IN THE SUPREME COURT OF NIGERIA

Suit No: SC116/2007

Petitioner: Bernard Ojeifo Longe
And
Respondent: First Bank of Nigeria Plc

Date Delivered: 2010-03-05

Judge(s): Dahiru Musdapher ,George Adesola Oguntade, Francis Fedode Tabai ,Ibrahim Tanko Muhammad ,Olufunlola Oye

Judgment Delivered

The appellant was the plaintiff before the Federal High Court Lagos where on 4-07-02, he issued a Writ of Summons against the respondent as the defendant claiming the following reliefs:

(i) A declaration that the Defendant\'s Board of Directors cannot lawfully hold any meeting of the said Board without giving notice thereof to the Plaintiff and accordingly all decisions taken at any such meeting is unlawful, invalid, null and void and incapable of having any legal consequence;

(ii) A declaration that in particular the decision of the Defendant\'s Board of Directors held on the 13th of June 2002 to revoke the Plaintiff s appointment as Managing Director/Chief Executive is wrongful, unlawful, invalid, null and void and incapable of having any legal consequence;

(iii) A declaration that any purported implementation of the said decision made by the Board on the 13th of June 2002 (including any appointment to the office held by the Plaintiff in the Defendant Company) is ineffective, unlawful and null and void;

(iv) An order of injunction restraining the said Defendants from giving effect or continuing to give effect to any of the decisions of the Board mentioned in claims (i) and (ii) hereof without first complying with the mandatory procedural requirements stipulated in Section 266(3) of C.A.M.A.

(v) A declaration that the Plaintiff is entitled to remain in the premises allocated to him by the Defendant including the enjoyment of all associated services until the expiration of a reasonable time from the date of any lawful and valid termination of his contract of service with the Defendant;

(vi) In the alternative to the foregoing, the Plaintiff claims the sum of N136,614,584.00 being the amount due and owing to the Plaintiff as at 13th June 2002;

(vii) Interest on the said sum of N136,614,584.00 at the rate of 21% per annum or such other rate of interest as the Court may adjudge to be fair and just.

(viii) In further alternative to claims (i) to (iii) the Plaintiff also claims the sum of N804,685,l17.00, US$207,360.00 and '359,100.00 being special damages suffered by him as a result of the wrongful termination of appointment.

The parties later filed and exchanged pleadings after which the suit was tried by Nwodo J. (as she then was). On 9-10-03, in the judgment, the appellant\'s claims i to v were dismissed whilst claims vi to viii which were withdrawn by plaintiff s counsel were struck out. The plaintiff was dissatisfied with the judgment. He brought an appeal before the Court of Appeal, Lagos (hereinafter referred to as the \'court below\'). The court below in its judgment on 5-1-06 dismissed plaintiff s appeal. Still dissatisfied, the plaintiff has come before this court on a final appeal. In the appellant\'s brief filed on his behalf, the issues for determination in the appeal were identified as the following:

\"3.2. Whether it is proper in law for the Court of Appeal to have jettisoned suo motu in its judgment the entire Reply Brief

of the Appellant in their judgment without giving the parties, in particular the Appellant, a hearing even though arguments have been proffered on all the Briefs including the Reply Brief without any objection or opposition by the Respondent and in circumstances which resulted in a deprivation of fair hearing'

3.2. Whether it was proper for the Court of Appeal to have failed in its judgment to resolve the issue whether a finding by the trial Court that the appellant was suspended under the common law meets the requirement of the Companies and Allied Matters Act that a director must be given a notice of directors meeting unless the director is disqualified under the Act (C.A.M.A.) an issue which if it had been pronounced upon would probably resolve the appeal in favour of the Appellant and by not doing so occasioned a miscarriage of justice'

3.4. Whether it was proper for the Court of Appeal to speculate on an issue which was not part of the grounds of appeal and which was also not an issue for determination before the Court'
3.5. Whether the Court of Appeal was right in holding that although the Appellant was appointed pursuant to Articles 105 of the Articles of Association of the Respondent, he is not a director for that purpose of the Companies and Allied Matters Act (C.A.M.A.) therefore his working relation is not within the contemplation of Section 266(i) and moreover that the office of the executive director is not known to the C.A.M.A.'\"
The respondent\'s counsel raised a preliminary objection to the appellant\'s 1st issue. It was contended by the respondent that since the judgment of the court did not in the end turn on the issues whether or not the appellant\'s Reply brief was properly filed before the court below, it was not proper for the appellant to raise an issue on the question whether or not the court below was right to have failed to consider the aforesaid appellant\'s Reply brief.
I am with respect unable to agree with the Respondent\'s counsel that the appellant was wrong to raise a ground of appeal and an issue for determination in the appeal on the question whether or not the court below was right to have refused to consider the contents of the appellant\'s Reply brief filed in reaction to the Respondent\'s brief. My firm view is that an appellant is entitled under Section 36 of the 1999 Constitution of Nigeria to have his appeal fully and fairly determined. The hearing of an appeal cannot be regarded as full and fair if the briefs filed by one party to the appeal is not considered while the brief of his opponent is considered. Even if a brief contains no more than arguments on the applicable facts and the law, the failure to consider the brief filed by one of the parties is tantamount to a refusal to hear the appeal fully. I am therefore unable to agree with the respondent\'s counsel that the appellant could not properly raise his issue 1.
I intend to consider issue 1 on its own and issues 2 - 4 together. Issue 1 is a complaint that the court below improperly failed to consider the appellant\'s Reply Brief before it when none of the parties had raised any issue before it as to whether or not the appellant\'s said Reply Brief should have been filed. None of the parties had, it was argued, raised any issue as to the contents of the Reply brief; and the appellant was therefore not enabled to say anything concerning the propriety or regularity of the contents of the Reply brief. Appellant\'s counsel Prof. Adesanya S.A.N. forcefully argued that the court below by failing to consider the contents of the appellant\'s Reply brief had denied the appellant his constitutional right to fair hearing. It was further submitted that a court could not properly raise issues suo motu which none of the parties had raised before it. Counsel placed reliance on Hamble v. Hueze [2001]4 NWLR (Pt. 703) 372 at 388; Abbas v. Solomon [2001]15 N.W.L.R. (Pt. 735)144; Korede v. Adedokun [2001] 15 NWLR (pt. 736) 483 at 497; Yesufu v. Government of Edo State [2001]13 NWLR (Pt. 731) 517; Achiakpa v. Nduka [2001]14 NWLR (Part 734) 623 S.C and The State v. Oladimeji [2003]14 N. WL.R. (Pt. 839) 57 at 69.
There is no doubt that the court below was of the view that the appellant ought not to have filed an appellant\'s Reply brief because the respondent had not in its brief raised any issue or argument which warranted the filing of an appellant\'s Reply brief. At pages 1225-1226 of the Record of Proceedings the court below per Salami J.C.A. (as he then was) reasoned thus:
\"I wish respectfully to observe that the appellant\'s reply brief went contrary to the principle governing writing of a reply brief. There is a demand for a reply brief when an issue of law or argument in the respondent\'s brief deals with fresh point, it should therefore be restricted or devoted strictly to proffering answer to the new points raised in the respondent\'s brief. It is not the intention of Order 6 rule 5 which provides for a reply brief, to allow the appellant to re-argue or re-open his appeal all over again under the pretext of writing a reply brief by merely re-emphasizing argument already contained in the appellant\'s brief. It is therefore clear that where there is no fresh point raised in the respondent\'s brief, appellant\'s reply brief would not only be unnecessary but also uncalled for and an unwholesome waster of the time of the respondent and the court. See Supreme Court\'s observation in Olajisoye v. Federal Republic of Nigeria (2004) 4 NWLR (Pt.864) 584, 644 per Niki Tobi, JSC and Ikine v. Edierode (2001) 18 NWLR (Pt. 745) 446, 461 per Ejiwunmi. JSC. This is not only a typical example of the benediction being longer than mass but also in flagrant disregard of respondent\'s right to reply.\"
It is to be said here that the respondent\'s counsel had not at the hearing raised any objection to the appellant\'s Reply brief filed by appellant\'s counsel. No issue was raised before the court below as to the propriety of filing the said Reply brief. It is a correct statement of law that courts of law must refrain from raising suo motu issues upon which their decisions or judgment would turn. The rationale for that approach is not difficult to understand. It is an inseparable adjunct of the concept of fair hearing. This court has in several cases warned on the approach in such matters. The dictum of this Court in the case of The State v. Oladimeji (supra) is very apposite. This Court at page 69 said:
\"The law in this regard is now settled. It is now trite law in the determination of disputes between the parties, the
court should confine itself to issues raised by the parties. The Court is not competent suo motu to make a case for either

or both parties and then proceed to give judgment in the case so formulated contrary to the case of the parties before it.\"

Having said the above, I must bear in mind that I am dealing here with the failure to consider an appellant\'s Reply brief and not with the question of the formulation of issues suo motu for parties by the court in its judgment. Whether or not raising a question suo motu affects adversely any of the parties is in itself a distinct matter which the appellate court must consider only in the light of the possible effect or impact which such an error may have had on the judgment or conclusion of the errant court. In this case, I am considering the argument in a brief; not evidence at the hearing or averments in a pleading. The contents of a brief are no more than arguments on the law which point the way to the court the direction in which it should go. Arguments constitute a form of assistance to the court but, briefs notwithstanding, courts are bound to give judgments according to law.

Order 6 rule 5 of the Court of Appeal Rules provides:

The appellant may also, if necessary, within fourteen days of the service on him of the respondent\'s brief, but not later than three clear days before the date set down for the hearing of the appeal file and serve or cause to be served on the respondent a reply brief which shall deal with all new points arising from the respondents brief. \"

(Underlining mine)

The point which the court below made in its judgment in the excerpt reproduced above is that the necessity to file an appellant\'s Reply brief did not arise as there were no new points raised in the respondent\'s brief. A careful perusal of the respondent\'s brief before the court below shows that no new issues were raised therein which necessitated the filing of an appellant\'s Reply brief. The said appellant\'s Reply brief was no more than an effort at re-arguing or emphasizing matters which had been fully discussed by the appellant\'s counsel in the appellant\'s brief. The work of justices who have to read these briefs is needlessly made cumbersome if they have to read and digest briefs which are a repetition of submissions previously made. I am with respect unable to agree with appellant\'s counsel that the court below was in error in its decision not to take into account the appellant\'s Reply brief.

Appellant\'s Issues 2,3 and 4 will be considered together. I observed earlier in this judgment that the trial court struck out the appellant's claims vi to viii following the withdrawal of same. The claims (i) - (v) which were pursued by the appellant relate to the interpretation of the provisions of the Companies and Allied Matters Act as to the legal consequence of the Defendant\'s/Respondent\'s Board of Directors holding a meeting at which certain decisions were taken when notice of such meeting was not given to the Plaintiff/Appellant. The relevant paragraphs of the averments in plaintiff/appellant\'s Statement of Claim are 3, 7, 8, 9 which read:

3. On the 24th of February 2000, the Defendant at the meeting of its Board of Directors held at the Board Room of the Head Office unanimously decided to appoint the Plaintiff as the Managing Director/Chief Executive of the Defendant Company for a period of 6 years but subject to an annual assessment of the Plaintiff s performance, the Plaintiff will at the trial refer to the Board Resolution for its full terms and effect.

''''''''''.

7. At a meeting of the Defendant\'s Board of Directors held on the 13th of June 2002, the Board wrongfully and unlawfully resolved to revoke the Plaintiff s appointment with the Defendant.

8. Contrary to the Articles of Association of the Defendant Company and to Section 266(3) of the Companies and Allied Matters Act 1990, the Plaintiff was not issued any notice of directors meeting of 13th June 2002 when the resolution to revoke his appointment was passed, accordingly the said meeting of the Board on 13th June 2002 is invalid, null and void and incapable of having any legal consequence.

9. By letter of 13th June 2002, the Defendant wrongfully and in repudiatory breach of the said agreement terminated the employment and wrongfully and unlawfully dismissed the plaintiff therefrom.\"

It is apparent from the above averments that the kernel or cornerstone of the plaintiff/appellant\'s case was the failure of the defendant/ respondent to serve him a notice to be present at the meeting whereat a decision was made to dismiss him from the service of the defendant/respondent. The defendant/respondent in paragraphs 9 to 15 and 18 to 42 of its Statement of Defence pleaded facts to the effect that the plaintiff/appellant had been negligent or reckless in the manner he granted an unauthorized loan to a company called Investors International (London) Ltd. for the acquisition of shares in NITEL.

A perusal of the Statement of Defence filed by the defendant/respondent conveys that the defendant/respondent pleaded and relied on facts which were not directly necessary to defeat the claims made by the plaintiff/appellant. It is a plaintiff who by his Statement of Claim primarily nominates the issues to be tried in a suit and on which he relies to have the judgment of the court. For a defendant it is only necessary to resist the plaintiff\'s claims on the facts pleaded. It is not for the defendant to set up facts which would convey that it is not just setting up a defence to plaintiff\'s suit but

setting up a new case of his own. He is only permitted to do this when he is setting up a counter-claim. The approach of the defendant/respondent in the manner it crafted its Statement of Defence needlessly made the matter complex and unwieldy.

If the reason which the defendant/respondent intended to rely upon for not serving the notice of the meeting at which plaintiff/appellant\'s employment was brought to an end was because he had given out unauthorized loans, the defendant would be entitled to plead as it did. But in its paragraph 17 of the Statement of Defence, the defendant/respondent pleaded:

\"17. The plaintiff was not entitled to attend the Board meeting and (sic) where his appointment was determined and dismissed. The plaintiff was suspended effective from April 22, 2002 and he was dismissed as Managing Director/Chief Executive from June 13, 2002 at a meeting of the Board of the Defendant. The plaintiff knew that to be the correct procedure of the Board.\"

What are the facts relevant to the claims made by the plaintiff/appellant' It was undisputed that the plaintiff was appointed the Managing Director/Chief Executive of the defendant on 24-2-2000. Before that date, the plaintiff had been the defendant\'s Executive Director. Following an improper grant of loan to a customer of the defendant, the plaintiff was on 22-04-02 suspended by the defendant\'s Board of Directors, and on 13-06-02 his appointment was revoked. The plaintiff was not given the Notice of the meeting of the Board of directors of the defendant at which the decision to terminate him was taken. It was plaintiff\'s contention that under section 266 of Companies and Allied Matters Act (hereinafter abbreviated as C.A.M.A.), he was entitled to be given Notice of the meeting and that the failure to give him such notices would render his termination null and void.

Now the letter by which the plaintiff was placed on suspension written on 22-4-2002 and tendered as an exhibit reads:

\"First Bank of Nig. Plc
35, Marina,
P. O. Box 5216, Lagos.
22nd April 2002
Mr. Bernard Ojeifo Longe, OON.
Managing Director/CEO,
First Bank of Nigeria PIc.,
35, Marina, Lagos.

I regret to convey to you the decision taken by the Board of Directors of the First Bank of Nigeria PIc., at its Extraordinary Board Meeting of 22nd April 2002 held at Coommasie House, Abuja to suspend you from office with effect from today,

22nd April 2002. During the suspension period, you are expected to concentrate on the recovery of the Credit Facility granted to the Investors Group Nigeria Limited (I.G.N.L.).

The Board expects that you will do your utmost best to help in the collective efforts towards the recovery of the money.

(Sgd.)
Alh. (Dr.) Mutallab, CON
(Chairman)

The extract of the minutes of the meeting at which the appointment of plaintiff was terminated reads:

First Bank of Nig. Plc
Samuel Asabia House
35 Marina, (12th Floor)
P. O. Box 5216, Lagos

EXRACT FROM MINUTES OF THE EXTRAORDINARY BOARD MEETING NO.2/2002 HELD ON JUNE 13, 2002 AT ABUJA

REVOCATION OF THE APPOINTMENTS OF MESSRS. BERNARD O. LONGE AND UZOMA NWANKWO FROM THE BOARD

The Board reflected and pursuant to article 105 of the Memorandum and Articles of Association of the Bank, resolved to revoke the appointment of Messrs. Bernard O. Longe and Uzoma Nwankwo from the Board as Managing Director/Chief Executive and Executive Director respectively, hence they ceased being members of the Board with effect from June 13, 2002.

This is a certified true copy of the minutes of the meeting referred to above.

(Sgd.)
Tijani M. Borodo.

Company Secretary
And the letter which conveyed the decision of the Board of Directors of the defendant to the plaintiff on 13-6-2002 reads:
First Bank of Nig. Plc
35 Marina,
P. O. Box 5216, Lagos.
13th June, 2002.
Mr. Bernard O. Longe, OON.
c/o 10 Murtala Mohammed Drive, Ikoyi,
Lagos.
Revocation of Appointment as Managing Director/Chief Executive of First Bank of Nigeria Plc.
I write to advise you that the Board of Directors at its meeting of 13th June, 2002 has resolved to revoke your appointment as Managing Director/Chief Executive. Consequently, your appointment is hereby revoked with effect from the date of this letter.
(Sgd.)
Alhaji (Dr) U. A. Mutallab. CON
Chairman
cc:
Mr. J.M. Ajekigbe
Managing Director/Chief Executive
There is no dispute as to the fact that the plaintiff was placed on suspension on 22-04-02 and that his appointment was revoked on 13-06-2002. Section 262 of C.A.M.A. provides:
\"262. (1) A company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him.
(2) A special notice shall be required of any resolution to remove a director under this section, or to appoint some other person instead of a director so removed, at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director under this section, the company shall forthwith send a copy of it to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.
(3) Where notice is given of an intended resolution to remove a director under this section and the director concerned makes with respect to it representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so
(a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and
(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company),
and if a copy of the representations is not sent as required in this section because it is received too late or because of the company\'s default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:
Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the court may order the company\'s costs on an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.
(4) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.
(5) A person appointed director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed a director.
(6) Nothing in this section shall be taken as depriving a person removed under it of compensation or damages
payable to him in respect of the termination of his appointment as a director or of any appointment terminating with that as director, or as derogating from any power to remove a director which may exist apart from this section.
The provisions of section 262 above clearly show not only that a company may remove a director, it also sets out how

that may be done. The case of the plaintiff is founded on Section 266 of C.A.M.A. which provides:
266. (1) 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.
(2) There shall be given fourteen days notice in writing to all directors entitled to receive notice unless otherwise provided in the articles.
(3) Failure to give notice in accordance with subsection (2) of this section shall invalidate the meeting.
(4) Unless the articles otherwise provide, it shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Nigeria; provided that if he has given an address in Nigeria, the notice shall be sent to such an address.\"
(Underlining mine)
The only persons disqualified from being given notice of directors\' meetings are those set out under section 257 of C.A.M.A. The section reads:
257. The following persons shall be disqualified from being directors -
(a) an infant, that is, a person under the age of eighteen years;
(c) a person disqualified under sections 253, 254 and 258 of this Act;
(d) a corporation other than its representative appointed to the board for a given term.
It was never part of the case of the plaintiff that he did not commit any offence justifying the revocation of his appointment. His case was simple and straightforward. It was that whereas Section 266(1) states that he shall be entitled to receive notice of the meeting at which the revocation of his appointment was to be discussed, no such notice was given to him. The combined requirement of Sections 266(1) and 262 is that a director to be removed must be given a notice of the meeting. It is not the requirement of the law that such director about to be removed must be present at the meeting. He may receive the notice and refuse to show up at the meeting. What Section 266(3) above punishes is the failure to give such notice. For emphasis I repeat Section 266(3) of C.A.M.A.:
\"(3) Failure to give notice in accordance with subsection (2) of this section shall invalidate the meeting.\"
Subsection 3 of Section 266 above is in mandatory terms and the court has no discretion to exercise in the matter where a director to be removed was not given a notice of the meeting at which his removal was to be discussed. There are three possible defences to Section 266 of C.A.M.A. namely:
1. That the director removed was given the notice of the meeting.
2. That the person involved has ceased to be a director of the company.
3. That the person involved is disqualified under Section 257 of C.A.M.A. from getting the notice.
Now what was the defence put forward by the defendant in its pleadings' I bear in mind that it is only on the pleadings of parties that issues to be tried at the trial are joined. See Egonu v. Egonu (1978) 12 S. C. 111; Sagay v. M N 1. (1977) 5 S.C. 143; African Continental Seaways v. Nigerian Roads & General Works Ltd. (1977) 5 S.C. 110.
The only relevant facts pleaded by the defendant are to be found in paragraphs 4, 9, 11, 16 and 17 of its statement of defence and they read:
\"4. The Defendant avers that the contract of the Plaintiff with the Defendant was brought to an end lawfully.
''
9. The Defendant avers that the Plaintiff was in breach of the following implied terms of his contract of employment as Managing Director/Chief Executive which were that the Plaintiff would:
(a) perform his duties with reasonable care and skill, and/or;
(b) perform his duties with reasonable competence and/or;
(c) render honest and faithful service and/or
(d) not act in such a manner as to destroy the relationship of mutual trust and confidence between himself and the Defendant and/or;
(e) discharge his fiduciary duty to the Defendant in his capacity as the Managing Director/Chief Executive and/or;
(f) not negligently or knowingly mislead the Chairman of the Board of the Defendant and/or the Defendant, and/or;
(h) not suppressing facts or information from the Chairman of the Board or from the Board itself which might affect adversely the Defendant\'s finances or result in financial loss to the Defendant or its shareholders.
''
11. The plaintiff was guilty of incompetence and/or conducts incompatible with or prejudicial to the Defendant\'s business.
''
16. The Defendant avers that it was entitled, as it has done in the circumstances, to dismiss the Plaintiff, for any reason

or for no reason at all without notice and without any financial benefits to the Plaintiff or at all.
17. The plaintiff was not entitled to attend the Board meeting and (sic) where his appointment was determined and dismissed. The plaintiff was suspended effective from April 22, 2002 and he was dismissed as Managing Director/Chief Executive from June 13, 2002 at a meeting of the Board of the Defendant. The plaintiff knew that to be the correct procedure of the Defendant.
It is easy to see that only paragraph 17 above is relevant to the case brought by the plaintiff. The defendant thereunder contends that the plaintiff was suspended effective from April 22, 2002 and dismissed on June 13, 2002.
The court below correctly in my view did not permit itself to be drawn into a consideration of the issue whether or not the plaintiff had committed in the course of his employment offences justifying his removal. The trial court fell into that error. The court below however fell into a very serious error by accepting that the fact that the plaintiff was first suspended on 22-4-02 deprived him of the entitlement to be given notice of his removal as conferred by section 266(2) of C.A.M.A.
At pages 1240 and 1242, the court below reasoned thus:
\"See Lewis v. Helfer & Sons (1978) 1 All ER 254. At page 364 Lord Denning exposed the legal situation thus-
\'Very often irregularities are disclosed in a government department or in a business house; and a man may be suspended on full pay pending inquiries. Suspicion may rest on him; and so he is suspended until he is cleared of it. No one, so far as I know, has ever questioned such a suspension on the ground that it could not be done unless he is given notice of the charge and an opportunity of defending himself, and so forth. The suspension in such a case is merely done by way of good administration. A situation has arisen in which something may be done at once. The work of the department or the office is being affected by rumours and suspicions. The others will not trust the man. In order to get back to proper work, the man is suspended. At that stage the rules of natural justice do not apply.\'
Also in the case The Shell Petroleum Development Company Ltd. vs. Lawson Jack (1998) 4 NWLR (Pt. 545) 249 this court observed as follows at pg. 270:
\'What it has done from the facts available was to set up an investigating panel to look into certain complaints bordering on alleged impropriety committed by one Mr. Nuk Ntuk, a member of staff of the appellant company. In the process the respondent was suspended from duty on full pay pending the investigation. He was the head of the department directly concerned with the allegation against Mr. Ntuk Ntuk.
A suspension of an employee is not an unusual procedure taken in order to facilitate such an investigation. The person affected can hardly complain, in the process, of not having been given a hearing; nor can he demand that the rules of natural justice should apply. The interest of the business of the defendant becomes paramount and the plaintiff is made to keep of the premises thereof until later.\'
The case of Mallock v. Aberden Corporation (1971) 2 All ER 1278 at 1294, (1971) 1 WLR 1578, 1595 cited in the respondent\'s brief of argument is being referred to in connection with exclusion of requirement of natural justice and the nature of remedy available to a plaintiff. A plaintiff can only ask for, in pure master and servant cases, at the
most damages, Lord Wilberforce states as follows at the relevant pages of the reports '
\'The argument that, once it is shown that the relevant relationship is that of master and servant, this is sufficient to exclude the requirements of natural justice is often found, in one form or another, in reported cases. There are two reasons behind it. The first is that, in master and servant cases, one is normally in the field of common law of contract inter partes so that principles of administrative law, including those of natural justice, have no part to play. The second relates to the remedy; it is that in pure master and servant cases, the most that can be obtained is damages, if the dismissal is wrongful; no order for reinstatement can be made, so no room exists for such remedies as administrative law may grant, such as a declaration that the dismissal is void. I think there is validity in both of these arguments. ,,,
At page 1245 the court below said
\"The suspension of the appellant is not an issue in this appeal. The appellant\'s grouse is predicated on the appellant being a director. There could not be a valid decision removing him as the managing director at a meeting he was not served a notice inviting him to attend. Since the appellant is comfortable with the suspension of his appointment as managing director/chief executive, the plank on which his claim rests collapsed. Having accepted the suspension of his only subsisting appointment with the respondent he was not entitled to the notice of the meeting. On suspension of the appellant\'s appointment of managing director/chief executive all his rights, privileges and powers consequential or attached to the employment, including attending boards meetings, ceased. The notice of the board meeting is not given for the fun of it. It is given for serious business of the company. It is, therefore, not issued informally to a person who is otherwise entitled to attend but barred by reason of his suspension. All authorities show that he was not entitled to the notice of the meeting except to enable him to be there to disrupt the meeting or cover up his tracks. Assuming he was entitled to the notice, without so deciding, the practice is that the person being discussed would step out to enable other

members of the board freely take their decision concerning him.\"
(Underlining mine)
With respect to their Lordships of the court below, I find the proposition made in their reasoning above very unacceptable. It is in my respectful view a clear encouragement to bodies governed by C.A.M.A. to circumvent the applicability of Section 266 of C.A.M.A. by first suspending a director without notice before removing him again without notice so that they could claim in a later litigation in court that the earlier suspension robs the director concerned of the right to notice as given by section 266 of C.A.M.A.
Let me say with all the necessary force and emphasis that when the law vests a right on a citizen, a court of law will resolutely resist any attempt and by whatever method to deny the citizen the enjoyment of the right conferred by law. The plaintiffs case was not founded on the principles of administrative law including those of natural justice. It is simply on whether or not an extant provision of law was obeyed.
In University of Calabar v. Esiogu [1997] 4 NWLR (Part 502) 719 at 723, the Court of Appeal discussing the nature of the consequences of suspension of an employee reasoned:
\"The word \'suspension\' means a temporary privation or deprivation, cassation or stoppage of or from the privileges and rights of a person. The word carries or conveys a temporary or transient disciplinary procedure which keeps away the victims or person disciplined from his regular occupation or calling either for a fixed or terminal period or indefinitely. The disciplinary procedure gives the initiation of the discipline a period to make up his mind as to what should be done to the person facing the discipline. Although in most cases, suspension results in a disciplinary action, it is not invariably so. There are instances when the authority decides not to continue with the matter. This could be because the investigations did not result in any disciplinary conduct.\"
Also in Boston Sea Fishing Co v Ansell (1886 ' 90) All ER 65 the court said
\'Mr. Ansell was dismissed and I think his dismissal must be taken to date from that meeting on October 19 and not from the day in September when he was suspended by the board because suspension is very different from dismissal. When a man is suspended from the office he holds, it merely amounts to saying \"so long as you hold the office and until you are legally dismissed, you must not do anything in the discharge of the duties which under your office you ought to do towards your employer.\"
(Underlining mine)
I think, with 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 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 a 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 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 that suspension had removed the necessity to give him the notice as mandatorily required under Section 266(1) of C.A.M.A. The court cannot grant to a litigant the right to disobey the law under any artifice or guise.
In any case, the letter of suspension to the plaintiff did not say that he had ceased to be a director. If it had said so, the plaintiff would have founded his action on that letter. Rather what the letter said was \"During the suspension you are expected to concentrate on the recovery of the credit facility granted to the Investors Group Nig. Limited. The Board expects that you will do your utmost best to help in the collective efforts towards the recovery of the money.\"
It is apparent that the defendant wanted the plaintiff to use the period of his suspension primarily to pursue the recovery of the loan granted to Investors Group Nig. Ltd. (LG.N.L.). That implies that he would do so only in his capacity as Managing Director/Chief Executive of the defendant. If he was no longer Managing Director/Chief Executive of the defendant, how could he go out to collect money for the defendant'
It is my firm view that the court below was wrong to have held that the suspension of the defendant on 22-04-02 robbed him of his status as a director of the defendant.
The court below also in its judgment laboured strenuously to show that the plaintiff was not a director within the meaning of C.A.M.A. It needs be said here that the defendant never raised any such defence. The court below engaged in the dichotomy between an executive director and a nonexecutive director which the parties had not raised in their pleadings. It has been said repeatedly that a court must not decide a case on issues not raised by parties in their pleadings. In George v. UB.A. [1972] 8/9 SC 264 this Court per Fatayi Williams J.S.C. (as he then was) said:

\"The first point to be considered in this appeal is whether the plaintiffs/respondents pleaded the assignment by the British and French Bank to them of the debt which they had claimed from the defendant/appellant. If the assignment is not pleaded, evidence regarding it goes to no issue and should not have been admitted; if admitted, it should have been ignored by the learned trial judge in his judgment. (See George v. Dominion Flour Mills Ltd. (1963) 1 All NLR. 71 at pp. 78-79). In this respect, we also wish to refer to our decision in Chief Sule limbo & Ors v. Aminu Asani & Ors, SC 373/67 delivered on 13th March, 1970, where we observed as follows:-

\'We are also concerned at the obvious departure from their pleadings of the two sets of plaintiffs. The object of pleadings is to fix the issues for trial accurately and to apprise the other side of the case which it would meet in court. To allow a party to give evidence in direct contradiction of his pleadings is to allow that party to make a different case at the trial and should not have been allowed. Such evidence must be regarded as not belonging to the issues raised on the pleadings and should have been rejected. We think the learned judge was wrong to have allowed such evidence to be given. See Erinle v. Adelaja, SC332/1966 delivered on the 6th June, 1969; also NI.P.C v. Thompson Organisation Ltd & Ors, SC192/67 delivered on 11th April, 1969.\'

Again, we refer to our decision in Ogboda v. Adulugba delivered on 12th February, 1971, where we emphasized the same point as follows:-

\'We have pointed out numbers of times that the evidence in respect of matters not pleaded really goes to no issue at the trial and the court should not have allowed such evidence to be given. (See Chief Sule Jimbo and Others v. Aminu Asani and Others, SC373/67 delivered on 13th March, 1970). Even when such evidence had been wrongly allowed, the trial court should disregard it as irrelevant to the issues properly raised by the pleadings.\",

And similarly in Okafor v. Okitiakpe [1973] 2 S.C 49 at page 54 this Court per Coker JSC said:

\"it is correct that facts not pleaded may not be given in evidence at a trial and if for any reason at all, any evidence was given of such facts the court of trial, and indeed the appeal court must disregard such evidence. This is trite law and if authority is needed for this we refer to the observation of this Court in Tomori v. Matanmi, SC146/68 decided on the 1st July 1970; also Conway v. George Wimpey [1951] 2 Q.B. 266 at p.274 et seqq \"

Now, at pages 1246 ' 1247 of the record, the court below reasoned thus

\"The appellant made a mountain out of a mole hill on the strength of Yalaju-Amaye \'s case (supra). That case on the facts and the law are not on all fours. Firstly article 106 of the First Schedule of Table A of Companies Act, 1968 and article 105 of the Article of Association of First Bank of Nigeria Plc are not in pari materia as demonstrated earlier in this judgment. Article 106 along with the Companies Act 1968 which gave it life was repealed on the inception of the Companies and Allied Matters Act, Cap.59 of the Laws of the Federation, 1990. Yalaju-Amaye\'s case recognizes the fact that a person, irrespective of his description who has a contract of service with the company is an employee and found that Yalaju-Amaye was a director and not an employee in the absence of contract of service between him and the first respondent. Yalaju-Amaye was a director in his own right who was so designated by the article of association of that respondent company. He was not only a director but also the founder and promoter of that first respondent company. Yalaju Amaye who was appointed a director as well as managing director in the article of association was allegedly removed as managing director on the strength of a purported oral resignation. Yalaju-Amaye can only be removed from these positions by alteration of the articles of association. It is clear on authorities that a power exercisable under the article of association can only be changed or altered by a

special resolution. But the appellant in the instant appeal was an employee who was appointed a managing director by the board of directors of respondent under article 105 of the respondent\'s article of association. The appellant was made or appointed a managing director by the directors exercising their power under article 105 of First Bank of Nigeria PIc., Article of Association. The same article empowers the directors to revoke any appointment made by them. It seems to me that the power of the board of directors of the respondent to remove anyone appointed by it is further strengthened by the provisions of section 41(3) of the Companies and Allied Matters Act which reiterates the right of the directors to enforce the power donated to them under the article to appoint or remove any director or other officer of the company. The section provides thus-

\'(3) where the memorandum or articles empower any person to appoint or remove any director or other officer of the company, such power shall be enforceable by that person notwithstanding that he is not a member or officer of the company.\'

It seems to me that the power to appoint person or persons of proven ability as executive or managing director as well as the power to revoke such an appointment conferred by article 105 is now repeated in the Act. So the power given to directors to appoint and remove executive and managing directors transcends by virtue of section 41(3) of Companies and Allied Matters Act, article 105\"

And at pages 1249-1250, the court below said:
\"The appellant is not contesting his removal on the facts. He has conceded to the facts of this case. But he is challenging the legitimacy of the board meeting at which the decision to revoke his appointment was taken on account that as a director he was not given notice of the meeting, contrary to section 266 of Companies and Allied Matters Act. It is common ground that he was suspended at the material time, which he is not contesting. Moreover, it is clear that being a managing director who could be suspended and was on suspension he was not entitled to the notice of the meeting. Further on this point, being a director appointed by the directors, under article 105 of the article of association, he was not a director appointed under the Companies and Allied Maters Act and that his working directorship was not within the contemplation of s.266(1) of the Companies and Allied Matters Act, therefore, was not entitled to the notice envisaged under section 266(1) of the Act which provides thus '
\'266. (1) Every director shall be entitled to receive notice of the directors\' meeting, unless he is disqualified by any reason under the Decree from continuing with the office of director.
(2) There shall be given 14 days notice in writing to all directors entitled to receive notice unless otherwise provided in the articles.
(3) Failure to give notice in accordance with subsection (2) of this section shall invalidate the meeting.\'
The appellant as observed earlier is disqualified to attend the meeting and was consequently not entitled to the notice of the meeting. He was disqualified by reason of his suspension by the board of directors under article 105 read in conjunction with the provisions of section 41 (3) of the Companies and Allied Matters Act.\"
The sum total of the approach of the court below is that because the plaintiff was a Managing Director/Chief Executive of the defendant appointed by the defendant on a contract of employment he was not a director within the meaning of section 266 of the C.A.M.A. The standpoint of the court below was a derivative of the earlier conclusion it had come to at pages 1235 - 1236 of the record where it said:
\"The appellant\'s misapprehension of the article stems from his reading article 105 of respondent\'s Article of Asso-ciation as if it were the repealed article 106 in the First Schedule in Table A of the repealed Companies Decree, 1968 which provides thus-
\'The directors may from time to time appoint one or more of their body to the office of Managing Director for such period and on such terms as they think fit.\'
This article allowed the board of directors to appoint one of their members as the managing director. It follows that, under article 106 of First Schedule in table A of Companies Decree, 1968, a person to be appointed a managing director must himself be a sitting director as he ought to come from amongst the directors. He was consequently permitted to retain his directorship along with his present status. The meaning of that article, which is, in any case, repealed, cannot be imported or read into article 105 of respondent\'s Article of association. The qualification under article 105 for being a managing director or an executive director no longer includes being a director; all that is required for the two offices are \'person or persons of proven relevant ability or experience.\' It follows that appellant was not a director appointed as a managing director. He was an executive director, a fact he admitted in evidence, immediately before he was appointed the managing director. He testified to this effect in his evidence-in-chief as well as cross-examination. The submission of the appellant that he was a director and managing director and there is no provision in the Companies and allied Maters Act to suspend the plaintiff as a director may be ingenious but not candid. It is not candid because there is no shred of evidence on the record supporting the claim that appellant was ever a director of respondent. There is no provision in the Companies and Allied Matters Act for appointment of
executive director. It is therefore not surprising that the same Act has no provision for suspension or discipline of an executive director, a situation adequately covered by article 105 already recited earlier in this judgment.
The appellant was employed an executive director by way of promotion by virtue of exhibit V. He was subsequently promoted as Managing Director/Chief Executive by virtue of exhibit A. The two documents were made pursuance of the power of the Board of Directors under article 105 of the articles of association of the First Bank of Nigeria PIc. The two positions do not run concurrently but consecutively: the former appointment terminates on the elevation of its holder to the position of a managing director.\"
I say with due respect to their Lordships of the court below that the power to amend or vary the meaning of a director under C.A.M.A. has not been vested in a company concerned or the court. The reasoning that, after all, if the issue of a director to be removed is to be discussed, the director concerned will be asked to step out is with respect untenable because that reasoning speculates on the intendment of the legislation. Section 262 reproduced earlier in this judgment gives the director whose removal is under consideration the priviledge 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'
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.\"
(Underlining mine)
The statutory definition of directors above does not recognize the nomenclature raised by the court below as between executive and nonexecutive 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 earlier, it is fair to say that the defendant on their pleadings did not plead that the plaintiff was not their director.
The emergence of directors in a company is governed by sections 247, 248 and 249 of C.A.M.A. which provide:
\"247. Subject to section 246 ofthis Act, the number of directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them or the directors may be named in the articles.
248. (1) The members at the annual general meeting shall have power to re-elect or reject directors and appoint new ones.
(2) In the event of all the directors and shareholders dying, any of the personal representatives shall be able to apply to the court for an order to convene a meeting of all the personal representatives of the shareholders entitled to attend and vote at a general meeting to appoint new directors to manage the company, and if they fail to convene a meeting, the creditors if any, shall be able to do so.
249. (1) The board of directors shall have power to appoint new directors to fill any casual vacancy arising out of death, resignation, retirement or removal.
(2) Where a casual vacancy is filled by the directors, the person may be approved by the general meeting at the next annual general meeting, and if not so approved, he shall forthwith cease to be a director.
(3) The directors may increase the number of directors so long as it does not exceed the maximum allowed by the articles, but the general meeting shall have power to increase or reduce the number of directors generally and may determine in what rotation the directors shall retire:
Provided that such reduction shall not invalidate any prior act of the removed director.\"
The plaintiff may have been a director appointed under section 248 or 249 as one appointed to fill a vacancy occasioned by death, resignation, retirement or removal of the previous holder of the position of managing director. The scheme under sections 247 to 249 recognises
(1) directors appointed by the subscribers of the memorandum of association or majority of them or those named in the articles,
(2) directors appointed at the annual general meeting, or
(3) directors appointed to replace such directors as may have died, resigned, retired or be removed.
It is eye-opening that section 244(3) criminalizes the situation where a person who is not a director holds himself out at such: the subsection provides:
\"(3) Where a person not duly appointed acts or holds himself out as a director, he shall be guilty of an offence and on conviction shall be liable to imprisonment for two years or to a fine of N100 for each day he so acts or holds out himself as a director or to both such imprisonment or fine and shall be restrained by the company.\"
The unchallenged evidence was that the plaintiff was made a managing director in the year 2000. He acted as such till 2002 when he was removed. Why did the defendant not disclaim him as a director during the period'
The two courts below were wrong in their conclusion that the suspension of the plaintiff from work had the effect of removing him as director. If the defendant believed that the plaintiff had ceased to be a director by his suspension on 22-04-02, why did they proceed to revoke his appointment on 13-06-02' In any case, the provision of section 266(1) is that a director may not be removed unless he is first given a notice to attend a meeting at which the removal will be discussed.
If the contention of the defendant is valid, that the plaintiff had ceased to be a director by his suspension on 22-04-02, it follows that if it was the suspension of 22-04-02, that removed plaintiff as such director, it would not be necessary to further revoke his appointment on 13-06-02 as was done by the defendant. The further reasoning of the court below that an executive director is not the same as a non-executive director is untenable. From other angles it may be correct but

for the purpose of removal under section 266(1) of C.A.M.A., all directors, whether executive or non-executive are the same as long as they are all engaged to direct and manage the business of the company.
In the final conclusion, this appeal must be allowed. It is meritorious. The judgment of the court below is set aside. The removal of the plaintiff as Managing Director/Chief Executive of the defendant without a notice to him to attend the 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 prescribed 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. For clarity, I set out those reliefs hereunder:
(i) A declaration that the Defendant\'s Board of Directors cannot lawfully hold any meeting of the said Board without giving notice thereof to the Plaintiff and accordingly all decisions taken at any such meeting is unlawful, invalid, null and void and incapable of having any legal consequence;
(ii) A declaration that in particular the decision of the Defendant\'s Board of Directors held on the 13th of June 2002 to revoke the Plaintiff s appointment as Managing Director/Chief Executive is wrongful, unlawful, invalid, null and void and incapable of having any legal consequence;
(iii) A declaration that any purported implementation of the said decision made by the Board on the 13th of June 2002 (including any appointment to the office held by the Plaintiff in the Defendant Company) is ineffective, unlawful and null and void;
(iv) An order of injunction restraining the said Defendants from giving effect or continuing to give effect to any of the decisions of the Board mentioned in claims (i) and (ii) hereof without first complying with the mandatory procedural requirements stipulated in Section 266(3) of C.A.M.A.;
(v) A declaration that the Plaintiff is entitled to remain in the premises allocated to him by the Defendant including the enjoyment of all associated services until the expiration of a reasonable time from the date of any lawful and valid termination of his contract of service with the Defendant;\"
Let me observe here that the defendant has by its unwillingness to respect the provisions of Section 266 brought about this unfortunate situation on itself. The plaintiff's suit was filed on 4-07-02 about a month after he was purportedly removed. All the defendant needed to do on being served with the summons was rescind the ill-advised action and follow thereafter the prescription under Section 266. Within a few weeks thereafter, the defendant would have been able to effectually remove the plaintiff. What could have been done validly within 3 months has been made to last eight years.
In this Court, I must uphold the law of the land. The appeal succeeds. The plaintiff/appellant is awarded costs as follows:
(a)
For appearance in the High court
N20,000.00
(b)
For appearance in the Court below
N30,000.00
(c)
For appearance in this Court
N50,000.00
Judgment delivered by Dahiru Musdapher, J.S.C
I have read before now the judgment of my Lord Oguntade, JSC with which I entirely agree. For the same reasons set out, I too allow this appeal and set aside the decisions of the courts below and enter judgment in terms of the appellant\'s claims which were not withdrawn.
I also abide by the orders for costs proposed in the aforesaid lead judgment in the trial Court, Court of Appeal and this Court.
Judgment delivered by Francis Fedode Tabai, J.S.C
I have had the privilege to read, in draft, the lead judgment of my learned brother Oguntade. JSC and I agree with the reasoning and conclusion that the appeal be allowed.
This appeal turns on the construction to be placed on Section 266 of the Companies and Allied Matters Act (C.A.M.A) which provides for the service of notice of directors meeting. The appellant being a director was entitled to be given 14 days notice of a meeting of directors.
Section 266(3) of the C.A.M.A. specifically provides that failure to give notice in accordance with subsection (2) of this section shall invalidate the meeting.

The Appellant was not given the notice as required by Section 266(3) of C.A.M.A. Although the appellant was on suspension, he still retained the right to be given notice of the meeting particularly having regard to the fact that issues affecting his rights were to be discussed.

In conclusion, I also hold that the appeal has merit and same is accordingly allowed. I assess the costs of this appeal at N50,000.00 in favour of the Plaintiff/Appellant against the Defendant/Respondent.

Judgment delivered by

Ibrahim Tanko Muhammad, JSC

I read in advance the judgment of my leaned brother, Oguntade, JSc. I concur.

Judgment delivered by

Olufunlola Oyelola Adekeye, JSC

I had read before now the judgment delivered by my learned brother, G.A. Oguntade, JSC. My brother had meticulously considered all the facts and the applicable principles of law raised in the four issues for determination in this appeal as follows: -

(1) Whether it is proper in law for the Court of Appeal to have jettisoned suo motu in its judgment the entire Reply brief of the appellant in their judgment without giving the parties in particular, the Appellant a hearing even though arguments have been proffered in all the Briefs including the Reply Brief without any objection or opposition by the Respondent and in circumstances which resulted in a deprivation of fair hearing.

(2) Whether it was proper for the Court of Appeal to have failed in its judgment to resolve the issue whether a finding by the trial court that the appellant was suspended under the common law meets the requirement of the Companies and Allied Matters Act that a director must be given a notice of directors meeting unless he is disqualified under the Act (CAMA) an issue which if it had been pronounced upon would probably resolve the appeal in favour of the appellant and not doing so occasioned a miscarriage of justice.

(3) Whether it was proper for the Court of Appeal to speculate on an issue which was not part of the grounds of appeal and which was also not an issue for determination before the court.

(4) Whether the Court of Appeal was right in holding that although the appellant was appointed pursuant to Article 105 of the Articles of Association of the respondent, he is not a director for that purpose of the Companies and Allied Matters Act [CAMA] therefore his working relation is not within the contemplation of Section 266 (1) and moreover that the office of the executive director is not known to the CAMA

At the Extraordinary meeting of the respondent, the First Bank of Nigeria held on Thursday 24th of February 2000 in Lagos, the Board of Directors unanimously appointed the appellant, Bernard Ojeifo Longe as the Managing Director/Chief

Executive of the bank, after a resolution of the Board in accordance with the Articles of Association of the Company. Extracts from the minutes of the meeting reads:

\"That pursuant to Article 105 of the Articles of Association of the Company, Mr. B.O. Longe, be and is hereby appointed the Managing Director/Chief Executive Officer of the First Bank of Nigeria Plc with effect from July 3 2000.\"

The Board agreed with the proviso that the above appointment being for a period of six years (i.e. 2 terms of 3 years each) but subject to annual assessment of the performance of the appointees. This being in the spirit of the new First Bank that is performance-driven.

At that meeting, Mr. B.O. Longe\'s name was listed as a Director of the First Bank of Nigeria PLC (pages 16 and 17 of the Record Exh. B). A Letter of Appointment Exh. A dated 3/7/2000 was dispatched to him to that effect. The Memorandum and Articles of Association was admitted in evidence by the trial court as Exh. DO. At another meeting of the Board held on 25/10/01, the issue of tenure of Directors was raised. It was resolved that the provisions of Companies and Allied Matters Act [CAMA] and the Memorandum and Articles of Association of the Bank should apply. The Article of Association at page 28 of the Record under Interpretation 2 (1) (L) defines that

\"The Directors\" shall include, and mean the Directors for the time being of the Company and the \"Board\" shall mean the Directors or any of them acting as the Board of the Company.\"

The removal of Directors is as provided for in Article 103 of the Articles of Association which reads: -

\"In addition to and without prejudice to the provisions of the Decree, the company may by ordinary resolution, remove any Director before the expiration of his period of office, and may in like manner appoint another in his place. Any person so appointed shall be subject to retirement at the same time as if he had become a Director on the day on which the Director in whose place he is appointed was last elected a director, but shall without prejudice to any claim the Director may have for damages for breach of any contract of service between him and the company.\"

Article 105 of the Article of Association provides for the post of the Chief Executive and Managing Director to which the

appellant was appointed. It states that: -
\"The Directors may from time to time appoint one or more person or persons of proven relevant ability and experience to the offices of Managing Director who is to be Chief Executive of the Company and Executive Director for such period and on such terms as they think fit and subject to the terms of any agreement entered into in any particular case, and may revoke such appointment but without prejudice to any claim he may have for damages for breach of contract.\"
The core complaint of the respondent against the appellant was that he disbursed a loan of $131,700,000 (One hundred and thirty-one million, seven hundred thousand dollars) on behalf of Investors International London Limited for 10% purchase price of 51 % stake in Nitel to Bureau of Public Enterprises on the Banks Non-Export Domiciliary Account. In particular that the processing of a loan of $50,000,000 (Fifty million dollars) and the disbursement was subject to various policy and procedural lapses in that the conditions precedent to Drawdown were not met. The US$ One hundred and thirty-five million short-term Bridge Finance Facility to acquire 51% stake in NITEL PLC was to be borrowed by Investors Group Nigeria Limited (IGNL). The lenders were to be a consortium of Financial Institutions with the First Bank PLC as the Lead Arranger. The purpose was to bridge the proceeds of the private equity issue in respect of the Investors International (London) Limited (1ILL)\'s acquisition of 51 % stake in Nigerian Telecommunications PLC (NITEL) under the Federal Government of Nigeria\'s then on-going privatization programme. The facility will be used to fund the required 100% down payment (vide pages 594 - 596 of the Record). According to one Tim Bolade, Head of Credit Risk Management, he put the total exposure of the bank at $111.7 million US dollars, which was approved - but there was no record of approval for the second $50,000,000 (Fifty million dollars). Bureau of Public Enterprise thereafter declared that the amount was non-refundable. The Board of Directors called an Extraordinary meeting on Monday April 22nd 2002. The Chairman of the Board disclosed that the purpose of the meeting was to assess the situation of NITEL\'s acquisition by International Investors (London) Limited (IILL) and the facility granted to Investors Group Nigeria Limited (IGNL) by the Bank. He thereafter called on the Managing Director/Chief Executive to brief the Board. The appellant went ahead to inform the Board that the
(1) Extension of time given to IILL to pay the balance of $1.37 billion Dollars had elapsed without payment.
(2) BPE had taken the position that the $131.7 million deposit has been forfeited in line with the terms of the Share Sales Agreement covering the transaction.
He informed the Board of his efforts to contact the major movers of the transaction IILL and the Chairman IGL so as to pay money to the Bank.
The Board set up a committee to compliment the efforts of the Executive Management in recovering the facility. A report of their activities was reported to the Board Meeting. Members of the Board discussed the situation and offered suggestions as to the best approach to recovering the facility. At the end of the discussion, the Chairman directed the Managing
Director/Chief Executive, and all Executive Directors and the Company Secretary to excuse the Non-Executive Director for further deliberations on the matter. The meeting reconvened to invite the three officers back to the Board meeting. The appellant was informed about his suspension and a successor was appointed in his place in an acting capacity. The chairman informed the meeting that the decision was taken in line with the Memorandum and Articles of Association of the Company. The Board confirmed the decision. The Chairman thereafter called for comment/observation on the decision of the Board.
The appellant was reported to have expressed surprise at the decision of the Board and believed that the action of the Board was unfair and unjust to him (vide pages 681, 687 A - 689 of the Record). This was followed by a letter dated the 22nd April 2002 confirming his suspension - the contents of which are as follows-
\"First Bank of Nig. Plc
35, Marina,
P. O. Box 5216, Lagos.
22nd April 2002
Mr. Bernard Ojeifo Longe, OON.
Managing Director/CEO,
First Bank of Nigeria PIc.,
35, Marina, Lagos.
I regret to convey to you the decision taken by the Board of Directors of the First Bank of Nigeria PIc., at its Extraordinary Board Meeting of 22nd April 2002 held at Coommasie House, Abuja to suspend you from office with effect from today,
22nd April 2002. During the suspension period, you are expected to concentrate on the recovery of the Credit Facility

granted to the Investors Group Nigeria Limited (I.G.N.L.).
The Board expects that you will do your utmost best to help in the collective efforts towards the recovery of the money.
(Sgd.)
Alh. (Dr.) Mutallab, CON
(Chairman)
The Board thereafter set up a 3-man Committee of Senior Management Staff, Head of Corporate Finance, Head Construction and Real Estate and Head, Credit Risk Management to submit a comprehensive report on the loan of the Bank to Investors Group Nigeria Limited on behalf of Investors International London Limited. Vide page 597 of the Record.
The respondent was penalised by the Central Bank of Nigeria for granting a loan to Investors International London Limited in contravention of the Provisions of the Banking Act. (page 463 of the Record)
On the 13th of June 2002, the respondent wrote to the appellant that -
First Bank of Nig. Plc
35 Marina,
P. O. Box 5216, Lagos.
13th June, 2002.
Mr. Bernard O. Longe, OON.
c/o 10 Murtala Mohammed Drive, Ikoyi,
Lagos.
Revocation of Appointment as Managing Director Chief Executive of First Bank of Nigeria Plc.
I write to advise you that the Board of Directors at its meeting of 13th June, 2002 has resolved to revoke your appointment as Managing Director/Chief Executive. Consequently, your appointment is hereby revoked with effect from the date of this letter.
(Sgd.)
Alhaji (Dr) U. A. Mutallab. CON
Chairman
The appellant filed an action at the Federal High Court Lagos challenging the revocation of his appointment. His claims are for
(i) A declaration that the Defendant\'s Board of Directors cannot lawfully hold any meeting of the said Board without giving notice thereof to the Plaintiff and accordingly all decisions taken at any such meeting is unlawful, invalid,
null and void and incapable of having any legal consequence;
(ii) A declaration that in particular the decision of the Defendant\'s Board of Directors held on the 13th of June 2002 to revoke the Plaintiff s appointment as Managing Director/Chief Executive is wrongful, unlawful, invalid, null and void and incapable of having any legal consequence;
(iii) A declaration that any purported implementation of the said decision made by the Board on the 13th of June 2002 (including any appointment to the office held by the Plaintiff in the Defendant Company) is ineffective, unlawful and null and void;
(iv) An order of injunction restraining the said Defendants from giving effect or continuing to give effect to any of the decisions of the Board mentioned in claims (i) and (ii) hereof without first complying with the mandatory procedural requirements stipulated in Section 266(3) of C.A.M.A.
(v) A declaration that the Plaintiff is entitled to remain in the premises allocated to him by the Defendant including the enjoyment of all associated services until the expiration of a reasonable time from the date of any lawful and valid termination of his contract of service with the Defendant;
(vi) In the alternative to the foregoing, the Plaintiff claims the sum of N136,614,584.00 being the amount due and owing to the Plaintiff as at 13th June 2002;
(vii) Interest on the said sum of N136,614,584.00 at the rate of 21% per annum or such other rate of interest as the Court may adjudge to be fair and just.
(viii) In further alternative to claims (i) to (iii) the Plaintiff also claims the sum of N804,685,l17.00, US$207,360.00 and '359,100.00 being special damages suffered by him as a result of the wrongful termination of appointment.
Parties exchanged pleadings whereupon the suit proceeded to trial. Parties gave evidence and tendered documents. The appellant as plaintiff tendered six documents Exhibits A, S, C, D, W and DO and the respondent as defendant tendered 24 documents - Exhibits E to 2, AA, SS, LL and Wi. The trial court ordered parties to file written addresses. In the considered judgment of court, the learned trial judge dismissed the plaintiff\'s claim, while it struck out the alternative

reliefs in Claims Vi to Vii basically for monetary payment, which were already abandoned by him. The appellant headed for the Court of Appeal. In the judgment of the Court of Appeal delivered on the 5th of January 2005, the appeal was dismissed. The appeal now under consideration emanated from the decision of the Court of Appeal. My learned brother had given an exhaustive consideration to the four issues distilled for consideration in this appeal, I however wish to re-emphasise issues one and two.

Issue One

Whether it is proper in law for the Court of Appeal to have jettisoned suo motu in its judgment the entire reply brief of the appellant in their judgment without giving the parties, in particular the appellant, a hearing even though arguments have been proffered on all the briefs including the Reply brief without any objection or opposition by the respondent and in circumstances which resulted in deprivation of fair hearing'

(underlining mine)

It is not in dispute that at the hearing of the appeal before the Court of Appeal on the 11th of October 2005, the parties to the appeal, the appellant adopted their briefs. The plaintiff/appellant adopted the plaintiff/appellant\'s brief and the Reply Brief. The defendant/respondent equally adopted its respondent\'s brief. After hearing the appeal, the court reserved judgment in the appeal. In the judgment of the court delivered on the 5th of January 2006, the Reply brief of the appellant came under the hammer of the court. It was the observation of the court that the appellant\'s Reply brief went contrary to the principle governing writing of a Reply Brief. That Order 6 Rule 5 of the Court of Appeal Rules 2002 which provides for a Reply brief does not envisage a situation where the appellant will re-argue or reopen the appeal, by merely re-emphasising argument already contained in the appellant\'s brief. The Reply brief was in the circumstance unnecessary and uncalled for, the court saw it as a waste of time of the respondent and the court. It was also filed, adopted and argued as a process in the appeal in flagrant disregard of the respondent\'s right of Reply. I must agree that the court\'s observation was right and proper.

In that filing of briefs and purpose are well specified and defined in the Rules of the appellate courts - the Court of Appeal and the Supreme Court. Briefs must be distinguished from the address by counsel at the close of hearing, to round up case of the parties before a trial court. A brief is in a tabloid form as opposed to oral hearing. A brief of argument is a succinct statement of the proposition of law or fact or both, which a party or his counsel wishes to establish at the appeal together with reasons and authorities to sustain them. Emodi v. Kwentoh (1996) 2 NWLR pt. 433 pgs 656 at 660 SC. UAC (Nig.) Ltd. v. Fasheyitan (1998) 11 NWLR pt. 573, pg. 179 SC.

In the process of taking a decision in an appeal it behoves on the court to give a dispassionate consideration to the case of the parties - on printed record, in their brief and the Record of Appeal. Anything inimical or irrelevant to the case of the parties, the court has an inherent right as a judex to discountenance it and expunge from record in the interest of justice. The

lower court was confronted with a situation where there was no legal justification to file a Reply brief. It had taken the right step and had exercised its discretion judiciously and judicially in favour of ignoring the Reply brief particularly when considering same will occasion miscarriage of justice, as the respondent\'s right of reply would have been breached. A Reply brief is necessary and usually filed when an issue of law or argument raised in the respondent\'s brief calls for a reply. Where a Reply brief is necessary, it should be limited to answering new points arising from the respondent\'s brief. Although an appellant\'s Reply brief is not mandatory, where a respondent\'s brief raises issues or points of law not covered in the appellant\'s brief, an appellant ought to file a reply brief. The appellant in the appeal before the lower court did not specify the new points of law arising from the respondent\'s brief which necessitated a Reply brief. It is not proper to use a Reply brief to extend the scope of the appellant\'s brief or raise new issues not dealt with in the respondent\'s brief. It is not to afford an appellant another bite at the cherry. Edjenode v. Ikine (2001) SCNJ pg. 184. Okonji v. Njokanma (1999) 12 SCNJ pg. 259.

The argument about the lower court considering the Reply brief suo motu before jettisoning the same is an awkward argument. The phrase suo motu is misapplied in the circumstance as once an appeal is reserved for judgment doors are closed to any argument or submission of counsel. The court can only call for argument from parties where substantial issues of law arise in the course of writing their judgment. This is not the position in this case as the courts saw the Reply brief as an irrelevant document.

Issue one is resolved in favour of the respondent.

I observe that issues two and four are interwoven, one leads to the other so I intend to consider them together.

Issue Two

Whether it was proper for the Court of Appeal to have failed in its judgment to resolve the issue whether a finding by the trial court that the appellant was suspended under the common law meets the requirement of the Companies and Allied

Matters Act that a director must be given a notice of directors meeting unless the director is disqualified under the Act [CAMA] an issue which if it had been pronounced upon would probably resolve the appeal in favour of the appellant and by not doing so occasioned a miscarriage of justice'

Issue Four

Whether the Court of Appeal was right in holding that although appellant was appointed pursuant to Article 105 of the Articles of Association of the Respondent he is not a director for the purpose of the Companies and Allied Matters Act therefore his working relationship is not within the contemplation of Section 266 (1) and that the office of the Executive Director is not known to CAMA.

The appellant submitted on issues two and four that the court erred in law in failing to decide the vital issue whether a suspension under the common law meets the requirement that a director must have been disqualified under the Companies and Allied Matters Act, and in circumstance in which failure to do so amount to a miscarriage of justice. The court erred in law in holding that a meeting of directors is not within the CAMA and in particular within Section 266 (1) and more importantly in the light of the definition of the word \"director\" in Section 650 of the CAMA which court failed to consider and/or examine and when the court made conflicting statements in the same judgment recognizing in one breath the existence of the office of executive director and denying in another breath the existence of the same office under the CAMA.

The respondent replied that the appellant\'s claim of dual capacity failed which was the only ground on which the appellant\'s case at the Court of Appeal rested, the failure of the appellant to challenge in this court that the Court of Appeal\'s crucial decision against his claim of dual capacity is irredeemably fatal to the present appeal. The relationship between the appellant and the respondent was that of employee-employer or master and servant relationship and on the evidence before the two lower courts, the plaintiff/appellant was rightly dismissed for gross misconduct as the Trial Court and the Court of Appeal concurrently found and held.

In reading between the lines of the foregoing submission of the parties, the issue before the court in the two issues is to my mind straight forward and within narrow limits. The germane question here is, whether the respondent complied with the proper procedure in revoking the appointment of the appellant. The respondent claimed that the revocation of his employment was done in accordance with his contract of employment - in a master and servant relationship. Whereas it is the stand of the appellant that as a director of the respondent as at the time of his dismissal, his appointment has transformed from that of master and servant as the Company and Allied Matters Act [CAMA] has clothed his employment with statutory flavour.

I must chip in at this stage that every contract of employment contains the terms and conditions that will regulate the employment relationship such as terms on determination, notice, wages, benefits are usually contained in the expressed contract of service or implied into it by common law and custom. The nature of employment generally affect the terms of the contract of employment. There are three categories of contracts of employment as follows: -

(a) Purely master and servant relationship.

(b) Servants who hold their office at the pleasure of the employer.

(c) Employments with statutory flavour.

In the master and servant relationship, the master has unfettered right to terminate the employment but in doing so he must comply with the procedure stipulated in their contract. In a contract with statutory flavour the employment is protected by statute. In the event of termination of employment with statutory flavour, strict adherence must be had to the statute creating the employment for statutory provisions cannot be waived.

The appellant in his new post as Managing Director and Chief Executive Office of the respondent was appointed by the letter, Exhibit A with effect from 3rd of July 2000. The letter conveyed terms of the appointment like '

(1) Duration subject to satisfactory performance.

(2) Remuneration and other entitlements and allowances.

Vide page 440 of the Record.

Exhibit B - Extraordinary Meeting of the Board of Directors where the appointment was made, the minutes of the meeting state as follows:

\'\'That pursuant to Article 105 of the Articles of Association of the Company, Mr. B.O. Longe be and is hereby appointed the Managing Director/Chief Executive Officer of First Bank of Nigeria PLC with effect from July 3, 2000.\"

Vide page 442 of the Record of Appeal.

The respondent had established before the court that the act of the appellant as Managing Director/Chief Executive Officer of the Bank without due regard to the Bank\'s policy and by adopting a procedure fraught with lapses thereupon causing the bank to lose a colossal amount in dollars as gross misconduct. The procedure adopted by the respondent in

giving the appellant a summary dismissal is now being challenged.
As I have recounted earlier on in this judgment, the immediate reaction of the respondent on getting a wind of the situation was to convene an extra-ordinary meeting of the Board. At the meeting held on the 22nd of April 2002, the Chairman informed the Board that the purpose of the meeting was to assess the situation on the NITEL acquisition by International Investors (London) Limited (IILL) and the facility granted to Investors Group Limited (IGL) by the bank. He called on the Managing Director/Chief Executive to brief the Board. The appellant briefed the Board about the position of the loan and the effort made by the Bank to recover the loan was discussed extensively. At the conclusion of the meeting, the appellant was issued the letter of suspension Exhibit G dated 22/4/2002 referred to earlier on in this judgment. The appellant was called upon for his comment after being served the letter. His reaction was to express surprise at the decision of the Board and believed that the action was unfair and unjust to him.
The next stage was that the Board convened another extraordinary meeting on the 13th of June 2002 where the issue of the revocation of his appointment was decided, and same was conveyed to him by a letter Exhibit J dated 13/6/2002. The contents of this letter already form part of this judgment.
Article 105 of the Article of Association of the respondent Exhibit DO stipulates that-
Article 105
\"The Directors may from time to time appoint one or more person or persons of proven relevant ability and experience to the offices of Managing Director who is to be Chief Executive of the Company and Executive Directors for such period and on such terms as they think fit, and subject to the terms of any agreement entered into in any particular case and may revoke such appointment but without prejudice to any claim he may have for breach of contract.\"
Article 103 of the Article of Association deals with Removal of Directors which states that
\"In addition to and without prejudice to the provisions of the Decree the company may by ordinary resolution remove any Director before the expiration of his period of office, and may in like manner appoint another in his place. Any person so appointed shall be subject to retirement at the same time as if he had become a Director on the day on which the Director in whose place he is appointed was last elected a Director, but shall be without prejudice to any claim the Director may have for damages for any breach of contract of service between him and the company.\"
In the Interpretation section of the Articles of Association vide page 698 - 699 of the Record Article 2 (1) (L). The Decree means the Companies and Allied Matters Decree or any statutory reenactment or modification thereof for the time being in force.
It is therefore statutory that in the removal of any Director of the bank going by Article 103 of the Articles of Association, it must be done in accordance with the relevant provision of the Company and Allied Matters Act. The contention of the appellant is that in the revocation of his appointment the relevant provisions of CAMA were not complied with. First and foremost, he was not served with Notice of the meeting. The appellant hinged his contention on Section 266 (1) of CAMA.
Section 266 of CAMA stipulates inter alia that-
(1) 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.
(2) There shall be given 14 days notice in writing to all directors entitled to receive notice unless otherwise provided in the articles.
(3) Failure to give notice in accordance with Subsection 2 of this section shall invalidate the meeting.
As at the time the Board of the respondent convened the meeting of 13/6/2002 when the decision to dismiss him was taken, the appellant was on suspension imposed on him by the Board as per the letter of suspension dated 22/4/02. The Decree (CAMA) is silent on the issue of suspension of a director serving as a disqualification to him to be served with notice to attend a meeting of the Board as a Director.
Suspension is usually a prelude to dismissal from an employment. It is a state of affairs which exists while there is a contract in force between the employer and the employee, but while there is neither work being done in pursuance of it nor remuneration being paid. Suspension is neither a termination of the contract of employment nor a dismissal of the employee. It operates to suspend the contract rather than terminate the contractual obligations of the parties to each other. Wallwork v. Fielding (1922) 2 KB pg. 46. Bird v. British Celanese Ltd. (1945) 1 KB pg. 336. University of Calabar v. Esienga (1999) 4 NWLR pt. 502 pg. 719.
It was however held in the case of Amadiume v Ibok (2006) 6 NWLR pt. 975 pg. 163 that the suspension of a servant or an employee when necessary cannot amount to a breach of the servant or employee\'s fundamental or common law rights. There is equally no provision for it under the Article of Association of the respondent as it relates to its Directors. It appears that under the Common Law, a term entitling the employer to suspend the employment of an employee will not

be implied into the contract of employment. It is usually a step taken in the interest of the employers business. see M.R. Freedland in the book Contract of Employment, Clarendon Press 1976 at page 77

What then is the procedure for removal of a Director under CAMA which is relevant to the case in hand'

Section 262 of Companies and Allied Matters Act Cap Laws of the Federation 1990 reveals as follows: -

262 Removal of Directors '

(1) A company may by ordinary resolution remove a director before the expiration of his period of office notwithstanding anything in its article or in any agreement between it and him.

(2) A special Notice shall be required of any resolution to remove a director under this section or to appoint some other person instead of a director so removed at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director under this section, the company shall forth with send a copy of it to the director concerned and the director whether or not he is a member of the company shall be entitled to be heard on the resolution at the meeting.

There is no power to remove a director under CAMA which shall be taken as derogating from any power to remove a director which may exist apart from this section.

The power to remove a Director under the Article of Association of the respondent is made subject to the provisions of CAMA. Obviously the foregoing procedure from printed Record was not complied with in revoking the employment of the appellant by the Board of Directors of the respondent. CAMA has removed the appellant though a full time employee of the respondent at the time of his dismissal from the sanction in the provision of the Employee Code of Conduct and Ethical Standard Guidelines, Exhibit X under summary dismissal from the service of the bank for gross misconduct. Vide page 562 at page 587 of the Record.

With fuller reasons given in the leading judgment of my learned brother, I also hold that the appeal succeeds. I abide by the

consequential orders including the order as to costs.

Counsel

Prof S.A. Adesanya. SAN

with him

.....

For the Appellant

Mr. Waheed Kasali

Chief Richard Akinjide. SAN

with him

Chief Tunde Olojo

Mr. Kenneth Obisike

.....

For the RespondentThe appellant was the plaintiff before the Federal High Court Lagos where on 4-07-02, he issued a Writ of Summons against the respondent as the defendant claiming the following reliefs:

(i) A declaration that the Defendant\'s Board of Directors cannot lawfully hold any meeting of the said Board without giving notice thereof to the Plaintiff and accordingly all decisions taken at any such meeting is unlawful, invalid, null and void and incapable of having any legal consequence;

(ii) A declaration that in particular the decision of the Defendant\'s Board of Directors held on the 13th of June 2002 to revoke the Plaintiff s appointment as Managing Director/Chief Executive is wrongful, unlawful, invalid, null and void and incapable of having any legal consequence;

(iii) A declaration that any purported implementation of the said decision made by the Board on the 13th of June 2002 (including any appointment to the office held by the Plaintiff in the Defendant Company) is ineffective, unlawful and null and void;

(iv) An order of injunction restraining the said Defendants from giving effect or continuing to give effect to any of the decisions of the Board mentioned in claims (i) and (ii) hereof without first complying with the mandatory procedural requirements stipulated in Section 266(3) of C.A.M.A.

(v) A declaration that the Plaintiff is entitled to remain in the premises allocated to him by the Defendant including the enjoyment of all associated services until the expiration of a reasonable time from the date of any lawful and valid termination of his contract of service with the Defendant;

(vi) In the alternative to the foregoing, the Plaintiff claims the sum of N136,614,584.00 being the amount due and owing to the Plaintiff as at 13th June 2002;

(vii) Interest on the said sum of N136,614,584.00 at the rate of 21% per annum or such other rate of interest as the Court may adjudge to be fair and just.
(viii) In further alternative to claims (i) to (iii) the Plaintiff also claims the sum of N804,685,l17.00, US$207,360.00 and '359,100.00 being special damages suffered by him as a result of the wrongful termination of appointment.
The parties later filed and exchanged pleadings after which the suit was tried by Nwodo J. (as she then was). On 9-10-03, in the judgment, the appellant\'s claims i to v were dismissed whilst claims vi to viii which were withdrawn by plaintiff s counsel were struck out. The plaintiff was dissatisfied with the judgment. He brought an appeal before the Court of Appeal, Lagos (hereinafter referred to as the \'court below\'). The court below in its judgment on 5-1-06 dismissed plaintiff s appeal. Still dissatisfied, the plaintiff has come before this court on a final appeal. In the appellant\'s brief filed on his behalf, the issues for determination in the appeal were identified as the following:
\"3.2. Whether it is proper in law for the Court of Appeal to have jettisoned suo motu in its judgment the entire Reply Brief
of the Appellant in their judgment without giving the parties, in particular the Appellant, a hearing even though arguments have been proffered on all the Briefs including the Reply Brief without any objection or opposition by the Respondent and in circumstances which resulted in a deprivation of fair hearing'
3.2. Whether it was proper for the Court of Appeal to have failed in its judgment to resolve the issue whether a finding by the trial Court that the appellant was suspended under the common law meets the requirement of the Companies and Allied Matters Act that a director must be given a notice of directors meeting unless the director is disqualified under the Act (C.A.M.A.) an issue which if it had been pronounced upon would probably resolve the appeal in favour of the Appellant and by not doing so occasioned a miscarriage of justice'
3.4. Whether it was proper for the Court of Appeal to speculate on an issue which was not part of the grounds of appeal and which was also not an issue for determination before the Court'
3.5. Whether the Court of Appeal was right in holding that although the Appellant was appointed pursuant to Articles 105 of the Articles of Association of the Respondent, he is not a director for that purpose of the Companies and Allied Matters Act (C.A.M.A.) therefore his working relation is not within the contemplation of Section 266(i) and moreover that the office of the executive director is not known to the C.A.M.A.'\"
The respondent\'s counsel raised a preliminary objection to the appellant\'s 1st issue. It was contended by the respondent that since the judgment of the court did not in the end turn on the issues whether or not the appellant\'s Reply brief was properly filed before the court below, it was not proper for the appellant to raise an issue on the question whether or not the court below was right to have failed to consider the aforesaid appellant\'s Reply brief.
I am with respect unable to agree with the Respondent\'s counsel that the appellant was wrong to raise a ground of appeal and an issue for determination in the appeal on the question whether or not the court below was right to have refused to consider the contents of the appellant\'s Reply brief filed in reaction to the Respondent\'s brief. My firm view is that an appellant is entitled under Section 36 of the 1999 Constitution of Nigeria to have his appeal fully and fairly determined. The hearing of an appeal cannot be regarded as full and fair if the briefs filed by one party to the appeal is not considered while the brief of his opponent is considered. Even if a brief contains no more than arguments on the applicable facts and the law, the failure to consider the brief filed by one of the parties is tantamount to a refusal to hear the appeal fully. I am therefore unable to agree with the respondent\'s counsel that the appellant could not properly raise his issue 1.
I intend to consider issue 1 on its own and issues 2 - 4 together. Issue 1 is a complaint that the court below improperly failed to consider the appellant\'s Reply Brief before it when none of the parties had raised any issue before it as to whether or not the appellant\'s said Reply Brief should have been filed. None of the parties had, it was argued, raised any issue as to the contents of the Reply brief; and the appellant was therefore not enabled to say anything concerning the propriety or regularity of the contents of the Reply brief. Appellant\'s counsel Prof. Adesanya S.A.N. forcefully argued that the court below by failing to consider the contents of the appellant\'s Reply brief had denied the appellant his constitutional right to fair hearing. It was further submitted that a court could not properly raise issues suo motu which none of the parties had raised before it. Counsel placed reliance on Hamble v. Hueze [2001]4 NWLR (Pt. 703) 372 at 388; Abbas v. Solomon [2001]15 N.W.L.R. (Pt. 735)144; Korede v. Adedokun [2001] 15 NWLR (pt. 736) 483 at 497; Yesufu v. Government of Edo State [2001]13 NWLR (Pt. 731) 517; Achiakpa v. Nduka [2001]14 NWLR (Part 734) 623 S.C and The State v. Oladimeji [2003]14 N. WL.R. (Pt. 839) 57 at 69.
There is no doubt that the court below was of the view that the appellant ought not to have filed an appellant\'s Reply brief because the respondent had not in its brief raised any issue or argument which warranted the filing of an appellant\'s Reply brief. At pages 1225-1226 of the Record of Proceedings the court below per Salami J.C.A. (as he then

was) reasoned thus:
\"I wish respectfully to observe that the appellant\'s reply brief went contrary to the principle governing writing of a reply brief. There is a demand for a reply brief when an issue of law or argument in the respondent\'s brief deals with fresh point, it should therefore be restricted or devoted strictly to proffering answer to the new points raised in the respondent\'s brief. It is not the intention of Order 6 rule 5 which provides for a reply brief, to allow the appellant to re-argue or re-open his appeal all over again under the pretext of writing a reply brief by merely re-emphasizing argument already contained in the appellant\'s brief. It is therefore clear that where there is no fresh point raised in the respondent\'s brief, appellant\'s reply brief would not only be unnecessary but also uncalled for and an unwholesome waster of the time of the respondent and the court. See Supreme Court\'s observation in Olajisoye v. Federal Republic of Nigeria (2004) 4 NWLR (Pt.864) 584, 644 per Niki Tobi, JSC and Ikine v. Edierode (2001) 18 NWLR (Pt. 745) 446, 461 per Ejiwunmi. JSC. This is not only a typical example of the benediction being longer than mass but also in flagrant disregard of respondent\'s right to reply.\"
It is to be said here that the respondent\'s counsel had not at the hearing raised any objection to the appellant\'s Reply brief filed by appellant\'s counsel. No issue was raised before the court below as to the propriety of filing the said Reply brief. It is a correct statement of law that courts of law must refrain from raising suo motu issues upon which their decisions or judgment would turn. The rationale for that approach is not difficult to understand. It is an inseparable adjunct of the concept of fair hearing. This court has in several cases warned on the approach in such matters. The dictum of this Court in the case of The State v. Oladimeji (supra) is very apposite. This Court at page 69 said:
\"The law in this regard is now settled. It is now trite law in the determination of disputes between the parties, the
court should confine itself to issues raised by the parties. The Court is not competent suo motu to make a case for either or both parties and then proceed to give judgment in the case so formulated contrary to the case of the parties before it.\"
Having said the above, I must bear in mind that I am dealing here with the failure to consider an appellant\'s Reply brief and not with the question of the formulation of issues suo motu for parties by the court in its judgment. Whether or not raising a question suo motu affects adversely any of the parties is in itself a distinct matter which the appellate court must consider only in the light of the possible effect or impact which such an error may have had on the judgment or conclusion of the errant court. In this case, I am considering the argument in a brief; not evidence at the hearing or averments in a pleading. The contents of a brief are no more than arguments on the law which point the way to the court the direction in which it should go. Arguments constitute a form of assistance to the court but, briefs notwithstanding, courts are bound to give judgments according to law.
Order 6 rule 5 of the Court of Appeal Rules provides:
The appellant may also, if necessary, within fourteen days of the service on him of the respondent\'s brief, but not later than three clear days before the date set down for the hearing of the appeal file and serve or cause to be served on the respondent a reply brief which shall deal with all new points arising from the respondents brief. \"
(Underlining mine)
The point which the court below made in its judgment in the excerpt reproduced above is that the necessity to file an appellant\'s Reply brief did not arise as there were no new points raised in the respondent\'s brief. A careful perusal of the respondent\'s brief before the court below shows that no new issues were raised therein which necessitated the filing of an appellant\'s Reply brief. The said appellant\'s Reply brief was no more than an effort at re-arguing or emphasizing matters which had been fully discussed by the appellant\'s counsel in the appellant\'s brief. The work of justices who have to read these briefs is needlessly made cumbersome if they have to read and digest briefs which are a repetition of submissions previously made. I am with respect unable to agree with appellant\'s counsel that the court below was in error in its decision not to take into account the appellant\'s Reply brief.
Appellant\'s Issues 2,3 and 4 will be considered together. I observed earlier in this judgment that the trial court struck out the appellant's claims vi to viii following the withdrawal of same. The claims (i) - (v) which were pursued by the appellant relate to the interpretation of the provisions of the Companies and Allied Matters Act as to the legal consequence of the Defendant\'s/Respondent\'s Board of Directors holding a meeting at which certain decisions were taken when notice of such meeting was not given to the Plaintiff/Appellant. The relevant paragraphs of the averments in plaintiff/appellant\'s Statement of Claim are 3, 7, 8, 9 which read:
3. On the 24th of February 2000, the Defendant at the meeting of its Board of Directors held at the Board Room of the Head Office unanimously decided to appoint the Plaintiff as the Managing Director/Chief Executive of the Defendant Company for a period of 6 years but subject to an annual assessment of the Plaintiff s performance, the Plaintiff will at the trial refer to the Board Resolution for its full terms and effect.

"""""""""".
7. At a meeting of the Defendant\'s Board of Directors held on the 13th of June 2002, the Board wrongfully and unlawfully resolved to revoke the Plaintiff s appointment with the Defendant.
8. Contrary to the Articles of Association of the Defendant Company and to Section 266(3) of the Companies and Allied Matters Act 1990, the Plaintiff was not issued any notice of directors meeting of 13th June 2002 when the resolution to revoke his appointment was passed, accordingly the said meeting of the Board on 13th June 2002 is invalid, null and void and incapable of having any legal consequence.
9. By letter of 13th June 2002, the Defendant wrongfully and in repudiatory breach of the said agreement terminated the employment and wrongfully and unlawfully dismissed the plaintiff therefrom.\"
It is apparent from the above averments that the kernel or cornerstone of the plaintiff/appellant\'s case was the failure of the defendant/ respondent to serve him a notice to be present at the meeting whereat a decision was made to dismiss him from the service of the defendant/respondent. The defendant/respondent in paragraphs 9 to 15 and 18 to 42 of its Statement of Defence pleaded facts to the effect that the plaintiff/appellant had been negligent or reckless in the manner he granted an unauthorized loan to a company called Investors International (London) Ltd. for the acquisition of shares in NITEL.
A perusal of the Statement of Defence filed by the defendant/respondent conveys that the defendant/respondent pleaded and relied on facts which were not directly necessary to defeat the claims made by the plaintiff/appellant. It is a plaintiff who by his Statement of Claim primarily nominates the issues to be tried in a suit and on which he relies to have the judgment of the court. For a defendant it is only necessary to resist the plaintiff\'s claims on the facts pleaded. It is not for the defendant to set up facts which would convey that it is not just setting up a defence to plaintiff\'s suit but setting up a new case of his own. He is only permitted to do this when he is setting up a counter-claim. The approach of the defendant/respondent in the manner it crafted its Statement of Defence needlessly made the matter complex and unwieldy.
If the reason which the defendant/respondent intended to rely upon for not serving the notice of the meeting at which plaintiff/appellant\'s employment was brought to an end was because he had given out unauthorized loans, the defendant would be entitled to plead as it did. But in its paragraph 17 of the Statement of Defence, the defendant/respondent pleaded:
\"17. The plaintiff was not entitled to attend the Board meeting and (sic) where his appointment was determined and dismissed. The plaintiff was suspended effective from April 22, 2002 and he was dismissed as Managing Director/Chief Executive from June 13, 2002 at a meeting of the Board of the Defendant. The plaintiff knew that to be the correct procedure of the Board.\"
What are the facts relevant to the claims made by the plaintiff/appellant' It was undisputed that the plaintiff was appointed the Managing Director/Chief Executive of the defendant on 24-2-2000. Before that date, the plaintiff had been the defendant\'s Executive Director. Following an improper grant of loan to a customer of the defendant, the plaintiff was on 22-04-02 suspended by the defendant\'s Board of Directors, and on 13-06-02 his appointment was revoked. The plaintiff was not given the Notice of the meeting of the Board of directors of the defendant at which the decision to terminate him was taken. It was plaintiff\'s contention that under section 266 of Companies and Allied Matters Act (hereinafter abbreviated as C.A.M.A.), he was entitled to be given Notice of the meeting and that the failure to give him such notices would render his termination null and void.
Now the letter by which the plaintiff was placed on suspension written on 22-4-2002 and tendered as an exhibit reads:
\"First Bank of Nig. Plc
35, Marina,
P. O. Box 5216, Lagos.
22nd April 2002
Mr. Bernard Ojeifo Longe, OON.
Managing Director/CEO,
First Bank of Nigeria PIc.,
35, Marina, Lagos.
I regret to convey to you the decision taken by the Board of Directors of the First Bank of Nigeria PIc., at its Extraordinary Board Meeting of 22nd April 2002 held at Coommasie House, Abuja to suspend you from office with effect from today,
22nd April 2002. During the suspension period, you are expected to concentrate on the recovery of the Credit Facility granted to the Investors Group Nigeria Limited (I.G.N.L.).

The Board expects that you will do your utmost best to help in the collective efforts towards the recovery of the money.
(Sgd.)
Alh. (Dr.) Mutallab, CON
(Chairman)
The extract of the minutes of the meeting at which the appointment of plaintiff was terminated reads:
First Bank of Nig. Plc
Samuel Asabia House
35 Marina, (12th Floor)
P. O. Box 5216, Lagos
EXRACT FROM MINUTES OF THE EXTRAORDINARY BOARD MEETING NO.2/2002 HELD ON JUNE 13, 2002 AT ABUJA
REVOCATION OF THE APPOINTMENTS OF MESSRS. BERNARD O. LONGE AND UZOMA NWANKWO FROM THE BOARD
The Board reflected and pursuant to article 105 of the Memorandum and Articles of Association of the Bank, resolved to revoke the appointment of Messrs. Bernard O. Longe and Uzoma Nwankwo from the Board as Managing Director/Chief Executive and Executive Director respectively, hence they ceased being members of the Board with effect from June 13, 2002.
This is a certified true copy of the minutes of the meeting referred to above.
(Sgd.)
Tijani M. Borodo.
Company Secretary
And the letter which conveyed the decision of the Board of Directors of the defendant to the plaintiff on 13-6-2002 reads:
First Bank of Nig. Plc
35 Marina,
P. O. Box 5216, Lagos.
13th June, 2002.
Mr. Bernard O. Longe, OON.
c/o 10 Murtala Mohammed Drive, Ikoyi,
Lagos.
Revocation of Appointment as Managing Director/Chief Executive of First Bank of Nigeria Plc.
I write to advise you that the Board of Directors at its meeting of 13th June, 2002 has resolved to revoke your appointment as Managing Director/Chief Executive. Consequently, your appointment is hereby revoked with effect from the date of this letter.
(Sgd.)
Alhaji (Dr) U. A. Mutallab. CON
Chairman
cc:
Mr. J.M. Ajekigbe
Managing Director/Chief Executive
There is no dispute as to the fact that the plaintiff was placed on suspension on 22-04-02 and that his appointment was revoked on 13-06-2002. Section 262 of C.A.M.A. provides:
\"262. (1) A company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him.
(2) A special notice shall be required of any resolution to remove a director under this section, or to appoint some other person instead of a director so removed, at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director under this section, the company shall forthwith send a copy of it to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.
(3) Where notice is given of an intended resolution to remove a director under this section and the director concerned makes with respect to it representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so
(a) in any notice of the resolution given to members of the company, state the fact of the representations having been

made; and
(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company),
and if a copy of the representations is not sent as required in this section because it is received too late or because of the company\'s default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:
Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the court may order the company\'s costs on an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.
(4) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.
(5) A person appointed director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed a director.
(6) Nothing in this section shall be taken as depriving a person removed under it of compensation or damages
payable to him in respect of the termination of his appointment as a director or of any appointment terminating with that as director, or as derogating from any power to remove a director which may exist apart from this section.
The provisions of section 262 above clearly show not only that a company may remove a director, it also sets out how that may be done. The case of the plaintiff is founded on Section 266 of C.A.M.A. which provides:
266. (1) 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.
(2) There shall be given fourteen days notice in writing to all directors entitled to receive notice unless otherwise provided in the articles.
(3) Failure to give notice in accordance with subsection (2) of this section shall invalidate the meeting.
(4) Unless the articles otherwise provide, it shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Nigeria; provided that if he has given an address in Nigeria, the notice shall be sent to such an address.\"
(Underlining mine)
The only persons disqualified from being given notice of directors\' meetings are those set out under section 257 of C.A.M.A. The section reads:
257. The following persons shall be disqualified from being directors -
(a) an infant, that is, a person under the age of eighteen years;
(c) a person disqualified under sections 253, 254 and 258 of this Act;
(d) a corporation other than its representative appointed to the board for a given term.
It was never part of the case of the plaintiff that he did not commit any offence justifying the revocation of his appointment. His case was simple and straightforward. It was that whereas Section 266(1) states that he shall be entitled to receive notice of the meeting at which the revocation of his appointment was to be discussed, no such notice was given to him. The combined requirement of Sections 266(1) and 262 is that a director to be removed must be given a notice of the meeting. It is not the requirement of the law that such director about to be removed must be present at the meeting. He may receive the notice and refuse to show up at the meeting. What Section 266(3) above punishes is the failure to give such notice. For emphasis I repeat Section 266(3) of C.A.M.A.:
\"(3) Failure to give notice in accordance with subsection (2) of this section shall invalidate the meeting.\"
Subsection 3 of Section 266 above is in mandatory terms and the court has no discretion to exercise in the matter where a director to be removed was not given a notice of the meeting at which his removal was to be discussed. There are three possible defences to Section 266 of C.A.M.A. namely:
1. That the director removed was given the notice of the meeting.
2. That the person involved has ceased to be a director of the company.
3. That the person involved is disqualified under Section 257 of C.A.M.A. from getting the notice.
Now what was the defence put forward by the defendant in its pleadings' I bear in mind that it is only on the pleadings of parties that issues to be tried at the trial are joined. See Egonu v. Egonu (1978) 12 S. C. 111; Sagay v. M N 1. (1977) 5 S.C. 143; African Continental Seaways v. Nigerian Roads & General Works Ltd. (1977) 5 S.C. 110.

The only relevant facts pleaded by the defendant are to be found in paragraphs 4, 9, 11, 16 and 17 of its statement of defence and they read:
\"4. The Defendant avers that the contract of the Plaintiff with the Defendant was brought to an end lawfully.
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9. The Defendant avers that the Plaintiff was in breach of the following implied terms of his contract of employment as Managing Director/Chief Executive which were that the Plaintiff would:
(a) perform his duties with reasonable care and skill, and/or;
(b) perform his duties with reasonable competence and/or;
(c) render honest and faithful service and/or
(d) not act in such a manner as to destroy the relationship of mutual trust and confidence between himself and the Defendant and/or;
(e) discharge his fiduciary duty to the Defendant in his capacity as the Managing Director/Chief Executive and/or;
(f) not negligently or knowingly mislead the Chairman of the Board of the Defendant and/or the Defendant, and/or;
(h) not suppressing facts or information from the Chairman of the Board or from the Board itself which might affect adversely the Defendant\'s finances or result in financial loss to the Defendant or its shareholders.
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11. The plaintiff was guilty of incompetence and/or conducts incompatible with or prejudicial to the Defendant\'s business.
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16. The Defendant avers that it was entitled, as it has done in the circumstances, to dismiss the Plaintiff, for any reason or for no reason at all without notice and without any financial benefits to the Plaintiff or at all.
17. The plaintiff was not entitled to attend the Board meeting and (sic) where his appointment was determined and dismissed. The plaintiff was suspended effective from April 22, 2002 and he was dismissed as Managing Director/Chief Executive from June 13, 2002 at a meeting of the Board of the Defendant. The plaintiff knew that to be the correct procedure of the Defendant.
It is easy to see that only paragraph 17 above is relevant to the case brought by the plaintiff. The defendant thereunder contends that the plaintiff was suspended effective from April 22, 2002 and dismissed on June 13, 2002.
The court below correctly in my view did not permit itself to be drawn into a consideration of the issue whether or not the plaintiff had committed in the course of his employment offences justifying his removal. The trial court fell into that error.
The court below however fell into a very serious error by accepting that the fact that the plaintiff was first suspended on 22-4-02 deprived him of the entitlement to be given notice of his removal as conferred by section 266(2) of C.A.M.A.
At pages 1240 and 1242, the court below reasoned thus:
\"See Lewis v. Helfer & Sons (1978) 1 All ER 254. At page 364 Lord Denning exposed the legal situation thus-
\'Very often irregularities are disclosed in a government department or in a business house; and a man may be suspended on full pay pending inquiries. Suspicion may rest on him; and so he is suspended until he is cleared of it. No one, so far as I know, has ever questioned such a suspension on the ground that it could not be done unless he is given notice of the charge and an opportunity of defending himself, and so forth. The suspension in such a case is merely done by way of good administration. A situation has arisen in which something may be done at once. The work of the department or the office is being affected by rumours and suspicions. The others will not trust the man. In order to get back to proper work, the man is suspended. At that stage the rules of natural justice do not apply.\'
Also in the case The Shell Petroleum Development Company Ltd. vs. Lawson Jack (1998) 4 NWLR (Pt. 545) 249 this court observed as follows at pg. 270:
\'What it has done from the facts available was to set up an investigating panel to look into certain complaints bordering on alleged impropriety committed by one Mr. Nuk Ntuk, a member of staff of the appellant company. In the process the respondent was suspended from duty on full pay pending the investigation. He was the head of the department directly concerned with the allegation against Mr. Ntuk Ntuk.
A suspension of an employee is not an unusual procedure taken in order to facilitate such an investigation. The person affected can hardly complain, in the process, of not having been given a hearing; nor can he demand that the rules of natural justice should apply. The interest of the business of the defendant becomes paramount and the plaintiff is made to keep of the premises thereof until later.\'
The case of Mallock v. Aberden Corporation (1971) 2 All ER 1278 at 1294, (1971) 1 WLR 1578, 1595 cited in the respondent\'s brief of argument is being referred to in connection with exclusion of requirement of natural justice and the nature of remedy available to a plaintiff. A plaintiff can only ask for, in pure master and servant cases, at the

most damages, Lord Wilberforce states as follows at the relevant pages of the reports '
\'The argument that, once it is shown that the relevant relationship is that of master and servant, this is sufficient to exclude the requirements of natural justice is often found, in one form or another, in reported cases. There are two reasons behind it. The first is that, in master and servant cases, one is normally in the field of common law of contract inter partes so that principles of administrative law, including those of natural justice, have no part to play. The second relates to the remedy; it is that in pure master and servant cases, the most that can be obtained is damages, if the dismissal is wrongful; no order for reinstatement can be made, so no room exists for such remedies as administrative law may grant, such as a declaration that the dismissal is void. I think there is validity in both of these arguments. ,,,
At page 1245 the court below said
\"The suspension of the appellant is not an issue in this appeal. The appellant\'s grouse is predicated on the appellant being a director. There could not be a valid decision removing him as the managing director at a meeting he was not served a notice inviting him to attend. Since the appellant is comfortable with the suspension of his appointment as managing director/chief executive, the plank on which his claim rests collapsed. Having accepted the suspension of his only subsisting appointment with the respondent he was not entitled to the notice of the meeting. On suspension of the appellant\'s appointment of managing director/chief executive all his rights, privileges and powers consequential or attached to the employment, including attending boards meetings, ceased. The notice of the board meeting is not given for the fun of it. It is given for serious business of the company. It is, therefore, not issued informally to a person who is otherwise entitled to attend but barred by reason of his suspension. All authorities show that he was not entitled to the notice of the meeting except to enable him to be there to disrupt the meeting or cover up his tracks. Assuming he was entitled to the notice, without so deciding, the practice is that the person being discussed would step out to enable other members of the board freely take their decision concerning him.\"
(Underlining mine)
With respect to their Lordships of the court below, I find the proposition made in their reasoning above very unacceptable. It is in my respectful view a clear encouragement to bodies governed by C.A.M.A. to circumvent the applicability of Section 266 of C.A.M.A. by first suspending a director without notice before removing him again without notice so that they could claim in a later litigation in court that the earlier suspension robs the director concerned of the right to notice as given by section 266 of C.A.M.A.
Let me say with all the necessary force and emphasis that when the law vests a right on a citizen, a court of law will resolutely resist any attempt and by whatever method to deny the citizen the enjoyment of the right conferred by law. The plaintiffs case was not founded on the principles of administrative law including those of natural justice. It is simply on whether or not an extant provision of law was obeyed.
In University of Calabar v. Esiogu [1997] 4 NWLR (Part 502) 719 at 723, the Court of Appeal discussing the nature of the consequences of suspension of an employee reasoned:
\"The word \'suspension\' means a temporary privation or deprivation, cassation or stoppage of or from the privileges and rights of a person. The word carries or conveys a temporary or transient disciplinary procedure which keeps away the victims or person disciplined from his regular occupation or calling either for a fixed or terminal period or indefinitely. The disciplinary procedure gives the initiation of the discipline a period to make up his mind as to what should be done to the person facing the discipline. Although in most cases, suspension results in a disciplinary action, it is not invariably so. There are instances when the authority decides not to continue with the matter. This could be because the investigations did not result in any disciplinary conduct.\"
Also in Boston Sea Fishing Co v Ansell (1886 ' 90) All ER 65 the court said
\'Mr. Ansell was dismissed and I think his dismissal must be taken to date from that meeting on October 19 and not from the day in September when he was suspended by the board because suspension is very different from dismissal. When a man is suspended from the office he holds, it merely amounts to saying \"so long as you hold the office and until you are legally dismissed, you must not do anything in the discharge of the duties which under your office you ought to do towards your employer.\"
(Underlining mine)
I think, with 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 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 a 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 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 that suspension had removed the necessity to give him the notice as mandatorily required under Section 266(1) of C.A.M.A. The court cannot grant to a litigant the right to disobey the law under any artifice or guise.
In any case, the letter of suspension to the plaintiff did not say that he had ceased to be a director. If it had said so, the plaintiff would have founded his action on that letter. Rather what the letter said was \"During the suspension you are expected to concentrate on the recovery of the credit facility granted to the Investors Group Nig. Limited. The Board expects that you will do your utmost best to help in the collective efforts towards the recovery of the money.\"
It is apparent that the defendant wanted the plaintiff to use the period of his suspension primarily to pursue the recovery of the loan granted to Investors Group Nig. Ltd. (LG.N.L.). That implies that he would do so only in his capacity as Managing Director/Chief Executive of the defendant. If he was no longer Managing Director/Chief Executive of the defendant, how could he go out to collect money for the defendant'
It is my firm view that the court below was wrong to have held that the suspension of the defendant on 22-04-02 robbed him of his status as a director of the defendant.
The court below also in its judgment laboured strenuously to show that the plaintiff was not a director within the meaning of C.A.M.A. It needs be said here that the defendant never raised any such defence. The court below engaged in the dichotomy between an executive director and a nonexecutive director which the parties had not raised in their pleadings. It has been said repeatedly that a court must not decide a case on issues not raised by parties in their pleadings. In George v. UB.A. [1972] 8/9 SC 264 this Court per Fatayi Williams J.S.C. (as he then was) said:
\"The first point to be considered in this appeal is whether the plaintiffs/respondents pleaded the assignment by the British and French Bank to them of the debt which they had claimed from the defendant/appellant. If the assignment is not pleaded, evidence regarding it goes to no issue and should not have been admitted; if admitted, it should have been ignored by the learned trial judge in his judgment. (See George v. Dominion Flour Mills Ltd. (1963) 1 All NLR. 71 at pp. 78-79). In this respect, we also wish to refer to our decision in Chief Sule limbo & Ors v. Aminu Asani & Ors, SC 373/67 delivered on 13th March, 1970, where we observed as follows:-
\'We are also concerned at the obvious departure from their pleadings of the two sets of plaintiffs. The object of pleadings is to fix the issues for trial accurately and to apprise the other side of the case which it would meet in court. To allow a party to give evidence in direct contradiction of his pleadings is to allow that party to make a different case at the trial and should not have been allowed. Such evidence must be regarded as not belonging to the issues raised on the pleadings and should have been rejected. We think the learned judge was wrong to have allowed such evidence to be given. See Erinle v. Adelaja, SC332/1966 delivered on the 6th June, 1969; also NI.P.C v. Thompson Organisation Ltd & Ors, SC192/67 delivered on 11th April, 1969.\'
Again, we refer to our decision in Ogboda v. Adulugba delivered on 12th February, 1971, where we emphasized the same point as follows:-
\'We have pointed out numbers of times that the evidence in respect of matters not pleaded really goes to no issue at the trial and the court should not have allowed such evidence to be given. (See Chief Sule Jimbo and Others v. Aminu Asani and Others, SC373/67 delivered on 13th March, 1970). Even when such evidence had been wrongly allowed, the trial court should disregard it as irrelevant to the issues properly raised by the pleadings.\",
And similarly in Okafor v. Okitiakpe [1973] 2 S.C 49 at page 54 this Court per Coker JSC said:
\"it is correct that facts not pleaded may not be given in evidence at a trial and if for any reason at all, any evidence was given of such facts the court of trial, and indeed the appeal court must disregard such evidence. This is trite law and if authority is needed for this we refer to the observation of this Court in Tomori v. Matanmi, SC146/68 decided on the 1st July 1970; also Conway v. George Wimpey [1951] 2 Q.B. 266 at p.274 et seqq \"
Now, at pages 1246 ' 1247 of the record, the court below reasoned thus
\"The appellant made a mountain out of a mole hill on the strength of Yalaju-Amaye \'s case (supra). That case on the facts and the law are not on all fours. Firstly article 106 of the First Schedule of Table A of Companies Act, 1968 and article 105 of the Article of Association of First Bank of Nigeria Plc are not in pari materia as demonstrated earlier in this judgment. Article 106 along with the Companies Act 1968 which gave it life was repealed on the inception of the Companies and Allied Matters Act, Cap.59 of the Laws of the Federation, 1990. Yalaju-Amaye\'s case recognizes the fact that a person, irrespective of his description who has a contract of service with the company is an employee and found that Yalaju-Amaye was a director and not an employee in the absence of contract of service between him and the first respondent. Yalaju-Amaye was a director in his own right who was so designated by the article of association of that

respondent company. He was not only a director but also the founder and promoter of that first respondent company. Yalaju Amaye who was appointed a director as well as managing director in the article of association was allegedly removed as managing director on the strength of a purported oral resignation. Yalaju-Amaye can only be removed from these positions by alteration of the articles of association. It is clear on authorities that a power exercisable under the article of association can only be changed or altered by a
special resolution. But the appellant in the instant appeal was an employee who was appointed a managing director by the board of directors of respondent under article 105 of the respondent\'s article of association. The appellant was made or appointed a managing director by the directors exercising their power under article 105 of First Bank of Nigeria PIc., Article of Association. The same article empowers the directors to revoke any appointment made by them. It seems to me that the power of the board of directors of the respondent to remove anyone appointed by it is further strengthened by the provisions of section 41(3) of the Companies and Allied Matters Act which reiterates the right of the directors to enforce the power donated to them under the article to appoint or remove any director or other officer of the company. The section provides thus-
\'(3) where the memorandum or articles empower any person to appoint or remove any director or other officer of the company, such power shall be enforceable by that person notwithstanding that he is not a member or officer of the company.\'
It seems to me that the power to appoint person or persons of proven ability as executive or managing director as well as the power to revoke such an appointment conferred by article 105 is now repeated in the Act. So the power given to directors to appoint and remove executive and managing directors transcends by virtue of section 41(3) of Companies and Allied Matters Act, article 105\"
And at pages 1249-1250, the court below said:
\"The appellant is not contesting his removal on the facts. He has conceded to the facts of this case. But he is challenging the legitimacy of the board meeting at which the decision to revoke his appointment was taken on account that as a director he was not given notice of the meeting, contrary to section 266 of Companies and Allied Matters Act. It is common ground that he was suspended at the material time, which he is not contesting. Moreover, it is clear that being a managing director who could be suspended and was on suspension he was not entitled to the notice of the meeting. Further on this point, being a director appointed by the directors, under article 105 of the article of association, he was not a director appointed under the Companies and Allied Maters Act and that his working directorship was not within the contemplation of s.266(1) of the Companies and Allied Matters Act, therefore, was not entitled to the notice envisaged under section 266(1) of the Act which provides thus '
\'266. (1) Every director shall be entitled to receive notice of the directors\' meeting, unless he is disqualified by any reason under the Decree from continuing with the office of director.
(2) There shall be given 14 days notice in writing to all directors entitled to receive notice unless otherwise provided in the articles.
(3) Failure to give notice in accordance with subsection (2) of this section shall invalidate the meeting.\'
The appellant as observed earlier is disqualified to attend the meeting and was consequently not entitled to the notice of the meeting. He was disqualified by reason of his suspension by the board of directors under article 105 read in conjunction with the provisions of section 41 (3) of the Companies and Allied Matters Act.\"
The sum total of the approach of the court below is that because the plaintiff was a Managing Director/Chief Executive of the defendant appointed by the defendant on a contract of employment he was not a director within the meaning of section 266 of the C.A.M.A. The standpoint of the court below was a derivative of the earlier conclusion it had come to at pages 1235 - 1236 of the record where it said:
\"The appellant\'s misapprehension of the article stems from his reading article 105 of respondent\'s Article of Asso-ciation as if it were the repealed article 106 in the First Schedule in Table A of the repealed Companies Decree, 1968 which provides thus-
\'The directors may from time to time appoint one or more of their body to the office of Managing Director for such period and on such terms as they think fit.\'
This article allowed the board of directors to appoint one of their members as the managing director. It follows that, under article 106 of First Schedule in table A of Companies Decree, 1968, a person to be appointed a managing director must himself be a sitting director as he ought to come from amongst the directors. He was consequently permitted to retain his directorship along with his present status. The meaning of that article, which is, in any case, repealed, cannot be imported or read into article 105 of respondent\'s Article of association. The qualification under article 105 for being a managing director or an executive director no longer includes being a director; all that is required for the two offices are

\'person or persons of proven relevant ability or experience.\' It follows that appellant was not a director appointed as a managing director. He was an executive director, a fact he admitted in evidence, immediately before he was appointed the managing director. He testified to this effect in his evidence-in-chief as well as cross-examination. The submission of the appellant that he was a director and managing director and there is no provision in the Companies and allied Maters Act to suspend the plaintiff as a director may be ingenious but not candid. It is not candid because there is no shred of evidence on the record supporting the claim that appellant was ever a director of respondent. There is no provision in the Companies and Allied Matters Act for appointment of
executive director. It is therefore not surprising that the same Act has no provision for suspension or discipline of an executive director, a situation adequately covered by article 105 already recited earlier in this judgment.
The appellant was employed an executive director by way of promotion by virtue of exhibit V. He was subsequently promoted as Managing Director/Chief Executive by virtue of exhibit A. The two documents were made pursuance of the power of the Board of Directors under article 105 of the articles of association of the First Bank of Nigeria PIc. The two positions do not run concurrently but consecutively: the former appointment terminates on the elevation of its holder to the position of a managing director.\"
I say with due respect to their Lordships of the court below that the power to amend or vary the meaning of a director under C.A.M.A. has not been vested in a company concerned or the court. The reasoning that, after all, if the issue of a director to be removed is to be discussed, the director concerned will be asked to step out is with respect untenable because that reasoning speculates on the intendment of the legislation. Section 262 reproduced earlier in this judgment gives the director whose removal is under consideration the priviledge 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'
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.\"
(Underlining mine)
The statutory definition of directors above does not recognize the nomenclature raised by the court below as between executive and nonexecutive 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 earlier, it is fair to say that the defendant on their pleadings did not plead that the plaintiff was not their director.
The emergence of directors in a company is governed by sections 247, 248 and 249 of C.A.M.A. which provide:
\"247. Subject to section 246 ofthis Act, the number of directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them or the directors may be named in the articles.
248. (1) The members at the annual general meeting shall have power to re-elect or reject directors and appoint new ones.
(2) In the event of all the directors and shareholders dying, any of the personal representatives shall be able to apply to the court for an order to convene a meeting of all the personal representatives of the shareholders entitled to attend and vote at a general meeting to appoint new directors to manage the company, and if they fail to convene a meeting, the creditors if any, shall be able to do so.
249. (1) The board of directors shall have power to appoint new directors to fill any casual vacancy arising out of death, resignation, retirement or removal.
(2) Where a casual vacancy is filled by the directors, the person may be approved by the general meeting at the next annual general meeting, and if not so approved, he shall forthwith cease to be a director.
(3) The directors may increase the number of directors so long as it does not exceed the maximum allowed by the articles, but the general meeting shall have power to increase or reduce the number of directors generally and may determine in what rotation the directors shall retire:
Provided that such reduction shall not invalidate any prior act of the removed director.\"
The plaintiff may have been a director appointed under section 248 or 249 as one appointed to fill a vacancy occasioned by death, resignation, retirement or removal of the previous holder of the position of managing director. The scheme under sections 247 to 249 recognises

(1) directors appointed by the subscribers of the memorandum of association or majority of them or those named in the articles,
(2) directors appointed at the annual general meeting, or
(3) directors appointed to replace such directors as may have died, resigned, retired or be removed.
It is eye-opening that section 244(3) criminalizes the situation where a person who is not a director holds himself out at such: the subsection provides:
\"(3) Where a person not duly appointed acts or holds himself out as a director, he shall be guilty of an offence and on conviction shall be liable to imprisonment for two years or to a fine of N100 for each day he so acts or holds out himself as a director or to both such imprisonment or fine and shall be restrained by the company.\"
The unchallenged evidence was that the plaintiff was made a managing director in the year 2000. He acted as such till 2002 when he was removed. Why did the defendant not disclaim him as a director during the period'
The two courts below were wrong in their conclusion that the suspension of the plaintiff from work had the effect of removing him as director. If the defendant believed that the plaintiff had ceased to be a director by his suspension on 22-04-02, why did they proceed to revoke his appointment on 13-06-02' In any case, the provision of section 266(1) is that a director may not be removed unless he is first given a notice to attend a meeting at which the removal will be discussed.
If the contention of the defendant is valid, that the plaintiff had ceased to be a director by his suspension on 22-04-02, it follows that if it was the suspension of 22-04-02, that removed plaintiff as such director, it would not be necessary to further revoke his appointment on 13-06-02 as was done by the defendant. The further reasoning of the court below that an executive director is not the same as a non-executive director is untenable. From other angles it may be correct but for the purpose of removal under section 266(1) of C.A.M.A., all directors, whether executive or non-executive are the same as long as they are all engaged to direct and manage the business of the company.
In the final conclusion, this appeal must be allowed. It is meritorious. The judgment of the court below is set aside. The removal of the plaintiff as Managing Director/Chief Executive of the defendant without a notice to him to attend the 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 prescribed 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. For clarity, I set out those reliefs hereunder:
(i) A declaration that the Defendant\'s Board of Directors cannot lawfully hold any meeting of the said Board without giving notice thereof to the Plaintiff and accordingly all decisions taken at any such meeting is unlawful, invalid, null and void and incapable of having any legal consequence;
(ii) A declaration that in particular the decision of the Defendant\'s Board of Directors held on the 13th of June 2002 to revoke the Plaintiff s appointment as Managing Director/Chief Executive is wrongful, unlawful, invalid, null and void and incapable of having any legal consequence;
(iii) A declaration that any purported implementation of the said decision made by the Board on the 13th of June 2002 (including any appointment to the office held by the Plaintiff in the Defendant Company) is ineffective, unlawful and null and void;
(iv) An order of injunction restraining the said Defendants from giving effect or continuing to give effect to any of the decisions of the Board mentioned in claims (i) and (ii) hereof without first complying with the mandatory procedural requirements stipulated in Section 266(3) of C.A.M.A.;
(v) A declaration that the Plaintiff is entitled to remain in the premises allocated to him by the Defendant including the enjoyment of all associated services until the expiration of a reasonable time from the date of any lawful and valid termination of his contract of service with the Defendant;\"
Let me observe here that the defendant has by its unwillingness to respect the provisions of Section 266 brought about this unfortunate situation on itself. The plaintiff's suit was filed on 4-07-02 about a month after he was purportedly removed. All the defendant needed to do on being served with the summons was rescind the ill-advised action and follow thereafter the prescription under Section 266. Within a few weeks thereafter, the defendant would have been able to effectually remove the plaintiff. What could have been done validly within 3 months has been made to last eight years.
In this Court, I must uphold the law of the land. The appeal succeeds. The plaintiff/appellant is awarded costs as follows:
(a)
For appearance in the High court
N20,000.00

(b)
For appearance in the Court below
N30,000.00
(c)
For appearance in this Court
N50,000.00
Judgment delivered by Dahiru Musdapher, J.S.C
I have read before now the judgment of my Lord Oguntade, JSC with which I entirely agree. For the same reasons set out, I too allow this appeal and set aside the decisions of the courts below and enter judgment in terms of the appellant\'s claims which were not withdrawn.
I also abide by the orders for costs proposed in the aforesaid lead judgment in the trial Court, Court of Appeal and this Court.
Judgment delivered by Francis Fedode Tabai, J.S.C
I have had the privilege to read, in draft, the lead judgment of my learned brother Oguntade. JSC and I agree with the reasoning and conclusion that the appeal be allowed.
This appeal turns on the construction to be placed on Section 266 of the Companies and Allied Matters Act (C.A.M.A) which provides for the service of notice of directors meeting. The appellant being a director was entitled to be given 14 days notice of a meeting of directors.
Section 266(3) of the C.A.M.A. specifically provides that failure to give notice in accordance with subsection (2) of this section shall invalidate the meeting.
The Appellant was not given the notice as required by Section 266(3) of C.A.M.A. Although the appellant was on suspension, he still retained the right to be given notice of the meeting particularly having regard to the fact that issues affecting his rights were to be discussed.
In conclusion, I also hold that the appeal has merit and same is accordingly allowed. I assess the costs of this appeal at N50,000.00 in favour of the Plaintiff/Appellant against the Defendant/Respondent.
Judgment delivered by
Ibrahim Tanko Muhammad, JSC
I read in advance the judgment of my leaned brother, Oguntade, JSc. I concur.
Judgment delivered by
Olufunlola Oyelola Adekeye, JSC
I had read before now the judgment delivered by my learned brother, G.A. Oguntade, JSC. My brother had meticulously considered all the facts and the applicable principles of law raised in the four issues for determination in this appeal as follows: -
(1) Whether it is proper in law for the Court of Appeal to have jettisoned suo motu in its judgment the entire Reply brief of the appellant in their judgment without giving the parties in particular, the Appellant a hearing even though arguments have been proffered in all the Briefs including the Reply Brief without any objection or opposition by the Respondent and in circumstances which resulted in a deprivation of fair hearing.
(2) Whether it was proper for the Court of Appeal to have failed in its judgment to resolve the issue whether a finding by the trial court that the appellant was suspended under the common law meets the requirement of the Companies and Allied Matters Act that a director must be given a notice of directors meeting unless he is disqualified under the Act (CAMA) an issue which if it had been pronounced upon would probably resolve the appeal in favour of the appellant and not doing so occasioned a miscarriage of justice.
(3) Whether it was proper for the Court of Appeal to speculate on an issue which was not part of the grounds of appeal and which was also not an issue for determination before the court.
(4) Whether the Court of Appeal was right in holding that although the appellant was appointed pursuant to Article 105 of the Articles of Association of the respondent, he is not a director for that purpose of the Companies and Allied Matters Act [CAMA] therefore his working relation is not within the contemplation of Section 266 (1) and moreover that the office of the executive director is not known to the CAMA
At the Extraordinary meeting of the respondent, the First Bank of Nigeria held on Thursday 24th of February 2000 in Lagos, the Board of Directors unanimously appointed the appellant, Bernard Ojeifo Longe as the Managing Director/Chief
Executive of the bank, after a resolution of the Board in accordance with the Articles of Association of the Company. Extracts from the minutes of the meeting reads:

\"That pursuant to Article 105 of the Articles of Association of the Company, Mr. B.O. Longe, be and is hereby appointed the Managing Director/Chief Executive Officer of the First Bank of Nigeria Plc with effect from July 3 2000.\"

The Board agreed with the proviso that the above appointment being for a period of six years (i.e. 2 terms of 3 years each) but subject to annual assessment of the performance of the appointees. This being in the spirit of the new First Bank that is performance-driven.

At that meeting, Mr. B.O. Longe\'s name was listed as a Director of the First Bank of Nigeria PLC (pages 16 and 17 of the Record Exh. B). A Letter of Appointment Exh. A dated 3/7/2000 was dispatched to him to that effect. The Memorandum and Articles of Association was admitted in evidence by the trial court as Exh. DO. At another meeting of the Board held on 25/10/01, the issue of tenure of Directors was raised. It was resolved that the provisions of Companies and Allied Matters Act [CAMA] and the Memorandum and Articles of Association of the Bank should apply. The Article of Association at page 28 of the Record under Interpretation 2 (1) (L) defines that

\"The Directors\" shall include, and mean the Directors for the time being of the Company and the \"Board\" shall mean the Directors or any of them acting as the Board of the Company.\"

The removal of Directors is as provided for in Article 103 of the Articles of Association which reads: -

\"In addition to and without prejudice to the provisions of the Decree, the company may by ordinary resolution, remove any Director before the expiration of his period of office, and may in like manner appoint another in his place. Any person so appointed shall be subject to retirement at the same time as if he had become a Director on the day on which the Director in whose place he is appointed was last elected a director, but shall without prejudice to any claim the Director may have for damages for breach of any contract of service between him and the company.\"

Article 105 of the Article of Association provides for the post of the Chief Executive and Managing Director to which the appellant was appointed. It states that: -

\"The Directors may from time to time appoint one or more person or persons of proven relevant ability and experience to the offices of Managing Director who is to be Chief Executive of the Company and Executive Director for such period and on such terms as they think fit and subject to the terms of any agreement entered into in any particular case, and may revoke such appointment but without prejudice to any claim he may have for damages for breach of contract.\"

The core complaint of the respondent against the appellant was that he disbursed a loan of $131,700,000 (One hundred and thirty-one million, seven hundred thousand dollars) on behalf of Investors International London Limited for 10% purchase price of 51 % stake in Nitel to Bureau of Public Enterprises on the Banks Non-Export Domiciliary Account. In particular that the processing of a loan of $50,000,000 (Fifty million dollars) and the disbursement was subject to various policy and procedural lapses in that the conditions precedent to Drawdown were not met. The US$ One hundred and thirty-five million short-term Bridge Finance Facility to acquire 51% stake in NITEL PLC was to be borrowed by Investors Group Nigeria Limited (IGNL). The lenders were to be a consortium of Financial Institutions with the First Bank PLC as the Lead Arranger. The purpose was to bridge the proceeds of the private equity issue in respect of the Investors International (London) Limited (1ILL)\'s acquisition of 51 % stake in Nigerian Telecommunications PLC (NITEL) under the Federal Government of Nigeria\'s then on-going privatization programme. The facility will be used to fund the required 100% down payment (vide pages 594 - 596 of the Record). According to one Tim Bolade, Head of Credit Risk Management, he put the total exposure of the bank at $111.7 million US dollars, which was approved - but there was no record of approval for the second $50,000,000 (Fifty million dollars). Bureau of Public Enterprise thereafter declared that the amount was non-refundable. The Board of Directors called an Extraordinary meeting on Monday April 22nd 2002. The Chairman of the Board disclosed that the purpose of the meeting was to assess the situation of NITEL\'s acquisition by International Investors (London) Limited (IILL) and the facility granted to Investors Group Nigeria Limited (IGNL) by the Bank. He thereafter called on the Managing Director/Chief Executive to brief the Board. The appellant went ahead to inform the Board that the

(1) Extension of time given to IILL to pay the balance of $1.37 billion Dollars had elapsed without payment.

(2) BPE had taken the position that the $131.7 million deposit has been forfeited in line with the terms of the Share Sales Agreement covering the transaction.

He informed the Board of his efforts to contact the major movers of the transaction IILL and the Chairman IGL so as to pay money to the Bank.

The Board set up a committee to compliment the efforts of the Executive Management in recovering the facility. A report of their activities was reported to the Board Meeting. Members of the Board discussed the situation and offered suggestions as to the best approach to recovering the facility. At the end of the discussion, the Chairman directed the Managing

Director/Chief Executive, and all Executive Directors and the Company Secretary to excuse the Non-Executive Director

for further deliberations on the matter. The meeting reconvened to invite the three officers back to the Board meeting. The appellant was informed about his suspension and a successor was appointed in his place in an acting capacity. The chairman informed the meeting that the decision was taken in line with the Memorandum and Articles of Association of the Company. The Board confirmed the decision. The Chairman thereafter called for comment/observation on the decision of the Board.

The appellant was reported to have expressed surprise at the decision of the Board and believed that the action of the Board was unfair and unjust to him (vide pages 681, 687 A - 689 of the Record). This was followed by a letter dated the 22nd April 2002 confirming his suspension - the contents of which are as follows-

\"First Bank of Nig. Plc
35, Marina,
P. O. Box 5216, Lagos.
22nd April 2002
Mr. Bernard Ojeifo Longe, OON.
Managing Director/CEO,
First Bank of Nigeria PIc.,
35, Marina, Lagos.

I regret to convey to you the decision taken by the Board of Directors of the First Bank of Nigeria PIc., at its Extraordinary Board Meeting of 22nd April 2002 held at Coommasie House, Abuja to suspend you from office with effect from today,

22nd April 2002. During the suspension period, you are expected to concentrate on the recovery of the Credit Facility granted to the Investors Group Nigeria Limited (I.G.N.L.).

The Board expects that you will do your utmost best to help in the collective efforts towards the recovery of the money.

(Sgd.)
Alh. (Dr.) Mutallab, CON
(Chairman)

The Board thereafter set up a 3-man Committee of Senior Management Staff, Head of Corporate Finance, Head Construction and Real Estate and Head, Credit Risk Management to submit a comprehensive report on the loan of the Bank to Investors Group Nigeria Limited on behalf of Investors International London Limited. Vide page 597 of the Record.

The respondent was penalised by the Central Bank of Nigeria for granting a loan to Investors International London Limited in contravention of the Provisions of the Banking Act. (page 463 of the Record)

On the 13th of June 2002, the respondent wrote to the appellant that -

First Bank of Nig. Plc
35 Marina,
P. O. Box 5216, Lagos.
13th June, 2002.
Mr. Bernard O. Longe, OON.
c/o 10 Murtala Mohammed Drive, Ikoyi,
Lagos.

Revocation of Appointment as Managing Director Chief Executive of First Bank of Nigeria Plc.

I write to advise you that the Board of Directors at its meeting of 13th June, 2002 has resolved to revoke your appointment as Managing Director/Chief Executive. Consequently, your appointment is hereby revoked with effect from the date of this letter.

(Sgd.)
Alhaji (Dr) U. A. Mutallab. CON
Chairman

The appellant filed an action at the Federal High Court Lagos challenging the revocation of his appointment. His claims are for

(i) A declaration that the Defendant\'s Board of Directors cannot lawfully hold any meeting of the said Board without giving notice thereof to the Plaintiff and accordingly all decisions taken at any such meeting is unlawful, invalid,
null and void and incapable of having any legal consequence;

(ii) A declaration that in particular the decision of the Defendant\'s Board of Directors held on the 13th of June 2002 to revoke the Plaintiff s appointment as Managing Director/Chief Executive is wrongful, unlawful, invalid, null and void and

incapable of having any legal consequence;
(iii) A declaration that any purported implementation of the said decision made by the Board on the 13th of June 2002 (including any appointment to the office held by the Plaintiff in the Defendant Company) is ineffective, unlawful and null and void;
(iv) An order of injunction restraining the said Defendants from giving effect or continuing to give effect to any of the decisions of the Board mentioned in claims (i) and (ii) hereof without first complying with the mandatory procedural requirements stipulated in Section 266(3) of C.A.M.A.
(v) A declaration that the Plaintiff is entitled to remain in the premises allocated to him by the Defendant including the enjoyment of all associated services until the expiration of a reasonable time from the date of any lawful and valid termination of his contract of service with the Defendant;
(vi) In the alternative to the foregoing, the Plaintiff claims the sum of N136,614,584.00 being the amount due and owing to the Plaintiff as at 13th June 2002;
(vii) Interest on the said sum of N136,614,584.00 at the rate of 21% per annum or such other rate of interest as the Court may adjudge to be fair and just.
(viii) In further alternative to claims (i) to (iii) the Plaintiff also claims the sum of N804,685,l17.00, US$207,360.00 and '359,100.00 being special damages suffered by him as a result of the wrongful termination of appointment.
Parties exchanged pleadings whereupon the suit proceeded to trial. Parties gave evidence and tendered documents. The appellant as plaintiff tendered six documents Exhibits A, S, C, D, W and DO and the respondent as defendant tendered 24 documents - Exhibits E to 2, AA, SS, LL and Wi. The trial court ordered parties to file written addresses. In the considered judgment of court, the learned trial judge dismissed the plaintiff\'s claim, while it struck out the alternative reliefs in Claims Vi to Vii basically for monetary payment, which were already abandoned by him. The appellant headed for the Court of Appeal. In the judgment of the Court of Appeal delivered on the 5th of January 2005, the appeal was dismissed. The appeal now under consideration emanated from the decision of the Court of Appeal. My learned brother had given an exhaustive consideration to the four issues distilled for consideration in this appeal, I however wish to re-emphasise issues one and two.
Issue One
Whether it is proper in law for the Court of Appeal to have jettisoned suo motu in its judgment the entire reply brief of the appellant in their judgment without giving the parties, in particular the appellant, a hearing even though arguments have been proffered on all the briefs including the Reply brief without any objection or opposition by the respondent and in circumstances which resulted in deprivation of fair hearing'
(underlining mine)
It is not in dispute that at the hearing of the appeal before the Court of Appeal on the 11th of October 2005, the parties to the appeal, the appellant adopted their briefs. The plaintiff/appellant adopted the plaintiff/appellant\'s brief and the Reply Brief. The defendant/respondent equally adopted its respondent\'s brief. After hearing the appeal, the court reserved judgment in the appeal. In the judgment of the court delivered on the 5th of January 2006, the Reply brief of the appellant came under the hammer of the court. It was the observation of the court that the appellant\'s Reply brief went contrary to the principle governing writing of a Reply Brief. That Order 6 Rule 5 of the Court of Appeal Rules 2002 which provides for a Reply brief does not envisage a situation where the appellant will re-argue or reopen the appeal, by merely re-emphasising argument already contained in the appellant\'s brief. The Reply brief was in the circumstance unnecessary and uncalled for, the court saw it as a waste of time of the respondent and the court. It was also filed, adopted and argued as a process in the appeal in flagrant disregard of the respondent\'s right of Reply. I must agree that the court\'s observation was right and proper.
In that filing of briefs and purpose are well specified and defined in the Rules of the appellate courts - the Court of Appeal and the Supreme Court. Briefs must be distinguished from the address by counsel at the close of hearing, to round up case of the parties before a trial court. A brief is in a tabloid form as opposed to oral hearing. A brief of argument is a succinct statement of the proposition of law or fact or both, which a party or his counsel wishes to establish at the appeal together with reasons and authorities to sustain them. Emodi v. Kwentoh (1996) 2 NWLR pt. 433 pgs 656 at 660 SC. UAC (Nig.) Ltd. v. Fasheyitan (1998) 11 NWLR pt. 573, pg. 179 SC.
In the process of taking a decision in an appeal it behoves on the court to give a dispassionate consideration to the case of the parties - on printed record, in their brief and the Record of Appeal. Anything inimical or irrelevant to the case of the parties, the court has an inherent right as a judex to discountenance it and expunge from record in the interest of justice. The
lower court was confronted with a situation where there was no legal justification to file a Reply brief. It had taken the

right step and had exercised its discretion judiciously and judicially in favour of ignoring the Reply brief particularly when considering same will occasion miscarriage of justice, as the respondent\'s right of reply would have been breached. A Reply brief is necessary and usually filed when an issue of law or argument raised in the respondent\'s brief calls for a reply. Where a Reply brief is necessary, it should be limited to answering new points arising from the respondent\'s brief. Although an appellant\'s Reply brief is not mandatory, where a respondent\'s brief raises issues or points of law not covered in the appellant\'s brief, an appellant ought to file a reply brief. The appellant in the appeal before the lower court did not specify the new points of law arising from the respondent\'s brief which necessitated a Reply brief. It is not proper to use a Reply brief to extend the scope of the appellant\'s brief or raise new issues not dealt with in the respondent\'s brief. It is not to afford an appellant another bite at the cherry. Edjenode v. Ikine (2001) SCNJ pg. 184. Okonji v. Njokanma (1999) 12 SCNJ pg. 259.

The argument about the lower court considering the Reply brief suo motu before jettisoning the same is an awkward argument. The phrase suo motu is misapplied in the circumstance as once an appeal is reserved for judgment doors are closed to any argument or submission of counsel. The court can only call for argument from parties where substantial issues of law arise in the course of writing their judgment. This is not the position in this case as the courts saw the Reply brief as an irrelevant document.

Issue one is resolved in favour of the respondent.

I observe that issues two and four are interwoven, one leads to the other so I intend to consider them together.

Issue Two

Whether it was proper for the Court of Appeal to have failed in its judgment to resolve the issue whether a finding by the trial court that the appellant was suspended under the common law meets the requirement of the Companies and Allied Matters Act that a director must be given a notice of directors meeting unless the director is disqualified under the Act [CAMA] an issue which if it had been pronounced upon would probably resolve the appeal in favour of the appellant and by not doing so occasioned a miscarriage of justice'

Issue Four

Whether the Court of Appeal was right in holding that although appellant was appointed pursuant to Article 105 of the Articles of Association of the Respondent he is not a director for the purpose of the Companies and Allied Matters Act therefore his working relationship is not within the contemplation of Section 266 (1) and that the office of the Executive Director is not known to CAMA.

The appellant submitted on issues two and four that the court erred in law in failing to decide the vital issue whether a suspension under the common law meets the requirement that a director must have been disqualified under the Companies and Allied Matters Act, and in circumstance in which failure to do so amount to a miscarriage of justice. The court erred in law in holding that a meeting of directors is not within the CAMA and in particular within Section 266 (1) and more importantly in the light of the definition of the word \"director\" in Section 650 of the CAMA which court failed to consider and/or examine and when the court made conflicting statements in the same judgment recognizing in one breath the existence of the office of executive director and denying in another breath the existence of the same office under the CAMA.

The respondent replied that the appellant\'s claim of dual capacity failed which was the only ground on which the appellant\'s case at the Court of Appeal rested, the failure of the appellant to challenge in this court that the Court of Appeal\'s crucial decision against his claim of dual capacity is irredeemably fatal to the present appeal. The relationship between the appellant and the respondent was that of employee-employer or master and servant relationship and on the evidence before the two lower courts, the plaintiff/appellant was rightly dismissed for gross misconduct as the Trial Court and the Court of Appeal concurrently found and held.

In reading between the lines of the foregoing submission of the parties, the issue before the court in the two issues is to my mind straight forward and within narrow limits. The germane question here is, whether the respondent complied with the proper procedure in revoking the appointment of the appellant. The respondent claimed that the revocation of his employment was done in accordance with his contract of employment - in a master and servant relationship. Whereas it is the stand of the appellant that as a director of the respondent as at the time of his dismissal, his appointment has transformed from that of master and servant as the Company and Allied Matters Act [CAMA] has clothed his employment with statutory flavour.

I must chip in at this stage that every contract of employment contains the terms and conditions that will regulate the employment relationship such as terms on determination, notice, wages, benefits are usually contained in the expressed contract of service or implied into it by common law and custom. The nature of employment generally affect the terms of the contract of employment. There are three categories of contracts of employment as follows: -

(a) Purely master and servant relationship.
(b) Servants who hold their office at the pleasure of the employer.
(c) Employments with statutory flavour.
In the master and servant relationship, the master has unfettered right to terminate the employment but in doing so he must comply with the procedure stipulated in their contract. In a contract with statutory flavour the employment is protected by statute. In the event of termination of employment with statutory flavour, strict adherence must be had to the statute creating the employment for statutory provisions cannot be waived.
The appellant in his new post as Managing Director and Chief Executive Office of the respondent was appointed by the letter, Exhibit A with effect from 3rd of July 2000. The letter conveyed terms of the appointment like '
(1) Duration subject to satisfactory performance.
(2) Remuneration and other entitlements and allowances.
Vide page 440 of the Record.
Exhibit B - Extraordinary Meeting of the Board of Directors where the appointment was made, the minutes of the meeting state as follows:
\'\'That pursuant to Article 105 of the Articles of Association of the Company, Mr. B.O. Longe be and is hereby appointed the Managing Director/Chief Executive Officer of First Bank of Nigeria PLC with effect from July 3, 2000.\"
Vide page 442 of the Record of Appeal.
The respondent had established before the court that the act of the appellant as Managing Director/Chief Executive Officer of the Bank without due regard to the Bank\'s policy and by adopting a procedure fraught with lapses thereupon causing the bank to lose a colossal amount in dollars as gross misconduct. The procedure adopted by the respondent in giving the appellant a summary dismissal is now being challenged.
As I have recounted earlier on in this judgment, the immediate reaction of the respondent on getting a wind of the situation was to convene an extra-ordinary meeting of the Board. At the meeting held on the 22nd of April 2002, the Chairman informed the Board that the purpose of the meeting was to assess the situation on the NITEL acquisition by International Investors (London) Limited (IILL) and the facility granted to Investors Group Limited (IGL) by the bank. He called on the Managing Director/Chief Executive to brief the Board. The appellant briefed the Board about the position of the loan and the effort made by the Bank to recover the loan was discussed extensively. At the conclusion of the meeting, the appellant was issued the letter of suspension Exhibit G dated 22/4/2002 referred to earlier on in this judgment. The appellant was called upon for his comment after being served the letter. His reaction was to express surprise at the decision of the Board and believed that the action was unfair and unjust to him.
The next stage was that the Board convened another extraordinary meeting on the 13th of June 2002 where the issue of the revocation of his appointment was decided, and same was conveyed to him by a letter Exhibit J dated 13/6/2002. The contents of this letter already form part of this judgment.
Article 105 of the Article of Association of the respondent Exhibit DO stipulates that-
Article 105
\"The Directors may from time to time appoint one or more person or persons of proven relevant ability and experience to the offices of Managing Director who is to be Chief Executive of the Company and Executive Directors for such period and on such terms as they think fit, and subject to the terms of any agreement entered into in any particular case and may revoke such appointment but without prejudice to any claim he may have for breach of contract.\"
Article 103 of the Article of Association deals with Removal of Directors which states that
\"In addition to and without prejudice to the provisions of the Decree the company may by ordinary resolution remove any Director before the expiration of his period of office, and may in like manner appoint another in his place. Any person so appointed shall be subject to retirement at the same time as if he had become a Director on the day on which the Director in whose place he is appointed was last elected a Director, but shall be without prejudice to any claim the Director may have for damages for any breach of contract of service between him and the company.\"
In the Interpretation section of the Articles of Association vide page 698 - 699 of the Record Article 2 (1) (L). The Decree means the Companies and Allied Matters Decree or any statutory reenactment or modification thereof for the time being in force.
It is therefore statutory that in the removal of any Director of the bank going by Article 103 of the Articles of Association, it must be done in accordance with the relevant provision of the Company and Allied Matters Act. The contention of the appellant is that in the revocation of his appointment the relevant provisions of CAMA were not complied with. First and foremost, he was not served with Notice of the meeting. The appellant hinged his contention on Section 266 (1) of CAMA.

Section 266 of CAMA stipulates inter alia that-
(1) 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.
(2) There shall be given 14 days notice in writing to all directors entitled to receive notice unless otherwise provided in the articles.
(3) Failure to give notice in accordance with Subsection 2 of this section shall invalidate the meeting.
As at the time the Board of the respondent convened the meeting of 13/6/2002 when the decision to dismiss him was taken, the appellant was on suspension imposed on him by the Board as per the letter of suspension dated 22/4/02. The Decree (CAMA) is silent on the issue of suspension of a director serving as a disqualification to him to be served with notice to attend a meeting of the Board as a Director.
Suspension is usually a prelude to dismissal from an employment. It is a state of affairs which exists while there is a contract in force between the employer and the employee, but while there is neither work being done in pursuance of it nor remuneration being paid. Suspension is neither a termination of the contract of employment nor a dismissal of the employee. It operates to suspend the contract rather than terminate the contractual obligations of the parties to each other. Wallwork v. Fielding (1922) 2 KB pg. 46. Bird v. British Celanese Ltd. (1945) 1 KB pg. 336. University of Calabar v. Esienga (1999) 4 NWLR pt. 502 pg. 719.
It was however held in the case of Amadiume v Ibok (2006) 6 NWLR pt. 975 pg. 163 that the suspension of a servant or an employee when necessary cannot amount to a breach of the servant or employee\'s fundamental or common law rights. There is equally no provision for it under the Article of Association of the respondent as it relates to its Directors. It appears that under the Common Law, a term entitling the employer to suspend the employment of an employee will not be implied into the contract of employment. It is usually a step taken in the interest of the employers business. see M.R. Freedland in the book Contract of Employment, Clarendon Press 1976 at page 77
What then is the procedure for removal of a Director under CAMA which is relevant to the case in hand'
Section 262 of Companies and Allied Matters Act Cap Laws of the Federation 1990 reveals as follows: -
262 Removal of Directors '
(1) A company may by ordinary resolution remove a director before the expiration of his period of office notwithstanding anything in its article or in any agreement between it and him.
(2) A special Notice shall be required of any resolution to remove a director under this section or to appoint some other person instead of a director so removed at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director under this section, the company shall forth with send a copy of it to the director concerned and the director whether or not he is a member of the company shall be entitled to be heard on the resolution at the meeting.
There is no power to remove a director under CAMA which shall be taken as derogating from any power to remove a director which may exist apart from this section.
The power to remove a Director under the Article of Association of the respondent is made subject to the provisions of CAMA. Obviously the foregoing procedure from printed Record was not complied with in revoking the employment of the appellant by the Board of Directors of the respondent. CAMA has removed the appellant though a full time employee of the respondent at the time of his dismissal from the sanction in the provision of the Employee Code of Conduct and Ethical Standard Guidelines, Exhibit X under summary dismissal from the service of the bank for gross misconduct. Vide page 562 at page 587 of the Record.
With fuller reasons given in the leading judgment of my learned brother, I also hold that the appeal succeeds. I abide by the
consequential orders including the order as to costs.
Counsel
Prof S.A. Adesanya. SAN
with him
.....
For the Appellant
Mr. Waheed Kasali
Chief Richard Akinjide. SAN
with him
Chief Tunde Olojo
Mr. Kenneth Obisike

.....
For the Respondent