

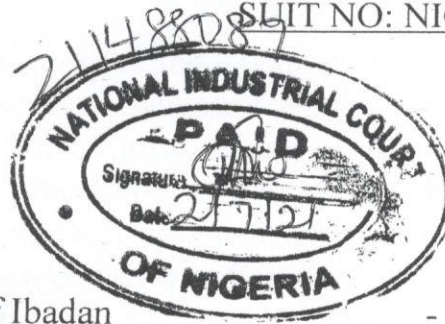
IN THE NATIONAL INDUSTRIAL COURT OF NIGERIA
IN THE IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN
BEFORE HIS LORDSHIP HON. JUSTICE J.D. PETERS

DATE: 24TH JUNE, 2021

SUIT NO: NICN/IB/85/2016

BETWEEN

Dr. Adenike A. O. Ogunshe



Claimant

AND

1. University of Ibadan
2. The Council, University of Ibadan

Defendants

REPRESENTATION

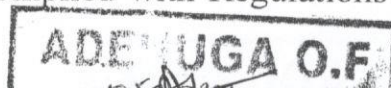
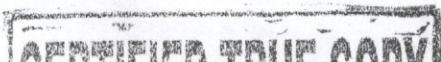
Femi Aborisade with Oladapo Ajisegiri, A.O Dare, O.D Ogunsola
& R.A Ejiwumi for the Claimant
A.S Ajayi for the Defendants

JUDGMENT

1. Introduction & Claims

1. The Claimant commenced this case by a Complaint dated 8/9/2016 and filed along with the other required frontloading processes on 9/9/2016. The Claimant, in her Complaint and Statement of Facts, made the following claims against the Defendants –

1. A declaration that the employment relationship between the Claimant and the Defendants is one characterized by statutory flavor and governed by constitutional force.
2. A declaration that the query dated 3/5/13 to the Claimant, which is based on a purported complaint received by the Vice Chancellor rather than by the Registrar is wrongful, not having complied with Regulations 8.1.5(a)(j) of the *Staff Handbook: Rules and Regulations Governing Condition of Service of Senior Staff, August, 2003*, made pursuant to the enabling law of the 1st Defendant, the *University of Ibadan Act, Cap. U6, Laws of the Federation of Nigeria, 2004* (updated to 31st December 2010, Vol.14), a subsidiary legislation made pursuant to the University of Ibadan Act.
3. A declaration that the query dated 3/5/13 to the Claimant without disclosing the complainant and the documented complaint against the Claimant, is wrongful, not having complied with Regulations 8.1.5(a)(i)



and 8.1.5(e) of the *Staff Handbook: Rules and Regulations Governing Condition of Service of Senior Staff, August, 2003*, made pursuant to the enabling Law of the 1st Defendant, the *University of Ibadan Act, Cap. U6, Laws of the Federation of Nigeria, 2004* (updated to 31st December 2010, Vol. 14), a subsidiary legislation made pursuant to the *University of Ibadan Act*.

4. A declaration that the query to the Claimant dated 3/5/13, which requires the Claimant "to show cause why disciplinary action should not be taken against you for this act of misconduct" is wrongful, same having not complied with the procedure prescribed in Regulations 8.1.5(a)(i), 8.1.5(a)(ii), 8.1.5(a)(iv), 8.1.5(c), and 8.1.5(d) of the *Staff Handbook: Rules and Regulations Governing Condition of Service of Senior Staff August, 2003*, made pursuant to the enabling Law of the 1st Defendant, the *University of Ibadan Act, Cap. U6, Laws of the Federation of Nigeria, 2004* (updated to 31st December 2010, Vol. 14), a subsidiary legislation made pursuant to the *University of Ibadan Act*.
5. A declaration that the roles of the Vice Chancellor of the 1st Defendant in the processes leading to the termination of the Claimant constitute gross violations of the principles or rules of natural justice and the rules of fair hearing, in that the Vice Chancellor acted as the accuser, the investigator, a Witness against the Claimant and Judge in his own case. VC acted as a witness notwithstanding he was at the same time chair of the SSDC the Panel G of which investigated the Claimant.
6. A declaration that the communication in or before 2013 by the Vice Chancellor of the 1st Defendant to the *National Universities Commission (NUC)* to the effect that the Claimant had been investigated by the *Senate Truth Committee (STC)* and the *Senior Staff Disciplinary Committee (SSDC)* and found culpable of refusal to move to a new office as stated in the NUC letter dated 12/4/13 ever before the Claimant was queried in May 2013, investigated in 2014-2015 and purportedly found guilty in 2016 is unjust and unconstitutional, same being a violation of the requirements of fair hearing, a negation of the rules of natural justice and an unfair labour practice.
7. A declaration that the membership of the SSDC and the SSDC Panel "G", which comprised Claimant's HOD and Dean who were connected with the allegation against the Claimant is unconstitutional, unlawful and wrongful in that the named bodies were not constituted in such a way as to secure their independence and impartiality as prescribed in the *Constitution of the Federal Republic of Nigeria, 1999 as amended, Section 25 (5) of the University of Ibadan Act*; and Regulation 8.1.1 of the *Staff Handbook: Rules and Regulations Governing Condition of Service of Senior Staff, August, 2003*.

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8. A declaration that the membership of the Council, which took the final decision to terminate the appointment of the Claimant but which comprised persons who had conflicts of interests with the Claimant without disclosing same violates the provisions of the Constitution on fair hearing, negates *Section 25 (5) of the University of Ibadan Act*, and breaches the rules of natural justice.
9. A declaration that the letters by the Registrar and Secretary to Council of the Defendants dated 14/6/16 and 15/8/16, which conveyed to the Claimant on behalf of Council that the Council has decided to terminate the appointment of the Claimant without the equitable notice of three (3) months or payment of three months salaries in lieu of notice, is wrongful, being a violation of Regulation 5.3.2 of the *Staff Handbook: Rules and Regulations Governing Condition of Service of Senior Staff, August, 2003*.
10. A declaration that the directive issued by the Claimant's Head of Department, Ag. Head of Department, Botany and Dean, Faculty of Science that the Claimant should vacate her office and relocate to a new office without considering the defence of the Claimant, touching on real threats to personal life and security is an unlawful directive in view of the particular actual threats to the Claimant's constitutionally guaranteed right to life and the specific advice of the Nigeria Police Force, the facts of which are well known to the Security Unit of the Defendant's institution, the office of the Vice Chancellor and the Defendant.
11. A declaration that the directive issued by the Claimant's Head of Department, Ag. Head of Department, Botany and Dean, Faculty of Science that the Claimant should vacate her office and relocate to a new office without considering the defence of the Claimant, touching on real threats to personal life and security is a discriminatory directive and an unfair labour practice.
12. A declaration that the 2nd Defendant's failure to carry out the directive of the Visitor to the 1st Defendant which accepted the recommendation of the Visitation Panel that the grievances of the Claimant, including the issue of her office, should be investigated and resolved as opposed to the Claimant being processed for punitive disciplinary action is unlawful, same being a breach of *Section 9 (b) of the University of Ibadan Act*.
13. A declaration that the findings, recommendations and the Report of the SSDC Panel "G" are tainted with bias, lack of objectivity and unfairness to the claimant and are therefore unlawful, unconstitutional and null and void.
14. A declaration that the termination of the appointment of the Claimant based on the findings, recommendations and Report of the SSDC Panel "G" and the SSDC is unlawful, unconstitutional, unjust and null and void.

15. An order setting aside the findings, recommendations and the Report of the SSDC Panel "G" and the SSDC on the ground of being perverse and a violation of the Claimant's constitutionally guaranteed right to life, natural justice and fair hearing.
16. An order setting aside the letters dated 14/6/16 and 15/8/16, which terminated the appointment of the Claimant.
17. An order reinstating the Claimant to her position as Senior Lecturer, without any loss of earnings, salaries, allowances, perquisites of office, seniority, privileges, pensionable rights and right to promotion, without any break in service, from 14/6/16 until the final determination of this Suit, as if she was never terminated.
18. An order for the payment of all earned remunerations, salaries, allowances, perquisites of office, including:

- i. Backlog of unpaid balance of salaries for January-March 2016 wherein out of the net-pay per month of about =N=223,000 (as shown on the Pay Advice for November 2015), only about =N=208,000 was paid: =N=15,000x3 = =N=45,000.
- ii. Backlog of unpaid balance of salaries for April-June 2016 wherein out of the net-pay per month of about =N=223,000 (as shown on the Pay Advice for November 2015), only about =N=192,000 was paid for each of the months of April-June 2016: =N=31,000x3 = =N=93,000.

Total estimated earned but unpaid earnings, excluding pension rights =N=138,000.00

19. Cost of this action in the sum of =N=1,800,000 (One Million Eight Hundred Thousand Naira). **Alternatively**

20. An order for the payment of the sum of (=N=8,000,000.00) Eight Million Naira being general damages for the failure, refusal and/or negligence to give the equitable three months' notice before terminating the employment of the claimant and for the life-threatening trauma to which the claimant had been subjected.

21. Any other order(s) and further orders that the Honourable Court may deem right in the circumstances.

2. In reaction, the Defendants entered an appearance to the Complaint and filed their statement of defence dated 4/5/17 along with all other frontloaded processes on 8/5/17. The defence processes filed were regularized 2018. The Claimant filed her Reply to Statement of Defence and Additional Written Statement on Oath on 17/10/2017. These processes were regularized on 1/2/2018.

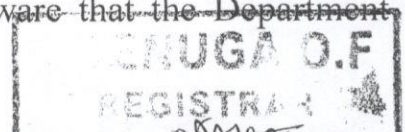
2. Case of the Claimant

3. Claimant opened her case on 30/10/18 as *CW*. She adopted her witness depositions dated 9/9/16 and 17/10/17 as her evidence in chief and tendered 63 documents as exhibits. The documents were admitted in evidence and marked as *Exh. AO1 – Exh. AO63* respectively.

4. The case of the Claimant as revealed from the testimonies in chief and the evidence led is that for security reasons known to the Defendants she could not relocate from her office to another as directed by the Defendants; that there were threats to her life which threat was known to the Defendants and for which the Defendants failed to take action; that she was not the only academic staff using the Preparatory Room as office at the time but that she was the only one singled out for relocation and that the Defendants did not strictly comply with the procedure laid down by them for discipline of staff of her cadre.

5. Under cross examination, Claimant stated that her duties are not as directed by the Head of Department; that part of her duties is to lecture and to mark students' scripts; that was one of the reasons she was given an office; that she was subject to allocation and reallocation of offices by the Head of Department; that she was an academic staff before her appointment was terminated. Claimant testified that she carried out many duties in different places and tied to Heads of those other Departments; that her Head of Department had power to assign her academic duties; that she was bound by the decisions taken by the Department so long as they did not endanger her life and the lives of her students; that the decisions to relocate her from office by the Head of Department was not backed by the University; that indeed the 1st Defendant provided her with personal security;

6. Claimant testified that the controversial appointment of the Head of Department was in 2006 while her appointment was terminated in 2016; that between the time there were several reasons given for reallocating her to another office; that between 2006 and 2016 there were different Heads for the Department; that the last Query issued to her was by the 1st Defendant's Vice-Chancellor; that the said procedure was contrary to the regulation; that the direction of the Dean was for her to leave the Preparatory Room but that she was not occupying the Preparatory Room and as such she could not have obeyed the direction. *CW* added that she did not request for the Dean to attend the *Senior Staff Disciplinary Committee* meeting because the Committee had already formally invited the Dean; that the Dean did not attend the meeting; that she only got to know after the Report was submitted; that she is aware that the Dean was the representative of the Vice-Chancellor in the Faculty of Science; that the Department of Microbiology was under the Faculty of Science headed by the Dean. According to the witness she is aware that the Department of



Botany and Microbiology was later separated into Department of Botany and Department of Microbiology; that she is aware that the block that housed her office then was allocated to be part of the Department of Botany; that she did receive a letter to vacate the office; that she did not comply because there were threats to her life then to the knowledge of the 1st Defendant; that she is aware that the acting Head of Department wrote to inform the Dean of Science; that the Dean did not direct her to leave Botany Department; that he directed her to leave Preparatory Room which she was not occupying at the time; that the Query she received was on allegation of refusal to vacate the Preparatory Room; that she once appeared before a *Senior Staff Disciplinary Committee* on issue of refusal to teach; that she got a letter of reprimand on false allegation of refusal to teach which she appealed but that the Defendant ensured that her appeal was not heard; that she wrote a *SOS* to the *National Universities Commission* respecting all victimization she was experiencing by the Defendant; that she did not commit act of insubordination while in the employment of the Defendants and that she attended Departmental meetings of her Department.

3. Case of the Defendants

7. On the 5th of March, 2019, the Defendants commenced their defence. They called one *John Babalola Ajibola* as *DW1*. The witness adopted his witness deposition dated 8/5/17 as his evidence in chief and tendered 139 documents as exhibits. The documents were admitted in evidence and marked as *Exh. D1 – Exh. D139* respectively.

8. The case as put forward by the Defendants in its pleadings and evidence led is that the Claimant was offered appointment as a lecturer in the 1st Defendant by the 2nd Defendant; that the Claimant was subject to the rules and regulations governing the appointment of staff in the 1st Defendant; that the Claimant was not allocated the place she converted as an office by any authority in the Defendants, but she decided to convert same being a Preparatory Room in the Final Year Laboratory; that the Claimant was requested to move from the converted office several times by several Heads of Department within the old Department of Botany and Microbiology and later when the old Department was demerged into the Department of Botany and the Department of Microbiology between 2006 and 2016 when her appointment was eventually terminated for her refusal to vacate the said converted office by a letter dated 14th June, 2016 on the directive of the 2nd Defendant that offered her appointment as an academic staff.

9. It is the case of the Defendants that the Claimant started to agitate by reason of the appointment of an Acting Head of Department in 2006 over a Professor in the old Department of Botany and Microbiology by the then Vice-Chancellor, and later confirmed/ratified by the Senate of the 1st Defendant; that

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the Claimant was queried for acts of misconduct bothering on her refusal to teach and mark scripts earlier and found guilty by 2nd Defendant which seriously reprimanded her sometime in 2010/2011; that the Claimant was invited by the 1st Defendant's *Senate Truth Committee* (STC) set up by the 1st Defendant to look into various complaints coming from the Claimant and from the new Department of Microbiology, and afterward the STC in its report of 2013 Claimant was advised to comply with the request and directives of the Departments which she never complied with; that the Claimant escalated her matter to the *National Universities Commission* (NUC), sometime in 2013, and the same NUC asked the Claimant to comply with all the directives of the Department of Microbiology; that the Claimant did not comply with the directive to relocate by the new Department of Microbiology, hence the Ag. Head of Department of Botany under whose jurisdiction the Preparatory Room in the Final Year Laboratory was located then kindly asked the Claimant to vacate the said self converted laboratory by the Claimant to an office, she refused; that the Claimant was then directed by the Dean of the Faculty of Science to vacate the Preparatory Room which she had converted to an office in a memo to her, Claimant refused; that the Claimant was then issued query from the Registrar of the 1st Defendant, acting through the Principal Assistant Registrar in the Establishments Division of the Registry, following a report of insubordination by the Dean of Science against a lawful directive to the Claimant hence the disciplinary process which eventually led to the termination of her appointment by the 2nd Defendant.

10. Under cross examination, *DWI* stated that *Exh. AO33* was not limited to refusal of Claimant to vacate the Preparatory Room; that all previous memoranda referred to refusal of the Claimant to vacate the Preparatory Room; that the document dated 18/3/13 is not the only document that requested Claimant to vacate the Preparatory Room; that *Exh. D137* is predicated on a document dated 16/2/12; that *Exh. D138* did not say that the Claimant had been occupying the Preparatory Room in the Department of Botany; that the Report against the Claimant was submitted to the Vice-Chancellor of the 1st Defendant; that *Panel G* of the *Senior Staff Disciplinary Committee* determined that the Claimant had a case to answer and that by a document dated 21/3/16, Claimant was not obliged a copy of the Report of the *Senior Staff Disciplinary Committee*.

11. According to *DWI*, the Vice-Chancellor is a member of the *Governing Council*; that the *Governing Council* takes final decision on the decision of the *Senior Staff Disciplinary Committee*; that the Vice-Chancellor is also the Chair of the *Senior Staff Disciplinary Committee*; that *Panel G* of the *Senior Staff Disciplinary Committee* is a sub-committee of the *Senior Staff Disciplinary Committee*; that the Vice-Chancellor directed the Registrar to query the Claimant; that he is not aware that the *Panel G* of the *Senior Staff Disciplinary*

Committee interviewed the Vice Chancellor as a witness against the Claimant; that he is not aware that the Vice Chancellor told *Panel G* that Claimant had some medical issues; that he is not aware that the *Visitation Panel* directed the *Governing Council* to resolve all issues of the Claimant; that Claimant had been in her office for all Accreditation and Resource Verification Exercises from 2004 until her appointment was terminated and that the Chairman of *Panel G* presented the report to the *Senior Staff Disciplinary Committee*

12. One Stella Oluwayemi-Soola was called as *DW2* on 4/2/2020. Witness adopted her witness statement on oath of 8/5/17 as her evidence in chief and tendered 10 documents as exhibits. The documents were admitted in evidence and marked as *Exh. D140 – Exh. D149* respectively. While being cross examined, witness testified that Claimant was not given a copy of the complaint against her. There was no re-examination.

13. One Abiodun Anthony Onilude testified as *DW3*. *DW3* adopted his statement on oath of 8/5/17. He did not tender any document as exhibit. Under cross examination, witness stated that he is aware of *Exh. AO57*; that the exhibit did not challenge his integrity; that possibly he had administrative differences with the Claimant while in the employment of the 1st Defendant; Claimant did not allege that he plagiarised her *M.Sc Dissertation*; that he is aware that Claimant opposed his appointment as Acting Head of Department of Botany; that he is also aware that Claimant presented petition to the Senate against his appointment; that *Exh. AO15* was issued by him and did not state that Claimant was occupying the *Preparatory Room*; that the exhibit was copied to the Chief Technologist to inform the Chief Technologist that he would occupy the *Preparatory Room*; that he was a member of the *Senior Staff Disciplinary Committee*; that he always stepped out whenever discussions at those meetings were about the Claimant and that the record of those proceedings always indicated that he stepped out.

14. *Sherifah Monisola Wakil* was called and testified as *DW4*. *DW4* adopted her witness deposition of 5/5/17 as her evidence in chief. *DW4* tendered a document which was admitted in evidence and marked as *Exh. D150*. Under cross examination, *DW4* stated that she was the acting Head of Department between 11/8/16 and 31/7/18; that before then she was a Lecturer only; that she was not the acting Head of Department at the material time relevant to the case of the Claimant; that she was not involved in the issuance of Query to the Claimant; that she was not a member of the *Senior Staff Disciplinary Committee*; that she was not a member of the *Senate*; that she was not a member of the *Senate Truth Committee*; that she was not a member of the *Council* that took decision to terminate the appointment of the Claimant; that as a Lecturer she did not have access to the documents relating to the Claimant; that she was not connected at all with the issue and disciplinary procedure

involving the Claimant in any official capacity and that she did not lie on oath in this case.

15. 3 additional witnesses were called by the Defendants on subpoena. The first was one *Olufunmilola Fasidi* who testified as *DW5*. Witness after being put on oath informed the Court that he resides at No 3, Irepodun Crescent, Bashorun, Ibadan and that he retired in 2007 as a Professor in the Department of Botany and Microbiology. *DW5* testified that at no time during his tenure as Head, Department of Botany and Microbiology did he allocate the Preparatory Room in the Final Year Laboratory to the Claimant; that the said Preparatory Room was being used by the final year students for their practical and research project; that both academic and non-academic staff make use of the Room for practical preparation and that he did not plead with the Claimant to use her money to renovate the said Preparatory Room.

16. Under cross examination *DW5* stated that he never said the office of the Claimant was temporarily out of use; that his tenure as Head of Department was from August 1998 to September 1st 2001; that it is the responsibility of the Department to allocate office to Lecturers to carry out their duties; that he did not allocate any office to the Claimant to carry out her work; that he did not ask the Claimant to vacate the office she was using; that he does not know the position occupied by the Claimant during his tenure as Head of Department; that he does know if the office of the Claimant was presented to the *National Universities Commission* for the purpose of accreditation of the Department as he was away on sabbatical at the time to *Adekunle Ajasin University, Akungba*; that he was not aware that Claimant used her resources to fix the Preparatory Room and that he did not allocate any furniture item to the Claimant.

17. Prof. Oluwole Sonubi was called as *DW6* on subpoena. *DW6* testified that he retired from the 1st Defendant as a Professor and that he did not at any time or place call or request the Claimant to support Dr. Onilude who is now a Professor in the Department. In cross examination, witness stated that he was not aware of the Report of *Visitation Panel* of 2011 and neither was he aware of any *Visitation Panel* to the 1st Defendant between 2004 and 2010.

18. Salam Adebayo Moshood, a Lecturer in the Department of Botany, also on subpoena testified as *DW7*. Witness stated that on the day in question, security personnel came to his office and informed him that the final year room doors were not locked; that he pleaded with them to wait till 8.00pm; that by 8.00pm himself and Security Officer had to go to Agbowo to buy a Padlock which was used to secure the Laboratory and the offices within the Laboratory; that he was not under any instruction to do so; that he did so because of his concerns for the materials in the offices and the Laboratory and that the following day he unlocked the padlock.

19. Under cross examination, DW7 stated that he was employed in 1990 by the 1st Defendant as Assistant Lecturer, became Lecturer 1 in 1996 and Senior Lecturer in 2017; that Claimant was the one occupying the office that was left open; that he did not call the Claimant to come and lock the office because he did not have her telephone contact; that he and the Claimant belonged to the same Security Committee; that he knew her quarters in the University; that the distance between Department and Claimant's residence and the Department and Agbowo are about the same thing; that he had no malice against the Claimant and that he is aware Claimant's door used Union lock which is incompatible with padlock.

4. Final Written Addresses

20. At the close of trial, and pursuant to the direction of the Court, learned Counsel for the parties filed their final written address and adopted same. The final written address of the Defendant dated 23/2/21 was filed on 2/3/21. It was a 15-page document with the first 12 and half pages dealing with the preliminaries, the claims, facts of the case and the exhibits tendered. The argument canvassed by the learned Counsel in support of the case of the Defendant is strictly of two and half pages. In the final written address, learned Counsel canvassed the following issues for the just determination of this case thus -

1. Whether the employment of a staff with statutory flavour who has been found guilty of misconduct can be terminated by the employer as presented in this case.
2. Whether on the state of the pleadings of the parties, documents tendered by the parties and the oral testimonies of the witnesses of the parties, the claimant has discharged the onus of proof to entitle her to judgment on her claim before the honourable court.

21. Respecting issue 1, learned Counsel submitted that the *University of Ibadan Act* empowers the Governing Council to terminate the appointment of staff where it appears to Council that the said staff has been guilty of misconduct, referring to Section 10(3) of the Act and that *Exh. AO6 – Staff Information Handbook* on the definition of *Misconduct*; that the refusal of the Claimant to obey lawful order, issued by the acting Head of Department and the Dean, for her to vacate an office not meant for her constituted a misconduct citing *Bamgboye v. University of Ilorin (1999)10 NWLR (Pt.622) 290*. Learned Counsel urged the Court to hold the issue raised in the affirmative and dismiss the case of the Claimant.

22. On issue 2, learned Counsel submitted that the Claimant has not adduced credible evidence to justify her refusal to obey lawful order of the University authority to vacate her converted office; that Claimant did not produce any

Police Report on her claim of threat to her safety; that Claimant's assertion that the query issued to her and its aftermath did not follow in that it was the Vice Chancellor who directed the issuance rather than the Registrar in line with *Regulation 8.1.5(a) i* of the Staff Information Handbook (*Exh. AO6*) is highly misconceived. Counsel further added that also untenable is the assertion by the Claimant that the treatment meted to her was an unfair labour practice as no evidence was led in support of this and that the character of the Claimant as "being rude to her Head of Department and to social club she belonged to and her refusal to attend Departmental meeting for a continuous period of ten years is enough to make any Council to terminate her appointment when same Council had had cause to strongly reprimand her in 2020". Learned Counsel prayed the Court to dismiss the case of the Claimant in its entirety.

23. The 34-page final written address of the Claimant was filed on 23/2/21. It was dated 9/2/21. In it learned Counsel sets down the following issues for determination –

1. Whether Claimant's employment is one with statutory flavor.
2. Whether Defendants strictly observed statutorily prescribed disciplinary procedure to make termination of Claimant's appointment valid, constitutional and lawful,
3. Whether rules of natural justice were observed in the procedure adopted in trying the claimant.
4. Whether the claimant is protected from any punitive measures for refusing to vacate her office and move to an office considered risky to her life.
5. Whether defendants have any valid defence against the claims of the claimant.

24. In arguing issue 1, learned Counsel submitted that where the contract of service is governed by the provisions of a statute, one where the conditions of service are contained in regulations derived from statutory provisions, they invest the employee with a legal status higher than the ordinary one of Master and Servant and accordingly enjoys statutory flavor citing *Imoloame v. WAEC (1992)9 NWLR (Pt. 265) 303*, Counsel submitted that the *University of Ibadan Act* was made pursuant to the Constitution of the Federal Republic of Nigeria, 1999, as amended while *Exh. AO6 (Staff Handbook: Rules and Regulations Governing Condition of Service of Senior Staff August, 2003)* was made pursuant to the *University of Ibadan Act* and that both documents govern the employment relationship between the Claimant and the Defendants. According to Counsel, by paragraphs 1.2.5-15 of the Statement of Defence, the Defendants admitted that the employment of the Claimant was one with statutory flavor and that it is a trite law that what is admitted need no further proof citing Section

123 of *Evidence Act, 2011*. Learned Counsel prayed the Court to resolve this issue in favour of the Claimant.

25. On issue 2, learned Counsel submitted that the Defendants did not strictly observe the statutorily prescribed disciplinary procedure and as such the termination of Claimant's employment is invalid, unconstitutional and unlawful; that in an employment with statutory flavor, the parties are bound by the statute and anything done which is inconsistent with that shall be null and void and of no effect citing *Union Bank v. Ogboh (1995)2 NWLR (Pt. 380) 647*; that where the finding is that the dismissal or termination is null and void, then there was no dismissal or termination as what the employer did was a nullity before the law citing *Ziidel v. RSCSC (2007)3 NWLR (Pt. 1022) 554*. Learned Counsel submitted that the Defendants violated statutory provisions and also failed to strictly comply with the requisite procedure it laid down in the *Staff Handbook* in terminating the appointment of the Claimant.

26. According to Counsel the issuance of Query (*Exh. AO33*), is in violation of the Visitor's directive that the Claimant's complaint about threats of ejection from office should be resolved (*Exh. AO22*); that the issuance of Query to the Claimant also violated Section 9(2) of the University of Ibadan Act which mandates all bodies and persons comprising the University to give effect to any instructions consistent with the provisions of the Act which may be given by the Visitor in consequence of a visitation; that there was infraction of the procedure for removal of the Claimant as predicated on *Regulation 8.1.5(a)* of *Exh. AO6* in that the report of the allegation against the Claimant was received by the Vice Chancellor rather than the Registrar as stipulated; that the complaints against the Claimant were not disclosed to her contrary to *Regulations 8.1.5(a)(i) & 8.1.5(e)* of *Exh. AO6*; that *DW2* indeed confirmed under cross examination that Claimant was not given a copy of the complaint against her and that failure to oblige the Claimant the complaint against her is not only an unlawful and wrongful infraction of a statutory provision but also a key element of fair hearing which requires that the Claimant should be made aware of the case against her. Counsel added yet another infraction of the procedure to be that the Claimant was not invited to comment on the complaint against her contrary to *Regulations 8.1.5(a)(i)&(iii)* of *Exh. AO6*; that the Query (*Exh. AO33*) was issued without complying with the provision of *Regulations 8.1.5(a)(ii)* of *Exh. AO6* which requires that "the report and comments, each in six copies, shall be submitted to the Vice Chancellor who shall refer same to the Committee" that is *Senior Staff Disciplinary Committee*; that the Query (*Exh. AO6*) which required the Claimant to show cause did not comply with the procedure in *Regulations 8.1.5(a)(iv)* of *Exh. AO6* which requires that the *Senior Staff Disciplinary Committee* after receiving the report and comments shall consider same and determine the nature of the alleged offence committed by the member staff

concerned; that the Query also did not comply with the procedure in *Regulations 8.1.5(a)(c)* of *Exh. A06*.

27. According to the learned Counsel another infraction is the violation of Regulation 8.1.5(a)(c) of Exhibit A06; that the query (*Exh. A033*), which required Claimant to show cause" is wrongful because rather than the *Senior Staff Disciplinary Committee (SSDC)* first determining that an offence has been committed and the nature of the offence committed by the Claimant, it was the Panel (i.e. *SSDC Panel G* that, after its sittings on 12/6/2014, 3/12/2014 and 9/12/2014, as stated in the first 6 lines of page 3 of *Exh. A043* that determined that an offence has been committed and the nature of the offence committed and that it was part of the evidence of *DWI* under cross examination that *SSDC Panel G* "determined that the Claimant had a case to answer"; that (*Exh. A033*), which required Claimant "to show cause ..." is wrongful/because it was issued without the *SSDC* first establishing whether there was a prima facie case against the Claimant and because it was issued before the *SSDC Panel G* wrongfully determined whether prima facie case existed against the Claimant contrary to *Regulation 8,1.5(d)*, which requires that "where a prima facie case is established by the Committee (i.e. *SSDC*), it (i.e. the *SSDC*) shall direct that the member of staff concerned be notified of the nature of the offence witted and that he/she should show cause why disciplinary action should not be taken against him/her for the offence committed."

28. Counsel submitted that the Report of *SSDC Panel G (Exh. A043)* and the Minutes of the meetings of *SSDC Panel G (Exh. A052)* did not comply with *Regulation 8.1.5.(e)* in *Exh. A06*, which provides for Tape Recording/Verbatim Report and Mandatory obligation to obtain written reports from 'complainants' (i.e. written allegations), "written self-defence" by "accused persons" or persons being investigated and written submissions from witnesses and other persons; that the *SSDC Panel G* did not demonstrate it sighted any written allegations that were allegedly received by the Vice Chancellor, and the panel neither exhibited any written reports nor did it indicate it asked for or received any written reports from any person, except the written submission of the Claimant; that the whole of *Exh. A052* confirm that the *SSDC Panel G* adopted only "Oral Interview" as its methodology, disregarding the mandatory requirements of Tape Recording/Verbatim Report and mandatory obligation to obtain written reports, as provided under *Regulation 8.1.5.(e)* of *Exh. A06*.

29. According to the learned Counsel by *Exh. 139 (Memo dated 21/3/2016)*, the office of the Registrar did not avail Claimant the Report of the *SSDC* meeting of 8/3/2016 which she requested in order to enable her exercise the right of making representation in person as guaranteed under *Section 10(2)(b), University of Ibadan Act*, referring to the evidence of *DWI* under cross

examination; that the participation of Dr. Onilude in the meetings of the SSDC leading to the termination of the employment of the Claimant was a violation of the Procedure predicated on *Regulation 8 1,1. of Exh. A06 and Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999, as amended*; that Dr. A. A. Onilude was the Claimant's former Ag. HOD and later Dean of Faculty of Science, who had contentious disputes with the Claimant over the Headship of the Department of Botany and Microbiology and actually (with Exhibit A015 dated 22/12/2006), started the moves to eject the Claimant from her office and was therefore closely connected with the allegation against the Claimant; that contrary to his evidence in chief that he did not participate in the proceedings of the SSDC that led to the Recommendation of termination of the appointment of the Claimant, Prof. A. A. Onilude indeed participated in the proceedings of the SSDC on, at least, the following days: 20/7/2015 (represented by *Exh. D2*); 18/8/2015 (represented by *Exh. D3*); 11/12/2015 (represented by *Exh. D5A*); 23/5/2016 (represented by *Exh. D5*) and 25/8/2016 (represented by *Exh. D6*), among other dates.

30. Learned Counsel added that contrary to *Regulation 8.1.8 of Exh. A06* which provides that the SSDC "shall meet every month and the dates shall be statutory without prejudice, of course, to emergency meetings being held, as and when occasions demand", with a view to speedy determination of disciplinary issues, the SSDC and SSDC Panel G did not meet monthly but delayed the disciplinary procedure concerning the Claimant, which lasted for about 36 months – the query to the Claimant (*Exh. A033*), was issued on 7/5/13, the Claimant replied the same day by *Exh. A035* and the Claimant's appointment was terminated by *Exh. A046* dated 14/6/16, which was served on the Claimant on 23/6/16.

31. Finally, learned Counsel submitted that the Defendants are caught by the principle of condonation/overlooking an infraction. According to Counsel, the law is that an employer who fails to promptly take steps to discipline or punish an employee is deemed to have condoned the infraction and the employer is stopped from complaining later, citing *Dr. Olusofa Adeyelu v. Lagos University Teaching Hospital (LUTH) & 2 Ors. (Suit No. NICN/LA/94/2017, Judgment of which was delivered on 25/4/17)*, relying on *Ekunda v. University of Ibadan 12 NWLR (Pt, 681) 220 (CA)*, *ACB Plc v. Nbisike (1995)8 NWLR (Pt. 416) 725 (CA)*, *Nigerian Army v. Brig. Gen, Maude Aminu-Kano (2010)5 NWLR (Pt. 1188) 429* and *Lawrence Idemudia Oborkhale v. LASU (2013)30 NLLR (Pt. 85) 1*. Learned Counsel prayed the Court to resolve this issue in favor of the Claimant.

32. On issue 3, learned Counsel submitted that the established principle of natural justice is that nobody should preside and ultimately give Judgment in his

own cause; that it does not matter whether miscarriage of justice is occasioned or not, once the principle is violated, the entire proceedings conducted under the watch and participation of an interested party stands vitiated citing *Mpama v. FBN Plc (2013)5 NWLR (Pt. 1346) 176 at 204*; that the Vice Chancellor was the accuser, the investigator (by virtue of being the Chairman of the SSDC whose Sub-Committee – *the SSDC Panel G* investigated the Claimant), the witness who granted interviews to *SSDC Panel G* against the Claimant citing *Exh.AO52* and the Judge (by virtue of being a member of the Council that terminated Claimant's appointment upon the recommendation of the *SSDC Panel G*) all rolled into one in the disciplinary procedure involving the Claimant. Counsel urged the Court to hold that the procedure adopted is a perfect one to find that the principles of natural justice were not observed as far as the role of the Vice Chancellor is concerned.

33. Counsel submitted further that the Disciplinary Committee did not observe the rules of fair hearing, impartiality and fairness; that evidence was received behind the Claimant; that Claimant was not afforded opportunity to confront her accuser citing *Exh. AO43 & Exh. AO52*; that the bias and malice against the Claimant are also demonstrated by *Exh. AO23 & Exh. D3* in which a Dr. Ajayi who was found guilty of plagiarism and liable to be imprisoned was given a minimum penalty compared to the Claimant whose appointment was terminated for refusal to vacate one office for another. Finally on this issue, Counsel submitted that Claimant was queried for refusal to vacate preparatory room in the final year Laboratory (*Exh. AO33*) and was found guilty of insubordination and flagrant disregard for constituted authority (*Exh. AO46*) an offence she was never given an opportunity to defend. Learned Counsel prayed the Court to hold that the Claimant was not given an opportunity to defend the offence of "insubordination and flagrant disregard for constituted authority".

34. On issue 4, learned Counsel submitted that the Claimant is protected from any punitive measures for refusing to vacate her office and move to an office considered risky to her life citing Section 33, Constitution of the Federal Republic of Nigeria, 1999, as amended, *Article 13, Occupational Health and Safety Convention No. 155 of 1981* (incorporated into the Constitution and made enforceable by Section 254C(2)) and the case of *Sahara Energy Resources Limited v. Oyebola (2020) LPELR-51806(CA)*; that the duty of an employee to obey his employer is only to the extent that the employer's instruction is both lawful and reasonable otherwise such an instruction would be adjudged to be unfair labour practices citing *The Ottoman Bank v. Chakarian (1930)AC 277*. Learned Counsel urged the Court to resolve this issue in favor of the Claimant.

35. Respecting issue 5, learned Counsel submitted that the Defendants have no valid defence against the claims of the Claimant; that while some of the

witnesses called by the Defendants gave contradictory evidence which should be discountenanced others gave evidence in direct opposition to the available documentary evidence before the Court. Counsel prayed the Court to grant all the reliefs sought by the Claimant.

36. On 15/3/21, the Defendants filed a 9-page reply on points of law. It was dated 5/3/21. What the learned Counsel to the Defendants did was to reply to each of the issues set down and canvassed by the Claimant one after the other.

5. Decision

37. The facts of this case would seem to me to be clear and straightforward. The 1st Defendant is a leading academic institution in this country and I dare say that judicial notice is taken of her reputation and respect among similar academic institutions both within and outside the shores of this country. The 2nd Defendant is the Council of the first. On the other hand, the Claimant, Dr. Adenike A.O Ogunshe, was employed by the Defendants and rose to the position of Senior Lecturer before the institution of this case. My understanding of the conflict between the parties is that the Claimant was directed by her Head of Department and some other authorities within the 1st Defendant to vacate her office said to be *Preparatory Room* for the Final year Laboratory. (There is evidence to the effect that the said office was never labeled a preparatory room at the time Claimant was allocated same many years ago. There is also evidence to the effect that the said office was just one out of many other offices in the Final Year Laboratory. It is also my finding that Claimant's office was allegedly labeled *Preparatory Room* out of many other offices there.) She was directed to move to another office. Claimant refused to comply with the directive on the basis of threat to her life. The Defendants therefore set in motion disciplinary mechanism for the Claimant. Eventually, the appointment of the Claimant as a Senior Lecturer was terminated allegedly for her refusal to vacate the office she then occupied. While adopting his final written address, learned Counsel to the Claimant applied to withdraw Relief No, 20 as sought. Having found that the Defendants would not in any way be overreached the same was granted and Relief No. 20 struck out.

38. Now, I have read and understood all the processes filed by the parties on either side. I heard the testimonies of all the witnesses called at the trial of this case as well as watched their demeanor. I also heard the oral argument canvassed by the learned Counsel for the parties at the point of adopting their final written addresses. In addition, I carefully and patiently evaluated all the exhibits tendered and admitted at trial. Having done all this, I adopt the two issues set down for determination by the Defendants for the just resolution of this case as follows –

1. Whether the employment of a staff with statutory flavour who has been found guilty of misconduct can be terminated by the employer as presented in this case.
2. Whether on the state of the pleadings of the parties, documents tendered by the parties and the oral testimonies of the witnesses of the parties, the claimant has discharged the onus of proof to entitle her to judgment on her claim before the honourable Court.

39. The first issue for determination as set down by the Defendants and which I have also adopted for the just determination of this case is whether the employment of a staff with statutory flavour who has been found guilty of misconduct can be terminated by the employer as presented in this case.

40. Both learned Counsel agreed that the employment of the Claimant is one with statutory flavor. However, the fact remains that consensus of learned Counsel as such does not necessarily make an employment one with statutory flavor. Whether or not it is of statutory flavor is a question of law to be determined by the Court. Secondly, the determination of the nature of an employment of an employee is critical and fundamental as it goes to the root of the procedure to be adopted in the termination of such an employment. When is an employment one with statutory flavor and what are the implications for the purpose of terminating such an employment? Simply put, an appointment is said to be with statutory flavor if it is protected by the statute. With respect to employment with statutory flavor, *Adekeye JSC in Dr. Taiwo Oloruntoba-Oju & Ors. v. Prof. Shuaibu O. Abdul-Raheem & Ors. (2009) LPELR-2596 (SC)* put the position of the law as follows -

“... where the terms and conditions of a contract of employment or service are specifically provided for by statute or regulations made there under - it is said to be a contract protected by statute or in other words an employment with statutory flavour”.

41. His lordship went further to state that the question of whether a contract of employment is governed by statute or not depends on the construction of the contract itself or the relevant statute and that the duty to construe the contract or the relevant statute is the exclusive preserve of the Courts. Without much ado, it is trite to state, perhaps for clarity, that for an employment to be one with statutory flavour, it must meet one of two conditions. One, the terms and conditions applicable to that particular employment must have been specifically provided for by a particular statute. Or in the alternative, the regulation which contains the applicable terms and conditions of the particular employment must have been made pursuant to or in the exercise of power conferred by a statute. It is also correct to add that it is not just sufficient that a statute confers power to

make such regulations and the regulations are made. The making of such regulations must certainly be expressed to be in pursuance of the power so conferred to make same.

42. The first leg of the question posed here has been answered, that is, as to when an employment is one with statutory flavor. The second leg which is by no means of less critical importance is the implication of an employment with statutory flavor for the purpose of termination. A very unique feature of an employment with statutory flavor is that the enabling statute or regulation lays down the method or procedure for terminating such an employment. The laid down procedure must therefore be followed and absolutely complied with. It must be followed step by step and failure to follow the laid down procedure in toto or from A to Z is fatal as the Court will not hesitate to declare such a termination as null, void and of no effect.

43. In the words of *Olabode Rhodes-Vivour JSC* in *Oforishe v. Nigerian Gas Co. Limited* (2017) LPELR-42766(SC)

“A contract of master and servant may be either subject to statutory or common law rules. Contracts with statutory flavor are contracts where the employer is created by statute. Such contracts are governed by the statute which creates the employer. E.g in *Olaniyan v. University of Lagos* (1985) 2 NWLR (Pt. 9) p. 599, Act No. 3 of 1967 creates the University of Lagos. It is that statute that governs employer employee contract. A contract is one with statutory flavor where the conditions for appointment and bringing the contract to an end are governed by an enabling statute. **It follows naturally that a valid appointment or determination of the contract must satisfy provisions in the statute**”. (Emphasis laid)

44. Earlier, the apex Court of the land had in *Longe v. FBN Plc* (2010) LPELR-1793(SC); (2010) 6 NWLR (Pt. 1189) 1 SC, held authoritatively that in the event of termination of employment with statutory flavor, strict adherence must be had to the statute creating the employment for statutory provisions cannot be waived. In much the same vein, *Otoruntoba-Oju & ors v. Abdul-Raheem & ors* (2009) LPELR-2596(SC); (2009) 13 NWLR (Pt. 1157) 83 SC, also decided that in the matter of discipline of an employee whose employment has statutory flavor, the procedure laid down by such statute must be fully complied with; if not, any decision affecting the right or reputation or tenure of office of that employee will be declared null and void. Where and when the Court so hold the termination null, it will, as a consequence, order a reinstatement of the employee concerned.

45. Now we have laid out the circumstances when an employment is said to be protected by the statute. We have also laid out the implication of such an employment for the purpose of determination. Two critical questions arise at

this stage. First is whether the employment of the Claimant was one protected by the statute. 1st Defendant is a creation of the statute – *University of Ibadan Act Cap. U6, Laws of the Federation of Nigeria, 2004*. Aside from the fact that both parties agreed in their pleadings that the employment of the Claimant is one with statutory flavor, I find and hold that by the combined reading of the *University of Ibadan Act* and *Exh. AO6 – Staff Information Handbook-Rules and Regulations Governing Conditions of Service of Senior Staff* the employment of the Claimant is regulated by these two instruments and is protected by the statute.

46. The next critical question is whether the procedure laid down by the applicable instrument was complied with in the termination of the employment of the Claimant? Clause 8.0 of *Exh. AO6* deals with matters of discipline of senior staff. It established a *Senior Staff Disciplinary Committee (Clause 8.1)* membership of which includes the Vice Chancellor as its Chairman (Clause 8.1.1) and its terms of reference contained in *Clause 8.1.2*. The disciplinary procedure as well as the *Modus Operandi* of the Committee is contained in *Clauses 8.1.4 & Clause 8.1.5*. I deem it important to reproduce here the mode of operation of the Committee as contained in Clause 8.1.5 –

8.1.5. Modus Operandi of the Committee

(a) The following procedure shall be adopted

i). The cases requiring disciplinary measures shall first be reported to the Registrar who shall invite comments from members of staff concerned.

(ii). The report and the comments, each in six copies, shall be submitted to the Vice-Chancellor who shall refer same to the Committee.

iii). Deliberate failure or refusal of a member of staff to send his/her comments to the Registrar within a period of 2 weeks shall attract reprimand (in writing) in the first instance. If, after a reminder is forwarded to the staff member concerned, and he/she still refuses to respond, the Committee shall dispose of the matter as it deems fit.

(iv). The Committee, after receiving the report and comments, shall consider same and determine the nature of the alleged offence committed by the member of staff concerned. Thereafter, the Committee shall proceed as follows:

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(b). Where it is satisfied that there is no offence committed by the said member of staff, or where it is satisfied that it has no jurisdiction over the matter, the Committee shall dispose of the matter as it deems fit;

(c). Where it is satisfied that an offence has been committed and that the offence lies within its jurisdiction, the Committee shall, where necessary, appoint a Panel to investigate the matter. The Panel shall consider representations by the member of staff and others concerned and report to the Committee for appropriate action;

(d) Where a prima facie case is established by the Committee, it shall direct that the member of staff concerned be notified of the nature of the offence committed and that he/she should show cause why disciplinary action should not be taken against him/her for the offence committed.

Note: A case is deemed to be before the Staff Disciplinary Committee after 8.1.5 (a) (iv) above.

(e). **Tape Recording/Verbatim Report** The Panel appointed to carry out an investigation should feel free to use any lawful means at its disposal to ascertain the facts of the situation. It must obtain written reports and may interview the accused person(s), the complainant(s), the eye-witnesses and other persons who can help the Panel (depending, of course, on the nature of the case). These will ensure that investigations are thorough and that missing links in written allegations and written self-defence are identified and taken into account.

(f) **Open Interrogation**

Open interrogation can be allowed by the Committee, if found necessary”.

47. The Defendants were comfortable with the above disciplinary procedure which they put together. The Claimant had no input to the same other than to comply with and be subject to same. The above step by step disciplinary procedure must be followed by the Defendants to lawfully terminate the employment of any of their senior staff, and the employment of the Claimant in the instant case. The word used in the opening of *Clause 8.1.5* is **shall** thus making full compliance with the procedure mandatory and not open to any abridgment. In order to now finally resolve issue 1 set down for determination it is imperative to examine whether the Defendants followed the rules and procedure as laid down by them for the termination of the employment of the Claimant. It was the argument of the Claimant that there were at least 14 infractions of the rules and regulations for discipline of senior staff by the Defendants in this case. It was on the other hand the contention of the Defendants that the applicable rules and regulations were complied with.

Detail

48. By the procedure laid down in *Exh. AO6*, the cases requiring disciplinary measures shall first be reported to the Registrar who shall invite comments from members of staff concerned. However, in the case of the Claimant as evidenced by *Exh. AO33*, the report of the alleged allegation against the Claimant was received by the Vice-Chancellor. The Registrar who ought to receive the report and invite comments from the Claimant never did so. This is understandable because the Registrar did not receive the report which would have formed the basis of invitation for comments. No doubt this is an infraction of rules and regulations of the laid down disciplinary procedure of the Defendants. Under *Clause 8.1.5(a)* of *Exh. AO6*, the Registrar was under an obligation to invite the Claimant to make comment on the allegations against her. Besides, it was for the *Senior Staff Disciplinary Committee*, after receiving the report and comments of the Claimant, to consider same and determine the nature of the alleged offence committed by the Claimant. This was not done in the instant case.

49. A query was issued to the Claimant to show cause, *Exh. AO33*. By *Clause 8.1.5 (a)* of *Exh. AO6* the Claimant was expected to react to report of allegations against her. Yet there is evidence, (*Exh. AO35*) that her request for the documents containing the allegation was not met. This fact was further confirmed by the evidence of *DW2* under cross examination on 4/2/2020 to the same effect. How was the Claimant expected to react to the allegations against her in the absence of the requisite documents? This, I find to be a fundamental breach of the written disciplinary procedure which the Defendants were under a compulsion to follow to the letter. Aside from being an infraction of the disciplinary procedure laid down, it is also a breach of the constitutional provision relating to fair hearing. I find that the issuance of that query was done in a rush without first complying with all the steps in *Clause 8.1.5* of *Exh. AO6* which ought to be taken before same was done. It is my finding, on the whole, that the Defendants did not comply with the provisions of *Clause 8.1.5* of *Exh. AO6* before terminating the employment of the Claimant.

50. In *Suit No: NICN/LA/14/2016: Aderonke Kehinde Oke v. Lagos State Government & 2ors*, Judgment of which was delivered on 9th October 2018, His Lordship, Hon. Justice B. B. Kanyip, as he then was (now the Hon. President of the NICN), was confronted with a situation similar to the instant case. His lordship having reviewed some appellate decisions stated the position of the law thus -

“35. The law is that the procedure for discipline in an employment with flavor must be complied with; otherwise, the dismissal ensuing thereof will be null and void. *Longe v. FBN Plc* (2010) LPELR-1793(SC); (2010) 6 NWLR (Pt. 1189) 1 SC, for instance, held that in the event of termination of employment with statutory flavor, strict adherence must be

had to the statute creating the employment for statutory provisions cannot be waived. And by *Otoruntoba-Oju & ors v. Abdul-Raheem & ors* (2009) LPELR-2596(SC); (2009) 13 NWLR (Pt. 1157) 83 SC, in the matter of discipline of an employee whose employment has statutory flavor, the procedure laid down by such statute must be fully complied with; if not, any decision affecting the right or reputation or tenure of office of that employee will be declared null and void.”

51. I resolve issue 1 in favor of the Claimant. I find and hold that the employment of a staff with statutory flavour who has been found guilty of misconduct cannot be terminated by the employer as presented in this case. Having found the employment of the Claimant to be one with statutory flavor and that the Defendants failed to comply with the applicable rules and regulations guiding the employment relationship especially respecting termination, I find and hold that the employment of the Claimant remains intact. I declare that the termination of the Claimant’s employment by the Defendants was unlawful, null and void. I here set aside the letters of termination of appointment dated 14/6/16 and 15/8/16 written by the Defendants and sent to the Claimant. As a consequential order therefore I order the immediate reinstatement of the Claimant to her position as Senior Lecturer in the Department of *Botany* of the first Defendant without loss of benefits, perquisites of office, promotion and remunerations. I further order and direct the Defendants to pay to the Claimant all her arrears of salaries from the date of termination of her employment. By *Exh. AO50*, the monthly salary of the Claimant as at November 2015 was =N=223,075.88. Claimant’s appointment was terminated on 15/8/16. That was about 61 months till date. The 1st Defendant is therefore ordered to pay to the Claimant the sum of Thirteen Million, Six Hundred and Seven Thousand, Six Hundred and Twenty Eight Naira Eight Kobo (=N=13,607,028.08) only being the salary arrears of the Claimant from 15th August 2016 to the date of this Judgment.

52. The second issue for determination is whether on the state of the pleadings of the parties, documents tendered by the parties and the oral testimonies of the witnesses of the parties, the claimant has discharged the onus of proof to entitle her to judgment on her claim before the honourable Court. Issue 1 as resolved above was not resolved in isolation of the pleadings, exhibits tendered by the parties and the oral testimonies of their witnesses. *Exh. AO6* is critical to the case of the parties. That exhibit was made by the Defendants. It was tendered by the Claimant and admitted in evidence without objection by the Defendants. It is important to note that indeed the Defendants also placed reliance on the exhibit as tendered by the Claimant. I had sufficient time to evaluate and I did evaluate all the exhibits tendered and admitted together with the testimonies of the witnesses called at trial in resolving Issue 1 before reaching the decision on that issue. In much the same vein having found non

compliance with the applicable disciplinary procedure and declared the termination of the employment of the Claimant as null and void, I have no reason to deviate from that position. The nature of the employment of the Claimant determines how her employment would be terminated. The success or otherwise of the case of the Claimant rests solely on whether the Defendants complied with the applicable disciplinary procedure. Having therefore resolved Issue 1 the way it has been done and the termination of Claimant's appointment declared null and void for failure to follow the applicable disciplinary procedure, the need to consider Issue 2 becomes otiose. Any consideration of same is therefore nothing but efforts in futility.

53. I will not draw a curtain on this Judgment without a comment or two on this case and call the attention of the Visitor to the 1st Defendant to some salient issues. It can hardly be controverted that the 1st Defendant is a renowned institution for learning and research both nationally and internationally. Considering therefore her contribution to learning and research judicial notice could and is here taken of its status in the comity of comparable institutions both within and outside of this country.

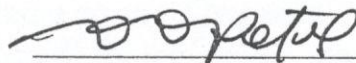
54. The issue of relocation of office which led to the alleged termination of the appointment of the Claimant started in 2006. It was left hanging until 2013 when Claimant was issued *Exh. AO33* – a Query dated 3/5/13. It is my finding that the issue was escalated by Claimant's insistent that rules and regulation must be followed. For instance, Claimant had insisted that the provision of the *University of Ibadan Staff Handbook* be followed in the appointment of Head of Department (*Exh. AO11* dated 14/06/06). There was also the issue of students who did not attend classes being allowed to write final examinations against the known laid down rules and regulations of the 1st Defendant. Yet, I have evidence before me of an academic staff of the 1st Defendant (one Dr. Ibronke A. Ajayi of the Department of Chemistry) who, though, found guilty of plagiarism and was by the Rules governing such conduct liable to termination of employment but was rather given a mere slap on the wrist. See *Exh. D3*. It is important that I call attention to alleged infractions of the Rules of the 1st Defendant by the 1st Defendant otherwise the 1st Defendant may lose its age-long reputation and credibility in the comity of academic institutions. Finally, that it took the Defendants to discipline a staff in 2016 pursuant to a query issued in 2006 speaks volume as to the kind administration governing the 1st Defendant. I say no more!

55. Finally, for the avoidance of doubt and for all the reasons as contained in this Judgment

1. I find and hold that by the combined reading of the *University of Ibadan Act* and *Exh. AO6 – Staff Information Handbook-Rules and Regulations*

Governing Conditions of Service of Senior Staff the employment of the Claimant is regulated by these two instruments and is protected by the statute.

2. I find and hold that the employment of a staff with statutory flavour who has been found guilty of misconduct cannot be terminated by the employer as presented in this case without full compliance with the established disciplinary procedure.
 3. I hold that the employment of the Claimant is one with statutory flavor and that the Defendants failed to comply with the applicable rules and regulations guiding the employment relationship especially respecting termination.
 4. I declare the entire process leading to the termination of the appointment of the Claimant null, void and of no effect whatsoever for infraction of the applicable rules and regulations of the 1st Defendant.
 5. I declare that the termination of the Claimant's appointment by the Defendants was unlawful, null and void for non-compliance with the applicable Rules.
 6. I here set aside the letters of termination of appointment dated 14/6/16 and 15/8/16 written by the Defendants and sent to the Claimant.
 7. I order the immediate reinstatement of the Claimant to her position as Senior Lecturer in the Department of Microbiology of the first Defendant without loss of benefits, perquisites of office, promotion and remunerations.
 8. I order and direct the Defendants to pay to the Claimant all her arrears of salaries from the date of termination of her employment till the date of this Judgment.
 9. The 1st Defendant is therefore ordered to pay to the Claimant the sum of Thirteen Million, Six Hundred and Seven Thousand, Six Hundred and Twenty Eight Naira Eight Kobo (=N=13,607,028.08) only being the salary arrears of the Claimant from 15th August 2016 to the date of this Judgment.
 10. The Defendants are ordered to pay to the Claimant the sum of Two Hundred Thousand Naira only as cost of these proceedings.
 11. All the terms of this Judgment shall be complied with immediately.
56. Judgment is entered accordingly.



Hon. Justice J. D. Peters
Presiding Judge

