. who

investigated the allegation [against him. He had the opportunity to request for a joint Committee 'the Council and the Senate to decide his matter. The whole disciplinary process starting with the issuing to him of exhibit Bili 4 the query commenced on 5th May 2000 and ended with exhibit Bili 110 dated 14lh December. 2000. He had a period of about 6 months to make the request which he failed and neglected to do. He cannot complain of lack of opportunity to do so.

Section 15(l) (b) and (c) of the Unilorin Act talk of the appellant's right to make personal representation to the council and right to make arrangement for a joint committee of the council and Senate. I think the legal maxim *volenti 11011 fit injuria* is applicable restrain the appellant from complaining in the circumstances that was not given adequate opportunity to present his case by virtue Section 15(l)(b) and (c).

Learned counsel for the appellant also argued that even though appellant indicated inability to appear, the failure of the S.D.A.C. to sit on 14/11/2000 and its failure to notify the appellant rescheduled was fatal lo the case of the respondents. He cited Osawe v. *Osawe* (2003) FWLR (Pt.183) 975 at 105.

He further submitted that exhibit Bili 3 showed that the appellant had already been found guilty before he was heard. He argued! exhibit Bili 3 showed clearly that the S.D.A.C. was biased against the appellant before his appointment was terminated thus the statu procedure laid down was not followed and he was denied fair hearing. He cited *U.N.T.H.M.B.* v. *Nnoli(1994) 6* NWLR (Pt. 250) 752; 10 SCNJ 7 at 88 - 91; *Fed. Poly Mubi v.Yusuf*/(1998) 1-

533) 343; (1998) 1 SCNJ 11 at 17

Learned respondents' counsel submitted in reply that appellant was given fair hearing in this case. Fair hearing does necessary mean oral representation. The appellant had elected that his written representation should be taken in lieu of his physical appearance. He cited *Olatunbosun* v. *N.l.S.E.R.* (1986) 3 NWLR; (Pt.29) 435 at 437: *Baba* v. *N.C.A.T.C.* (1991) 5 NWLR (Pt.192). 388 at 418. He argued that the appellant was given every opportunity to be heard though he chose not to make himself available physically to be heard orally. He *cited Danna v. Oceanic Bank lnt'1 Nig. Ltd.* (2005) 4 NWLR (Pt.915) 315 al 408; *Annum v. B.S.J.S.C.* (2006) All FWLR (Pt.296) 843 at 860. He submitted that there was enough evidence on record to support the decision of the trial court. He cited *Romaine* v. *Romaine (1992)* 4 NWLR (Pt.238) 650 at 667; *Akujinwa v. Nwaonuma (*1998) 13 NWLR (Pi.583) 632 ai 647.

A careful perusal of exhibit Bili 3 to my mind does not show any bias. The report of the committee exhibit Bill 3 showed clearly the attempts of the committee to investigate his mailer and their conclusions and recommendation to senate. Where is the bias when the appellant failed to utilize three opportunities given to him by the Committee of the University to appear in person more so when the allegation of misconduct was his absence from his duly post which he had admitted in exhibits Bili 5 and Bili 8. To my mind, I am of the view that the appellant was given every opportunity to be heard See *Darma v. Oceanic Bank supra* al 408 and *Annam v. B.S.J.S.C. supra* at 860.

Finally, learned appellant's counsel argued that even though the appellant was given a query for his abandonment of duty exhibit Bill 4, his appointment was eventually terminated according to exhibit Bili 1 because of his failure to return to his duty post by 21st December, 2000 in obedience to the directive of the council. He argued that the respondent ought to have given the appellant a fresh earring. He ought to have been given the opportunity to make representation on why he could not be back at the University by the scheduled date of 21st December, 2000.

On this the learned trial Judge held as follows:-

> "Learned counsel also suggested that the plaintiff has been indicted before being heard. This was also disputed by the other side. I do not agree to the plaintiff's counsel on this as exhibit Bili 3 did not terminate his appointment but asked him to return to his duty post latest 30/11/2000 which he did not comply with. By exhibit Bi Hi 10, plaintiff was also asked to return home by 14/12/2000. he did not comply with this too."

From the affidavit evidence it is clear that the appellant's ointment was deemed terminated by him on his failure to report lo his duly post. The University Council gave him an opportunity to retrace his steps which he did not avail himself of ere is absolutely no need for the University to issue a query on appellant for his failure to obey a direct order of the council lo item to his duty post. He was plainly made to understand that the consequence of his failure to return to his duty would result in automatic termination of his appointment.

Learned appellant's counsel in his brief did not seriously canvass any argument with regard to an alleged breach by the respondents If Section 36(1) of the 1999 Constitution. However on a careful leading of the whole proceedings and judgment of the trial court. I persuaded that there has been no breach of the appellants institutional right to fair hearing.

For the foregoing reasons, I am of the view that the appellant's eal lacks merit and it is hereby dismissed. 1 award N 10.000 costs the respondents against the appellant. Appeal dismissed.

KONGBEH, J.C.A.: I have had the privilege of reading before the judgment just delivered by my learned brother. Ogumvumiju. CA. I entirely agree with her that this appeal is totally lacking in lent and ought to be dismissed. She carefully analyzed the legal angle and came to the right conclusion that the respondents well within their rights and powers in regarding the appellant-having voluntarily brought the employer/employee relations between the 1st respondent and himself to an end and in a the fact.

I want to look at it a bit from the moral angle. The sheer bravad with which the appellant has pursued this matter through the High Court and this court is amazing. Instead of addressing the real facts of which he is abundantly aware, and admitting that he was in the wrong and seeking to make amends, the appellant and his legal adviser have been pursing technicalities and make-believe. They want everyone to believe that the appellant had committed no wrong at all and that he is only being victimised by the 4th respondent, who he claims, harbours personal animosity towards him.

They want everybody to ignore the fact that the appellant admits that he did leave his duty post and travel overseas, to pursue a course for which he had won an award, without permission from his employers. They want everybody to ignore the fact that he admits that he needed such permission to travel but traveled without it anyway. They want everybody to buy his explanation that he travelled without permission because he was confident that the permission was only a matter of time in coming. They want everybody to forget that he admits that he does not dispute that it is in the absolute discretion of the 1st respondent or its duly authorised official to grant or refuse permission. They want everybody to forget that he admits that soon after the respondents discovered that he had travelled overseas without permission they expressed their displeasure and issued him a query to explain why disciplinary action should not be taken against him. They want everybody to ignore the fact that he admits that they wrote to him more than once requiring him to return home and resume his duties. Everybody should forget that he himself revealed in one of his arrogant replies that instead of complying and returning home, he made arrangements and moved his family from Nigeria to join him overseas and fixed them in schools there and seeks 10 use this very act of insubordination as the reason for his inability to comply with the directive to him to return home. From March 2000. when he traveled out up till date he has not shown his face at his duty post. He has prosecuted this case by proxy through his friend. Professor J. Adepoju Akinyanju who on his own admission, receives instructions on the phone

and by e-mail. What there be that the appellant has indeed, adorned his duty post with no intention of resuming to it?

Now he wants to blame all his travails on the 4th respondent, says that the latter had deliberately withheld the grant of mission because of the hatred he (4th respondent) has for him (appellant). The question, however, is, does this cancel out the fact the appellant abandoned his duty post and traveled out of the country without the permission that he himself acknowledges heeded before travelling? Does it cancel out of the fad that he has consistently refused to return to it depend repealed demand by the respondents that he return to it? One would have though that the 4th respondent had animosity towards him was the more reason for him to be careful enough not to take any rash or foolish in contravention of the rules and regulations that would give is enemy the opportunity to exercise his acknowledged disciplinary under the law against him. A popular local adage warns that he should not dance in front of a naked furnace soaked in highly flammable oils with one's enemies completely surrounding the ice; enemies who have legitimate cause and powers to feed him the furnace. The appellant should have heeded this warning by devouring to keep within the rules and regulations instead of laying into his perceived enemy's hands.

His reason for travelling without the requisite permission was lat he would have lost some time from his study period had he lifted beyond 29th March 2000 to obtain the permission before veiling. But is that good enough reason for him to refuse to return /hen it became abundantly clear that his employers were not willing Itogne him permission to remain away from his duty post'?

I do not think so. That might be a reason to sympathise with the appellant but it certainly does not suffice as a reason *for forcing* the respondents to condone the appellant's action taken in contravention the rules and regulations governing his employment. By the readings before the High Court and before us the appellant is king to force the respondents to condone his breach of the rules 'at forbid an employee to abandon his duty post. He has no moral mind on which to stand and make such a claim.

He had a choice in the circumstances to either return to his job and forget the course he had won an award to pursue, or forsel the and pursue the course. The facts as disclosed mostly by the 'appellant himself show that he chose the latter option. The respondents did no more than respect his choice and accept that he had himself brought an end to the employer/employee relationship that had existed between them.

Therefore, in my view, the appellant had no moral justification for dragging the respondent s through the courts. Indeed he should have been grateful to them for the many opportunities they put in his way to retain his job with them, even though he was undeserving of the kind gesture, considering his arrogant disregard for authority. He should have been pleading with the respondents for mercy. But no, he wants the courts to penalise the respondents for exercising their acknowledged legal powers. He wants the court to force the respondents against their wish to grant permission to him to stay away from his duty post his own terms an still retain him in their employment.

For this and the fuller reasons given by my learned brother in the lead judgement, I too dismiss this appeal. I abide by all the consequential orders.

ABDULLAHI,J.C.A.: I have had the advantage of reading in draft the leading judgement of my learned brother, Ogunwumiju, JCA, and agree with her assessment and conclusions. She had dealt exhaustively with all the live issues in this appeal. I too dismiss the appeal for lack of merit and abide by the order as to costs.

Appeal dismissed.