IN THE SUPREME COURT OF NIGERIA

Suit No: SC40/2004

Petitioner: Forestry Research Institute of Nigeria
And
Respondent: Mr. I.A. Enaifoghe

Date Delivered: 2007-05-11

Judge(s): Umaru Atu Kalgo, George Adesola Oguntade, Aloma Mariam Mukhtar, Walter Samuel Nkanu Onnoghen, Christoph

Judgment Delivered

The case of the plaintiff, (who is now the respondent) in the High Court of Oyo State holden in Ibadan, is that he was employed as a cleric officer by the defendant (who is now the appellant), in 1974.He was appointed an Assistant Secretary in 1981, after obtaining a degree on study leave without pay between 1977 and 1980, and thereafter he was promoted to the post of Assistant Secretary I, a post in which his duties included disbursement of money. In 1986 he was given a query by the management of the defendant for alleged irregularities in the disbursement of cash advance granted to him. A sub-committee was set up to investigate the irregularities, and he made written memorandum, which the committee considered, and recommended that the plaintiff be warned. In 1987, Ministerial Administrative panel of Inquiry into the affairs of the defendant visited the defendant, and the 1986 irregularities were again raised before the panel and the plaintiff was invited again to defend himself, and he submitted a written memorandum to the allegations against him for which he had already been punished in 1986.At the end of the investigation the plaintiff was dismissed, vide a letter of 5th October 1988, and according to him the dismissal was illegal, unlawful, unconstitutional, null and void. The plaintiff stated that he had been searching for alternative job to mitigate the sufferings brought by his dismissal, but to no avail. The reliefs sought by the plaintiff were as follows:-

\"(i) Declaration that the purported letter of dismissal (sic) dated October, 1988 written by the defendant to the plaintiff and the| dismissal of the plaintiff emanating there from are null void unconstitutional and of no effect at all.

(ii) Declaration that the plaintiff is for all time and purposes and in spite of the letter of dismissal of 5th October, 1988 was Assistant Secretary I of the defendant as at October, 1988.

(iii) An order of this Honourable Court reinstating the plaintiff as an Assistant Secretary I of the defendant,

(iv) Declaration that as such Assistant Secretary I of the I defendant, the plaintiff is entitled to be paid all his salary or wages, allowances or any other entitlement made up as here under,.....\"

In its statement of defence, the defendant denied some of the allegations above, but admitted some to the, extent that the plaintiff was eventually dismissed, in 1988, but that the earlier investigation of 1986 was not conclusive, and so the plaintiffs promotion was deferred. In view of this, the plaintiffs matter was investigated by a Ministerial Panel of Inquiry in 1987, as the first and only panel or body to sit on the allegation against the plaintiff. The defendant has stated that the plaintiff has since his dismissal been gainfully engaged in trading activities to wit he has bagged contracts of supply from the defendant.

On completion of pleadings, evidence were adduced, and they were evaluated by the learned trial judge, who at the end of the day found in favour of the plaintiff, and granted the reliefs sought by the plaintiff. Dissatisfied with the judgment, the defendant appealed to the Court of Appeal on several grounds of appeal. The appeal was dismissed, and the defendant has appealed to this court again, and this time on three grounds of appeal. As is the practice in this court parties exchanged briefs of argument, to wit there was also an appellant\'s reply brief which were adopted at the hearing of the appeal. Three issues for determination were raised in the appellant\'s brief of argument, and the issues are:-

\"(i) Whether the Respondent\'s action was not statute-barrel by the provisions of Section 2(a) of the Public Officers Protection Act Cap 379 Laws of the Federation of Nigeria, 1990 thereby ousting the jurisdiction of the court.

(ii) Whether the learned Justices of the Court of Appeal were right in holding that the Respondent\'s employment was statutorily protected and therefore entitled to an order of re-instatement.

(iii) Whether the learned Justices of the Court of Appeal were right when they held that there was no evidence to the contrary that the Respondent could be disciplined by way of exhibit J not withstanding the previous disciplinary action taken by the appellant.\"

In his own brief of argument, the respondent raised only two issues for determination, which are:-

\"a. Whether the learned Justices of the Court of Appeal were right in affirming the findings and judgment of the trial court that the Respondent's employment was statutorily protected to justify the order of reinstatement of the respondent.

b. Whether the Court of Appeal was right in holding that the respondent could not be punished twice for the same offence.\"

In his brief of argument, the respondent raised a preliminary objection on ground (i) of the grounds of appeal, which according to learned counsel raised an issue which was never raised before the lower court and no leave was sought by the appellant in order to raise same. According to learned counsel, the appellant was granted leave by the Court of Appeal to amend its notice of appeal on 23/2/2000, and in pursuant to the said leave, the appellant filed an amended notice of appeal on 29/2/2000, and no where in the appellant\'s brief or the amended notice of appeal was the provision of Section 2(a) of the Public Officers Protection Act Cap 379) Laws of Nigeria 1990 mentioned. Learned counsel set out cases where conditions that a party must satisfy before he can raise fresh point at the Supreme Court were laid down. These cases are Sken Consult Nig Ltd. v. Ukey (2001) 49 WRN 63; (1981) 1 SC 67, Adedeji v. N.N.B.N. (1989) 1 NWLR part 96 page 212, Oniah v.Onyia (1989 1 NWLRpart 99 page 514. and Agbaje v. Adigun (1993) 1 NWLR (part 269) page 261.

Learned counsel for the appellant in its appellant\'s reply brief of argument submitted that the notice of preliminary objection to the first ground of appeal is misconceived and ought to be dismissed. He said the issue was raised in the court below with leave of the court and the learned Justices fully considered it but decided the issue against the appellant in the Judgment.

It is on record that the learned counsel for the appellant on 23/2/2000 moved a motion on notice dated 10/12/99, in which the following prayers were sought:-

'(i) Leave to amend the notice of appeal dated 16th April, 1998 by filing additional grounds of appeal-as set out in the schedule hereto attached.

(ii) Leave to raise a fresh point on appeal namely the jurisdiction of the trial court, which issue was not raised during trial in the court below.

(iii) .....'

In the supporting affidavit to the motion, one Ademola Busari deposed to the following averments amongst others:-

\"6. Upon discovery of the said record he commenced its study and thereafter informed me and I verily believe that it will be necessary to seek leave of this court to amend the prior notice of appeal filed dated 16th April, 1998 in order to prosecute the appeal properly. The said counsel further informed me and I verily believe that it would also be necessary to obtain leave of this Honourable court to, raise a fresh issue which was not canvassed to the trial court namely: the jurisdiction of the trial court to sit on the suit.\"

The prayers sought were granted, the orders of which included the following:-

\"Leave is also given to the appellant/applicant to raise a fresh point on jurisdiction of the trial court which was not raised during final (sic) in the court below.\"

Contrary to the submission of learned counsel for the respondent that the notice of appeal in the Court of Appeal made no mention of Section 2 (a) of the Public Officers protection Act, ground (7) of the amended Notice of Appeal on page 52 of the record of proceedings is very clear on this. I will reproduce this ground (7) here below. It reads:-

\"7. The trial court erred in law when it entertained and determined the suit when the said court lacked jurisdiction to entertain or adjudicate in the proceedings.

Particulars

(i) The jurisdiction of the court was ousted by the provision of the Public Officers\' Protection Law Cap. 106 (sic) Cap. 103) Laws of Oyo State of Nigeria which were applicable to the suit and was manifest on the pleadings.

(ii) The said law had terminated the Respondent\'s cause of action and thereby robbed the court of jurisdiction as the cause of action accrued on 5th October, 1988 while the suit was not filed until 7th October, 1991.\"

Particular (1) above talks of the Public Officers Protection Law, so I am at a loss as to why learned counsel made that submission, or did he do so because particular (i) is based on laws of Oyo State not laws of Nigeria' Is there an obvious difference in the two laws' Perhaps I should look at the two laws to consider any existing difference in the provisions. It is instructive to note that whilst the preamble in the Public Officers Protection Act Cap. 379 of the 1990 Laws of the Federation of Nigeria reads as follows:-

\"An Act to provide for the protection against actions of persons acting in the execution of public duties the preamble in the Oyo State law Cap. 103 is, \"A law to provide for the protection against actions of persons acting in the execution of public duties.\"

Section (2) of the two laws have the same provisions and are in pari materia, so the fact that the exact relevant law was not stated is inconsequential, considering the nature of the issue, which is on jurisdiction.

It is instructive to note that paragraph (b) of the supporting affidavit which I have reproduced above is inter related with ground (7) of amended notice of appeal, equally reproduced above. It follows that what the appellant sought to raise as fresh issue was an issue on jurisdiction. Then in its brief of argument in the court below, the appellant raised as an issue for determination, the following:-

\"Whether the Respondent\'s cause of action against the appellant having accrued since 5th October, 1988 was not barred by the Public Officers\' Protection Law of Oyo State as the suit was not filed until 8th October, 1991.\"

The learned Justice of the Court of Appeal dealt with the above issue and indeed found on it in his judgment. See page 192 of the printed record of proceedings. Besides, the issue is one of jurisdiction which can be raised at any stage of proceedings. See Oloriode v. Oyebi (1984) 5 S.C. 1 Ezemo v. Oyakhire (1985) 2 S.C. 260, and Oloba v. Akereia 1988 3 NWLR part 84; page 508.

I think I have said enough on this preliminary objection, and I need not over flog the issue as there is no merit in it. I therefore overrule the objection, and hold that ground (ii) of this appeal is valid and competent and will remain so. The authorities cited by learned counsel on conditions to be satisfied before raising fresh point at the Supreme Court, though apposite are not relevant.

The treatment of this appeal will be based on the appellant\'s issues supra, starting with issue (1). In arguing this issue learned counsel for the appellant argued that although great emphasis was placed in the court below on the provisions

of the Public Protection Officers Law of Oyo State which was held inapplicable, the court declined to countenance submissions made to it on the applicability (in the alternative) of the provisions of the Public Officers Protection Act Cap. 379 LFN. Learned counsel submitted that the appellant, being a body statutorily established by Federal Legislation is entitled to the protection afforded by Section 2(a) Public Officers Protection Act being a person within the provisions of the said law and the interpretation of the word \'person\' in the cases of Ibrahim v. J.S.C. Kaduna State (1998) 14 NWLR part 584; page l, Offoboche v. Ogoja Local Government (2001) 16 NWLR (part 739) page 458. Kolo v. A. G. Federation (2003) 10 NWLR (Pt 829) page 602. and Daudu v University of Agriculture Makurdi (2000) FWLR (part176), page 687 Learned counsel further submitted that since the respondent\'s cause of action accrued by virtue of Exhibit J on 5th October, 1988, time began to run and in order to bring an action against the appellant the plaintiff/respondent ought to have filed his action within three months of 5th October 1988, but the action was not filed until 8th October, 1991. It is his. submission also that on the authority of Egbe v. Adefarasin (1987) 1 NWLR Pt 47) page 1, that since the respondent failed to file the suit within three months the Public Officers Protection Act removed his right of action, the right of judicial relief and left him with a bare and empty cause of action which he could not enforce. He placed reliance on the cases ofTexaco Panama Inc. v. S.P.D.C. Ltd (2002) 5 NWLR (part 759), page 209, Fred Egbe v. Alhaii A. Alhaii & ors (1990) I NWLR Pt 128) page 546, and Fred Egbe v.M.D. Yusuf 919920 6 NWLR (Pt 245) page 1. The Legal consequence of the respondent's claims being statute barred is that in such circumstance no court has jurisdiction to entertain the action. Learned counsel referred to the cases of John E. Emiator v. Nigerian Army &0rs (1999)12 NWLR (part 631) page 362, and Andrew A. Ajayi v. Military Administrator, Qndo State & 2.Ors (1997) 5 NWLR (Pt 504) page 237.

The learned counsel for the respondent did not pay attention to the submissions of learned counsel for the appellant on this issue in his argument on the main appeal. It is only in his argument on the preliminary objection that learned counsel addressed the issue in a way, by submitting that as a matter of pleading, the appellant is not entitled to raise this issue, the same not having been raised in its pleadings before the trial court. Learned counsel referred to the provision of Order 25 rule 6 (i) of the Oyo State High Court Civil Procedure rules of 1988, which stipulates thus:-

\"6(1) A party shall plead specifically any matter for example performance, release, any relevant statute of limitation, fraud or any fact showing illegality which, if not specifically pleaded .might take the opposite party by surprise.\"

There is no doubt that this rule connotes mandatory procedure, but it does not preclude a party from raising the defence of statute of limitation, at an appellate court, vide leave to do so even if he did not do so at the court of first instance, because such issue borders on the fundamental issue o jurisdiction. The appellant in this case, realized its mistake in not thrashing out the issue and so raised it in the Court of Appeal after leave was obtained.

In its appellant\'s reply brief, learned counsel for the appellant has submitted that there exists exception to the requirement in the said order 25 Rule 6 (1) above namely: where the date or time of accrual of cause of action is clearly stated in the writ of summons or statement of claim and there should be no need to call evidence to prove and or disprove same, the defendant need not plead it to be able to raise the defence. He placed reliance on the cases of Amata v. Omofuma (1997) 2 NWLR (part 485), page 93, Oyebanji and Or v. Lawanson and Ors (2004).As much as the former case is relevant to the issue of limitation of action, it was a counter claim that triggered off the issue, in the former case what was in controversy was how and when an action could be determined to be statute barred, the controversy here is also the necessity to specifically raise the defence of statute of limitation, as provided in Order 25 Rule 6 (i) of the Oyo State Court\'s rules. It is instructive to note however, that although the principle propounded in the Amata\'s case supra could be applied to this case, (i.e. that the plaintiffs pleading was enough to determine whether this plaintiff/respondent\'s action was statute barred or not) the issue of limitation did not arise in the court of first instance.\' This issue arose on appeal, as a fresh issue. Indeed a thorough perusal of the respondent\'s amended statement of claim and the writ in this case is illuminating enough of the: period that has elapsed between the date of the respondent\'s dismissal from the appellant\'s employment vide Exhibit J which was dated 5/10/88, which is when the cause of action arose and:the date the suit was commenced, which was dated 7/10/91. More so, the respondent\'s amended statement of claim gave a clear graphic picture of the sequence of events, which clearly shows that time within which the respondent was allowed by law to commence the action has elapsed, vide the provision of the Public Officers Protection Act supra which stipulates thus:-

\"2. Where any action prosecution, or other proceeding is commenced against any person for any act done in pursuance or execution or intended neglect or default in the execution of any such Act, Law, duty or authority, the following provisions shall have effect '

(a) the action prosecution or proceeding shall not lie or be instituted unless, it is commenced within three months next after the act, neglect or default complained of, or in case of a continuance of damage or injury, within three months next after ; the ceasing thereof.\"

Paragraph (2)) of the respondents amended statement of claim clearly shows that the plaintiffs action was taken outside the period stipulated above. The said paragraph (2) reads as follows:-

\"20 The plaintiff shall contend that his dismissal vide the letter of October, 5th 1988 by the defendant is illegal unlawful, unconstitutional, null and void.\"

I will state here that the dismissal of the respondent having taken place in 1988, the respondent\'s cause of action arose three months thereafter, and not three years after. In this respect I find solace in the dicta of Oputa J.S.C in the case of Fred Egbe v. Honourable Justice Adefarasin (supra) which is encapsulated thus:-

\"A cause of action is said to be statute barred if in respect of it the proceedings can not be brought because the period laid down by the limitation law or Act had elapsed. How does one determine the period of limitation. The answer is simply by looking at the writ of summons and the statement of claim alleging when the wrong was committed which gave the plaintiff a cause of action and by I comparing that date with the date on which the writ of summons was filed. This can be done without taking oral evidence from witnesses. If the time on the writ is beyond the period allowed by the limitation law then the action is statute barred.\"

I In this appeal, the respondent having not brought the action within the time prescribed by the Public Officers Protection Act supra, he was definitely statute-barred from commencing the action. The action he brought, (having been outside the prescribed period) is against the provisions of the said law and so does not give rise to any cause of action. Again, the High Court was bereft of jurisdiction to hear the matter, as the law governing the action has not been complied with. Once a court has no jurisdiction to adjudicate on a matter, even where it had done so, such adjudication will be adjudged a nullity by an appellate court. The case of A. Ibegbu v. Lagos City Council Caretaker Committee and Anor relied upon by the lower court to refuse the appellant\'s ground of appeal hinged on the statute of limitation is not apposite.

Jurisdiction is a very fundamental issue that robs on the competence of a court to hear and decide a matter. A party that submits itself to a court for adjudication of a matter for which he is seeking redress, but without cause of action, cannot clothe the court with jurisdiction to hear and determine the matter, and even if by an oversight the court vests itself with jurisdiction and decides the case, an appellate court is bound to nullify the decision. Indeed, I repeat the principle of the law that it is trite that an issue on jurisdiction can be raised at any stage of legal proceedings, be it in the Court of Appeal, or even this court. See Oloriade v Oyebi and the other cases on this position of the law supra.

A proceeding that emanated from a court without jurisdiction is one that never took place at all, because the court should not have entertained the suit, for it is incompetent to do so. This is the exact position in this appeal. The court of first instance had no jurisdiction to hear the matter, and so its decision was a nullity and has to be treated as such (even if at that stage the issue of limitation of action was not raised). See Shell Petroleum Development Co.(Nig.) Ltd. v. Abel Isaiah and Ors (2001) 1 NWLR (part 723) page 168, and Peenok Investments Ltd v. Motel Presidential Ltd. (1983) 4 NLLR page 122. In the circumstance, issue (1) above is resolved in favour of the appellant. Ground of appeal No. (1) to which the issue is married succeeds, and it is hereby allowed. I think the determination of this issue about jurisdiction disposes of the entire appeal, and the need to treat the other issues raised is obviated.

The end result is that the appeal succeeds and it is hereby allowed. The respondent\'s claims in the High Court of Oyo State are hereby struck out.

I hereby order costs of N10,000.00 in favour of the appellant against the defendant.

Judgment Delivered By
Umaru Atu Kalgo, J.S.C

I have read before now the judgment just delivered by my learned brother Mukhtar J.S.C. I agree that there is merit in the appeal and ought to be allowed. I agree with the reasoning and conclusion reached in the said judgment I adopt as mine. I therefore also allow the appeal with costs as assessed in judgment.

Judgment Delivered By
George Adesola Oguntade, J.S.C.

I have had the advantage of reading in draft a copy of the lead judgment by my learned brother Mukhtar J.S.C. I agree with the said judgment that this appeal has merit. The respondent\'s case as presented on his pleadings before the trial court was hinged on an alleged invalidity of the letter of dismissal served on him by the appellant on 5th October, 1988. The respondent however did not initiate his suit until 8th October, 1991.

The appellant was granted leave by the court below on 23-2-2000 to raise a fresh point on appeal concerning the jurisdiction of the trial court to adjudicate on the matter. Pursuant to the leave granted by the court below, the respondent raised his 7th ground of appeal which reads:

\"7. The trial Court erred in law when it entertained and determined the suit when the said Court lacked jurisdiction to entertain or adjudicate in the proceedings.

Particulars

(i) The jurisdiction of the Court was ousted by the provisions of the Public Officers Protection Law Cap. 106 Laws of Oyo Slate of Nigeria which were applicable to the suit and was manifest on the pleadings.

(ii) The said Law had terminated the Respondent\'s cause of action and thereby robbed the Court of jurisdiction as the cause of action accrued on 5th October, 1988 while the suit was not filed until 7th October, 1991.\"

The said 7th ground of appeal enabled the respondent as appellant before the court below to raise as the 1st issue the following-

\"Whether the Respondent\'s cause of action against the appellant having accrued since 5th October, 1988 was not barred by the Public Officers Protection Law of Oyo State as the suit was not filed until 8th October, 1991.\"

The court below in its judgment made a short shrift of the issue whether or not the respondent\'s suit had been statute barred when it said at page 192 of the record thus:

\"I shall now consider the issues raised, the first is whether the Public Officers Protection Law Cap. 106 Laws of Oyo State 1978 is applicable to the contractual relationship of the parties. Mr. Oladejo for the Respondent submitted that it does not and relied on Ubeaghu.v. Lagos City Council Caretaker Committee &Anor. (1974) 1 AllNLR (Part I) 368. Mr. Akin Ige for the Appellant urged that the law applies because (1) the parties to the proceeding are both resident in the Slate and (ii) there is nothing in the statute excluding bodies created by a Federal Statute. The Institute itself and the Officers employed therein including the Plaintiff/Respondent all fall within the definition of Federal public Officers. They certainly are not public officers of the Government of Oyo State. In Ubeagbu v. Lagos City Council Caretaker Committee (supra) the High Court upheld the contention of the defendant that the claim was statute barred by virtue of thePublic Officers Protection Act Cap. 168 Laws of the Federation of Nigeria and was struck out. On appeal, the Supreme Court

held that the Federal law did not apply and that the applicable law was the Public Officers Protection Law of Lagos State. The corollary of this is that a State Officers Protection Law would not also apply to a Federal public Officer. In the absence of any definite judicial pronouncement to the contrary I am inclined to accept the view of the Respondent that the Public Officers Protection Law Oyo State does not apply to protect the Defendant/Appellant.\"

I think, with respect, that the court below was in error to have treated the issue whether or not the respondent\'s suit was statute barred so casually and almost disinterestedly. It was a very serious issue which if upheld was bound to affect the jurisdiction of the two courts below.

On the respondent\'s own, showing in his Statement of Claim, he had brought the suit outside the period allowed by law. The trial court should not have heard the suit. I would therefore allow the appeal. I subscribe to the orders made by Mukhtar J.S.C in the lead judgment.

Judgment Delivered By
Walter Samuel Nkanu Onnoghen, J.S.C.

This is an appeal against the judgment of the Court of Appeal holden at Ibadan in appeal No.CA/1/97/99 delivered on the 19th day of June 2003 dismissing the appeal of the appellant against the decision of the Oyo State High Court, holden at Ibadan in suit No. 1/915/91 delivered on the 20th day of March 1998 in which it granted thereliefs of the plaintiff /respondent.

The respondent, as plaintiff had instituted the action against the appellant claiming the following reliefs before the High Court:-

1. Declaration that the purported letter of dismissal dated 5th October, 1988, written by the defendant to the plaintiff and the dismissal of the plaintiff emanating there from are null, void unconstitutional and of no effect at all.

2. A declaration that the plaintiff is for all time and purposes and in spite of the letter of dismissal of 5th October, 1988 was Assistant Secretary of the defendant as at October, 1988.

3. An order of the Honourable Court reinstating the plaintiff as an Assistant Secretary I of the defendant.

4. A declaration that as such Assistant Secretary 1 of the defendant, the plaintiff is entitled to be paid all his salary or wages, allowances or any other entitlement made up as be re under (totaling N44, 259.54).

The plaintiff also claimed the sum of N500, 000.00 as general damages. These reliefs with the exception of the claim for general damages were granted by the trial court in the following terms:-

\"1. It is hereby declared that the letter of dismissal dated 5th October, 1988 written by the defendant to the plaintiff whereby he is dismissed from the service of the defendant is unconstitutional, null and void and of no effect.

2. It is hereby ordered that the plaintiff be forthwith and with immediate effect reinstated as Senior Assistant Secretary under the defendant.

3. It is further ordered that the defendant shall forthwith pay to the plaintiff all his salaries, allowances, emoluments and other entitlements with effect from November, 1998 till date.\"

As stated earlier in this judgment the above judgment of the trial court was affirmed, with sight modifications in relation to relief No. 3 as granted by the trial court. On further appeal to this court, the issues for determination as formulated by learned counsel for the appellant in the appellant's brief of argument, are as follows:-

\"(i) Whether the Respondent\'s action was not statute-barred by the provisions of section 2(a) of the Public Officers Protection Act, Cap.379 Law of the Federation of Nigeria 1990 thereby ousting the jurisdiction of the court.

(ii) Whether the learned Justices of the Court of Appeal were right in holding that the Respondent\'s employment was statutorily protected and therefore entitled to an order of reinstatement.

(iii) Whether the learned Justices of the Court of Appeal were right when they held that there was no evidence to the contrary that the Respondent could be disciplined by way of Exhibit J notwithstanding the previous disciplinary action taken by the Appellant.\"

It is very clear from the pleadings that the respondent was dismissed from the service of the appellant vide a letter of dismissal dated 5th October 1988 and that the action instituted for the relief against that dismissal was instituted on the 8th day of October 1991. It is also clear that the respondent\'s cause of action accrued on the 5th day of October 1988 when his employment was brought to an end by the letter of dismissal. From the 5th day of October 1988 when the respondent\'s cause of action accrued to the 8th day of October 1991 when the action was instituted is a period of about 3 years.

Section 2(a) of the Public Officers Protection Act provides, inter alia, as follows:-

\"2, Where any action, prosecution, or other proceeding is commenced against any person 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 any such Act, Law, duty or authority, the following provisions shall have effect -

(a) the action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of, or in case of a continuance of damage or injury, within three months next] after the ceasing thereof .....\"

It should be noted that learned counsel for the respondent did not proffer argument on appellant\'s issue 1 by way of alternative in case his preliminary objection against the ground of appeal from which the issue was distilled failed, as it did in this case.

However, from the undisputed facts relating to the accrual of the cause of action and the time the action was instituted, it is clear that the institution of mat action was contrary to the clear provisions of section 2(a) of the Public Officers Protect Act supra.

The consequence of the above finding/holding is that the said section 2(a) supra has removed the right of action, the right of enforcement, the right of judicial relief, from the respondent and left him with a bare and empty cause of action which us unenforceable in law - see Texaco Panama Inc v. SPDC Ltd. (2002) 5 NWLR (Pt.128) 546; Egbe v. Yusuf (1992) 6 NWLR (Pt. 245) 1 at 12;

It should be noted that the issue under consideration was also raised before the lower court but the appellant\'s argument before that court was based on the Public Officers Protection Law Cap.106, Laws of Oyo State 1978 instead of Cap. 379, Laws of the Federation of Nigeria 1990 supra, particularly as the appellant is; a Federal Government institution. The lower court, in applying the decision of this court in Ibegbu v. Lagos City Council Caretaker Committee & Anor. (1974) All NLR(Vol.1) 328 (reprint), held that since appellant relied on the state legislation which would not apply to federal officers and 'in the absence of any definite judicial pronouncement to the contrary I am inclined to accept the view of the respondent that the Public Officers Protection Law of Oyo State does not apply to protect the defendant/appellant.'

In the Ibegbu\'s case the appellant sued in the Lagos High Court, claiming against the defendants jointly and severally the sum of N5, 000.00 being special and general damages for injuries suffered by him and for damages to his motor-cycle in an accident caused by the negligence of the driver of 1st defendant allegedly in the course of his duties.

The defendant\'s counsel contended that the claim was statute barred by virtue of the provisions of S. 2(a) Public Officers Protection Act, Cap.168 Law of the Federation of Nigeria. The trial court upheld the contention and struck out the claim with costs. On appeal to the Supreme Court, Irikefe , J.S.C. (as he then was) at pages 330 - 331 of the report summarized argument for and against, as follows:-

\"Mr. Coker\'s submission before us may be summonsed under three heads as follows:

(a) That the Public Officers Protection Act - Cap.168 - Laws of the Federation on which the ruling is bused, if it applies at all, offers protection to persons when acting in the execution of public duties.

(b) That the learned judge was in error to rule that the action was statute - barred without spelling out which among the defendants qualified for the protection afforded under section 2(a) of the Public Officers Protection Act ' Cap 168 of the Laws of the Federation of Nigeria.

(c) That by virtue of the interpretation Act of 1964, \"a public officer\" as therein defined does not and cannot include an employee of the Lagos City Council.

For the respondents, Mrs. Ibironke argued that the order made by the learned judge was a proper order in the circumstance of the case, and drew our attention to section 8 of the Limitation Decree (No.8 of 1966) which prescribes a period of 3 years within which to bring an action sounding in negligence.\"

The learned Supreme Court Justice then proceeded to determine the above issues thus;-

\"In as much as the ruling the subject of this appeal is apparently based on the provisions of the Public Officers Protection Act - Cap. 168 - Laws of the Federation of Nigeria -1958, we are of the view that the learned Judge was in error. This is so, because in the Lagos State, the above federal statute is no longer in force; having been replaced by the Public Officers Protection Law -Cap.106 Laws of Western Nigeria ' 1959 by virtue of the Lagos State (Applicable Laws) Edict No.2 of 1968 which came into force on 1st May, 1968.

It is also our view that, as the respondents were sued jointly and severally, the statutory defence pleaded in paragraph 10 of the statement of defence does not sufficiently set out, as it should, the party on whose behalf it is being raised. The need for such precision becomes apparent when it is realized that the 1st respondent, the Lagos City Council Caretaker Committee, derives its corporate existence from the Lagos Local Government Act - Cap.93 - Laws of the Federation of Nigeria -1958 as amended by Ordinance No 18 of 1959.

In this regard, the 1st respondent is a separate and distinct entity from its employees such as the 2 respondent '.

For the above reasons, we think that a case for the application of the statute was not made out and that the learned judge was in error in ruling that his (sic) action is statute ' barred '....\"

From the above, it is very clear that even though the court held that the trial court erred in applying a federal statute instead of that of a state the main reason for allowing the appeal was that the case for the application of the provisions of the Public Officers Protection Act was not made out and that the trial court was consequently in error when it ruled that the action was statute barred. I hold the further view that if the case for the application of the provisions of the Public Officers Protection Act, had beer found to have been made out, the court would have proceeded, the interest of doing substantial justice to apply the appropriate law to the facts of the case, despite the fact that the respondent relied on a wrong law in presenting his case and the trial judge in arriving at its decision. It is settled law that a party is not to be denied any relief to which he is entitled merely because he sought the relief under the wrong rule of court or law/statute ' see Hello v. A - G of Oyo State (1986) 5 NWLR (Pt.45)828 at 876. Falobi v. Falobi (1976) 1 NMLR 169

Having resolved issue 1 in favour of the appellant with the consequence that the action as constituted in the trial court |is incompetent and therefore liable to be struck out, it follows that there is no need for a consideration of any of the other

issues submitted for determination as such determination would serve no useful purpose.

It is for these and the more detailed reasons contained in the lead judgment of my learned brother Murkhtar J.S.C, the draft of which I have read, that I agree that the appeal has merit and should be allowed.

I hereby order accordingly and abide by all the consequential orders contained in the said lead judgment including the order as to costs. Appeal allowed.

Judgment Delivered By
Christopher Mitchell Chukwuma-Eneh, J.S.C.

The plaintiff has brought this action in the High Court of Oyo State against his former employer (the defendant) for wrongful dismissal from his employ merit. Before then he was an Assistant Secretary 1 in the employ of the Defendant and was put in charge of management and disbursement of money belonging to the defendant in respect of cash advances for fuel and flight tickets for the staff. Following an allegation of misappropriation of funds in his care for which he was queried; a departmental investigating panel was set up to enquiry into the matter of the misappropriation. The panel in the end recommended that the plaintiff be given a warning. He was duly given one. However, a Ministerial Administrative panel of inquiry later reopened the matter and re-investigated the same all over again. This time the plaintiff was found guilty. Upon the recommendation of the Ministerial Administrative panel the plaintiff was dismissed from the employ of the Defendant by a letter dated 5/10/88. The plaintiff has claimed against the Defendant as follows:

\"(i) Declaration that the purported letter of dismissal dated 5th October 1988 written by the defendant to the plaintiff and the dismissal of the plaintiff emanating there from are null and void, unconstitutional and of no effect at all.

(ii) Declaration that the plaintiff is for all time and purposes and in spite of the letter of dismissal of 5th October 1988 was Assistant Secretary I of the Defendant as at October 1908.

(iii) An order of this Honourable Court reinstating the Plaintiff as an Assistant Secretary I of the Defendant.

(iv) Declaration that as such Assistant Secretary I of the defendant the plaintiff is entitled to be paid all his salary or wages, allowances or any other entitlement made up as here under. Total salary, allowance N44, 259.54 General damage, Damages N500.000: total claims: N 544.259.54\"

The parties filed and exchanged their pleadings. The facts of this matter are evident from the reliefs as set out above and sufficient for determining this appeal. The case proceeded to trial before the trial Court. At the conclusion of hearing the trial Court found in favour of the plaintiff. Dissatisfied with the decision the defendant headed to the Court of Appeal on appeal, the appeal was dismissed. The defendant has finally appealed to this Court by a Notice of Appeal dated 9./11/2003 and filed on 12/9.2003 in which the defendant/appellant has raised 3 grounds of appeal from which has been distilled 3 issues for determination in the appellant\'s brief of argument. The respondent has also filed the respondent\'s brief of argument in which he has formulated 2 issues for determination. The appellant\'s issues for determination are:

(i) Whether the Respondent\'s action was not statute-barred by the provisions of Section 2(a) of the Public Officers Protection Act cap. 379 Laws of the Federation of Nigeria, 1900 thereby ousting the jurisdiction of the Court.

(ii) Whether the learned Justices of the Court of Appeal were right in holding that the respondent\'s employment was statutory protected and therefore entitled to an order of re-instatement.

(iii) Whether the learned Justices of the Court of Appeal were right when they held that there was no evidence to the contrary that respondent could be disciplined by way of Exhibit J not withstanding the previous disciplinary action taken by the appellant.\"

The respondent\'s issues for determination are:

\"(a) Whether the learned Justices of the Court of Appeal were right in affirming the finding and judgment of the trial Court that the respondent\'s employment was statutory protected to justify the order of re-instatement of the respondent.

(b) Whether the Court of Appeal was right in holding that the respondent could not be punished twice for the same offence.\"

I have read the judgment in this case prepared by my learned brother Mukhtar J S C and agree with him that the appeal should be allowed.

The only area I would want to vouch an opinion is on the provisions of Section 2(a) Public Officers Protection Act and it provides as follows:

\"2 Where any action prosecution, or other proceeding is commenced against any person for any act done in pursuance or execution or intended neglect or default in the execution of any such Act, Law, duty or authority, the following provisions shall have effect -

(a) the action prosecution or proceeding shall not lie or be instituted unless, it is commenced within three months next after the act, neglect or default complained of, or in case of a continuance of damage or injury, within three months next after the ceasing thereof.\"

As can be gathered from reading the above provisions it limits the right to seek legal redress in Courts. The clear implication of the provisions is that the plaintiff may have a cause of action but cannot enforce it by instituting a judicial process to that effect. This is because the limitation law has elapsed by effluxion of time and so the action is said to be Statute barred. The instant law has allowed 3 months within which to commence an action on a cause of action that has arisen against a public officer which includes in this context persons as the appellant See: Upper Benue River Basin Development Authority V Alka & ors. (1998) 2 NWLR (Pt. 537) 328. The respondent here was dismissed on 5/10/88 and only started this action on 8/10/91 well outside the limitation period of 3 months. On the face of the pleadings filed and exchanged between the parties the date of dismissal is that much as clear as per paragraph 18 of the Amended statement of claim and paragraph 5(e) of the statement of Defence. The action as per the writ of summons was filed on 8/10/99.

There can be no doubt that there are conditions that guide the application of this law and similar legislation indeed in order to be given the protection. One such fundamental condition is that being a special defence, under our Rules it must be pleaded and proved by the defendant. This requirement is so, so as to plead the requisite facts of the date of accrual of the cause action and the expiry of the applicable period of time. And where this defence is not taken, it is deemed as waived.

Speaking for myself, it is still a moot point which I do not decide here whether or not this defence can be raised for the first at the level of the Court of Appeal- See:Upper Benue River Basin Development Authority v. Alka (supra). Nor do I decide the case as an issue of jurisdiction as such. However, on the peculiar facts of this case the Statement of Defence here has pleaded copious facts which have enabled the Court to determine when the cause of action accrued and expired and to decide whether the claim is in fact statute-barred under the Public Officers Protection Act. I dare say that the respondent here pleaded in like manner. In determining how to determine this issue Oputa J.S.C opined in Fred Egbe v. Adefarasin that in such instance that,

\"The answer is simply by looking at the writ of summons and the Statement of claim alleging when the wrong was committed which gave the plaintiff a cause of action and by comparing that date with the date on which the writ of summons was filed. This can be done without taking oral evidence from witness. If the time on the writ is beyond the period allowed by the limitation law then the action is statute-barred\".

This procedure as set out in the foregoing abstract having been followed in this case it is beyond question that the

instant claim is statute-barred. There is merit in the appeal. I therefore allow it and abide by the orders contained in the lead judgment