

IN THE SUPREME COURT OF NIGERIA

Suit No: SC51/2002

Petitioner: Shamsideen Abolore Bakare

And

Respondent: Nigerian Railway Corporation

Date Delivered: 2007-07-13

Judge(s): Aloysius Iyorgyer Kastina-Alu, George Adesola Oguntade, Sunday Akinola Akintan, Aloma Mariam Mukhtar, Mahmud

Judgment Delivered

The plaintiff, a former staff, of the Defendant sued the defendant in the High Court of Lagos State claiming the following reliefs: -

- (a) A declaration that the letter references No EDO. 1028/CON/172 dated 25th January, 1993 and letter reference No 20663/CON/171 dated 8th of March, 1993 written by the Defendant purportedly accepting the Notice of Withdrawal of Service of the plaintiff to remain in its employment is irregular, illegal, null and void and of no effect.
- (b) A declaration that the plaintiff's employment has not been duly determined in accordance with the terms and conditions of his services.
- (c) An order reinstating the plaintiff to the post and station without loss of seniority and privilege to contemporaries on officiating capacity in the employment of the defendant.

Having ignited this claim by serving the Writ of Summons on the defendant, parties filed and exchanged their pleadings. The core of the defendant's defence as pleaded is the statutory bar in Section 83(1) of the Nigeria Railway Corporation Acts Cap. 323 Laws of the federation 1990 (NRC Act) that action shall not be brought against the defendant after 12 months from the accrual of cause of action. The plaintiff contended that Sections 8(l) (a) of the Limitation Law of Lagos State 1994 which provided for a limitation of 6 years instead of Section 83(1) NRC Act applied to the matter. Thus implying that the instant case is not statute-barred. The matter eventually went to trial and both parties called one witness apiece. At the end of the day, the trial court found in favor of the Defendant that the Plaintiffs case fell within the ambit and scope of Section 83(1) NRC Act and not having been instituted within the limitation period of 12 months of the accrual of cause of action as prescribed by Section 83(1) NRC, the action is obviously incompetent. The action was accordingly declared statute-barred and struck out accordingly.

Aggrieved by the decision the plaintiff appealed to the Court of appeal arguing in the main that the cause of action fell within the purview of Section 8(1) (a) of the Limitations Law of Lagos-State Cap 118 as against Section 83(1) NRC Act upon which the decision of the trial court was grounded. The Court of Appeal (Court below) in a considered judgment unanimously upheld the decision of the trial court as correct and the plaintiff's action was held statute-barred. The decision of the trial court was thus affirmed.

The plaintiff still feeling aggrieved by the decision of the court below finally appealed to this Court upon a Notice of Appeal dated 12/2/02 and therein has raised 3 grounds of appeal against the decision of the court below. In this Court the plaintiff is the appellants and the defendant, the respondent.

The parties have filed and exchanged their briefs of argument in compliance with the Rules of this court. The appellants in his brief of argument filed on 7/3/2000 has identified 3 issues for determination as follows:-

'1. Is the termination of the contract of employment of the Appellants within the purview of Section 83(1) of the Defendant Act, Cap 323 LFN 1990'

2. Better still, what is the exact extent of Section 83(1) of the Nigerian Railway Corporation Act Cap.323 LFN 1990'

3. If the answer to issue No 1 is No, what order should this Honorable Court make in the circumstances'

The respondent also filed its respondent's brief of argument on 6/8/02 and has distilled 3 issues for determination thereof, which are identical with the 3 issues identified in the appellant's brief of argument. Short of so stating, it literally adopted the appellant's 3 issues for determination in substance that it serves no use replicating them here. The Appellant has in view of the invitation from him to overrule by this Court's earlier decision in NBC v. Bankole (1992) NSCC (Vol. 7) 220 applied for a full court to be constituted to hear and determine the instant appeal. And the court was so constituted. Before us the parties have adopted and relied on their respective briefs of argument. Nothing outside their respective briefs of argument has been urged at the oral hearing of the appeal.

The facts of this matter are not in dispute and they are clearly and fully stated at p. 112 of the record from which they have been culled as follows: -

The plaintiff/appellant was employed by the defendant/respondent on the 1st of July 1975 as Craft Apprentice on Grade Level 02. See Exhibit "A". He was still in the respondent's employment at its Divisional Office Ibadan when on the 16th November 1992 he gave the respondent 3 months notice of his intention to withdraw his services as per Exhibit C. Before the expiration of the notice the Appellant changed his mind and on the 14th of January 1993 wrote a Letter of cancellation of this notice of intention to withdraw his service. See: Exhibit D. On the 10th February, 1993 the respondent through its Divisional Manager (West) Ibadan accepted the cancellation. See Exhibit F. On 15th of March 1993 the plaintiff received another letter dated 8th March, 1993 from the Divisional Manager which has attached thereto a letter dated 25th January from the respondent's Headquarter approving his withdrawal from service and regarded him as having left the service on his own volition. The appellant has commenced this action against the respondent as per the above claim.

The appellant arguing issues 1 and 2 together and having referred to the provision of Section 83(1) of NRC Act has contended that the termination of the appellant's contract of employment with the respondent cannot be said to come within the said provision; not even if one has to rely upon the construction put on a similar provision as per Section 61(1) of the Nigerian Broadcasting Corporation Act (NBC Act) as construed in the decision in Nigerian Broadcasting Corporation v. Bankole (1972) N.S.C.C.(vol. 7) 220 (NBC's case). It submitted that the facts and circumstances in NBC's case differ substantially from the instant case and so the principle emanating from the construction put on Section 61(1) by the Supreme Court should not bind this court in the construction of Section 83(1) of the NRC Act. The appellant further submits that the court below in construing the provision of Section 83(1) has relied even then upon some other extraneous provisions of the N.R.C. Act leading it to the erroneous interpretation that Section 83(1) (supra) applied to the appellant's conditions of employment and so, bringing it within the direct pursuance of the execution of the respondent's statutory duty. It is the case of the appellant that it cannot be right that the provisions of section 17(2)(g)(i) and (ii) and Section 48 of the NRC Act which the appellant regards as irrelevant and extraneous materials not helpful for arriving at the true meaning of Section 83(1) (supra) have, as it were conjured up in construing self same Section 83(1) of the NRC Act, with the result that upon the community reading of the aforesaid Revisions and Section 83(1) the court below has been misguided into holding that Section 83(1) NRC Act is applicable to the appellant's contract of employment with the respondent and to the untenable conclusion, that the instant action founded on it is statute-barred.

He further submits that the provision of Section 83(1) (supra) being clear and unambiguous should not otherwise be construed to lead to any injustice as the injustice occasioned to the appellant in his respect. See *Ebiriuku v. Ohanyerenwa*(1959) F.S.C 212 and *Nabhan v. Nabhan* (1967) ANLR 47 and so has submitted that, section 17(2)(a)(i) and (ii) should not be used to clog the clear and ambiguous construction of Section 83(1) (supra). The position in this regard is contrasted with the position in NBC's case and according to the appellant to highlight their dissimilarities. See *Ifezue v. Mbadugha* (1984) 1 SCNJR 42 and *Toriola v. Williams* (1982) 7 SC 27. The appellant has therefore berated the court below for sorting to Section 17(2) (g) (i) and (ii) and Section 48(1) of the NRC Act vis-'-vis the respondent's contention of construing the act of terminating the appellant's employment as an act done by the respondent in the

'execution or intended execution of its statutory duty', It is posited that the instant contract being one of master and servant at Common Law is completely outside the purview of Sections NRC Act; again, in the sense that it is not an act done in the execution of the respondent's statutory duty. In these circumstances, submitted that the case of NBC v. Bankole (supra) cannot be a binding authority to apply to the instant case on its peculiar facts, and so, the respondent has acted wrongfully in terminating the appellant's employment.

Furthermore, it therefore follows that the matter cannot be affected under Section 83(1) of the NRC Act by the provision to commence this action within 12 months; otherwise meaning that it is not statute-barred.

On issue 3: the appellant has opined that the proper course to do justice in the matter is to uphold the appellant's claim or order a retrial de novo.

On the application made pursuant to Section 6(5) (4) of the Supreme Court Rules 1985:

The appellant has invited this court to overrule its earlier decision in N.B.C. v. Bankole (1972) NSCC (vol. 7) 220 which interpreted a similar provision as per Section 61(1) of the NBC Act in *peri material* with the provision of Section 83(1) of (NRC Act) and which held to the effect that Section 61(1) (supra), "applies to and affords protection to all acts done in the circumstance contemplated by that Section;" in other words, including contracts of employment as the instant one before this court. The appellant argues that to so interpret Section 61(1) (supra) is too wide and has the potential of leading to miscarriage of justice as indeed it has occasioned in this case in the guise of furthering, executing and intended executing of a statutory duty. It is submitted that the principle of law in NEC's case is no longer good law as it is an instrument of oppression and injustice and should be done away with. He refers to *Adisa v. Oyinwale* (2000) 10 WRN 125 where this court was invited to overrule *Salati v. Shehu* (1986) 1 NWLR (pt 15) 128. *Sadikwu v. Dalori* (1996) 5 NWLR (pt.447) 151 and *Oyeniran v. Egbetola* (1997) 5 NWLR (pt. 504) 122 this is so, as it serves as an instance of this court rising to the occasion to overrule its decision on grounds of interest of justice. See *Odi v. Osafire* (1985) 1 NWLR (pt. 1) 17, *Bucknor-Maclean v. Inlark* (1980) 8 Sc 11, *Williams v. Daily Times of Nigeria Ltd.* (1990) 1 NWLR (pt. 124) 1 and *Eperokun v. University of Lagos* (1986) 4 NWLR (pt. 34) 162. In the last cited case this court laid down the guides as when to overrule its previous decisions, it is submitted. That is to say, that the earlier decision was wrong or erroneous in law or that it was given *per incuriam* or that it has become an instrument of injustice. Upon any of the foregoing grounds, the court is urged to move towards more acceptable, purposeful and pragmatic interpretation of Section 83(i) of the NRC Act and save Section 83(1) (supra) from becoming a monster to itself and an instrument of injustice. See *Adisa v. Oyinwale* (supra).

The respondent in response to the Appellant also on issues 1 and 2 argued together has submitted that the appellant has misconstrued the terms - Act, Law, Public duty and authority as used in Section 83(i) of the NRC Act. It submits that by the provision of Section 83(i) of the NRC Act, the respondent has been given authority to maintain and regulate matters pertaining to its staff and more, in regard to the exercise of the power to make rules and regulation to guide the employment and conditions of service of its staff and so, it is argued that the appellant's employment is clearly subject to the NRC Act. It has relied on the trial court's findings that the termination has been done in pursuance or execution or intended execution of such Act, law, duty or authority to submit that the act of termination is covered for Section 83(1) NRC Act. See *Santana Medical Services v.* (1999) 12 NWLR (pt 630) 189 at 191-192, *Adelekan v. Nigeria Ports Authority* (1968) NCLR 408; and in this regard the court below is not been faulted by the appellant.

Referring to the case of NBC v. Bankole (supra) the respondent Intends that the court construed Section 61 (1) of the Nigerian Broadcasting Corporation Act very similar to Section 83(1) of the NRC Act and held it applies to rights exercised at common law or contract. This court is urged to be guided by that decision. The respondent also has adverted to the case of *NPA v. Contruzioni Generali Faarsura Coyefar SPA* (1974) 1 ANLR 463 which construed Section 97 Nigerian Ports Authority Act (NPA Act), similar provision to Section 83(1) of NRC Act and which came to the conclusion that the provision of the said Section 97 of the Nigerian v Ports Authority Act (NPA Act) does not apply to cases of breach of contract. He submits that the two cases are not on all fours. This case submits, is of master and servant relationship based on a contract of employment while the NPA's case is one of building contract for the second Apapa Wharf Extension involving an independent contractor under a specific contract. It has, all the same, been submitted that NBC's case is still good law. See *Santana Medical Services Ltd v. NPA* (supra).

On the submission of the appellant that the court below acted in error in construing together Sections 17(2)(g)(i) and (ii) and 48 of the NRC Act with 83(1) of the NRC Act, the respondent has posited the court below has power to take into consideration other provision, NRC Act in. construing Section 83(1) of the Act and to take, judicial notice of all laws that will be helpful to it in resolving the-latter before it and rightly has done so here.

On the interpretation of Section 83(1) the respondent submits that the provision is clear and unambiguous and should be given its ordinary and grammatical meaning unless some manifest absurdity is thereby occasioned - which is not the case. See *Toriola v. Williams* (supra).

On issue 3: replying to the submission that because this case bordered on a breach of contract that Section 83(1) of the NRC Act does not apply, he submits that it is not every contract that is outside Section 83(1) of NRC Act and refers to the cases of *NPA v. Construzioni Generali Faarsura Coyefar SPA* (supra). It is submitted that the view expressed in the cited case is too wide, as it should not apply to a contract of master and servant as in this matter. He points out that the finding of the trial court to the effect that the termination complained of was not in breach of the Act but in exercise of statutory powers or authority given to the respondent by the Act.

In opposing the application brought under Section 6(5) (4) of the Supreme Court Rules: the respondent has referred to occasions when this court can overrule itself and to submit that those features to ignite its power are not present in this matter to warrant overruling the decision in *NBC v. Bankole* (supra). And even moreso, the appellant on whom lies the burden on this point has not showed that any of the factors to ground the application in that regard is present in this matter. See *Eperkun v. University of Lagos* (1984) 4 NWLR (pt.34) 162 *Oduye v. Nigerian Airways Ltd* (1987) 2 NWLR (pt.55) 126 *Bronik Motors v. Wema Bank Ltd* (1983) 1 SCNLR 29. And even then, specifically, that nothing as injustice or error perpetuated by not overruling the ratio in *N.B.C. v. Bankole* has been made out. Alleging that indiscriminate termination would result if not overruled is speculative and not tenable, the appellant has submitted: See *Madukolu v. Nkemdilim*(1962) 2 SCNLR 341, *Abakaliki Local Government Council v. Abakaliki Rice Mills Owners Enterprises* 6 NWLR (pt. 155) 182 and *Obaba v. Military Governor Kwara State* (1994) 4 NWLR (pt.336) 26. Finally, it is submitted that this court should exercise this power in deserving cases only and not in regard to this matter.

The court is urged to dismiss the appeal for want of merit and affirm the decision of the courts below.

I have taken a close look at the three issues formulated by the appellant in his brief of argument. The respondent has more or less adopted them. I think I should point out early enough that Issue one appears to be gulped up by Issue 2, which in my view is too wide in its purport. Issue one on the other hand has rightly narrowed the question to be discussed with regards to the termination of the appellant's employment with the respondent to the cause of action in this matter.

The appellant's grouse in this matter in a nutshell is with the construction that the court below placed on Section 83(1) of the NRC Act vis-à-vis the instant cause of action. Particularly, it is argued that the wrongful act of terminating the appellant's employment is not one that can come within the provision of Section 83(1) of the NRC Act. In other words that the act complained of does fall within ambit of

"..... any act done in pursuance or execution or intended execution of any Act or law, or of any public duty or authority."

Meaning, in effect, that any act not done in pursuance or execution or intended execution of any Act or law or of any public duty falls outside of Section 83(1) of the NRC Act. So, to put this finding in the words of the court below and it respectfully held thus:

"As a corollary any act which is outside the category of acts set out in the Section is outside the Statute and will not enjoy the protection afforded by the Section. See *Omotayo v. NRC* (1992) 7 NWLR (pt. 254) 471."

In other words, such act would not be caught by the period of limitation of 12 months as prescribed in Section 83(1) of

NRC Act, that is within which period of time plaintiff as the appellant here as to seek redress for any breach of his Right in a Court of Law.

Let me at this stage examine the definition of limitation of action which is the pit of this matter. Limitation of action is the principle of law requiring the plaintiff as a matter of obligation to seek prompt remedy for the breach of his Right in a Court of law within the time limited by the law otherwise his Right of Action or cause of action becomes unenforceable at the expiration of the period allowed for commencing an action by the law. This principle is used as a defence in actions in tort and contract amongst other actions, the law requires that it must be sufficiently pleaded or otherwise it is deemed to have been waived. See 28 Halsbury's Laws of England 4th Edition p.408 et Seq; and UBRBD v. Alka (1998) 2 NWLR (pt. 537328).

It should be noted that the provision of Section 83(1) of the NRC Act is identical to the provision of Section 2 Public Officers Protection Act which has been dealt with in numerous cases including Yare v. Nunku (1995) 5 NWLR (pt344) 129, and Ibrahim v. Judicial Service Commission (1998) NWLR (pt.584) 1. The same is true in the case of Section 61 of the Nigerian Broadcasting Corporation Act (NBC Act), which has been interpreted in the case of Nigerian Broadcasting Corporation v. Bankole (1992) NSC 220. Furthermore, the court has had the opportunity of construing Section 12(I) and (2) of the Nigerian National Petroleum Corporation Act Cap. 320 Laws of the Federation giving protection in this regard not only to the Corporation itself but any member of the Board of the Corporation or an employee. It also provides that no action shall lie against these persons for any "act done in pursuance or execution of any Act or law or any public duties or authority" like in the instant Section 83(1) of the NRC Act being construed here it has been construed in the case of Eboigbe v. N.N.P.C. (1994)5 NWLR (pt. 347) 649.

For purposes of presenting a wholistic background to this matter, I have also to advert to the case of Nigerian Ports Authority v. Construzioni Generali Faarsura Spadanor (1974) 12 SC 69 which construed Section 97 of the Port Act as the respondent has highlighted it in its brief of argument Ibekwe J.S.C (of blessed memory) in the cited case said:

"We too are of the opinion that de Comarmond SP has quite rightly stated the law in the passage of his judgment cited above" [i.e. as Salako v. L.E.D.B & Anor. (20 NLR 169) which construed S.2 of the Public Officers Ordinance].

Words in brackets supplied by me.

What was in issue in the above cited matter concerns pre-action notice of no relevance to this matter. I see no need to go into any further discussion of it here.

Before going into the question of construing Section 83(1) of the Act, I must state that I have not tried here to take for granted or gloss over the questions arising from the relationship of master and servant as between the parties and the cause of action as per the appellant's statement of claim.

This is so in that to deal with this matter within the ambit of master and servant, the only way it can be resoundingly achieved is firstly by the establishment of the fact of employment of the appellant by the respondent and the breach of the terms and conditions of the same. Permit me to go a bit into this matter by stating that the appellant's case in the court below is that there is a contract of employment between the parties. See paragraphs of 6 and 7 statement claim. It is alleged that it is the two letters complained of that have prevented the appellant to continue working and thus have led to the breach of the instant contract of employment and so Section 83(1) of Act does not apply as it is not an act done in pursuance of fended execution of a statutory duty. Furthermore, that being a master and servant relationship any infraction of the contract is a breach. The respondent has submitted that if there is a breach of contract it is in the nature of breach of contract of employment by way of termination and so Section 83(1) of the NRC Act has to apply to govern the relationship.

The trial court found that the cause of action was the termination of the appellant's employment and so subject to Section 83(1) of the NRC Act. It is against the foregoing background that one has to examine the relationship of the parties and what is the cause of action. It is settled and I will cite all the same a number of cases in support that the only place to look for it is the statement of claim. Cause of action is made up of two factors, that is, the wrongful act of the

defendant and the consequential damage occasioned to the plaintiff See: Yusuf v. Co-operative Bank Ltd (1994) 7 NWLR (pt. 359) 676, Mohammed v. Dantata (2000) 7 NWLR (pt. 644) 176; Union Bank of Nigeria Ltd v. Peny-Mart Ltd (1992) 5 NWLR (pt. 240) 228. It is on these premises that the court below said at pp. 140 to 141 of the record thus:

"In other words, it is the alleged breach of the terms and conditions of service which is the foundation of the plaintiff/appellant's case. Refusal to allow the appellant to remain in employment is an off-shoot of the alleged breach. This, in my view, brings the plaintiff/appellant's case within the purview of master/servant relationship for there is no way by which the case can be established without proof of fact of employment and the breach of the terms and conditions of same. I therefore reject the argument of the respondent that refusal to allow the plaintiff/appellant to remain in the employment is the main complaint of the plaintiff/appellant"

I agree with the foregoing reasoning and findings and I approve the same as a proper statement of the law in this regard.

However, it appears to me from the state of the submissions on the issues for determination in this court, from both parties and as clearly articulated in their respective briefs of argument and upon the findings on these issues as per the decision of the Court below that the cause of action has arisen from, the breach of contract of appellant's employment that is say in the relationship of master and servant based on the terms and conditions of the appellant's employment. The respondent has not cross-appealed any of the above findings by the court below on the master and servant relationship as between the parties nor on the findings as to the cause of action in this matter as found by the court below. These questions should therefore not be flogged any further.

In the premises, this takes me to the question of whether the instant action is caught by the provision of Section 83(1) of the NRC Act and therefore statute barred having been instituted outside 12 months of the accrual of cause of action. In this regard, the appellant as posited that it is Section 8(1) (a) of the Limitation Law of Cap 118 Laws of Lagos State 1994 that applies to this case in contradiction to section 83(1) of the NRC Act as otherwise submitted by the respondent.

It must be noted that the court below found that it is Section 83(1) of the NRC Act that is applicable to this matter and not Section 83(l) (a) of the Limitation Law of Lagos-State 1994. This finding not having been challenged on appeal to this court is final. The Appellant's argument in this regard is not predicted on any ground of appeal before this court and it is to that extent otiose and should be discountenanced. See Okelola v. Boyle (1998) 2 NWLR (pt.539) 533 SC. There is however, the finding of the court below on the issue of whether or not the instant action is statute-barred at pp. 144 - 145 of the record starting from the last paragraph at 144 as follows:-

"The Writ was taken out on 25th August, 1994. The letter complained of although dated 8th March, 1993 came to the knowledge of the Plaintiff/Appellant on 15th March, 1993. The Writ, undoubtedly was taken out far in excess of the twelve-month period prescribed by Section 83(1) NRC Act. The claim is therefore statute-barred".

I think I should firstly dispel the erroneous impression created at p. 4 LL 1-3 of the appellant's brief of argument wherein he has submitted that a clause in the provision of Section 83(1) NRC Act, that is to say

"... .any act done in pursuance or execution or intended execution or of any Act or Law or of any public duty',

given its proper meaning takes the case outside Section 83(1) as the respondent's termination of the contract of employment cannot be said to be an act in pursuance or execution or intended execution of any Act or Law or of any public duty, and to say respectfully that it is settled that it is the entire Section 83(1) NRC Act that has to be read together as whole to get to the meaning of the Section as the Section in that truncated form should not construed in bits and pieces. See: S.P.D.C. v. Isaiah (1997)6 NWLR (pt.505)236; Omoijahe v. Umoru (1966) 6 NWLR (pt.614) 178 at 188. It is trite that a statute should be construed as a whole and should be given an interpretation Insistent with the object and general context of the entire statute. The provision of Section 83(1) of the NRC Act is reproduced as follows:-

"No suit against the Corporation or any servant of the corporation for any act done in pursuance or execution or intended execution or of any Act or Law, or of any public duty or authority or in respect of any alleged neglect or default

in the execution of such Act or Law, duty or authority, shall lie or be instituted in any court unless it is commenced within twelve months next after the acts neglect, or default complained of or, on the case of a continuance of damage injury, within twelve month next after the ceasing thereof.

Provided that, in the case of a claim for a refund of an overcharge in respect of goods accepted by the corporation for carriage, or for compensation in respect of loss, damages, deviation, misdelivery, delay, or detention of or to any goods so accepted, the cause of action shall be deemed to have arisen on the day of such acceptance".

The forgoing provision of Section 83(1) of NRC Act is plain and unambiguous and it is settled that in that view the words have to be given their ordinary and natural meaning and that unless the meaning leads to absurdity it is unnecessary to resort to other canons of interpretation.

It is also the case that this court faced with the construction of a statutory provision in pari materia with one that has been previously construed by this court, it has to follow the principle laid down in the earlier case see Mobil Oil Plc v. IAL 32INC (2000) FWLR (pt.10) 1632 at 1640. In this regard, I have to advert to the decision in NBC's case in so far as the principle of interpretation enunciated in that case applies here.

I agree with respondent that the appellant has totally misconstrued the words: Act, Law, Public duty and authority as per the enabling Act which created the respondent and has given it duties and authority including the power to make Rules and Regulations inter alia to guide employment of its staff and contracts with other persons. This is evident as per the provisions of Section 17 and 48 of the NRC Act and even more so from the appellant's averments as per paragraphs 6 and 7 of the Statement of Claim. Paragraphs 6 and 7 read as follows:

"6. It was an express term and conditions of service of the defendant that any of its employees could withdraw their services at the expiration of 3 months notice given by the employee.

7. It was also an express term and condition of service of the defendant that employment of staff may determine by notice in writing from either side."

It is evident from the foregoing averments of the existence of Rules Regulations in particular governing employment of its staff, and which rightly governs the instant contract of employment of the appellant. Therefore, to achieve a sensible meaning of Section 83(1) and other provisions of the NRC Act it has to be read along with the Section 17(2)(g)(ii) and Section 48 to arrive at an interpretation which is otherwise consistent with the object and general context of entire statute. See S.P.D.C. v. Isaiah (supra). Section 17(2) (g) (ii) provides:

"Subject to the provisions of this Ordinance and the Corporations Standing Tender Board Act 1968 the powers conferred by sub-section (1) shall include all such powers as are necessary or advantageous and proper for the purposes of the Corporation and in particular but without prejudice to the generality of the foregoing sub-section or the Board, shall include power:

(g) to enter into agreements with any person

(ii) for the performance or provision by that person if any of the services or facilities which may be performed or provided by the Corporation."

Section 48 of the NRC Act provides:

"The Corporation may make regulations determining generally the conditions of service of servants of the Corporation and in particular, without prejudice to the generality of the foregoing power, may make regulations relating to (a) the appointment, dismissal, discipline hours of employment, pay and leave of such servant."

If I may come properly to the construction of the foregoing provisions they are plain and clearly unambiguous and the words used thereof ought to be given their ordinary, grammatical and natural meaning. In fact, I do not share with

appellant the unfounded apprehension indeed the misgivings being entertained over a community reading of these, provisions. It is the most sensible thing to do in order to achieve an interpretation of Section 83(1) of the Act that is consistent with the object and general intendment of the entire statute. The foregoing provision of Section 83 (1) in particular refers to acts done in pursuance of statutory duty as regards any neglect or default. And if I may reiterate any act not within the purview of the provision is outside the Act and is not afforded any protection under the Limitation Law. The point which the appellant has rightly taken here on construing Section 83(1) in isolation is that the instant master and servant relationship may be one known at Common Law or not covered by statute that is, not within any act done in pursuance of statutory duty by the respondent. This will negate all known principles of interpreting statutory provisions. Surely, a community construction of Section 83(1), 17 and 48 of the NRC Act gives a robust expression of the statutory duty and power of the respondent under the Act as gathered from the context of the entire statute.

Section 17 is quite explicit that the respondent is given the power to make rules and regulations regulating staff appointment and employment and furthermore as pertaining to the conditions of service of the respondent's staff. The long and short of it is that it also is clothed with the statutory power to make conditions of service as to the appointment, discipline and dismissal of its staff as per Section 48. To this end, the relationship between the parties cannot simply be one of master and servant at Common Law as it comes within the ambit of the foregoing statutory provisions as an act done under statutory authority and as averred in paragraphs 6 and 7 of the statement of claim there are materials on the ground of staffs conditions of service in place. This being the case the relationship of the parties is therefore subject to Section 83(1) and (2) of the NRC. Thus giving effect to the principle laid in *NEC's* case. So for the instant action to enjoy the protection of Section 83(1) it must be commenced within 12 months of the accrual of cause of action. Otherwise it is statute-barred.

Therefore, there is no gainsaying that *N.B.C. v. Bankole* is still good law. This conclusion naturally follows from my reasoning above.

What has emerged from a community reading of the three provisions, that is, of Section 83(1), along with Section 17(2)(g)(ii) and Section 48, if I may recall, makes it abundantly clear the respondent has the power to enter into agreements with any person for the performance by that person of any services, duties, facilities being performed by the respondent. It can also make rules and regulations on the general conditions of service of its servants. There can be no doubt therefore, that it has the power -to enter into a contract of employment and did so enter here, the breach of which is the object of this action. By the averment in paragraphs 6 and 7 of the Statement of claim (reproduced herein) and supported by evidence given at the trial court the instant contract of employment is undeniably governed by Section 83(1) of the NRC Act. And I so hold.

The next question is whether the action is statute-barred. I have hesitation in holding in the affirmative. It is common cause between the parties that the letter complained of and the cause of action is dated 15/3/93 when this action commenced on 15/6/93 that is over 12 months of the accrual of cause of action as prescribed by Section 83(1) of the NRC Act. The action is definitely statute-barred, again I so find.

This court has been invited pursuant to Section 6(5) (4) of the supreme Court Rules 1985 to overrule its decision in *Nigerian Corporation v. Bankole* (*supra*) (*NBC's* case) which construed Section 61(1) of the NBC Act in *pari materia* with the instant Section 83(1). The appellant is particularly irked by the finding in this case (*N.B.C.'s* case) that it

"applies to and affords protection to all acts done in the circumstances contemplated by that section and by extension, including breach of contract of employment.

It is contended that such a wide interpretation is a ready tool for mischievous employers in these era of rising unemployment to back an indiscriminate termination without regard to the parties of the case". It is submitted that *Eperkun v. University of Lagos* (*supra*) has laid down the guidelines to guide the exercise of this power.

Where this court is minded to overrule its previous decision. It must be showed according to the cited case that the earlier decision is wrong or erroneous in law or that it is *per incuriam* or that it has become an instrument of injustice. The appellant has urged this court follow in this regard the footsteps in *Adisa v. Oyinwale* (*supra*) which this court has

overruled its earlier decisions as shown herein. It is alleged that Section 83(1) of the NRC Act has turned into a monster not only to itself but also has become an instrument of injustice as in the instant case. The respondent has submitted in response to the application to overrule the ratio in NBC's case that the appellant has not discharged the burden of identifying any factors as per *Eperkun v. University of Lagos* (supra) to ground the application. And more so that the application is highly speculative and so has urged the court to decline the invitation and dismiss the application.

I think that the conclusion I have reached in this matter which tolls a death knell to the application and which in addition as submitted by the respondent is founded on speculation. In whatever respects the instant Section 83(1) NRC Act has become an instrument of injustice and oppression are not matters to be treated lightly and it is a serious matter and respectfully cannot be rested on an empty grousing of the appellant. This court cannot pronounce on an academic or speculative matter and has said so on numerous occasions. See *Oyeyemi v. Irewole Local Government* (1993) NWLR (pt.270) 462 at 483 and *Ivienagor v. Bazuaiye* (1999) 9 NWLR (pt.620) 552 at 561. On this ground alone, in the absence of any solid material grounding this application it is a non-starter and being baseless it is refused and hereby dismissed.

On the whole I do not find any merit in this appeal. I therefore dismiss it with N10,000.00 costs in favour of the respondent.

Judgment delivered by
Aloysius Iyorgyer Kastina-Alu. J.S.C.

I have had the advantage of reading in draft the judgment delivered by my learned brother Chukwuma-Eneh, J.S.C in this appeal. I agree entirely with it and, for the reasons he gives, I too, dismiss this appeal for lacking in merit. There shall be costs of N10,000.00 in favour of the Respondent.

Judgment delivered by
George Adesola Oguntade. J.S.C.

The facts leading to the dispute out of which this appeal arose are simple and straightforward. The plaintiff/appellant was an employee of the respondent. The plaintiff had sent a notice in writing to the respondent indicating his intention to leave respondent's service which said notice, the respondent accepted in writing. Later, the plaintiff changed his mind and sought to withdraw the notice of withdrawal of service earlier sent to the respondent. The respondent did not countenance the withdrawal. It proceeded to terminate plaintiff's employment. Under these circumstances, the plaintiff at the Lagos High Court issued his writ of summons claiming the following reliefs:

"(a) A Declaration that the letter reference No EDO.1028/CON/172 dated 25th January, 1993 and letter reference No. 20663/CON/171 dated 8th of March, 1993 written by the Defendant purportedly accepting the Notice of withdrawal of service of the Plaintiff and the refusal to allow the Plaintiff to remain in its employment is irregular, illegal, null and void and of no effect.

(b) A Declaration that the Plaintiff's employment has not been duly determined in accordance with the terms and conditions of his service.

(c) An Order reinstating the Plaintiff to his post and station without loss of seniority and privilege to contemporaries on officiating capacity in the employment of the Defendant.

(d) \$185,183.28 as special and General damages."

Before the trial court, the parties filed and exchanged pleadings. The cornerstone of the respondent's defence was that the plaintiff, not having initiated his suit within 12 months of the accrual of his cause of action could no longer bring or maintain his suit by virtue of section 83(1) of the Nigerian Railway Corporation Act, Cap.323, Laws of the Federation, 1990.

The trial judge, in his judgment on 3rd November, 1997, upheld the respondent's contention that the plaintiff's suit was statute-barred. He accordingly struck out plaintiff's suit. Dissatisfied, the plaintiff brought an appeal before the Lagos Division of the Court of Appeal (hereinafter referred to as the court below). The court below, on 14-01-2002 in its unanimous judgment, dismissed plaintiff's appeal and affirmed the judgment of the trial court striking out plaintiff's suit. Still dissatisfied, the plaintiff has come on a final appeal to this Court. In his appellant's brief, the plaintiff's counsel formulated the following issues as arising for determination in the appeal:-

1. Is the termination of the contract of employment within the purview of S.83(1) of the Respondent Act, Cap.323 LFN 1990'
2. Better still, what is the exact extent of S.83(1) of the Nigerian Railway Corporation Act Cap.323 LFN 1990'
3. If the answer to issue No. 1 is NO, what order should this Honourable Court make in the circumstances'

In his appellant's brief, learned counsel has canvassed very interesting argument as to why this Court needed to overrule its decision in *TV.B. C. v. Bankole* [1972] NSCC (Vol. 7) 220. In that case, this Court had stated the law whilst interpreting Section 61(1) of the Nigerian Broadcasting Act which is similar to Section 83(1) of Cap. 323 thus:

"We are in no doubt that the learned trial Judge was in error in taking the view that section 61(1) is restricted to acts causing 'injury or trespass to a person or his property', and does not apply to cases where the Corporation is exercising 'right based on common law or on a contract'. Upon a proper interpretation of section 61(1), we fail to see how it could be said that the section draws such distinction. In our view, the wording of the section is clear and unequivocal. It applies to

'an act done in pursuance or execution or intended execution of any Ordinance or Law, 'or of any public duty or authority, or in respect of any alleged neglect or default in execution of such ordinance or Law, duty or authority.'

and affords protection to all acts done in the circumstances contemplated by that section. Section 1 of the Public Authorities Protection Act, 1893, which is similar to section 61(1) of the Nigerian Broadcasting Corporation Act was considered in *Compton v. West Ham County Borough Council* (1939) 3 All E.R. 193. In that case, it was held that the breach of a contract which a public authority has the duty to make or is by statute bound to make comes within the protection of the Act. We respectfully adopt the views expressed by Crossman, J. at PP.198 to 200 when he said:

'The defendant council relied upon the provisions of that Act. Sect. 1 of that Act provides as follows:

'Where after the commencement of this Act any action, prosecution, or other proceeding is commenced in the United Kingdom against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such act, duty or authority, the following provisions shall have effect:

- (a) the action, prosecution, or proceeding shall not lie or be instated unless it is commenced within 6 months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof

Counsel for the defendant council says that the keeping back from the plaintiff of the half of his salary which was kept back was an act done in pursuance or execution or intended execution of an Act of Parliament, and that, the action not having been commenced within 6 months next after the act so done, the action does not lie. Counsel for the plaintiff says that the Act does not apply because the action is for breach of contract, and he relies upon *Clarke v. Lewisham Borough Council* and *Sharpington v. Fulham Guardians*.

The statement in Halsbury's Laws of England, Hailsham Edn Vol. 26, p.294, para. 612, in the article on 'Public Authorities and Public Officers,' and in the section which is concerned with the execution of a statute, duty or authority,

dealing with the Public Authorities Protection Act, 1893, is as follows:

'The performance, or breach, of a contract which a public authority has the power, but not the duty, to make, is not within the protection (of the Public Authorities Protection Act).'

I think that that is a correct statement of the law, and I think that it also would be correct to take that in an inverted form, and to say that the breach of a contract which a public authority has the duty to make is within the protection of the Act. However, that does not make it at once possible to see how that applies to the present case, because the question is, what was the act done here in respect of which this action is brought? I think that it is only a breach of contract which a public authority has the power, but not the duty, to make which is not within the Act. I think that this appears from *Bradford Corpn. v. Myers and McManus v. Bowes*.

I find it difficult, really, to construe the authorities, and to arrive at the law applicable to this case from them. I think that a breach of a contract which a public authority is by statute bound to make does come within the Public Authorities Protection Act, 1893 and as the defendant Council were by the Public Assistance Order, 1930, art. 142(1), bound to make the appointment of the plaintiff, I hold that an action for breach of the terms of that appointment is an action within sect. 1 of the Act of 1893. Art. 142 provides as follows:

(1) The council shall appoint a district medical officer for every medical relief district and a relieving officer for every general relief district formed pursuant to art. 20.

Thus, the appointment of the plaintiff was an appointment which the defendant council were bound to make under the Act. The action here has arisen in consequence of that appointment, and it seems to me that the best conclusion at which I can arrive as to the meaning of sect. 1 of the Act is that the section does apply to an action which is to remedy a breach of a contract which the defendant council were bound to make in pursuance of the Poor Law Act, 1930, and the regulations thereunder. I should say that, under the Poor Law Act, 1930, s. 136(2), the articles contained in the Public Assistance Order, 1930, have the same effect as if they were enacted in the Poor Law Act, 1930.'

In the instant case, it seems to us that by the combined effect of section 53 of the Nigeria Broadcasting Corporation Act by virtue of which the defendant/Corporation appointed its staff, and the regulations made under section 5(1) for the dismissal of staff, the plaintiff's contract of employment was one which the defendant/Corporation was bound to make under the Act and as the present action alleged a breach of that contract, the defendant/Corporation is entitled to the protection offered by section 61(1) of the Nigeria Broadcasting Corporation Act. It follows that the defendant's plea that the action was statute barred under section 61(1) ought to have been upheld by the learned trial judge.'

Similarly in *Umukoro v. Nigerian Ports Authority* [1997] 4 NWLR(Pt. 506)656 at 667, this Court considered Section 97(1) of N.P.A. Act which is similar to section 61(1) of the Nigerian Broadcasting Act and Kutigi JSC (as he then was) said:

'I think Section 97(1) of the Ports Act (Supra) is quite clear and unambiguous. The imperative nature of the provisions is not in doubt. I am in complete agreement with the decisions of both the two lower courts (and as rightly conceded by Mr. Eduvie) that the plaintiffs suit is statute barred and therefore rightly dismissed.'

It would appear however that the two decisions of this Court above had not adverted to another decision of this Court in *Nigerian Ports Authority v. Construzioni F.C.S. & Anor* [1974] Vol. 9 NSCC 622 at 630 where this court per Ibekwe J.S.C. considered the position of Section 97(1) of the same Ports Act thus:

'We shall now deal with the other point which to our mind, does not seem to be well-settled, namely whether the kind of statutory privilege which we have been considering is applicable to an action founded upon a contract. We think that the answer to this question must be in the negative. We agree that the section applies to everything done or omitted or neglected to be done under the powers granted by the Act. But we are not prepared to give to the section the stress which it does not possess. We take the view that the section does not apply to cases of contract. The learned Chief Justice, in deciding this point, made reference to the case of *Salako v. L.E.D.B. and Anor.*, 20 N.L.R. 169 where deCommarmond S.P.J. as he then was, construed the provision of S.2 of the Public Officers Protection Ordinance which

is almost identical with S.97 of the Ports Act, and thereafter stated the law as follows:

'I am of opinion that section 2 of the Public Officers Protection ordinance does not apply in cases of recovery of land, breaches of contract, claims for work and labour done, etc.'

We too are of the opinion that de Commarmond S.P.J., has quite rightly stated the law in the passage of his judgment cited above. It seems to us that an enactment of this kind i.e. S.97 of the Ports Act is not intended by the legislature to apply to specific contracts.

It is pertinent to point out that the view which we have just expressed seems to be in consonance with the trend of the judgments pronounced in English cases dealing with similar provisions in certain English Statutes. We shall refer only to one case as an example. In the *Midland Railway Company v. The Local Board for the District of Withington* (1882-3) 11 Q.B.D., 788, the Court of Appeal construed S.264 of the Public Health Act, 1875 (38 & 39 Vet. C.55) which, more, or less falls in line with S.97 of the Ports Act, the subject-matter of this appeal. We think that it is desirable that we should here set out the provision of S.264 of the Public Health Act, 1875 as follows:

'Sec.264. A writ or process shall not be issued out against or served on any local authority, or any member thereof, or any officer of a local authority, or omitted to be done under the provisions of this Act, until the expiration of one month after notice in writing has been served on such local authority member, officer, or person

Delivering the judgment of the court at p.794, Brett, Mr., made the following illuminating observation:

'It has been contended that this is an action in contract, and that whenever an action is brought upon a contract, the section does not apply. I think that where an action has been brought for something done or omitted to be done under an express contract, the section does not apply; according to the cases cited an enactment of this kind does not apply to specific contracts. Again, when goods have been sold, and the price is to be paid upon a quantum meruit, the section will not apply to the action for the price, because the refusal or omission to pay would be a failure to comply with the terms of the contract and not with the provisions of the statute.'

We agree with their Lordships' exposition of the law on this point. Clearly, the appellants' claim and the 1st respondents' counterclaim in the present case are founded in contract. The counterclaim, in brief, is for the payment of the balance of money due from the appellants to the respondents as a result of the contract they both entered into for the construction of the second Apapa Wharf Extension.'

More or less the same issue arose in *N.P.A. Pic. v. Lotus Plastic Ltd.* [2005] 19 NWLR (Pt. 959) 158. I approached the problem by considering the nature of the contract which was under consideration. I then came to the conclusion that if the contract in issue is one which is a specific or special one in which it might have been expected that the parties would have freely agreed the terms of the relationship between them, the provision of the Law on Limitation would not apply; but it would apply on matters bordering on the day-to-day activities of the public corporation as protected by the provision of the Law.

At pages 209-210 of the report I said:

'I think, with respect, that it would be unjust to cloth the Nigerian ports Authority with special protection in all costs of contract as that would negate the general principles upon which the Law of Contract is based.

In a contract, parties are free to negotiate the terms of their relationship. It is therefore sound to say that in a specific contract, section 72(1) of the Act No. 74 of 1993 may not be invocable unless the Nigerian ports and the party with which it is contracting have specifically made it a part of the terms of the contract. In the *Construzioni* case, the N.P.A. was involved in a specific for the construction of Apapa Wharf Extension.

In the case on hand, there was no averment that the plaintiff, entered into a specific contract with the 1st defendant. There was no averment that the plaintiff handed its bus to the 1st defendant for safe keeping. If the plaintiff was relying

on a contract in bailment, the foundation for such contract could only have been based on the general duties placed on the 1st defendant under section 3(1) and (2) of Act No. 74 of 1993. The plaintiff's vehicle could not otherwise have found its way into 1st defendant's custody save only in the performance of the 1st defendant's duties under section 3(1)(a) to 'provide and operate in the ports, such port facilities as appear to it best calculated to serve public interest.' This view draws support from the averment in paragraph 12 of the statement of claim where the plaintiff pleaded:

'12. The plaintiff paid the freight and the warehousing fees to the defendants whereof the defendants are in breach of contract for failure to deliver the said bus in good condition or at all. The value of the car is US\$49,300.00.'

It is obvious that the plaintiff was not relying on a specific contract with the 1st defendant but rather on the fact that it paid warehousing fees. This is a fee, which all importers generally pay for the services of the 1st defendant.

The only conclusion to be drawn is that plaintiff's suit arose from the normal day to day operations of the 1st defendant under the Ports Act and not under any specific contract. It seems to me that the language of section 72(1) is very clear. It is to protect the Nigeria Ports Authority in its day-to-day operations and as provided under the Act. A conclusion that the 1st defendant/appellant could not derive protection under the Act would amount in my view to a subversion of the clear language of the law.

There may be valid reasons why specific contracts should not be covered or protected by section 72(1). But I think that the general day-to-day operations of the Nigerian Ports Authority ought to be protected under the Act."

I still think in the same way. This is why I agree with the lead judgment of my learned brother Chukwuma-Eneh JSC. I would also dismiss this appeal with costs as assessed in the lead judgment.

Judgment delivered by
Sunday Akinola Akintan. J.S.C.

The appellant was an employee of the respondent. He was employed as a craftman on 1st July, 1975 on the Corporation's salary grade level 02. Between 1975 and 1993 he had earned a number of promotions as a result of which he was in 1993 on the respondent's salary grade level 07. By a letter dated 16th November, 1992, the appellant gave a three-month notice of his intention to withdraw his services with effect from 17th February, 1993. The letter was routed through his Divisional Manager in Ibadan where he was then serving. The appellant, however, later had a change of mind in that he decided to withdraw the notice of his intention to withdraw his service contained in the said letter dated 16th November, 1992. The appellant therefore wrote another letter dated 14th January, 1993 to that effect. But the respondent refused to accept the change of mind and act on the letter. The reason given by the respondent for the refusal was that the respondent had accepted the application to withdraw the service and as such could not reverse its decision.

The appellant therefore instituted the present action at Lagos High Court as Suit No. LD/3810/94 against the respondent as defendant. His claim was, inter alia, for declaration that the refusal of the respondent to accept his withdrawal of service notice and allow his service to continue was irregular, null and void; declaration that his employment was not duly terminated; and claim for various sums of money as damages arising from the respondent's wrongful act. Pleadings were filed and exchanged and the trial took place before Famakinwa, J.

The respondent, as defendant, apart from denying the plaintiff's claim in its statement of defence, pleading as follows in paragraph 23 of its statement of defence:

'23. The defendant further states that by reason of section 83 of the Nigerian Railway Corporation Act (Cap 323, Laws of the Federation) the plaintiff's action is statute-barred.'

At the conclusion of the trial, the learned trial Judge delivered his reserved judgment on 3rd November, 1997 in which he upheld the defendant's contention that the action was statute-barred. His conclusion is as follows:

"In the final analysis, the whole claim in its entirety is thrown out because it is statute-barred. The suit is therefore struck out. No order as to costs. Each party shall bear his or its own cost of the action."

The appellant was dissatisfied with the judgment and his appeal to the court below was dismissed. The present appeal is from the judgment of the court below. In the lead judgment of the court below delivered by Aderemi, JCA (as he then was) with Ige and Sanusi, JJCA concurring, the court upheld the decision of the trial High Court that the appellant's claim was statute-barred.

The Learned Justice said, *inter alia*, as follows in the concluding paragraph of the lead judgment:

"The next question to answer is whether the suit is statute-barred. The writ was taken out on 25th August, 1994. The letter complained of although dated 6th March, 1993 came to the knowledge of the plaintiff/appellant on 13th March, 1993. The writ, undoubtedly, was taken out far in excess of the twelve-month period prescribed by section 83(1) of the Act. The claim is therefore statute-barred. In the concluding part of the judgment of the court below, the learned trial Judge having found that the action was statute-barred made an order striking out the entire suit. The law has been well laid down in a number of judicial decisions that where an action is adjudged to be statute-barred, a plaintiff who might have had inured to his benefit a cause of action for all times loses the right to enforce that cause of action through judicial process because the period of time allowed by the Limitation Law for instituting such a suit has elapsed. Such an action can never be validly commenced again. Since the plaintiff has lost the right to seek a redress in a court of law, his suit must stand dismissed. See *Eboigbe v. N.N.P.C.* (1994) 5 NWLR (Pt. 347) 649. I would think that the trial Judge should enter an order dismissing the entire suit instead of striking it out. I would order a dismissal of the suit."

The parties filed their briefs of argument in this court. The appellant formulated the following three issues as arising for determination in the appeal, which the respondent also adopted in its brief:

1. Is the termination of the contract of employment of the appellant within the purview of section 83(1) of the Respondent's Act, Cap 323 Laws of the Federation of Nigeria, 1990'
2. Better still, what is the exact extent of section 83(1) of the Nigeria Railway Act, Cap. 323, Law of the Federation of Nigeria 1990'
3. If the answer to Issue No. 1 is No, what order should this Honourable court make in the circumstances"

Fred Agbaje, Esq., learned counsel for the appellant had earlier indicated to this court that he would like us to over-rule an earlier decision of this Court in *NBC v. Bankole* (1972) NSCC 220 where this court had pronounced on section 16 of the NBC Act which is in *pari materia* with the section 83(1) of Nigeria Railway Act under consideration in the instant case. His request therefore led to the empanelling of a full court to take the appeal.

The crux of the appellant's case, as canvassed in Issues 1 and 2 of the appellant's brief, is that the provisions of section 83(1) of the Nigeria Railway Corporation Act are restrictive and do not cover the appellant's case as held by the two lower courts. The termination of the appellant's employment is said not to be an act covered by the provisions of the section. It is further submitted that the facts and circumstances of the instant case differ substantially from those of the *NBC v. Bankole* case. The appellant's case is therefore said not to be covered by the section 83(1).

It is submitted in the appellant's Issue 3 that based on the submission that the provisions of Section 83(1) of the Nigerian Railway Act are inapplicable to the appellant's case as it was founded on breach of contract, it is then submitted that the appellant's case should be upheld in the interest of justice or remit the case back for hearing *de novo* before another Judge.

Finally, this Court is urged, in the appellant's brief that its decision in *NBC v. Bankole*, *supra*, should be over-ruled because the interpretation adopted in that case was too wide and that continued adherence to that principle would lead to gross injustice and miscarriage of justice. It is contended that while the principles in the said *NBC v. Bankole* case

was good law in 1972 when it was decided, the position is said not to be so today when the country is under a democratic dispensation. It is said in conclusion that the situation in the instant case warrant and justify the application of the principle of law which this court laid down in its numerous decisions on when a previous decision could be reversed.

It is submitted in reply in the respondent's brief that it is a misconception of the provisions of section 83(1) of Nigerian Railway Corporation Act to say that they are not applicable to the appellant's case. It is argued that the action taken in the case was part of the respondent's statutory authority to hire, maintain, remunerate, promote or remove its own staff. The evidence led at the trial was clearly in support of the fact that the respondent acted in pursuance of or execution or intended execution of such Act, law, duty or authority. Both the trial court and the court below are therefore said to have correctly interpreted the provision.

On the request that this court should over-rule its earlier decisions in its interpretation of the provisions of section 83(1), it is submitted that a party inviting this court to depart from its earlier decision must show that the earlier decision was wrong or erroneous in law or that it was given per incuriam or that it has become an instrument of injustice. The appellant is said to have failed to establish the existence of any of the required conditions precedent to taking such a step.

The main controversy in this appeal rests on the interpretation of the provisions of section 83(1) of the Nigerian Railway Act. That section provides as follows:

"83 (1) No suit against the Corporation or any servant of the Corporation for any act done in pursuance or execution or intended execution of any Act or Law, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of such Act or Law, duty or authority, shall lie or be instituted in any court unless it is commenced within twelve months next after the ceasing thereof:

Provided that, in the case of a claim for a refund of an over-charge in respect of goods accepted by the Corporation for carriage, or for compensation in respect of loss, damage, deviation, misdelivery, delay or detention of or to any goods so accepted, the cause or action shall be deemed to have arisen on the day of such acceptance.

(2) No suit shall be commenced against the Corporation until three months at least after written notice of intention to commence the same shall have been served upon the Corporation by the intending plaintiff or his agent; and such notice shall clearly and explicitly state the cause of action, the particulars of the claim, the name and place of abode of the intending plaintiff and the relief which he claims."

The question therefore is whether the action of the respondent in the instant case came within the scope covered by the provisions of section 83(1) of the Act set out above. I have no doubt in holding that the respondent is conferred in the Act with the powers to employ, discipline and determine any appointment made. The section provides that "no suit against the Corporation or any servant of the Corporation for any act done in pursuance or execution or intended execution of any Act or Law, or of any public duty ----- shall lie or be instituted in any court unless it is commenced within 12 months next after the act..."

In addition to the above requirement, it is also provided in section 83(2) that "no suit shall be commenced against the Corporation until three months at least after written notice of intention to commence the same shall have been served upon the Corporation".

It is not in doubt that section 83(1) of the Act provides for a form of limitation period within which an action against the Corporation must be commenced while section 83(2) provides for pre-action notice which must be given to the Corporation. The two requirements must be met before an action against the Corporation can be said to be properly instituted. Failure to comply with either of the provisions would lead to the action being, declared as incompetent: See *Madukolu v. Nkemdilim*(1962) 2 SCNLR 341.

The question in issue in this case, therefore, is whether the wrong that formed the basis of the appellant's action conies within the scope covered by the provisions of Section 83(1) of the Act. The answer to that question was unequivocally

answered in the affirmative by this Court in a previous decision of this Court in *Nigeria Bottling Co. v. Bankole* (1972) NSCC and I do not think that the decision of this court in that case can be faulted.

The other question raised is that the decision in *NBC v. Bankole* case, *supra*, be over-ruled. This again brings to fore a consideration of the conditions that must be met before this Court could embark on over ruling its previous decision.

The conditions that must exist include that the party inviting the court to depart from its earlier decision must show that the earlier decision was wrong or erroneous in law or that it was given *per incuriam* or that it has become an instrument of injustice. See *Eperokun v. University of Lagos* (1986) 4 NWLR (Pt. 34) 162; *Adisa v. Ogunwola* (2000) 10 WRN 125; *Williams v. Daily Times of Nigeria Ltd*, (1980) 8-11 SC 11; and *Odi v. Osafire* (1989) 1 NWLR (Pt. 1) 17.

The request for a departure from an earlier decision is not granted simply by merely asking. It is a serious decision that must be given after strict compliance with the conditions that must be met before making such a decision. In the instant case, the reason given by the appellant is that the continued adherence would lead to injustice. But it has not been shown how such injustice could arise and as such the appellant has failed to make a good case to warrant the grant of the request. In the result the request is refused.

For the above reasons I hold that there is no merit in the appeal. I accordingly dismiss it with N10,000 costs in favour of the respondent.

Judgment delivered by
Aloma Mariam Mukhtar. J.S.C.

The reliefs claimed by the appellant against the respondent as per the writ of summons in the High Court of Lagos State are as follows:-

1. A Declaration that the letter reference No EDO.1028/CON/172 dated 25th of January, 1993 and letter Ref. No WP.20663/CON 171 dated 8th of March, 1993 written by the Defendant purportedly accepting the Notice of withdrawal of service of the Plaintiff and refusal to allow the Plaintiff to remain in its employment is irregular, illegal null and void and of no effect.
2. A Declaration that the Plaintiffs employment has not been duly determined in accordance with the terms and condition of his service.
3. AN Order reinstating the Plaintiff to his post and station without loss of Seniority and privilege to contemporaries on officiating capacity in the employment of the Defendant.
4. N185, 183.28k as special and general damages."

Famakinwa J. in his judgment found no merit in the above reliefs and concluded his judgment thus:-

"In the final analysis, the whole claim in its entirety is thrown out because it is statute barred. The suit is therefore struck out. No order as to costs. Each party shall bear his or its own costs to the action."

Dissatisfied with the judgment, the plaintiff appealed to the Court of Appeal, where the suit was in fact dismissed. Again the plaintiff appealed to this court on three grounds of appeal, from which the following three issues for determination were distilled.

1. Is the termination of the contract of employment of the appellant within the purview of Section 83(1) of the Respondent Act, Cap. 323 LFN 1990'
2. Better still, what is the exact extent of Section 83(1) of the Nigerian Railway Corporation Act Cap. 323 LFN 1990'

3. If the answer to issue No. 1 is No, what orders should this Honourable Court make in the circumstances\".

The above issues were virtually adopted by learned counsel for the respondent. The whole appeal in my view, revolve around the provision of Section 83(1) of the Nigerian Railway Corporation Act supra, so I will reproduce the said provision at this juncture. The said Section 83(1) stipulates the following:-

"83(1) No suit against the corporation or any servant of the Corporation for any act done in pursuance or execution or intended execution of any Act or law, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of such Act or law, duty or authority, shall be or be instituted in any court unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuance of damage or injury, within twelve months next after the ceasing thereof:

Provided that, in the case of a claim for a refund of an over-charge in respect of goods accepted by the corporation for carriage, or for compensation in respect of loss, damage, deviation, misdelivery, debut or detention of or to any goods so accepted, the cause of action shall be deemed to have arisen on the day of such acceptance."

The quarrel of the learned counsel for the appellant is that the court below having accepted that the appellant's case (except 'any further material\') does not peremptorily fall within Section 83(1) of the NRC Act supra. The portion of the judgment the appellant seems to be attacking is as follows on page 10 of the judgment of the lower court:-

"On a proper construction of this section it seems to me that only an act which was done in pursuance or execution or intended execution of any ordinance or law or of any public duty or authority or in respect of any neglect or default thereto is covered by it. As a corollary any act which is outside the statute and will not enjoy the protection afforded by the section. See *Omotayo vs N.E.C.* (1992) 7 NWLR (pt. 254) 471. Although the appellant was employed as a craft apprentice in 1979 he rose to the level of a Higher Technical Officer (works) level 08 in the absence of any further material before me I would have said, peremptorily, that section 83(1) of the N.R.C. is not applicable to this case."

I do not see the reason for the heavy weather made by the learned counsel for the appellant on the above, for the invocation of the provisions of Sections 17(2) (a) (i) b (ii) and 48 of the NRC Act (which the learned counsel thinks was uncalled for) by the lower court was necessary, and Aderemi, JCA (as he then was) was right to have considered those provisions in the course of his judgment. A judge in the course of writing his judgment is at liberty to have recourse to any provision of the law that is relevant to the subject matter of the case in controversy in order to completely give the judgment the attention it deserves, to do justice to it, and to avoid a miscarriage of justice. See *Onuoha v. State* 1988 3 NWLR part 83 page 460.

A judge is also enjoined to interpret the provision of law and give it its grammatical and ordinary meaning, and not to ramble and distort its construction. See *Amadi v. N.N.P.C.* 2000 10 NWLR part 674 page 76, *First Bank of Nigeria PLC. V.Ibennah* 1996 5 NWLR part 451, page 725, *Shell Petroleum Development Co. (Nig.) Ltd v. Federal Board of Internal Revenue* 1996 8 NWLR part 461 page 256 and *Adisa v. Ovinwola* (2000) 10 NWLR part 674 page 116.

In the instance case, the two lower courts gave the correct interpretation of section 83 (1) of the NRC Act and applied it to the case. The subject matter of this case is one that has statutory flavour, and which must be governed by provision of the said relevant statute, and nothing else. In this respect I find no merit whatsoever in the appeal before this court, and would also dismiss it. As for the application of the appellant that this court should depart from its earlier decision in *Nigerian Broadcasting Corporation v. Bankole* 1972 NSCC page 220, I am afraid the application must fail, because the principles to justify such departure have not been met or established by the appellant. See *Eperkun v. University of Lagos* 1986 4NWLR part 34 page 162. The application has no legs to stand on. I have read in advance the lead judgment written by my learned brother Chukwuma-Eneh, JSC and I entirely agree with him that the appeal lacks merit and substance. I abide by the consequential orders made therein.

Judgment delivered by

Mahmud Mohammed. J.S.C.

The Appellant in this appeal was an employee of the Nigerian Railway Corporation now the Respondent in this Court. A notice of withdrawal from service was served by the Appellant on the Respondent which notice was accepted by the Respondent. When the Appellant changed his decision to leave the service of the Respondent and attempted to withdraw the notice of withdrawal from service, the attempt was resisted by the Respondent which went ahead and terminated the employment of the Appellant. Aggrieved by the action of the Respondent, the Appellant as Plaintiff filed his suit at the trial High Court of Justice, Lagos and claimed the following reliefs: -

"(a) A Declaration that the letter reference No EDO.1028/CON/172 dated 25th January, 1993 and letter reference No. 20663/CON/171 dated 8th of March, 1993 written accepting the Notice of withdrawal of service of the Plaintiff and the refusal to allow the Plaintiff to remain in its employment is irregular, illegal, null and void and of no effect.

(b) A Declaration that the Plaintiff's employment has not been duly determined in accordance with the terms and condition of his service.

(c) An Order reinstating the Plaintiff to his post and station without loss of seniority and privilege to contemporaries on officiating capacity in the employment of the Defendant.

(d) N185,183.28K as special and General damages.

The case was heard on pleadings in the course of the hearing, each of the parties called only one witness. The main defence raised by the Respondent/Defendant to the appellant/Plaintiff's case, was that the action not having been filed within 12 months of the accrual of the cause of action, the action was statute barred by virtue of the provision of Section 83(1) of the Nigerian Railway Corporation Act, CAP 323 Laws of the Federation of Nigeria, 1990. In his judgment delivered on 3rd November, 1997, the learned trial judge accepted the defence of the Respondent/Defendant and found the Appellant/Plaintiff's action statute barred and struck out the same. The Appellant/Plaintiff's appeal to the Court of Appeal against the order of the trial Court striking out his action was also dismissed by the Court of Appeal, hence his further and final appeal to this Court.

In the respective briefs of argument filed by the Appellant and the Respondent before this appeal was heard on 19th April, 2007, the following three identical issues were formulated for the determination of the appeal. They are:-

- "1. Is the termination of the contract of employment of the Appellant within the purview of Section 83(1) of the Respondent's Act, CAP 323 LFN 1990'
2. Better still, what if the exact extent of Section 83(1) of the Nigerian Railway Corporation Act CAP 323 LFN 1990'
3. If the answer to issue No. 1 is No, what order should this Honourable Court make in the circumstances"

Notwithstanding the identification of these issues by the parties, I am of the view that the answer to the question of whether or not the trial Court and the Court below were right in their decisions that the action of the Appellant was statute barred by virtue of Section 83(1) of the Nigerian Railway Corporation Act, is enough to determine this appeal. The Section reads -

"83(1) No suit against the corporation or any servant of the Corporation for any act done in pursuance or execution or intended execution of any Act or Law, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of such Act or law, duty or Authority, shall lie or be instituted in any Court unless it is commenced within twelve (12) months next after the act, neglect or default complained of on, in the, case of continuance of damage or injury, within twelve (12) months next after the ceasing thereof."

From the records of this appeal, it is quite clear that the complaint of the Appellant/Plaintiff regarding wrongful termination of his employment by the Respondent/Defendant was the cause of action which arose on 15th March, 1993

when the Respondent/Defendant ordered the Appellant/Plaintiff to stay away from work. The Appellant/Plaintiff, who was aggrieved by the order, did not take any step to challenge it in Court, until 5th August, 1994, when the action that gave rise to the present appeal was filed. In other words the action was not filed until 17 months after the cause of action had accrued. By the provisions of Section 83(1) of the Nigerian Railway Corporation Act, the action was required to have been filed within the period of twelve months from 15th March, 1993, when the act complained of took place. Therefore on the facts placed before the trial High Court, and the Court below, and taking into consideration the statute prescribing the period within which actions on suits against the Respondent/Defendant should be commenced, the trial Court and the Court below were quite right, in their decisions that the Appellant/Plaintiff's suit against the Respondent/Defendant, was statute barred. This is because from the evidence on record which reveals the nature of the Appellant's contract of employment and the manner the contract was terminated by the Respondent, it is quite clear that the act complained of by the Appellant was done in pursuance or execution or intended execution of such Act, law, duty or authority. The Court of Appeal was therefore right when it found that the act or breach complained of by the Appellant in his action was well within the protection afforded to the Respondent by Section 83(1) of the Nigerian Railway Corporation Act. The decision of the Court below in this respect is fully supported by the decision of this Court in Nigerian Broadcasting Corporation v. Bankole (1972) N.S.C.C.220, in which the provision of Section 61(1) of the Nigerian Broadcasting Corporation Act, which provision of Section 83(1) of the Nigerian Railway Corporation Act, were considered and construed, leading to the same result as in the present appeal.

Having regard to the clear position of the law regarding the fate of the action as filed outside the period prescribed in Section 61(1) of the Nigerian Broadcasting Corporation Act, Section 83(1) of the Nigerian Railway Corporation Act, or similar Acts providing protection to such Corporations created under statutes, learned counsel to the Appellant is now asking this Court in the present case to depart from its decision in Nigerian Broadcasting Corporation v. Bankole (supra), on the ground that the decision had generated injustice against employees in search or pursuit of their rights against their employers.

The question is whether the learned counsel has succeeded in showing any features in the present case justifying this Court departing from its decision in N.B.C. v. Bankole (supra). This is to say, the learned counsel has woefully failed to show that the earlier decision in N.B.C. v. Bankole (supra) was wrong or erroneous in law or that it was given per incuriam or that it has become an instrument of injustice. Indeed, where there is likelihood of injustice being perpetuated, this Court has, in the recent past had occasion to over-rule itself. See Bucknor-Maclean v. Inlacks Ltd. (1980) 8 - 11 S.C. 1 wherein this Court over-ruled its previous decisions in Shell B.P. v. Jammal Engineering (1974) 1 All N.L.R. 543 and Owumi v. P. Z. (1974) 1 ALL N.L.R. (Part 2) 107. In my view, the onus lies squarely on the Appellant to show that there have been new developments since N.B.C. v. Bankole (supra) which rendered the decision of this Court therein no longer good law or which rendered the application of that decision in the present case oppressive or unjust. See Eperokun & Ors. v. University of Lagos (1986) 4 N.W.L.R. (PT. 34) 162 at 175 - 176.

In the final result, as the Appellant's learned counsel has failed to exclude the case of the Appellant from the clutches of the provisions of Section 83(1) of the Nigerian Railway Corporation Act, CAP 323 of the Laws of the Federation of Nigeria, 1990, or show a real likelihood of injustice being perpetuated to the Appellant in the present case, the need to depart from N.B.C. v. Bankole (supra) which remains good law, does not arise.

Accordingly this appeal fails and it is hereby dismissed with N10,000.00 costs to the Respondent. In this respect, I am in complete agreement with my learned brother Chukwuma-Eneh, J.S.C. in his leading judgment in this appeal, which has just been delivered.

Judgment delivered by
Francis Fedode Tabai. J.S.C.

I had the privilege to read, in advance, the lead judgment prepared by my learned brother Chukwuma-Eneh J.S.C., and I agree entirely with his reasoning and conclusion that the appeal lacks merit. It is also accordingly dismissed by me with costs which I assess at N10,000.00 in favour of the Respondent.