

IN THE SUPREME COURT OF NIGERIA

Suit No: SC402/2001

Petitioner: Nigeria Ports Authority

And

Respondent: Abu Airadion Ajobi

Date Delivered: 2006-07-07

Judge(s): Idris Legbo Kutii , loysius Iyorgyer Katsina-Alu , Ignatius Chukwudi Pats Acholonu , Aloma Mariam Mukhtar , Francis

Judgment Delivered

In the High Court of Justice Holden at Warri, the Plaintiff's claims as endorsed on the Amended Writ of Summon read thus -

- (i) Declaration that the trial of Plaintiff by the Disciplinary Panel/Tribunal set up by the Defendant to investigate matters involving fraud and other associated criminal offences allegedly committed by the Plaintiff is ultra vires the Defendant, null and void.
- (ii) Order setting aside the findings made by the said Disciplinary Panel/Tribunal wherein the Plaintiff was found guilty of committing fraud and other associated criminal offences.
- (iii) An order compelling the Defendant to pay to Plaintiff all the entitlements including pension and gratuity forfeited by the Defendant consequent upon the findings of the said Tribunal/Panel.

In The Alternative

- (iv) An order reinstating Plaintiff in the employment of the Defendant authority.
- (v) An order that the Plaintiffs salaries from September 1984 until the date of judgment be paid to him by the Defendant authority."

After the filing and exchange of pleadings, the case proceeded to trial. The Plaintiff gave evidence for himself, he was cross-examined and closed his case. The case was then adjourned for the defence. The Defendant now filed a Motion on Notice praying the Court for an order-

'Dismissing this suit on the ground that by Section 97(1) of the Ports Ordinance Cap. 155 Laws of the Federation of Nigeria, 1958 and Section 110(1) of the Ports Act, Laws of the Federation 1990 Cap. 36, the action is statute barred.'

The motion was supported by an affidavit and the defendant filed a counter-affidavit in opposition. The motion was argued and in a reserved Ruling, the learned trial Judge concluded as follows-

'It was agreed on both sides that at the time of the purported dismissal of the Respondent (meaning Defendant), he was still standing trial in a criminal charge brought by the Applicant (meaning Defendant).

Learned Counsel for the Respondent submitted that the Respondent could not have taken out this action while the criminal case against him was still pending and that time began to run as from the date the criminal trial terminated in favour of the Respondent. I agree with this submission because at the time of the purported termination of the appointment of the Respondent, he was not in a position too determine whether or not the Criminal case will terminate in his favour. For the foregoing reasons, I hold that the application lacks merit and it is accordingly dismissed. No order as to costs.'

Aggrieved by the Ruling, the Defendant appealed to the Court of Appeal Holden at Benin City. The only issue submitted for resolution was -

"Whether the suit of the Respondent (Plaintiff) was not statute barred having regard to the provisions of Section 97(1) of the Ports Ordinance Act Cap. 155 Laws of the Federation of Nigeria, 1958."

In a unanimous judgment, the Court of Appeal allowed the appeal in part only. The lead judgment concluded as follows

"In the result, I hold that legs (i), (ii) and (iii) of the Plaintiff/Respondents claims are statute barred and they are accordingly dismissed. On the other hand, I hold that legs (iv) and (v) of the claims are not statute barred in that they were filed within twelve (12) months of the act complained of. These legs of the claim are therefore valid. I therefore order that the trial in respect of legs (iv) and (v) of the claim should proceed. In conclusion, I hold that the appeal partially succeeds in that the first three legs of the claim are dismissed in that they are statute barred while the trial in respect of the two remaining legs should continue. I make no order on costs."

Still aggrieved by the decision of the Court of Appeal, the Defendant has further appealed to this Court. There is no cross- appeal. Parties filed and exchanged briefs of argument in obedience to the Rules of Court. These were adopted by Counsel at the hearing of the appeal. Only one issue was submitted for determination in the appeal. It reads-

"Whether the learned Justices of the Court of Appeal were right in holding that the claims of the Plaintiff for reinstatement and payment of the salaries could only arise after Plaintiff was discharged by the Magistrate Court of the criminal charge preferred against him.

The issue directly arose from the Court of Appeal's interpretation of Section 97(1) of the Ports Ordinance Cap. 155 Laws of the Federation of Nigeria, which is in pari materia with Section 110(1) of the Ports Act, Laws of the Federation 1990. The Section reads -

"When any suit is commenced against the Authority or any servant of the Authority for any act done in pursuance or execution or intended execution of any Ordinance or Law on any public duties or authority in respect of any alleged neglect or default in the execution of such ordinance, law, duty or authority such suit shall not lie or be instituted in any Court unless it is commenced within twelve months next after the act, neglect or default complained of or damage within twelve months next after the ceasing, thereof."

(emphasis mine)

This appeal, being an interlocutory appeal, care must be taken not to comment on any issue or issues yet to be decided or tried in the substantive suit. I intend therefore to be brief.

A summary of the undisputed facts of the case is that the Plaintiff was an employee of the Defendant. The Plaintiff was accused of acts bordering on fraud in the course of his official duties. The Defendant reported the matter to Police for investigation. The Police on completion of their investigation arraigned the Plaintiff before a Magistrates Court. He was tried and found not guilty, discharged and acquitted of the charge preferred against him. This was on 23/12/1985. The Plaintiff then applied to the Defendant for reinstatement (see Exhibit E). This was refused. The Plaintiff thereafter proceeded to issue and file his Writ of summons herein against the Defendant on 22/9/1986 which time is clearly within twelve (12) months of the discharge by the Magistrate Court on 23/12/1985 vide Exhibit D, and as prescribed by Section 97(1) above.

It is important to state here now that while the trial in the Magistrate Court was still pending and in progress, the Defendant had purportedly dismissed the Plaintiff from its employment vide its letter dated 6/12/1984 (see Exhibit D)

It was therefore contended by the Defendant in the lower Courts and in this Court that the Plaintiff's cause of action arose from the date of his dismissal by the Defendant on 6/12/1984 and not from the day of his discharge and acquittal

by the Magistrate Court on 23/12/1985. Consequently therefore under Section 97(1) of the Ports Ordinance (supra) the Plaintiff ought to have instituted his action within twelve months of the occurrence of the cause of action i.e. 6/12/1984. That the Plaintiff filed this action twenty-one and a half (2 11/2) months after his dismissal by the Defendant/Appellant. The suit was therefore statute barred. It was also submitted that the Court of Appeal was wrong when it held that the Plaintiff's claims for reinstatement and payment of salaries could only arise after his discharge in the Magistrate Court because the Plaintiff's cause of action arose from his dismissal by the Defendant and not from his trial in the Magistrate Court. We were urged to allow the appeal and dismiss the suit.

The Plaintiff on the other hand contended that in deciding when time started to run against him in respect of reliefs or claims (iv) and (v) subject matter of the appeal, the Court should have regard to the facts and be guided by the observation of this Court in the case of *Fadare & Ors v Attorney General of Oyo State* (1982) Vol. 13, N.S.C.C. 62 at 80 (1982) 4.S.C. 1 at 6-7 to the effect that-

'Time, therefore, begins to run when all there is in existence, a person who can sue and another who can be sued and when all facts have happened which are material to be proved to entitle the Plaintiff to succeed.'

In other words, time will start to run when all the facts which constitute the Plaintiff's cause of action arose. That in this case the Plaintiff needed evidence amongst others to prove that he was discharged and acquitted of the offences on which his dismissal was based. And that being the case, time started to run when the Plaintiff was discharged and acquitted on 23/12/1985. The Court of Appeal was therefore right in its decision. The Court was urged to dismiss the appeal.

This appeal as indicated earlier relates only to claims or reliefs (iv) & (v) of the Amended Writ of Summons above. As also earlier indicated there is no cross-appeal.

Now, applying the law as declared by this Court in *Fadare & Ors v Attorney General of Oyo State* (supra), I have no hesitation in agreeing with Plaintiff's submissions above and in coming to the conclusion that the Court of Appeal was right in holding that claims (iv) and (v) above, are not statute barred (see also *Thomas v Olufosoye* (1986) 1 N.W.L.R. 669; *Egbe v Adefarasin* (1987) 1 N.W.L.R. 1)

The claims or reliefs should proceed to trial with utmost dispatch. The suit was filed twenty (20) years ago! The case is remitted to the High Court Warri for continuation of trial before Bazunu J., or in his absence a fresh trial before another Judge as may be directed by the Chief Judge of Delta State. The Plaintiff/Respondent is awarded costs of N10,000.00 against the Defendant/Appellant.

Judgement delivered by
Aloysius Iyorgyer Katsina-Alu. J.S.C.

I have read in draft the judgment delivered by my learned brother Kutigi. JSC. I agree with him that the appeal has no merit.

By a Writ of Summons dated 10 September 1986 and filed on 22 September 1986, in the High Court of Delta State, Warri Judicial Division, the plaintiff claimed against the defendant as follows:

- (i) A Declaration that the trial of Plaintiff by the Disciplinary Panel/Tribunal set up by the defendant to investigate matters involving fraud and other associated criminal offences allegedly committed by Plaintiff is ultra vires the Defendant's powers, null and void.
- (ii) An Order setting, aside the findings made by the said Disciplinary Panel/Tribunal wherein the plaintiff was found guilty of committing fraud and other associated criminal offences.

(iii) An Order compelling the Defendant to pay to Plaintiff all his entitlements, pension and gratuity forfeited by the Defendant consequent upon the finding of the said Tribunal/Panel.

Subsequently, the Plaintiff/Respondent sought and obtained an Order of Court to amend his Writ of Summons by way of including two alternative reliefs, viz:

(iv) An Order of Court reinstating Plaintiff in the employment of the Defendant Authority.

(v) An Order that the Plaintiff's salaries from September 1984 until date of judgment be paid to him by the defendant Authority.

At the close of pleadings, the defendant filed an application to dismiss the suit on the ground that it was statute barred by virtue of Section 97(1) of the Ports Ordinance Cap 155 Laws of the Federation of Nigeria, 1958 which is in pari materia with Section 110(1) of the Ports Act, Laws of Nigeria 1990.

After hearing arguments, the learned trial Judge dismissed the application on 17 May 1995.

On appeal to the Court of Appeal, that Court held that reliefs Numbers 1, 2 and 3 of the plaintiff's claim were statute barred while reliefs Numbers 4 and 5 were not by a judgment delivered on 5 July 2000. The defendant has further appealed to this Court.

In its brief of argument, the defendant submitted a lone issue for determination. It reads:

'Whether the learned Justices of the Court of Appeal were right in holding that the claims of the plaintiff for reinstatement and payment of salaries could only arise after plaintiff was discharged by the Magistrate Court of the criminal charge preferred against him. The plaintiff's lone issue was similar to that of the defendant reproduced above.'

The Court of Appeal in its judgment held:

'The position with legs (iv) and (v) of the claim seems to be different from the first three legs I already discussed above. In leg (iv), the plaintiff prayed the Court for an order that his salaries from September 1984 until the date of judgment be paid to him. The difference I mentioned earlier between the three earlier legs of the claim and the last two legs can be seen if one goes back to the genesis that led to the plaintiff instituting the action. The man was accused of committing fraud in the course of his official duties. The matter was reported to the police for investigation. On completion of the police investigation, he was arraigned before a Magistrate Court, there, he was tried and found not guilty, discharged and acquitted of the charge preferred against him. His claim for reinstatement of salaries pending judgment in the case could only arise after his discharge in the Magistrate Court. The cause of action in respect of those two legs of the claim therefore arose from the date the Magistrate delivered his verdict discharging the respondent of the criminal charge preferred against him.'

I cannot agree more. It is important to stress here that the respondent was accused of committing acts of a fraudulent nature in the course of his official duties. The appellant reported to the Police for investigation. At the completion of the Police investigation, the respondent was arraigned before a Magistrate Court. He was tried and found not guilty. He was accordingly acquitted and discharged.

It is not in dispute that the appellant dismissed the respondent from service while his trial by the Magistrate Court was still going on. This is where the appellant goofed. Let me explain. Having referred the matter to the Police for investigation the appellant was bound to wait for the outcome of the trial. The respondent was liable to dismissal only if he was convicted by the Court.

In the circumstances of this case, the cause of action arose from the date the appellant refused to re-instate the respondent after his acquittal. Clearly therefore the respondent's action was not caught by the limitation period. Claims

(iv) and (v) should therefore proceed to trial.

In the result, I also dismiss this appeal and affirm the decision of the Court of Appeal. The case is remitted to the High Court Warri for continuation of trial before Bazumu J. or in his absence a trial de novo before another Judge. There shall be costs of N10,000.00 to the Plaintiff/Respondent against the Defendant/Appellant.

Pronouncement by
Idris Legbo Kutigi. J.S.C.
(Presiding)

Pursuant to Section 294(2) of the Constitution of the Federal Republic of Nigeria

Hon. Justice I.C. Pats-Acholonu who participated with us in the appeal agreed at our conference that the appeal be dismissed.

Judgement delivered by
Aloma Mariam Mukhtar, JSC.

The appellant in the appeal before this Court, as the defendant in the High Court of Delta State filed and argued an application to dismiss the suit instituted against it by the plaintiff, who is now the respondent. Pleadings had already been exchanged by the parties when the application was filed and moved. The order sought in the motion paper was :-

'Dismissing this suit on the ground that by Section 97(1) of the Ports Ordinance Cap. 155 Laws of the Federation of Nigeria, 1958 and Section 110(1) of the Ports Act, Laws of the Federation 1990 Cap. 36, the action is statute barred.'

The application was supported by an affidavit, the salient depositions of which read :-

"4. That the plaintiff/respondent was dismissed from his employment by the defendant/applicant on 6/12/84 vide the letter of dismissal dated the 6/12/84. The defendant/applicant shall ask the court to make use of the said letter already in evidence Exhibit B at the hearing of this motion.

5. That the plaintiff/respondent filed this action on the 22/9/86. The defendant/applicant shall at the hearing of this motion ask the Court to make use of the original Writ of Summons dated the 10/9/86 and filed on the 22/9/86.

6. That I am informed by Chuks Lester Uguru Esq., Counsel for the defendant/applicant and I verily believe that the action is statute barred that it was not commenced within 12 months next after the cause of action arose on the 6/12/84 as required by law.

In his counter-affidavit the defendant/respondent made the following averments:-

"2. That in September, 1984 the defendant/applicant reported a case of stealing with which I was allegedly connected with other members of the staff of N.P.A. to the police.

3. That in November, 1984 two months thereafter, the defendant/applicant again set up a Disciplinary Tribunal to adjudicate upon this self same allegation of stealing which they had already referred to the Police for due investigation and prosecution, that the documents now shown to me and marked exhibits 'BB' are letters concerning the establishment of the said Disciplinary Tribunal and the dismissal of the plaintiff/respondent consequent upon the findings

of the said Tribunal.

4. That the police charged this matter to Court in January, 1985.

5. That this Criminal Trial dragged on until December, 1985 when I was discharged and acquitted which fact the defendant/applicant conceded in their Statement of Defence before this honourable Court.'

The respondent's action against the appellant in the High Court was for unlawful dismissal, he being a servant of the appellant/respondent, accused of fraud. The Police was still investigating the allegation when the appellant set up a disciplinary Tribunal to try the plaintiff, and it found the respondent guilty, consequent upon which the respondent was dismissed from the services of the appellant. The reliefs claimed by the plaintiff/respondent, as per his amended Writ of Summons are as follows:-

(i) Declaration that the trial of Plaintiff by the Disciplinary Panel/Tribunal set up by the Defendant to investigate matters involving fraud and other associated criminal offences allegedly committed by the Plaintiff is ultra vires the Defendant, null and void.

(ii) Order setting aside the findings made by the said Disciplinary Panel/Tribunal wherein the Plaintiff was found guilty of committing fraud and other associated criminal offences.

(iii) An order compelling the Defendant to pay to Plaintiff all the entitlements including pension and gratuity forfeited by the Defendant consequent upon the findings of the said Tribunal/Panel.

In The Alternative

.....

In his amended Statement of Claim the plaintiff made the following crucial averments, which in my view, form the kernel of his case:

"12. Whilst the criminal charge was pending in the Chief Magistrate Court, Warri and before the determination of same, the said Disciplinary Tribunal set up by the defendant authority as above pleaded, went ahead to try the plaintiff of the same offence with which he was being tried before the Chief Magistrate Court, Warri and purportedly found him guilty of stealing, fraud and other associated criminal offences where upon plaintiff was dismissed from the employment of the defendant authority. The plaintiff would rely on letter dated 6th December, 1984 at the trial.

13. The plaintiff shall contend that the setting up of the said Disciplinary Tribunal by the defendant authority which usurped the power of a Court of competent jurisdiction by purportedly trying the plaintiff of offence of fraud and associated criminal offences is ultra vires the power of the defendant authority and the findings made pursuant thereto by the Disciplinary Tribunal is void and of no effect whatsoever.

14. The plaintiff was thereafter discharged and acquitted by the Chief Magistrate Court, Warri in respect of the said charge No MW/37c/85. Plaintiff shall at the trial rely on the said judgment in that connection."

The learned trial Judge after considering the addresses of learned Counsel dismissed the defendant's application for dismissal of the suit against it, and found as follows :-

"Learned Counsel for the respondent submitted that the respondent could not have taken out this action while the criminal case against him was still pending and that time begins to run as from the date the criminal trial terminated in favour of the respondent.

I agree with this submission because at the time of the purported termination of the appointment of the respondent he was not in a position to determine whether or not the criminal case will terminate in his favour."

The defendant/appellant was not satisfied with the ruling, and appealed to the Court of Appeal. The Court of Appeal as per Akintan J.C.A. (as he then was) held that (i), (ii) and (iii) of (the plaintiff/respondent's claims were statute barred and dismissed them, but held that legs (iv) and (v) were not statute barred, and remain valid, and should proceed. The defendant/appellant was still dissatisfied and has appealed to this Court.

In its brief of argument, the appellant raised a single issue for determination which reads as follows:-

"Whether the learned Justices of the Court of Appeal were right in holding that the claims of the plaintiff for reinstatement and payment of the salaries could only arise after he was discharged by the Magistrate Court of the criminal charge preferred against him"

The respondent's issue in his brief of argument is :-

" Whether the learned Justices of the Court of Appeal correct in holding that time started to run against the plaintiff after his discharge by the Magistrate's Court on the criminal charge preferred against him in respect of reliefs 4 and 5 in his Writ of Summons"

Learned SAN for the appellant in arguing his issue referred to Section 110 (1) of the Ports Act, Laws of Nigeria, which he says is the pivot on which this appeal revolves.

The section reads:-

"When any suit is commenced against the authority or any servant of the authority for any act done in pursuance or execution, or intended execution of any Act or law, or of any public duties or authority, or in respect of any alleged neglect or default in the execution of such act, law, duty or authority, such suit shall not lie or be instituted in any Court unless it is commenced within 12 months next after the act, neglect or default complained of, or, in the case of a continuance of injury or damage, within twelve months next after the ceasing thereof."

Underlined is mine.

I wish to emphasise the above underlined in particular the words '12 months next after the act complained of.' Here, the act complained of is theft, a criminal offence, which carries with it conviction if proved, and which by virtue of Section 138 of the Evidence Act Cap. 112, 1990 Laws of the Federation of Nigeria, must be proved beyond reasonable doubt. The appellant, having reported the offence to the Police and having caused the respondent to be charged in a Court of law, it behoves it to wait for the outcome of the case. The exercise having started, it is on completion that the time prescribed in the above law would start to run, not the date panel's report was out, or the date the respondent received a letter of dismissal, since the criminal allegation was the root of the respondent's dismissal. See *Thomas v. Olufosoye* 1986 1 All N.L.R. part 1, page 215.

For the foregoing and the fuller reasons in the lead judgment of my learned brother Kutigi JSC, I am in full agreement that the appeal is totally devoid of any merit. I abide by the consequential orders made in the lead judgement.

Judgement delivered by
Francis Fedode Tabai, JSC.

I had a preview of the leading judgment prepared by my learned brother Kutigi, JSC and I agree entirely with his conclusion therein.

In the Writ of Summons filed in September 1986 at the Warri Division of the High Court at then Bendel State and which was subsequently amended, the Plaintiff who is the Respondent herein claimed five reliefs clearly set out in the judgment of my learned brother Kutigi JSC.

Subsequent thereto, the Defendant authority who is the Appellant herein filed an application for dismissal of the action on the ground that the suit is statute barred by virtue of the provisions of section 97(1) of the Ports Ordinance Cap 113 Laws of the Federation of Nigeria 1958. The said law is in pari materia with section 110(1) of the Ports Act Laws of the Federation of Nigeria 1990. The application was dismissed in the High Court.

The case went on appeal to the Court below which allowed the appeal with respect to reliefs (i) (ii) and (iii) on the ground that the said reliefs were statute barred. The Court below however dismissed the appeal with respect to reliefs (iv) and (v) on the ground that they were not caught by the limitation provisions of the Act and ordered a remittal of the case back to the trial High Court for trial of those two reliefs.

Still dissatisfied, the Appellant has come before this Court. The singular issue is whether or not the two reliefs are also statute barred. Section 110(1) of the Ports Act Laws of the Federation of Nigeria 1990 states:

"When any suit is commenced against the Authority or any servant of the Authority for any act done in pursuance or execution or intended execution of any Ordinance or Law on any alleged neglect or default in the execution of such law duty or authority, such suit shall not or be instituted in any Court unless it is commenced within twelve months next after the act, neglect or default complained of or damage within twelve months next after ceasing thereof."

The submission of learned Senior Counsel for the Appellants is that the Respondent's cause of action accrued from the date of his dismissal. The Respondent was dismissed from the employment of the Appellant for allegations for which he was standing trial at the Magistrate Court. If he were convicted, he would not have had a cause of action. He was however found not guilty for the allegation which also formed the basis of his dismissal. In my considered view, his right of action accrued only upon his acquittal and discharge of the criminal allegations. Any action instituted before his acquittal and discharge at the Magistrate Court would have been founded on mere speculation. And since the suit was filed less than 12 months from the date of his acquittal and discharge at the Magistrate Court, the action with respect to reliefs (iv) and (v) was not statute barred.

For the foregoing and other reasons detailed in the judgment of Kutigi JSC, I also dismiss the appeal for lack of merit. I adopt the consequential orders in the leading judgment.