



DECONSTRUCTING THE EMPLOYEE'S RIGHT TO VOLUNTARY RESIGNATION



The morning of June 15, 2021 started like every other morning at X-Tech Technologies Limited (X-Tech); coffee, note pads, pens, little chatter here and there, as staff settled in to the day's activities. An internal memo was distributed to staff via email, informing them that Omolayo Sodipe ('Molayo, as she was fondly called) had been dismissed. Tolu, 'Molayo's closest friend at the office, quickly excused herself from the group of colleagues discussing the issue to place a call across to her friend. On reaching 'Molayo, Tolu informed her of the internal memo that had just been distributed at the office, wondering why

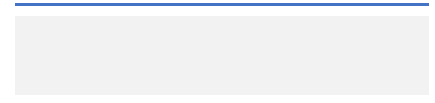
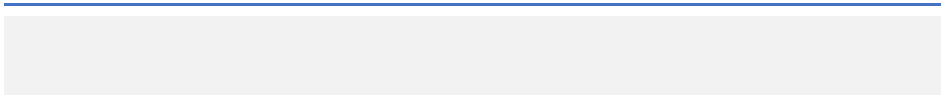
'Molayo had been dismissed, when in fact, she had proceeded on terminal leave, retiring at 40 to travel the world. The news came as a shock to 'Molayo, who promised her friend that she would inquire into the matter.

On ending the call with Tolu, 'Molayo checked her phone and found that an email had been sent to her by her former company's Human Resources Department, informing her of the outcome of a disciplinary hearing that had been conducted on June 1, 2021, and demanding that 'Molayo refunds the sum of USD \$800,000.00 (Eight Hundred Thousand United States Dollars) which had gone missing under 'Molayo's watch. Shocked at the turn of events, 'Molayo immediately reached out to the law firm of Fire Legal Partners, who have now filed a suit at the National Industrial Court of Nigeria (NICN), to enforce 'Molayo's right to voluntary resignation.

Interestingly, the scenario above is akin to the facts in the case of *Mrs. Martina Oladipo Bakare v. Skye Bank Plc*, Suit No. NICN/LA/349/2015, judgment of the NICN delivered by Hon. Justice Obaseki-Osaghae on December 3, 2021. The NICN considered among other issues, the question of whether the claimant is qualified for retirement outside the terms provided in the defendant's employee handbook.

FACTS AND FINDINGS

Martina Oladipo Bakare (Martina) headed the Recovery and the Special Assets Units of Skye Bank Plc. (Skye Bank/Bank) before her retirement on June 25, 2014. In June 2013, Martina claimed to have been approached by the Chairman of Skye Bank to sell Skye Bank's property at Alma Beach, Elegushi, Lekki, Lagos with a market value of about ₦2,000,000,000.00 (Two Billion Naira) to his company, Olutoyi Estate Development and Service Limited, at ₦1,000,000,000.00 (One Billion Naira) which she as Head, Special Assets Unit turned down as it was not in the interest of Skye Bank, and she believed she could get a higher sum for the property.



Martina would later sell the Alma Beach property to GT Rich Investment Limited at ₦3,100,000,000.00 (Three Billion, One Hundred Million Naira). This, she claimed, displeased the Bank's Chairman, who threatened to deal with her.

Martina was queried on June 10, 2014, and invited to appear before a Disciplinary Committee (DC) set up by the Bank. Before the DC could reach its findings on the allegations leveled against Martina, she turned in an application to retire. This notwithstanding, Martina was dismissed from the service of the Bank upon the findings of the DC on July 16, 2014. Martina's dismissal was based on her violation of the Bank's Policy and Code of Conduct, which the DC found to be gross misconduct. Dissatisfied with her dismissal from the Bank, Martina instituted the extant action at the NICN, claiming amongst other reliefs, her right to voluntarily retire from the Bank as well as her exit benefits.



During proceedings, the Bank led evidence to show that Martina was pursuing sales of its toxic assets for her material personal gain rather than its interest, and as a result, Martina was blackmailing the Bank's Chairman in her bid to cover up her financial impropriety. It was also established that Martina disguised and earned personal secret commissions apart from her salary from the sale of the Bank's assets. It was the Bank's position that Martina, in pre-empting the findings of the DC, surreptitiously turned in her letter of resignation in flagrant disregard of its policy regulating the exit of management staff. The Bank counterclaimed the sum of ₦31,000,000.00 (Thirty-One Million Naira) from Martina, representing the sum she fraudulently misappropriated from the Bank.

The Court, in holding that Martina was not qualified for retirement, considered the provisions of the Bank's employee handbook which provided that employees are due for retirement upon attaining 60 years of age, or after 30 years of service, whichever occurs first, and seeing that Martina was only 50 years old at the time of her application to retire, and had spent about 8 years with the Bank, the Court found that Martina was not qualified for retirement. The Court also found that the claimant had only applied for early retirement, and her application did not amount to substantive retirement, having not been approved by the Bank. The Bank's counterclaim succeeded.

OUR COMMENTS

No doubt, where an employee is guilty of gross misconduct (and this has been defined as conduct of a grave and weighty character as to undermine the confidence which should exist between the employee and his employers or working against the deep interest of the employer), he could be lawfully dismissed summarily without notice and without wages. See *U.B.N. Ltd v Ogboh*.¹

In the case under review, Martina's right to voluntary resignation was not upheld because she had only sought resignation to avoid facing the outcome of the DC's proceedings, and it was apparent that by virtue of the Bank's employee handbook, Martina was not qualified for retirement, having not attained 60 years of age,

¹ [1995] 2 NWLR (Pt 380) 647 at 669, paras. F-G

nor served the Bank for 30 years. It is however worthy of note that the Court's decision was based on the fact that Martina only applied for early retirement, and could not re-interpret that application as a resignation, especially as there was no evidence before the Court that the Bank approved Martina's application for early retirement.

The law is settled that the terms of a contract of service are the bedrock upon which an aggrieved employee must found his or her case. He or she succeeds or fails upon the terms. The Court will not look outside the terms stipulated or agreed by the parties in deciding their rights and obligations. See *Katto v Central Bank of Nigeria*². Though it is true that no one can force a willing servant on an unwilling master, and vice-versa, it is crucial that we note that certain considerations may lawfully circumscribe an employee's right to resign, or terminate a contract of employment. Where by contract, an employee agrees to only resign on attaining a certain age, or serving the company for a number of years, that employee is bound to the terms of the contract of employment.



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² (1999) 6 NWLR (Pt 607) 390