

# DISMISSAL OF EMPLOYEES FOR CONDUCT AMOUNTING TO A CRIME - A REVIEW OF THE NIGERIAN LAW

By

A.O. SANNI\*

## INTRODUCTION

The employer's power to dismiss an employee of any grade who has committed a criminal offence in the course of his duty is beyond doubt.<sup>1</sup> Problems have however arisen in Nigeria whether an employer could invoke this power without or before the investigation and possible prosecution of the criminal case in a law court.<sup>2</sup> This problem was triggered by the statement of Fatayi Williams J.S.C. (as he then was) in the case of Sofekun v Akinyemi & ors.<sup>3</sup> where the learned Justice held that:

"Once a person is accused of a criminal offence, he must first be tried in a court of law where the complaints of his accuser can be ventilated in public and where he would be sure of getting a fair hearing as set out in subsections (4) to (10) of sections 22 of the Constitution of the Federal Republic of Nigeria.<sup>4</sup> No other tribunal, investigating panel or committee will do.<sup>5</sup>

In practice, most employers do not want to go to court especially in respect of petty criminal offences committed by their staff. They would rather ask the employee to go quietly so as to avoid the unpleasantness and publicity that go with litigation.<sup>6</sup> Some employers also consider the interdiction procedure as "throwing away good money after bad"<sup>7</sup> especially in the case of an employee who has committed an act of financial impropriety since the employer would have to continue to pay the employee half of his monthly salary until the case is finally disposed off and his employment is terminated by dismissal.<sup>8</sup>

Since the case of Sofekun v Akinyemi & ors.<sup>9</sup> strenuous efforts have been made to no avail by parties in successive cases<sup>10</sup> to persuade the court to relax the principle enunciated in the case. However, the Supreme Court in a dramatic manner, in the recent case of Yusuf v Union Bank of Nigeria PLC<sup>11</sup> unequivocally held that "it is neither necessary nor is it a requirement under the Nigerian Law that an employee must first be tried before a court of law before such an employee could be disciplined or dismissed by his employer".<sup>12</sup>

The main aim of this paper is to review the Nigerian cases on the right of an employer to discipline his employee for an act of misconduct amounting to a crime with a view to reconciling the seeming inconsistency of the recent decision of the Supreme Court with the well established principle on this important aspect of labour law. The aim is not to review disciplinary procedure generally but to consider the vexed question of whether or not an employee who has committed an act of misconduct which amounts to a crime must first be tried in a court of law before his employer can punish him by dismissal.

\* A. O. Sanni. Lecturer, Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria.

## JURISDICTIONAL ISSUE

It is an established principle that when a conduct which a Disciplinary Board or Panel is investigating amounts to a criminal offence the proper course is to refer the matter to the Police for full investigation and possible prosecution.<sup>13</sup>

The case that forcibly brought out the wisdom of conducting a criminal investigation and possible prosecution before going on with any consequential breach of disciplinary rule in a master and servant relationship in Nigeria is the case of Sofekun v Akinyemi & ors.<sup>14</sup> The facts of the case are very interesting.

Before 25th May, 1972 the "Western Region Public Service Regulations"<sup>15</sup> expressly provided that where a public officer is suspected to have committed an act of misconduct which also amounted to a crime, disciplinary action upon any ground shall be postponed until after the conclusion of the criminal proceedings or the refusal of the Director of Public Prosecutions to prosecute.<sup>16</sup> On 25th May, the Public Service Commission amended the provision of the 1963 Regulations in such a way that permitted the Commission to proceed to investigate any act of misconduct committed by any public officer which disclosed a criminal offence and punish such officers for the misconduct without waiting for the public prosecution.<sup>17</sup>

The above was the summary of the state of the law in the Western State of Nigeria in December, 1972 when the facts of the case arose.

The Plaintiff, a registered medical practitioner and Senior Consultant in Ophthalmology in the State's Public Service was accused inter alia of indecently assaulting and attempting to have carnal knowledge of an 18 year old girl. The Plaintiff set up an Investigation Panel to try the Plaintiff for the misconduct. The Panel found the Plaintiff guilty and recommended that he should be dismissed. The Commission accepted the findings of the Panel and consequently dismissed the Plaintiff. On receiving his letter of dismissal, the Plaintiff commenced proceedings in the Ibadan High Court claiming a declaration that his purported dismissal was invalid, illegal, ultra vires, null and void and of no effect.

The plank of his case was that the Commission had acted in excess of jurisdiction and also in contravention of the rules of natural justice. The Defendants on their part maintained that the Public Service Commission had acted within its constitutional right in dismissing the Plaintiff. In effect, issues were joined on the constitutionality of the action taken by the Public Service Commission.

The learned judge found for the Plaintiff and held that the allegations for which the Plaintiff was dismissed being criminal in nature, the Defendants must have proved the criminal charges against the Plaintiff beyond reasonable doubt in the court before the dismissal can be justified. And since the Defendants have failed to do this, the Plaintiff was innocent of the criminal charges.

Being dissatisfied with the decision of the High Court, the Defendants appealed to the then Federal Court of Appeal. The Federal Court of Appeal allowed the appeal and dismissed the Plaintiff's claim.

The Plaintiff then appealed to the Supreme Court. At the Supreme Courts, the Plaintiffs counsel forcefully argued that the amendment to the Regulations by the Western State Legal Notice No. 68 of 1972 was inconsistent with sections 22 of the Constitution of the federal Republic of Nigeria, 1963, which was in force at the relevant time. The Plaintiff further submitted that since the charges disclosed criminal offences, they ought to have been tried and adjudicated upon by a court of law and not by an Investigating Panel unless the State's Director of Public Prosecutions saw good reasons not to want to prosecute. Not having left the decision to the court before acting rendered the Commission's decision null and void. In the result, the original regulation was still in force and since there had been non compliance with its mandatory provisions, the whole exercise embarked upon by the Commission was void.

The Supreme Court upheld the argument of the Plaintiff/Appellant and held that:

".... the amendment made to the Regulations in 1972, the effect of which is to make it unnecessary to take a public officer in the States Public Service who has been accused of a criminal offence to a "court of law" and in effect, to dispense with the due process of law, is clearly ultra vires the provisions of section 22 subsection (2) of the constitution and is, therefore invalid. So also were the trial of the Plaintiff/Appellant held there- under by the Investigating Panel and his consequential dismissal from the Public Service by the Commission"<sup>18</sup>

The Court went further to say that:

"Moreover, because of the mandatory provisions of section 22(2) of the Constitution, it seems to me that once a person is accused of a criminal offence, he must be tried in a "court of law" where the complaints of his accusers can be ventilated in public and where he would be sure of getting a fair hearing ...No other Tribunal Investigating Panel or Committee will do".<sup>19</sup>

The Supreme Court's decision in Sofekun v Akinyemi & ors is however not authority for a general statement that any misbehaviour by an employee or misconduct which carries a colouring of dishonesty, fraud or moral turpitude, must be first tried by the court of the land before disciplinary action can be taken against him. The principle will not apply if the employee's conduct complained of does not constitute a crime known to law under the code. This point was clarified in the case of Lana v University of Ibadan.<sup>22</sup>

In that case, the Plaintiff was dismissed from the employment of the Defendant/Respondent as a senior lecturer. The circumstances leading to the dismissal were that during the 1979/80 promotion exercise the Appellant listed in his curriculum vitae two publications which he claimed have been accepted for publication in an International Journal.

When the falsity of his claim was discovered, a Disciplinary Committee was set up to consider the case. Although the charges against the Appellant could have led to his dismissal the Committee however

recommended that he should not be considered for promotion in the subsequent three years. The Appellant then instituted this action.

At the hearing of the appeal, the Appellant's counsel argued strenuously that the trial of the Appellant for dishonesty and "academic fraud" was a violation of section 33 of the 1979 constitution and reliance was placed on the Sofekun v. Akinyemi and ors."<sup>23</sup>

The Supreme Court considered the submission as misconceived and held that the two charges did not constitute offences under the criminal law and consequently the provisions of section 33 of the 1979 Constitution have therefore not been violated.

Furthermore, the court held that the case of Sofekun v Akinyemi and ors<sup>24</sup> is not authority for a general statement that any misbehavior or misconduct which carries a colouring of dishonesty, fraud or moral turpitude must be tried by the courts of the land even if they do not constitute a crime known to law. In the words of Uche Omo, J.C.A. as he then was:

"In Sofekun's case the main offences that were investigated were clearly crime known to our criminal code, to wit, attempted rape and indecent assault. The decision of the Supreme Court (in the case) ... must be confined to this ..."<sup>25</sup>

The principle in Sofekun has also been applied by the Supreme Court in the case of Federal Civil Service Commission v Laoye.<sup>26</sup> Laoye, the Respondent, was a senior civil servant in the Ministry of External Affairs. He served in the Consulate-General, New York from 1973 to 1979. In 1978 he was given a query alleging that he had conspired with certain persons in the flying Aces Aviation Training Centre, Miami, Florida, to defraud the Government of Nigeria of the sum of about U.S. \$119,000.00. He was then asked to submit his reply within 48 hours. The letter was issued by the Ministry of External Affairs. The Respondent promptly wrote a reply wherein he denied all the allegations and explained what he knew about it giving names of those who could be contacted for verification of his story. More correspondences were exchanged between the Ministry of External Affairs and the Respondent but there was no evidence that those whose names were given by the Respondent were ever contacted by the Ministry before it took its final decision.

On 21st July, 1981, the Federal Civil Service Commission dismissed the Respondent from the Civil Service based on the allegation of the Ministry of External Affairs and the Respondent's reply thereto, but there was nothing to show that the Commission was involved in the whole exercise save that the letter of dismissal was issued by it.

The Respondent successfully challenged his dismissal in the High Court and he was ordered to be reinstated. The Defendant then appealed to the Court of Appeal which dismissed the appeal. Being dissatisfied, the Defendants appealed to the Supreme Court. At the Supreme Court, the Attorney-General appeared in person and requested the court inter alia to review its previous decisions relating to fair hearing in the dismissal of civil servants. In his oral submission, the learned Attorney-General argued that in the case "prosecution may not serve the end of Justice". He then urged the court to hold

that it is not in all cases where misconduct amounts to a crime that the court should insist on prosecution.<sup>27</sup>

The Supreme Court disregarded the argument of the Attorney-General and held that if the allegation touches the commission of a crime, it is only a criminal Tribunal that could convict the Respondent. In the words of Oputa J.S.C. (as he then was) "to do otherwise will constitute an unwarranted attack on our system of criminal Justice."<sup>28</sup>

However, the Supreme Court seemed to be ready to put a limitation on the rule in Sofekun's case in circumstances where an employee admits his guilt. In such a circumstance, it was opined obiter that the employer need not establish the employee's guilt in a regular court before invoking his disciplinary power of dismissal. In the words of Esho J.S.C. (as he then was):

"I would like to emphasize herein that the decision ... should not be taken as a prohibition of institution of disciplinary measures against civil servant where there has been a criminal charge or accusation. However, other consideration might enter. For once such criminal allegations are involved, care must be taken that the provisions of section 33 (4) of the Constitution are adhered to. It is not so difficult where the person so accused accepts his involvement in the acts complained of, and no proof of the criminal charges against him would be required. He has in such a case, been confronted with the accusation and he had admitted it. He could face discipline thereafter. But in real enactment of life drama, this is never the case. People very seldom, if at all, admit their involvement in criminal acts".<sup>29(a)</sup>

It suffices to say however that such a confession must have been free and voluntary in accordance with the provisions of Evidence Act<sup>29(b)</sup> Otherwise its admissibility may be challenged in the law court.

The principle that an employee can short-circuit the strict legal norms of natural justice where he admits his guilt was however sharply rejected five years later by the Supreme Court in the case of University of Nigeria Teaching Hospital v Hope Chinyelu Nuoli.<sup>29(c)</sup> The facts of the case is blood-chilling.

The Respondent was the Assistant Chief Pharmacist of the University of Nigeria Teaching Hospital, the 2nd Appellant. She was the only qualified chemist in the compounding unit of the Teaching Hospital at the time material to the case. An unqualified pupil pharmacist, named Nwizor who was then undergoing his internship with the 2nd Appellant was posted to the Respondent's units. Being on internship, Mr. Nwizor was not to compound medicine on his own without supervision. On 20th February, 1989. Mr. Nwizor allegedly compounded chloroquine syrup which caused the deaths of children aged between one and four years who took ill. Post mortem examinations conducted on the bodies of the children confirmed the cause of death. Analysis of the said syrup by the Central Drug Control Unit of the Federal Ministry of Health revealed that the said chloroquine syrup contained about eight times more chloroquine phosphate than a normal dose. Such overdose, it was deciphered, is dangerous and liable to result in deaths of children aged between one and four.

Sequel to the death of the children there was a public outcry and the 1st Appellant conducted an investigation to consider the matter of the deaths of the children. The Respondent and Mr. Nwizor and

the Chief Pharmacist who was the head of the Pharmacy Department, were summoned to the meeting held on 18th May, 1987. Mr. Nwizor admitted compounding syrup and stated that he was supervised during the compounding by the Respondents. The assertion by Mr. Nwizor was put to the Respondent and following her answer in the affirmative, she was asked by the 1st Appellant if she had any previous record of negligence. She was alleged to have answered in the positive, following which the 1st Appellant compulsorily retired her with full benefits from the service of 2nd Appellant. The Secretary to the Board of the 1st Appellant however did not give notice of the complaints against the Respondent to the Respondent before her retirement. As a result of the purported retirement, the Respondent commenced an action in the High Court of the former Anambra State challenging her retirement.

The Supreme Court declared the Respondent's retirement to be null and void for failure to follow the disciplinary procedure laid down in the statute establishing the Appellant. In the words of Ogwuegbu, J.S.C. (as he then was)

"It appears to me that the Appellant were carried away by the purported admission of fault by the Respondent and the public outcry following the death of innocent children. They were under the erroneous impression that under the circumstances that prevailed it was unnecessary to observe the conditions laid down in the Act as well as the strict observance of the rules of natural justice."<sup>29 (d)</sup>

In practice, when an act of misconduct is committed, it is usual for the employer to carry out some preliminary domestic investigation which will form the basis of the allegation and complaint to the police.

In the case of Baba v Nigeria Civil Aviation Training Centre<sup>30</sup> the court drew a line between "bodies that merely investigate a matter and those that decide on one's right and obligation" and also reaffirmed the principle in Sofekun's case where the findings of the body shows that a crime has been committed. The court held inter alia that:

"Where some allegations have been made against an employee, such as the Appellant; the employer is entitled to set up a panel to investigate the allegations. But once the Panel has concluded its inquiry and makes out finding which points to the fault of any' person, the employer must first inform such an employee and give him the opportunity to refute, explain or contradict them or otherwise exculpate himself by making any representations or defence thereto before the employer can use those points as a basis for dispensing with his services. Where those points amount to a crime, the case must be reported to the police for investigation and possible prosecution."<sup>31(emphasis mine)</sup>

## **REASONS FOR THE ATTITUDE OF THE COURT**

One therefore wonders why the courts have jealously guarded their criminal jurisdiction to the exclusion of all other bodies. An examination of the cases has however revealed that the attitude of the court is partly based on the principle of separation of powers and the need to preserve the rights of an accused to a fair hearing.<sup>32</sup> The Supreme Court stated the reasons in Sofekun's case thus:

"If Regulations such as those under attack in this appeal were valid, the Judicial power could be wholly absorbed by the Commission (one of the organs of the Executive branch of the State Government) and taken out of the hands of the Magistrates and Judges ... What is done once, if it is allowed, may be done again and in less demanding circumstances. If the Commission is allowed to get away with it, judicial power will certainly be eroded. Such an erosion is, without doubt, contrary to the clear intention of section 22(2) of the constitution. The Jurisdiction and authority of the courts of this country cannot be usurped by either the Executive or the Legislative branch of the Federal or State Government under any guise or pretext whatsoever".<sup>33(a)</sup>

Secondly, contrary to the erroneous impression that the principle in Sofekun's case provides an undue protective custody round the erring employee rather the principle was partly formulated to ensure that "sinners do not go unpunished". Since a crime is against the public and not compoundable by a complainant, it is considered to accord with justice' if the employee is first punished for his crime, if found guilty before he is then subjected to a milder punishment of dismissal or other form of disciplinary action. This can be deduced from the statement of Oputa J.S.C. (as he then was) in Laoye's case where the learned justice said:

"The Plaintiff/Respondent has been accused of very serious offences of conspiracy and stealing U.S. \$119,000.00 very large sum of hard currency. It is in the interest of justice that the truth of the entire transaction be known and that he and all culprits be brought to justice and if the Plaintiff really committed the offences charged that he should be imprisoned. After conviction or during or after serving his sentence, the 1st Defendant could then dismiss him. That is Justice ... It is true that the court is the temple of Justice and the objective is the attainment of Justice. Now Justice is only reached through the ascertainment of the truth and the instrument which our law presents to us for the ascertainment of the truth or falsehood of a criminous charge is trial in open court."<sup>33 (b)</sup>

In view of the above reasons, we therefore respectfully submit that the principle in Sofekun's case is applicable to all categories of employer-employee contracts viz: contracts governed by common law, written contracts, contracts covered by civil service rules.<sup>34</sup>Our submission is based on the constitutional principle that any derogation of the provisions of a Constitution is null and void.

### **A SUDDEN CHANGE OF ATTITUDE**

Just at the time when one could say that the principle in Sofekun's case had become settled and crystallized, the Supreme Court in a dramatic turn made a volte face in the case of Yusuf v Union Bank of Nigeria Plc.<sup>35</sup> The Appellant an employee of Union Bank was dismissed from the employment for gross misconduct. The Appellant allegedly diverted a sum of N4, 665.00 from one customer's account into the account of his friend, one Salami Yekin. The bank gave him a query in which details relating to the complaint against him were given.

The Appellant was summarily dismissed, his reply to the query having been found to be unsatisfactory. The Appellant challenged his dismissal and lost both at the trial court and Court of Appeal. At the

Supreme Court, the Appellant for the first time raised the issue that the conduct for which he had been dismissed amounted to a criminal offence of misappropriation under sections 308 and 309 of the Penal Code<sup>36</sup> and that he had not been accorded fair hearing before he was dismissed. The Supreme Court discountenanced the argument and held that the Appellant had been accorded fair hearing. Wali, J.S.C. stated the position of the law thus:

"Before an employer can dispense with the service of his employee under the common law, all he needs to do is to afford the employee an opportunity of being heard before exercising his power of summary dismissal, even where the allegation for which the employee is being dismissed involves accusation of crime. In the case in hand, the Respondent had done that."<sup>37</sup>

Perhaps to preclude any doubt the learned Justice went further to state that:

"It is not necessary nor is it a requirement under section 33 of the 1979 Constitution that before an employer can summarily dismissed his employee from his service under the common law, the employee must be tried before a court of law where the accusation against the employer is for gross misconduct involving dishonesty bordering in criminality. The provisions of section 33 of the 1979 Constitution have no application to the facts of this case."<sup>38</sup>

The case of Yusufu is remarkable in many important respects. Firstly, reading through the Judgement the ratio decidendi cannot be clearly deduced for the above decision of the court. Considering the fact that this decision of the Supreme Court in this case is against the run of earlier authorities of the same Court, one would have expected the court to review the prior decided cases, and unequivocally over-rule them. It will be recalled that in Laoye's case that the Supreme Court was expressly invited by the Attorney General to over-rule its previous cases relating to fair hearing to no avail. The necessary implication therefore is that the judgement stands on its own without any insight into the history of or rationale behind the principle it purportedly laid down.

The same short coming of scantiness is glaring when the court was considering the issue whether or not the Appellant was given fair hearing. No mention or reference was made in the judgement to the regulations governing the conditions of service of the Respondent's employees and the disciplinary procedure that may be laid down in the regulations.<sup>39</sup> It is a trite principle of labour law that the rights of parties to a written contract of service are determined in accordance with the express terms of the contract. Where the contract stipulates a particular disciplinary procedure that procedure must be followed otherwise the disciplinary action may be reversed where the employee applies for a judicial review.<sup>40</sup>

The decision in Yusuf's case is undoubtedly the line of the least resistance and the shortest cut to "justice" for employers of labour who may be impatient to follow the strict norms of fair hearing. It suffices to point out however that attempt to short circuit legal norms and norms of natural Justice may at the end prove to be more time consuming, expensive and generally counter-productive. To borrow the words of Aniagolu J.S.C. in State Civil Service Commission &Or. v A. I. Buzughe<sup>41</sup>



"Instances may exist where short cuts may prove invaluable and achieve their objectives. It is, however, generally to be recognised that in legal matters, particularly, in matters of natural justice short cut many times prove counterproductive, by short-circuiting legal norms of natural justice and rendering the whole exercise a futility. In that case, the shortest cut becomes the ineffective longer route"<sup>42</sup>

Based on the foregoing, it may therefore be necessary to limit the application of the decision of the Supreme Court in Yusuf's case to a contract of employment governed by common law.

The decision will certainly not apply where terms of the contract of employment expressly require certain administrative procedure or otherwise to be followed before the exercise of disciplinary power by the employer. Employers are therefore advised to thread with caution in applying the principle laid down in the Yusuf's case.

## CONCLUSION

In this paper, we have examined the various Nigerian cases on the issue whether or not an employee who has committed an act of misconduct which also amounts to a crime must first be tried in a court of law before he could be dismissed. The Supreme Court in a well - considered judgment in the case of Sofekun v Akinyemi and ors.<sup>43</sup> has held that criminal Investigation and possible prosecution must first be conducted before the employer can go on with any consequential breach of disciplinary rule.

This decision, as we can see is based on the reason that since only a court of law has jurisdiction to try criminal offences, it will offend the constitutional provisions on fair hearing and the principle of separation of power to allow the employer to first decide on the issue of discipline.

This principle has been affirmed in several others cases by the Supreme Court until June 1996 when the court decided against the run of earlier authorities (without expressly overruling or distinguishing them) in the case of Yusuf v Union Bank of Nigeria, Plc<sup>44</sup> that "it is not necessary nor is it required under section 33 of the 1979 constitution that before an employer can summarily dismiss his employee from his service under the common law, the employee must first be tried before a court of law".

We have briefly examined the fact of the case of Yusuf and respectfully submitted that the decision was wrong and unsupportable in many fundamental respects. Firstly, no discernable ratio decidendi was given by the court as the basis for the change of position. Secondly, the court failed to review the **prior decided cases and distinguish and/or** overrule them. Also, the court wrongly categorised the contract of employment between the Appellant and the Respondent as one governed by the common law. In view of the foregoing, it is hoped that the principle laid down in the decision will be reconsidered at the earliest opportunity.

In the light of the foregoing analysis, it suffices to say that, notwithstanding the decision in Yusuf's case, an employer must be cautious in exercising his disciplinary power over his employee where the employee is alleged to have committed a crime. The decision should not be taken to mean a blank cheque permitting the disciplinary authority to throw overboard the rules of natural justice. The

employer must accord the employee fair hearing before determining his liability or otherwise. Where the contract of employment stipulates a particular procedure, the procedure must be scrupulously followed.

The domestic disciplinary body should also refrain from couching the allegation in form of a crime and also avoid the use of legal terminologies such as "charge", "offence", "guilty", inter alia and the allegation should be related to the Regulations of the establishment.<sup>45</sup> Also, the disciplinary proceeding must be well documented since such documents usually form vital evidence, if and when the matter is referred to the court for possible judicial review.

## REFERENCES

1. The right to dismiss a delinquent workers is implied in a contract of employment. Generally, the employer can dismiss where the conduct of the employee is of a grave and weighty character as to undermine the confidence which should exist between him and the employer. See A. Emiola, v. Nigerian Labour Law, p. 68, see also Sule v. Nigerian Cotton Board (1985) 2 N.W.L.R. (pt.20) p. 17 Ajayiv Taxaco Nigeria Limited (1987) 3 N.W.L.R. (pt. 62), p. 579.
2. E Adeyemi, "Enforcement of Labour Law in Nigeria: Problems and Prospects". Nigeria Journal of personnel vol. 8, No 1 1995, p. 17
3. (1980) S.C. 1
4. See Cap 62 Laws of Federation, 1990. See also section 33(4) for the corresponding provision under the Constitution of the Federal Republic of Nigeria, 1979.
5. O. Ogunniyi, Nigeria Labour and Employment law in Perspective, p.220.
6. E. Adeyemi, op.cit. p. 1.
7. See Adekunle v Western Region Finance Corporation (1963) W.N.L.R. p.5, Sule v. Nigerian Cotton Board (supra p. 17), National Electric Power Authority v. Alhaji S.I. El-Fandi (1986) 3 N.W.L.R. pt. 32p. 884.
8. Where an employee is suspected to have committed a criminal offence the normal practice especially in public service is for the employer to report the case to the police for proper investigation and prosecution. Meanwhile, the employer is interdicted and placed on at least half of his salary or wages. The interdiction lasts until investigation is concluded by the police and the matter is finally disposed off. If the employee is found guilty, an eventually dismissed the employer does not claim a refund of the half salary paid to the employee during the period of interdiction but further payment is stopped effective from the date of the dismissal following the conclusion of the criminal case. Where the employee is discharged and acquitted of the criminal charges he could still be dismissed or otherwise punished on any other charges arising out of his conduct in the matter provided they did not raise substantially the same issues as those in which the employee has been acquitted. See generally, Akin Eniola Public Servant and the Law, p. 89, Adekunle v Western Region Finance Corporation (supra) p.7.

9. Supra
10. See Lana v University of Ibadan (1987) 4 N.W.L.R. (pt 64) p. 248, Federal Civil Service Commission v Laoye (1989) 2 N.W.L.R. (pt. 106) at p. 706, Baba v Civil Aviation Training Centre (1991) 7.S.C.N.J. p.3
11. (1996) 6. S.C.N.J. p. 203
12. See Ibid at p. 214.
13. See Denloye v. Medical and Dental Practitioners Disciplinary Committee (1968) All N.L.R 309, Garba&ors v University of Maiduguri (1989) 1 NWLR. (pt. 18) p. 558.
14. Supra
15. See Western Nigeria Public Service Regulation. 1963 (published as W. N.L.R. 99 of 1963).
16. See Ibid Sections 41, 44 and 45.
17. See Western Nigeria Public Service Commission (Amendment) Regulation 1972, Published as W.S.L.N. 68 of 1972.
18. at p. 19-20
19. at p. 20
20. Supra
21. See Criminal Code Cap. 77. Laws of Federation. 1990, Penal Code. Cap 345 Laws of Federation. 1990.
22. Supra
23. Supra
24. Ibid
25. at p. 262
26. Supra
27. See Supra at p. 706
28. at p. 707
- 29(a). at p. 679
- 29(b). See section 28 of the Evidence Act, Cap. 112 Laws of Federation, 1990
- 29(c). (1994) 8 N.W.L.R. pt. 363 p. 3400.
- 29(d) Ibid at 419
30. Supra
31. Supra
32. See M. O. Adediran, "Judicial Review of Disciplinary Actions in Nigerian Tertiary institutions" p. 17. A paper delivered at the National Workshop on Prevention and Management of Crisis in Nigerian Tertiary Institutions, at Obafemi Awolowo Conference Centre (August 13-15. 1996) Unpublished.
- 33(a) at p. 165
- 33(b) See Federal Civil Service Commission v Laoye(Supra) p. 707
34. These four categories of employment contracts were highlighted in the case of Faponlev. University of Ilorin Teaching Hospital Board of Management (1991) 4 N.W.L.R. (pt. 184) p. 53.
35. Supra
36. See Cap 345 Laws of Federation.
37. at p. 214
38. Ibid.

39. It is usual for financial establishments such as the respondent to have "Employees Book" or handbook containing regulations governing the conditions of service including disciplinary procedure.

40. See Olaniyan v. University of Lagos (1985) 2 N.W.L.R. (pt. 9) 599. Laoye v. Nigerian Civil Service Commission(Supra); Olatunbosun v. NISER Council (1988) 3 N.W.L.R. (pt. 80) 25, Baba v. Nigerian Civil Aviation Centre (Supra)

41. (1984) 7 S.C. 19

42. Ibid at p. 40

43. Supra.

44. Supra.

45. See M. O. Adediran op. cit., p. 25.