

## EFFECT OF REPEAL OF A STATUTE ON CONTRACT OF EMPLOYMENT WITH STATUTORY FLAVOUR: IDEHEN v. UNIVERSITY OF BENIN\*

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### Introduction:

The contract of employment of a Registrar of a Federal University is one with statutory flavour. Such employment is protected by statute specifying the method of appointment, promotion, discipline, retirement and removal from office of the incumbent. These statutory rules, regulation and procedure must be strictly adhered to in dealing with such staff. Accordingly, where, for instance, the appointment is purportedly terminated contrary to the statutory rules, regulations and procedure, the court will grant a declaration that such contract subsists by virtue of the applicable statutory regulation and the purported termination null and void. In addition, the court would order a reinstatement of the affected office holder<sup>1</sup>. This is quite different from appointments that are premised only on the master and servant relationship at common law. In this latter case, a wrongful termination of appointment may only attract damages for the terminated employee and the court will not force the employee on the unwilling employer by way of reinstatement<sup>2</sup>.

The contract of employment of the Registrar of the University of Benin, indeed, seems to enjoy double protection as a statutory one. By virtue of the 1999 Constitution of Nigeria<sup>3</sup> the Registrar is a Public Officer and a senior staff in a pensionable service<sup>4</sup>. The office is also a statutory one having been created a principal office by virtue of the First Schedule to the University of Benin Law<sup>5</sup> and under section 5 of the Universities (Miscellaneous Provisions) Decree No.11 of 1993.

However, it would appear that the office is not absolutely "iron-cast." As past events had shown, the Registrar may be removed following an amendment of the applicable law or a repeal of the protective provisions of the latter by another law or the enactment of a new statute entirely for that purpose such as the Civil Service Commissions and Other Statutory Bodies, Etc. (Removal of Certain Persons from Office) Act<sup>6</sup> and the Public Officers (Special Provisions) Act<sup>7</sup>. The removal may also be due to an intervention from a subsequent statute reducing the tenure of office of the Registrar<sup>8</sup>. However, the latter seemed not too clear to some authorities hence, it took the intervention of the Federal High Court to protect the Registrar of the University of Benin from unlawful determination of her contract of service by the Council of the University in purported compliance with the provisions of the Universities (Miscellaneous Provisions)

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<sup>1</sup> Shitta-Bay v. Federal Civil Service Commission (1981) 1 S.C. 40; Abomeli v. Nigeria Railway Corporation (1995) 1 N.W.L.R. (pt. 372) 453; Olaniyan and Ors. V. University of Lagos (1985) 2 N.W.L.R. 589; Laoye v. Federal Civil Service Commission (1989) 2 N.W.L.R. (pt. 106) 632; Eperokun and Ors. V. University of Lagos (1986) 4 N.W.L.R. (pt. 34), 162.

<sup>2</sup> Olafimihan v. Nova Lay-Tech. Nig. Ltd. (1998) 4 N.W.L.R. (pt. 547) 608, Osakwe v. Nigeria Paper Mill Ltd. (1998) 10 N.W.L.R. (pt 568) 1; Ilodibia v. Nigeria Cement Co. Ltd. (1997) 7 N.W.L.R. (pt. 512) 174.

<sup>3</sup> The Constitution of the Federal Republic of Nigeria 1999 came into force on 29<sup>th</sup> May, 1999.

<sup>4</sup> See Item 15 Part II of the Fifth Schedule to the 1999 Constitution.

<sup>5</sup> Cap. 452, Laws of the Federation of Nigeria 1990.

<sup>6</sup> Cap. 54, Laws of the Federation of Nigeria 1990.

<sup>7</sup> Cap. 381 Laws of the Federation of Nigeria 1990.

<sup>8</sup> See for example, the Universities (Miscellaneous Provisions) Decree No. 11, 1993.

Decree No.11, 1993. This is the subject of our focus for critical examination in this contribution.

### **Facts of Idehen v. University of Benin.<sup>7a</sup>**

Mrs. M.N.N. Idehen, the incumbent Registrar of the University of Benin, was appointed Registrar by a letter Reference No. REG/SSA/P.719|293 dated 29<sup>th</sup> December 1995. To this letter was attached the Memorandum of Appointment. Both documents constituted the basic contract of her service with the University of Benin. She assumed office as Registrar on 1<sup>st</sup> January 1996 and to remain in service until her retirement age of 60 years on 6<sup>th</sup> May 2003 under these basic documents.

However, in November, 2000 she received a letter from the Vice-Chancellor of the University with Reference No. REG/SSA/P. 719 dated 27<sup>th</sup> November 2000 stating *inter alia* that her first term of 5 years shall expire on December 31<sup>st</sup>, 2000 under the Universities (Miscellaneous Provisions) Decree No. 11, 1993 as amended by the Universities (Miscellaneous Provisions) (Amendment) Decree No. 55, 1993 and the Universities (Miscellaneous Provisions) (Amendment) Decree No. 25, 1996. The Registrar contended that she was on a pensionable appointment and that her appointment was not a termed tenure. She took out an Originating Summons at the Federal High Court, Benin posing one question for determination as follows:

“Whether in view of the Plaintiff’s letter of appointment REF. NO. REG/SSA/P.719/293 dated 29<sup>th</sup> December, 1995 with the attached Memorandum of Appointment which constitute the basic documents of the contract of service between the Plaintiff and the 1<sup>st</sup> Defendant, the provisions of the Universities (Miscellaneous Provisions) Decree No. 11 of 1993 as amended by the Universities (Miscellaneous Provisions) Amendment Decree No. 55 of 1993, the Plaintiff’s employment with the 1<sup>st</sup> Defendant is subsisting till Plaintiff attained retirement age and Plaintiff cannot be prematurely retired or her employment terminated at the pleasure of the Defendants or any of them?”

The plaintiff also claimed the following reliefs:

- (1) A declaration that the Plaintiff is the incumbent Registrar of the University of Benin having been so appointed by the appropriate authority, that is, the Defendants and or their predecessors in office vide letter No. RE/SSA/P.719/293 dated 29<sup>th</sup> December, 1995 and cannot be removed from office until she retires statutorily on 6<sup>th</sup> May, 2003.
- (2) An order of perpetual injunction against the Defendants jointly and severally, their agents, privies or servants from conducting any interview whatsoever for the appointment to the post of Registrar of the University of Benin and or removing the plaintiff from office and or doing anything whatsoever inconsistent with the Plaintiff’s peaceful enjoyment of the perquisites of office or of office generally until the Plaintiff who now occupies the post retires statutorily from office on 6<sup>th</sup> May, 2003”.

The major plank of the argument by the Council of the University of Benin was that the provisions of Decree No. 11, 1993 specifying a definite term of 5 years for the Registrar (which may be renewed for another 5 years term) though deleted by Decree No. 55 of 1993 were revived and became operative by virtue of Decree No.25 of 1996 which repealed Decree No. 55 of 1993.

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<sup>7a</sup> Unreported, Suit No. FHC/B/CS/120/2001, delivered on 19<sup>th</sup> December, 2001.

However, the court rejected this contention of the University, answered the question posed by the plaintiff in her Originating Summons in the affirmative and granted her the two reliefs sought.

**Rationale for the Decision:**

It is submitted that this decision of the Federal High Court is sound in law and there was no basis for the University's action in the first place except that the authorities may have been misled by some erroneous interpretation of these Decrees. To allow for a better appreciation of the matter, the relevant Decrees and events will be arranged in chronological and logical order.

1. With effect from 1<sup>st</sup> January 1993 the Universities (Miscellaneous Provisions) Decree No.11, 1993 was promulgated and was in existence before the plaintiff Registrar was appointed in 1996. This Decree appeared to override the provisions of any other law as it states in its section 1 thereof as follows:

“Notwithstanding anything to the contrary contained in any other law, the provisions of this Decree shall apply to a University controlled by the Government of the Federation and listed in the Schedule to this Decree.”

The University of Benin is one of the Universities controlled by the Federal Government within the meaning of this Decree and was listed in the Schedule thereof. Section 5 of the Decree created the office of the Registrar and limited the tenure to 5 years renewable, where appropriate, for another five years as follows:

- “5-(1) There shall be a registrar, who shall be the chief administrative officer of the University and shall be responsible to the Vice-Chancellor for the day-to-day administrative work of the University except as regards matters for which the bursar is responsible in accordance with section 6(2) of this Decree.
- (2) The person holding the office of registrar shall by virtue of that office be secretary to the Council, the Senate, Congregation and Convocation.
- (3) A Registrar -
  - (a) shall hold office for a period of five years beginning from the effective date of his appointment and on such terms and conditions as may be specified in his letter of appointment; and
  - (b) may be re-appointed for one further period of five years and no more.
- (4) Where on the commencement of this Decree, a Registrar appointed before the commencement of this Decree has held office -
  - (a) for five years or less, he shall be deemed to be serving his first term of office and may be re-appointed for another term of five years;
  - (b) for more than five years but less than ten years, he shall complete the maximum period of ten years and thereafter relinquish his post and assigned to other duties in the University;
  - (c) for ten years or more, the Council may allow him to serve as Registrar for a further period of one year only and thereafter he

shall relinquish his post and be assigned to other duties in the University".<sup>9</sup>

2. With effect from 23<sup>rd</sup> August 1993, the Universities (Miscellaneous Provisions) (Amendment) Decree No. 55, 1993 amended Decree No. 11, 1993 removing the termed tenure of five years for the Registrar by deleting section 5 subsections (3) and (4) thereof as follows:
  - "1. The Universities (Miscellaneous Provisions) Decree 1993 (in this Decree referred to as "the principal Decree") is hereby amended as set out in this Decree
  2. Section 5 of the principal Decree is amended by deleting subsections (3) and (4)."<sup>10</sup>
3. In 1996 Mrs. Idehen assumed office as Registrar of the University of Benin. Her contract of service with the University of Benin was contained in her letter of appointment dated 29<sup>th</sup> December 1995 with the Memorandum of Appointment attached thereto. Clause 8 of the Memorandum of Appointment stated that the appointment was pensionable and that the plaintiff was entitled to retirement benefits in accordance with the University of Benin Regulations in that behalf. She assumed duty on 1<sup>st</sup> January 1996 based on these terms. These Regulations were made pursuant to the University of Benin Law<sup>11</sup> which did not specify any termed tenure for the Registrar. There was no reference to Decrees Nos. 11 and 55, 1993 in her letter of appointment.
4. With effect from 21<sup>st</sup> August 1996, section 5 of the Universities (Miscellaneous Provisions) (Amendment) Decree No. 25, 1996 repealed the Universities (Miscellaneous Provisions) (Amendment) Decree No. 55, 1993 as follows:
  - "5. The Universities (Miscellaneous Provisions) (Amendment) decree 1993 is here consequentially repealed".

The contention of the University of Benin from the above is that by repealing Decree No. 55 of 1993, the provisions of Decree No. 11, 1993 concerning the termed tenure of the Registrar earlier repealed by Decree No. 55, 1993 had revived to determine the tenure of the plaintiff Registrar. In other words, it was contended that the effect of the repeal by Decree No. 25 of 1996 was to revive the provisions of Section 5 subsections (3) and (4) of the Decree No 11, of 1993, which were earlier repealed by Decree No. 55, 1993. It is submitted that such interpretation is strange, curious and innocuous as it does not enjoy the support of any known or existing principle or canon of statutory interpretation. It is not surprising therefore, that Counsel to the University of Benin could not cite any authority for his submission in this regard. Thus, this contention, which is an erroneous interpretation, inevitably provokes a critical consideration of the effect of a repeal not only on the statute repealed but on a statute earlier repealed.

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<sup>9</sup> Section 6 of the Decree also made similar provisions in relation to a termed tenure for the Bursar of a Federal University.

<sup>10</sup> Section 3 of the Decree also deleted the provisions of the Principal Decree in relation to the termed tenure of the Bursar.

<sup>11</sup> Cap. 452 Laws of the Federation of Nigeria 1990.

## Effect of Repeal of a Statute

Contrary to the contention of the University, the effect of repealing a statute is to erase the repealed statute from the statute book. When a statute is repealed, it ceases to exist and no longer forms part of the laws of the land. In other words, the effect of the repeal is to render the repealed statute dead and non-existent in law. Like a dead person, it cannot be revived. Accordingly, in *Onagoruwa v. I.G.P.*,<sup>12</sup> it was held that in law, a non-existent statute is dead and cannot be saved or salvaged by the court. Also, in *Madumere v. Onuoha*,<sup>13</sup> it was held by the Court of Appeal that the effect of repealing a statute is to obliterate it completely from the records of the Parliament as if it had never been passed. Such a law is to be regarded legally as a law that never existed except for the purpose of actions, if any, which were commenced, prosecuted and concluded while it was an existing law. This means, in effect, that when a statute is repealed it ceases to be an existing law under the Constitution of the Federal Republic of Nigeria.

Indeed, the Interpretation Act<sup>14</sup> supports the above interpretation. Section 6(1) and (2) provides as follows:-

- “6. (1) The repeal of an enactment shall not-
- (a) revive anything not in force or existing at the time when the repeal takes effect;
  - (b) affect the previous operation of the enactment or anything duly done or suffered under the enactment;
  - (c) affect any right, privilege, obligation or liability accrued or incurred under the enactment;
  - (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under it;
  - (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, or forfeiture or punishment; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the enactment had not been repealed.
- (2) When an enactment expires, lapses or otherwise ceases to have effect, the provisions of subsection (1) of this section shall apply as if the enactment had then been repealed”.

Applying these to the instant case, it is clear that Decree No. 55 of 1993 by deleting sections 5(3) and (4) of Decree No. 11, 1993 relating to the termed tenure of the Registrar had rendered those provisions dead and non-existent by erasing them from the statute book completely. The true effect of the amendment by Decree No. 55, 1993 is to erase, remove or strike out the termed tenure of 5 years from Decree No. 11, 1993 for good. Following this amendment, section 5 (3) and (4) of Decree No. 11, 1993 became ineffectual, ceased to be in existence or in force having been deleted. Accordingly, by the time Decree No. 25 of 1996 repealed Decree No. 55 of 1993 the provisions of section 5(3) and (4) of Decree No 11, 1993 were no longer in existence or in force and there was therefore nothing to be revived as argued by the University of Benin. This is clear from the provisions of section 6(1) of the Interpretation Act to the effect that the repeal of an enactment does not revive anything not in force or existing at the time when the repeal takes effect. Indeed, the provisions of section 5(3) and (4) having ceased to exist, there

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<sup>12</sup> (1991) 75 N.W.L.R. (pt. 193) 593.

<sup>13</sup> (1999) 8 N.W.L.R. (pt. 615) 422.

<sup>14</sup> Cap. 192 Laws of the Federation of Nigeria 1990.

was nothing to revert to as argued by the University of Benin. Accordingly, the repeal of Decree No. 55, 1993 could not revive section 5(3) and (4) of Decree No. 11, 1993 which were not in existence or in force when the latter repeal took effect.

For the avoidance of any doubts, there cannot be any implied resurrection of a dead law through the repeal of a repealing statute. The only way to bring the provisions of a repealed statute into existence is to do so expressly through the provisions of a new statute entirely. Accordingly, it is submitted that the repeal of a repealing enactment does not have the effect of reviving the enactment originally repealed. The latter enactment is dead in law and given a decent burial. If anything, the repeal of a repealing enactment appears to signify a "second burial" for the enactment originally repealed.

## **Conclusion**

The foregoing critical examination of the judgement of the Federal High Court obviously betrays the poverty of the argument that the repeal of a repealing statute has the legal effect of reviving the statute earlier repealed. Such argument necessarily implies that the effect of a repeal is merely to “knock the statute repealed into a state of coma” to be automatically revived when the repealing statute itself is repealed. This is rather ridiculous and cannot be supported in law. Rather, it has been demonstrated that the effect of repeal is to render the repealed provision or statute dead and buried or non-existent in law. There is no miracle or magic of automatic revival of a repealed statute in law. Only an entirely new statute could revive a repealed statute by re-enactment.

Accordingly, this sound judgement of the Federal High Court, Benin would serve as a befitting precedent on the correct interpretation of the three Decrees considered – The Universities (Miscellaneous Provisions) Decree No. 11, 1993, The Universities (Miscellaneous Provisions) (Amendment) Decree No. 55, 1993 and the Universities (Miscellaneous Provisions) (Amendment) Decree No. 25, 1996.