LONGE V. FIRST BANK OF NIGERIA PLC: A VIEW IN SUPPORT OF THE SUPREME COURT DECISION

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Abstract

In the case of **Longe v. First Bank of Nigeria Plc** the Supreme Court of Nigeria seemingly made a revolutionary pronouncement on the settled position of labour law by deciding that the remedy of reinstatement or specific performance could be granted in favour of employees in private employments. Perhaps, for the first time in the history of labour law in Nigeria, the apex Court held that an employee in a private employment could be reinstated. This decision, as would be expected, has been criticized by courtroom lawyers, legal scholars as well as labour and industrial relations stakeholders in Nigeria. Almost all scholarly works on the **Longe case** have criticized the Supreme Court decision in the case.

In this paper, however, we have taken a view different from that of other scholars and commentators, by supporting the apex Court's decision. We have thus made an attempt to analyse the seemingly judicial tsunami heralded by the Supreme Court decision in the **Longe case**, with a view to putting the case in its proper perspective. We have contended that the Supreme Court decision is legally justifiable on the ground that, the plank on which the Supreme Court based its decision in reinstating Mr. Longe was that, he being a (Managing) Director, his employment was rooted in a statute, that is, the Companies and Allies Matters Act (CAMA) and so, his employment, though a private one, was statutorily flavoured.

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Introduction

In the case of **Longe v. First Bank of Nigeria Plc**[1], the Supreme Court of Nigeria seemingly made a *volte – face* on the settled position of labour law by deciding that the remedy of reinstatement or specific performance could be granted in favour of employees in private employments. Perhaps, for the first time in the history of labour law in Nigeria, the apex Court held that an employee in a private employment could be reinstated. This decision, as would be expected, has generated a heated galaxy of criticism and controversies among courtroom lawyers, legal scholars as well as labour and industrial relations stakeholders in Nigeria. Almost all scholarly works on the **Longe case** have criticized the Supreme Court decision in the case.

In this paper, we intend to take a different view by supporting the apex Court decision. In a bid to achieve this, this paper we would analyse the seemingly judicial tsunami heralded by the Supreme Court decision in the **Longe case**, with a view to putting the case in its proper perspective. We will argue that the plank on which the Supreme Court based its decision in reinstating Mr. Longe was that, he being a (Managing) Director, his employment was rooted in a statute, that is, the Companies and Allies Matters Act (CAMA)[2] and so, his employment, though a private one, was statutorily flavoured.

It is an elementary common law principle that the remedy of specific performance, otherwise known as order of reinstatement in labour law, does not apply to contracts of employment, except where the employment is one that is clothed with statutory flavour. In other words, at common law, the Court does not order that a servant/employee be reinstated in a mere master-servant relationship or private kind of employment. The best an aggrieved employee could get is damages for wrongful termination of his employment which is not statute – based.

Thus, at common law, in a mere master – servant relationship, an employer could terminate his employee's appointment for any reason, whether good or bad or for no reason at all[3]. He has the right to hire and fire at will. In all cases of gross misconduct, the employer can dismiss the employee summarily, provided he has given the employee a fair hearing – which has been interpreted to mean confronting him with the accusation and

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[1] (2010) 6 NWLR (Pt. 1189) 1

[2] Cap C20, Laws of the Federation of Nigeria (LFN), 2004

[3] See *Olarewaju v. Afribank* (2001) 6 MJSC 68 at 77 paras D – E and *Chukwu v. NITEL* (1996) 2 NWLR (pt. 430) 290 at 303.

requiring him to furnish any defence.[4] Where the reason for termination is not given, the Court does not have the *vires* to go outside the letter of termination of appointment with a view to fishing for the reason it believes may be behind the termination.[5] However, in terminating the employment, the employer is obligated to abide by the terms of the contract of employment which terms may have provided for the giving of a notice or payment in lieu of[6].

Hence, it would be tantamount to wrongful termination of employment if an employer fails to follow the terms of employment in determining the employee's contract of employment. However, as noted above, if an employee in a mere servant – master relationship has his appointment wrongfully terminated, his relief lies in monetary compensation or damages, not reinstatement since the Courts do not make it a practice of compelling an unwilling employer to accept a willing employee back into his business or office[7]. Even at that, his entitlement to damages is not at large but is limited to the salaries and benefits he would have earned within the contractual notice period[8]. Specific performance or reinstatement, as observed, is only available to employees whose employment is statutorily flavoured, that is those in the public service or statutorily created bodies or those whose appointment and dismissal is traceable to a statute[9].

In a bid to driving home our view in support of the decision in the **Longe case**, we would, in this paper, examine the concept of contract of employment, types of contract of employment, the applicability of the remedy of specific performance to contract of employment, analysis of the **Longe case,** the basis of our support for the apex Court's decision as well as its legal implication on the much more settled principle of law that reinstatement is an exclusive preserve for the employments in the public service.

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[4] See *Arinze v. FBN Plc* (2004) 8 MJSC 94 at 98 – 104 and *Osievwore v. NEPA* (2003) 1 MJSC 143 at 151-152 paras G – E .

[5] See *Matthew Iwuoha v. Mobil Producing Nig. Unltd* (2013) All FWLR (pt. 664) 144 at 151 paras A – B.

[6] At common law, an employee can be dismissed summarily, without notice or payment in lieu of, where he commits gross misconduct, such as persistent absence from work as happened in the case of *British – American Insurance Company (Nig.) Ltd v. Omolayo* (1991) 2 NWLR (Pt. 176) 721 and 727 para E where a watchman was dismissed after being warned, severally, to desist from his unrepentant absenteeism. See also *Chukwuma v. Shell Petroleum Development Company of Nigeria Limited* (1993) 4 NWLR (pt. 289) 512 at 560 where it was held that once an employer elects to pay salary in lieu of notice in terminating an employment, such salary must be paid immediately the letter of termination is delivered to the employee, and not later. However, where an employee has accepted payment of salary in lieu of notice, he cannot turn round to complain that he was not given notice of termination. See *Morohunfola v. Kwara State College of Technology* (1990) 4 NWLR 506 at 519.

[7] See *ACB v. Ufondu* (1997) 10 NWLR (Pt. 523) 169. See also *Chukwuma* case (supra) at 539 and *Osievwore* case (supra) at 153 para G.

[8] Gbenga, J., "Legal Redress for Unlawful Termination of Employment: It is Time to Call a Spade a Spade", *Labour Law Review (NJLIR)* Vol. 1 No. 3 (2007).

[9] See *NITEL v. Ikaro* (1994) 1 NWLR (Pt. 320) 350 at 362

The Concept of Contract Employment

A contract of employment is one of the many contracts recognized by the law in Nigeria. A contract has been defined as *"an agreement which the law will enforce or recognize as affecting the legal rights and duties of the parties*[10]*."* In **Federal Government of Nigeria v. Zebra Energy Limited**[11], Mohammed, JSC stated that, *"...A contract is an agreement freely entered by the parties and may be terminated by any of the contracting parties with good or bad or no reason at all."* For a contract to exist, the parties must be *ad idem* and the other elements of a valid contract, such as offer, acceptance, consideration, intention to create legal relations and capacity must be satisfied before a contract can be enforceable at law[12].

A contract of employment is no different from the general contracts as the same elements or principles, as identified in the preceding paragraph, govern it[13]. However, we must hasten to state that a contract of employment is, generally, a contract of service, in contradistinction to a contract for service. The importance of the difference lies in the application of the doctrine of vicarious liability which is applicable to employment – contracts of service but not applicable to similar relationships like that of a principal and an independent contractor – contract for service.

A contract of employment is an agreement in which one person called the employer agrees to employ another person called the employee as his servant while that other person agrees to serve as an employee, subject to agreed terms. This type of contract could be oral or written, partly oral and partly written[14], it could be express or implied by conduct. The terms of the contract of employment religiously bind the parties thereto as well as the Court, in the event that the relationship becomes a subject of litigation. Whether a party will succeed or fail in his suit would depend on the terms of contract, written or oral, which he voluntarily entered into.[15]

Types of Contract of Employment

Basically, there are three types of contract of employment, viz:

a. Master – servant kind of contract of employment
b. An employment where the servant holds the office at the pleasure of the master
c. Employment that is governed by statute

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[10] Sagay, E.I., *Nigerian Law of Contract* (Ibadan: Spectrum Law Publishing, 2000)1.
[11] (2003) 1 MJSC at 23 para G.
[12] Okany, M.C., *Nigerian Commercial Law* (Onitsha: Africana – FEP Publishers Limited, 1992) 44
[13] See *Laws v. London Chronicles* (1959) 2 All E.R. 285.
[14] The only exceptions are contracts of employment of seamen and apprentices which must be in writing. See Section 21(1) of the *Merchant Shipping Act* and Section 53 (1) of the *Labour Act*, Cap LI, LFN, 2004.
[15] See *Morohunfola v. Kwara State College of Technology* (1990) 4 NWLR 506 at 519 where the appellant's action for wrongful termination of appointment was dismissed on the ground that he failed to plead and rely on the terms of contract as contained in his letter of appointment. See also *Union Bank v. Edet* (1993)4 NWLR (pt. 287) 288.

Thus, in **Olarewaju v. Afribank**[16] it was held that,

> *Generally, employments fall into three categories, viz:*
>
> *a. Master and servant*
>
> *b. A servant holds an office at pleasure;*
>
> *c. Employment that is governed by statute.*
>
> *See Ridge v. Baldwin (1964) A.C. 40 per Lord Reid; Olaniyan v. University of Lagos (1985) 2 NWLR (pt. 9) 599. Both parties agree that the present case does not fall within the third class. It is not a case where the tenure of office of the servant is governed by statute. It is also common ground that the present case is one of master and servant.*

The difference between the above types of employment becomes important when viewed against the backdrop of the remedy that would be available to the employee where his employment is wrongfully terminated. In respect of the first two types of employment, the only remedy available to the employee is damages. In other words, where parties have agreed to give each other a notice of a specified number of days or months before termination of the employment contract, failure to give such notice will only entitle the employee to damages and not reinstatement. It is trite law that, in cases of master – servant relationship or in a situation where a person, for instance, a personal assistant to the Governor holds office at the pleasure of the Governor, the Court cannot impose such a willing servant on an unwilling master, the servant's remedy lies in damages only. Reinstatement will be ordered only in special circumstances. Whether the **Longe case** constitutes a special circumstance to have warranted Longe's reinstatement would be considered *anon.*On the other hand, employees whose employments are governed by statutes or regulations made pursuant to a statute are entitled to be reinstated in the event that they are unlawfully or wrongfully terminated.

The Remedy of Specific Performance or Reinstatement in Contract Employment

As noted earlier, where a statute provides for the procedure for terminating an employee's appointment, failure to follow the laid down procedure is fatal. It is trite law that where a statute lays down a procedure for doing a thing, non-compliance with the procedure is a fundamental defect which would nullify the process. Hence, in

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[16] Supra

the case of **Federal Polytechnic, Idah v. Onoja**[17], Okoro, JCA who read the Lead Judgment, had this to say at page 758 paragraphs E-F of the Law Report,

> *All courts in this country are enjoined to do substantial justice and to avoid technicalities.* ***At the same time, all courts are bound by statute, both substantive and subsidiary. Where a statute lays down the procedure for the doing of an act, the court must follow it… to ignore the rules and leave the attainment of justice to the discretion, caprices or idiosyncrasies of individual judges could lead to tyranny and injustice which may lead in chaos but clearly not in the interest of justice according to the law.***[18]

Some employees have been called back or reinstated to their employment by the Courts, owning to the failure by their employers to follow the statutory procedure for termination of employment. A review of some of the cases will help drive home the point being made.

In **Shitta – Bey v. The Federal Public Service Commission**[19], the Appellant was a Legal Adviser in the Federal Ministry of Justice whose name was linked with an alleged drug trafficker. As a result of the allegation, the respondent directed that he should be retired compulsorily after his representations regarding the allegation had been considered and rejected. He challenged his retirement on the ground that the Civil Service Rules, made pursuant to the Constitution were not followed in retiring him. The Supreme Court agreed with him by reinstating him.[20]

In **P.H.C.N. v. Offoelo**[21], the Respondent only got to know that he had been compulsorily retired after the retirement process had been concluded, contrary to the statute governing his employment, which provided that he should be given a 3 months' notice of compulsory retirement. The Supreme Court, per Fabiyi, JSC said,

> *I wish to observe …that where the terms and conditions of a contract of service are created by a statute, same must be complied with when the*

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[17] (2013) All FWLR (Pt. 667) 745

[18] Emphasis ours. See also *Sekoni v. UTC (Nig.) Plc* (2006) All FWLR (pt. 310) 1620 at 1634 paras E – F where it was held that, "*…This court, like any other court, is enjoined to do substantial justice and to avoid technicalities but the court is bound by statute, both substantive and subsidiary; if the statute lays down a procedure, the court is bound to enforce its compliance…"*

[19] (1981) 1 SC 40

[20] A similar decision was reached in *Olaniyan v. University of Lagos.* (1985) 2 NWLR (pt. 9) 599 where some lecturers who were relieved of their jobs by the appellant without regard to the statutory procedure for removal from employment, were reinstated by an Order of Court.

[21] (2013) All FWLR (Pt. 664) 1 at 24 para E. See also *Psychiatric Hospital Management Board v. E.O. Ejitagha* (2000) FWLR (pt. 9) 1510 at 1516 para. E where Uwaifo, JSC said, *"To force a public servant into retirement, that is, before he gets to his retirement age, is an unusual action against him in his career."*

> *contract is being brought to an end. If there is failure to act in the right direction, the court would declare the termination null and void and pronounce the employment as valid and subsisting. An employment is said to be clothed with statutory flavour if the appointment is protected by statute…"*

This settled position of the law is applicable to all statutorily flavoured employments, no matter the gravity of the allegations against the employee. Hence, in the recent case of **The Council of the Federal Polytechnic, Ede v. Olowoookere**[22]**,** the respondent, who was a lecturer with the appellant, was accused of involving in examination malpractices. He was dismissed without being afforded the opportunity to defend himself, contrary to Section 17(1) of the Federal Polytechnics Act, 2004. He challenged his dismissal and he succeeded. Pronouncing on the appellant's Appeal, it was held, per Adumein, JCA that:

> *The appellants brazenly breached the provisions of section 17(1) of the Federal Polytechnics Act and the respondent's right to fair hearing and their decisions purporting to terminate the respondent's appointment as Lecturer was nullified and set aside by the trial court. Here, one is not concerned with the gravity of the respondent's misconduct complained of or the evidence available in that respect. It was the failure by the appellants to fully comply with the statutory procedure for terminating the respondent's appointment which has statutory backing or flavour that is the real issue. No matter how black or grave the allegations against an employee whose employment is statutorily spiced, the employer must adhere to full compliance with the procedure provided by the statute.*

However, we hasten to state here that, the mere fact that a person is an employee in a statutorily - created body or organization does not automatically make his employment statutorily flavoured. Put differently, an employee's employment is said to be with statutory flavour if and only if his appointment and removal is

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[22] (2013) All FWLR (Pt. 699) 1200 at 1216 – 1217 paras H – A.

regulated by a statute, not merely because his employer is a statutory body. This point was taken beyond peradventure in **P.H.C.N. v. Offoelo**[23] where Muhammad, JSC had this to say:

> *Now, just for the sake of emphasis, I need only to reiterate the position of the law which has long been settled in a litany of cases that the mere fact than an employer is a creation of statute or that it is a statutory corporation or that the government has shares in it does not elevate its employment into one of statutory flavour. Rather, there has to be a linkage or nexus between its employee's appointment with the statute creating the employer or corporation.*

The summary of the point being made is that an order of reinstatement can be granted in favour of a confirmed and pensionable employee whose appointment is statutorily garbed. But then, what is the fate of a probationary staff that has been on probation beyond the period stated in the contract of employment? Can such a staff be protected by the statutory flavour regime in the event that his employment is terminated wrongfully, and before the appointment could be confirmed? The Court has proffered an answer to these questions in the **Olowookere case**[24]**.** There, the appellants employed the respondent as a lecturer on a "temporary" appointment and stated in the appointment letter that the latter would be on probation for 2 years before his appointment could be confirmed, subject to favourable medical and confidential reports. At the end of the 2 years probationary period, the appellants were silent on whether they had confirmed the respondent's appointment. Rather, they continued to pay the respondent who also continued to render his services as a lecturer for another 1 year before his appointment was eventually terminated. The Court of Appeal held:

> *…In the eyes of the law, having kept the respondent as an academic staff, using him as a lecturer and paying him his salaries and other benefits for about 12 (twelve) months after the period of probation had elapsed, for the appellants had by their conduct confirmed the respondent's appointment. See the case of Obafemi Awolowo University v. Onabanjo at 570. Paragraphs D – E.*

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[23] Supra, 23 para B
[24] Supra, 1215

It is therefore our humble submission that the relief of reinstatement enures in favour of both the expressly confirmed staff and staff whose appointments have been impliedly confirmed by the conduct of their employers, as in the **Olowookere case.**

Before the **Longe case**, the above judicial pronouncements on reinstatement only applied to public service or statutory employments, at least, generally. It was settled then that an order of reinstatement could not be granted by the Court in cases relating to private employments, except in special circumstances[25]. It does appear that the **Longe case** has scuttled this settled position of the law, though exceptionally.

The Factual Matrix of Longe v. First Bank of Nigeria Plc

The appellant, Mr. Longe was originally appointed as an Executive Director of the respondent bank. In the course of time, the appellant was promoted or appointed to the office of the Managing Director of the bank, pursuant to the powers of the Board of Directors under Article 105 of the respondent bank's Articles of Association. The appellant was alleged to have improperly granted loan to one Investors Group Nigeria Limited for the acquisition of shares in NITEL. As a result of the impropriety, the appellant was suspended from the office of the Managing Director. Subsequently, his appointment as the Managing Director was "revoked" at a meeting of the Board of Directors in respect of which no notice of meeting was served on him. Being aggrieved with the decision on the revocation of his appointment, the appellant instituted an action at the Federal High Court, Lagos, urging the Court to nullify the revocation of his appointment and/or reinstate him, principally on the ground that the revocation was not validly done, him having not been served with a notice of the meeting where the decision to revoke his appointment was taken.

The appellant hinged his argument on Section 266(1) & (3) of CAMA which provides that failure to give a notice of meeting to a director entitled to receive such notice would invalidate the meeting if held. On the other hand, the respondent canvassed two major points as a defence. One, the respondent contended that the appellant was not a director within the meaning of CAMA since he was a working Managing Director, and as such, he was not entitled to notice under Section 266. Secondly, the respondent also argued that the suspension of the appellant as Managing Director had disentitled him from receiving notices of meeting of the Board of Directors.

While the Trial Court and the Court of Appeal held that the appellant was a mere working director or a mere servant of the bank who could be hired and fired by the bank based on the terms of employment, the Supreme

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[25] Animashaun, O., "Foisting A willing Employee on an Unwilling employer: The Remedy of Reinstatement Revisited", *Labour Law Review (NJLIR)* Vol. 3. No. 2 (2009). See also *Afribank v. Nwanze* (1998) 6 NWLR (pt. 553) 283 at 296.

Court upturned the lower Courts' decisions, thus making some revolutionary pronouncements on the applicability of reinstatement to private employments in Nigeria. In the words of a learned writer, the Longe decision "*is watershed in the law of labour relations in Nigeria in that the Court, for the first time, made an order of reinstatement in private sector employment.*"[26]

The Supreme Court was of the view that section 266 applies to executive and non-executive directors. In fact, the Court opined that as far as the section is concerned, there is no dichotomy between an executive and non-executive director as CAMA only defines who directors are without classifying them into executive and non-executive directors. In the words of Oguntade, JSC, who read the Lead Judgment at pages 42- 43 of the Law Report:

> *…Section 262 reproduced earlier in this judgment gives a director whose removal is under consideration the privilege to make written presentation in his own defence to the Board of Directors. The case of the plaintiff is that he was not given such a notice. How could a director who was not given a notice of the meeting of the Board make a written presentation at the meeting of the Board.[sic, ?]*
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> *Section 244(1) of C.A.M.A defines a director thus:*
>
> *"Meaning of directors. Directors of a company registered under this Act are persons duly appointed by the company to direct and manage the business of the company." (Italics mine)*
>
> *The statutory definition of directors above does not recognize the nomenclature raised by the court below as between executive and non-executive directors. Rather directors are those appointed by the company "to direct and manage the business of the company." How does one conclude that a 'managing director/chief executive' of a company is not a director of the company? The truth of course is that under any definition a managing director is the directing mind and will and the alter ego of the company through which the company acts. It is indeed by virtue of his office that the plaintiff was able to give out some substantial amount as loan on behalf of the defendant. As I observed*

[26] Atilola, B., "Expanding the Frontiers of Employment with Statutory Flavours: A Review of the Supreme Court's Decision in Longe v. First Bank", *Labour Law Review (NJLIR)* Vol. 5 No. 3 (2011) 1 at 6-7.

earlier, it is fair to say that the defendant on their pleadings did not plead that the plaintiff was not their director.

As to the effect of the non-service of notice of meeting on the appellant regarding the meeting where his appointment was revoked, His Lordship held at page 45:

The removal of the plaintiff as Managing Director/Chief Executive of the defendant without a notice to him to attend meeting at which the decision was taken is a clear violation of section 266(1) and (2) of the Companies and Allied Matters Act; and such violation must attract the penalty by law under section 266(3). The said meeting is under the law invalid. I so pronounce it. I declare that the removal of the plaintiff is not in accordance with law. The plaintiff must be deemed to be still the Managing Director/Chief Executive of the defendant. I accordingly grant the reliefs 1 – 5 claimed by the plaintiff appellant …

Such was the radical pronouncement by the Supreme Court in **Longe case** that has now expanded the classes of employments with statutory flavour, by including directors of private companies registered under CAMA.

A lot has been written, in disagreement with the reasoning of the apex Court in the case under consideration[27]. According to Atilola, a Managing Director or Executive Directors are not directors within the meaning of section 266 of CAMA. The directors contemplated by the section, to the learned writer, are non-executive directors who do not collect salaries and other entitlements payable to executive directors[28]. As scholarly as these contentions may sound, we are minded to disagree with the writer and agree with the Supreme Court on this point. In the first place, going by the definition given to the word "director" in the aforestated section 244 (1) of CAMA, there is no indication that the framers of the Act had any intention of differentiating between managing/executive and non-executive directors in defining the word. While the appellant might have come in as an ordinary employee, upon his appointment as an executive director, and later, a managing director, the provisions of CAMA kick in to regulate the procedure for his removal. The CAMA itself did not leave us in doubt that a director means any director, whether executive or non-executive. Hence, the opening word in

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[27] See Atilola, B., op. cit. and Amucheazi, O.D. and Oji, E.A., "Reinstatement of a Dismissed Employee in a Contract of Employment: A Case Review of Long v. First Bank of Nigeria Plc", *Labour Law Review (NJLIR)* Vol. 4 No. 2 (2010) 19

[28] Atilola, B., op. cit., 13

Section 266 is "every". For the purposes of succinctness, we reproduce below, the provisions of section 266 (1), (2) and (3) of CAMA:

> ***EVERY*** *director shall be entitled to receive notice of the directors' meetings, unless he is disqualified by any reason under the Act from continuing with the office of director.*
>
> *There shall be given fourteen days notice in writing to* ***ALL*** *directors entitled to receive notice unless otherwise provided in the articles.*
>
> *Failure to give notice in accordance with subsection (2) of this section shall invalidate the meeting*[29].

We humble submit that the wordings of the above statutory provisions are clear enough and same should be given their ordinary dictionary meaning. If the legislators had intended the section not to apply to executive or managing directors, they would have expressly stated so during the law-making process. We are of the view that if there is any complaint to be laid as regards the **Longe case** decision, such complaint should actually be directed not at the Court but at the law makers who did not deem it fit to legislatively exclude a mere servant in a contract of employment who later rose to the rank of a director, from the application of the provisions of CAMA, especially the provisions dealing with removal of directors[30]. We opine that the Court did not err as it only gave a simple interpretation to the clear provisions of CAMA as it currently stands. After all, the respondent could not show that the appellant was "disqualified by any reason **under the Act** from continuing with the office of director", which would have been a valid justification for not giving him the requisite notice of meeting. We hold the firm view that the provisions of CAMA serve as sufficient ground to make the **Longe case** a special circumstance to warrant a reinstatement of an employee in a private employment.

From another angle, we also observe that the counsel to the respondent bank in this case did not help the cause of his client by the untidy way he handled the case. That must have also contributed to the reasoning of the Supreme Court. In the first place, instead of pleading relevant facts that would have served as a formidable defence to the allegation of non-service of notice, the counsel was gallivanting about by canvassing irrelevant facts about the impropriety or misconduct committed by the appellant which allegations the appellant did not deny. The central issue, in the appellant's case, was not whether he was guilty of misconduct but whether he

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[29] Emphasis ours.

[30] See Section 262 of CAMA

was served any notice of meeting as required by CAMA. The respondent counsel, in our view, failed to pointedly meet this issue with the formidable defence it deserved.

Still talking about the conduct of counsel, he also did a great disservice to the respondent's defence by blowing hot and cold at the same time. In one breath, the counsel stated that the appellant was not a director properly so called under the CAMA and so was not entitled to notice of meeting. In other breath, in paragraph 17 of the Statement of Defence, the respondent's counsel was of the view that the appellant was not entitled to notice of meeting because he was on suspension at the time the meeting was held. Is this not contradictory? Does it mean the appellant would have been entitled to the notice of meeting where he was removed if he had not been suspended? More questions than answers!

On the effect of the suspension of the appellant vis-à-vis entitlement to notice, we again opine that the apex Court was on the right footing when it held a contrary opinion from that of the Court of Appeal which had earlier erroneously stated that the suspension disentitled the appellant from receiving notice of meeting. At page 34 of the Law Report, the apex Court, per Oguntade, JSC held:

> *I think with due respect, that the court below completely misunderstood the import of suspension. Admittedly, an employer suspending his employee may impose terms of the suspension but in a general sense of suspension of an employee from work only means the suspension of the employee from performance of the ordinary duties assigned to him by virtue of his office. Suspension is not a demotion and does not entail diminution of rank, office or position. Certainly, it cannot import a diminution of the rights of the employee given to him under the law. To accept as the court below did, that the suspension of the plaintiff would deny him the protection afforded him under section 266 is to confer the right on the defendant to vary the status of the plaintiff without complying with the procedure laid down for doing so. The defendant cannot first suspend the plaintiff without notice to him of the meeting at which the suspension was discussed and agreed and then turn round to say that the suspension had removed the necessity to give him the notice as mandatorily required under section 266 (1) of*

CAMA. The court cannot grant to a litigant the right to disobey the law under any artifice or guise[31].

Conclusion

The implication of the decision in the **Longe case** is not to unsettle the settled position of the law on reinstatement. In other words, **Longe case** has not scuttled the common law position that reinstatement, as a remedy, does not apply to mere master – servant kind of employments or private employments. This hallowed labour law principle, in our considered opinion, still stands. What the Supreme Court has done through the case is to widen the sphere of employments with statutory flavour, that is, employments in respect of which reinstatement can be ordered by the Court. This the Court has done by removing company directors, secretaries of public companies[32] and other officers of registered companies, appointed under CAMA, from the realm of mere master – servant employments to that of statutorily garnished employments. Consequently, post **Longe case**, it is no longer possible to sack or dismiss the aforementioned officers of companies without following the statutory procedure laid down under CAMA. They are no more mere servants to be sacked at the whims and caprices of the powers – that – be in the company. By this decision, the apex Court has charted a new course, and it is therefore a new dawn in Nigerian Labour Law.

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[31] See also *University of Calabar v. Esiaga (*1997) 4 NWLR (pt. 502) 719 at 723 on the import of suspension .
[32] See Sections 293 – 298 of CAMA on the appointment, duties and removal of a public company secretary.