

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU'AZU
SUIT NO. FCT/HC/CV/541/2021
MOTION NO: M/4018/2021
ON THE 28TH SEPTEMBER, 2021**

BETWEEN:

MRS. BILKISU SANNUSI - COMPLAINANT

AND

<p>1. PROF. IDRIS .M. BUGAJE 2. THE RECTOR, KADUNA STATE POLYTECHNIC 3. KADUNA POLYTECHNIC</p>	}	DEFENDANTS.
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Appearance:

*Martin Opara Esq. for the Claimant
A.Ishaq Esq. holding the brief of
K. Umar Esq. for the Defendant.*

RULING

The Defendant in this matter filed a notice of preliminary objection seeking for:

1. An Order of the honorable Court dismissing/striking out the case of MRS. BILKISU SANNUSI V PROF. IDRIS BUGAJE & 1 OR with suit no FCT/HC/CV/541/2021 as this Court lacks jurisdiction to entertain same.

2. And for such further Orders as this Honourable Court may deem fit to make in the circumstances of this matter.

The objection is predicted on 3 grounds, to wit:

1. That this action is statute barred by virtue of the provisions of public officers' protection Act.
2. That 1st and 2nd Defendant are agents of disclosed principal.
3. That the necessary parties have not been joined.

In the affidavit in support, One Al-Amin Imran (the deponent) averred inter alia, that from information he received from Kamaluddin Umar Esq; Counsel for the defense, the Defamation of character which is the basis of this suit was made and published since the 15th day of April, 2019 while this action was instituted on this 24th day of February, 2021, violating the provisions of the public officers' protection Act. The Claimant has been aware of the defamatory statement since it was made as seen in paragraph 10 of the Claimant's statement of claim.

The Deponent averred further that the Claimant did not take any step to institute an action against the Defendants until after the expiration of almost 2 years as such this Court

lacks the jurisdiction to entertain this suit and it will be in the interest of justice to strike out the entire suit for lack of merit.

The Learned Defendants' Counsel in the written address in support of the objection formulated 3 issues for determination, to wit:

1. Whether or not this Honourable Court has the jurisdiction to entertain this matter, the suit having been caught up by the provisions of the public officers' protection Act.
2. Whether or not this Honourable Court has the jurisdiction to entertain this suit, the necessary parties having not been joined.
3. Whether or not the 1st and 2nd Defendant been Agents of the 3rd Defendant, and disclosed, are parties to this suit.

The Learned Counsel argued the issues succinctly in urging the Court to grant the application.

The Claimant filed a Counter affidavit in opposing the Defendant's affidavit in support of their notice of Preliminary Objection.

The Deponent therein one Joy Ishaku Maina averred that from information received from Martin Opara Esq Counsel in the matter, the affidavit of the objectors is defective in form and riddled with falsehood. The Claimant suit has not violated the provision of the public officers' protection Act. That while it is true that the letter grounding this libel action was made on the 15th April, 2019, the Claimant only became aware on the 1st of July, 2020 at the investigation panel as pleaded in paragraph 10 of her statement of claim and her stumbling on the letter on the floor near her office on 9th December, 2020 as pleaded in paragraph 13 of her statement of claim. The publication of which, has confirmed and unabated till date. That the cause of action Crystallised upon the claimant getting hold of the libelous letter on the 9th of December, 2020 and she filed the matter on the 24th February, 2020 a period of less than 3 months.

The Deponent averred further that it will be in the interest of justice to dismiss the Preliminary Objection with cost.

In the written address of Counsel in opposing the Preliminary Objection Learned Counsel formulated a sole issue for determination of the Court, to wit:

Whether this Honourable Court has the Jurisdiction to entertain this suit as presently constituted.

The Learned Counsel argued the issues succinctly in urging the Court to dismiss the Preliminary Objection.

I have given due consideration to the notice of Preliminary Objection and averments in both affidavits in support and against the Preliminary Objection. I have also considered the submission of both Counsels.

In arguing the 1st issue he formulated, to wit:

Whether or not the Honourable Court has the Jurisdiction to entertain this matter, the suit having been caught up by the provisions of the public officers' protection Act.

Counsel contended that, the matter was statute barred and therefore liable to be dismissed. Counsel relied on many authorities and the statement of claim filed by the Claimant where it is stated in paragraph 11 that the said defamatory publication authored by the Defendant was dated 15th April, 2019 but was dispatched on the 26th day of June, 2020. Learned Counsel submits that since this action was filed on the 24th of February, 2021, it is clear that it violates section 2(a) of the Public Officers Protection Act since it was filed outside the statutory period of 3 months.

In response to this issue Learned Counsel for the Claimant argued that in determining the time the cause of action crystallised the Court will be guided by Writ of Summons and the statement of claim. And contains that the cause of action Crystallised on the 9th of December 2020 when the Claimant stumbled on the publication next to her office as stated in paragraph 13 of the statement of claim and that it never ceased.

For clarity, I wish to reproduce the provision of section 2(a) of the Public Officers' Protection Act hereunder.

“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 – limitation of time (a) the, action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within three months next after the act, neglected or default complained of, or in case of continuance of damage or injury within 3 months next after the ceasing thereof:

In this matter the parties are settled and agreed as to how the period of limitation is determined. In determining the period of limitation the Court has to look of the time the cause of action arose and compared with when the writ of Summons was filed.

This brings me to the question.

“When did the cause of action arise, was it on the 15th of July, 2020, when the Claimant 1st became aware of the publication or on the 9th of December, 2020 when she picked a copy from the floor next to her office.

The answer to question is embedded in the provision of section 2(a) of the Public Officers' Protection Act itself.

In interpreting the provision the Court of Appeal in INEC VS OGBADIBU LG COUNCIL & ORS (2014) LPELR – 2264 O(CA) held that:

“The self same provision has an inbuilt exception/qualification by encapsulating the clause” or in case of a continuation of damage or injury, within this month next after the ceasing thereof”...That is where there continuation of the damage or injuring constituting the cause of action, the calculation of statute-bar is on hold until the cessation of the wrong.

This being the case, the cause of action arose on the 9th of December, 2020 making the action within the statutory limit hunt. I so hold.

On the 2nd issue, to wit:

“Whether or not this Honourable Court has the Jurisdiction to entertain this suit, the necessary parties having not been joined”

The Learned Counsel for the Objectors submitted that non joinder of a necessary party to a suit is fatal to the case and affects the Jurisdiction of the Court to entertain the matter. TAFIDA VS BAFARAWA & ORS (1999) LPELR – 6510 (CA). In response to this issue Counsel for the Claimant maintained that non joinder or misjoinder of parties cannot defeat a cause of action.

I agree with the Learned Claimant's Counsel that non joinder cannot defeat an action. See AZUH VS UBN (2014) LPELR 22913 (SC) where the Supreme per REKERE – EKUN JSC HELD THIS:

“The position of the Law is that non joinder of a necessary party in a suit is an irregularity that does not affect the competence or Jurisdiction of a Court to adjudicate on the matter before it.

Accordingly this issue is resolved against the objectors.

On the last issue, to wit:

“Whether or not the 1st and 2nd Defendants been agent of the 3rd Defendants and disclosed are parties to this suit”.

In arguing this issue Learned objectors’ Counsel submitted that 1st and 2nd Defendant are agents of the 3rd Defendant and ought not to be parties in this suit. Learned Counsel relied on the authority in UKPANAN VS AYAY (2010) LPELR – 8590 (CA).

In response learned Claimants’ Counsel submits that the argument of the objectors’ Counsel is unfounded in Law as the Defendants are joint fortresses and the Claimant has the liberty to select one or all of them to same.

Considering the Defendants are pursuing with joint and normal liability in the tort action for the same injury to this same person, it is right to refer to them as joint fortresses.

Accordingly, it is the Law as hold in BEKS KIMSE (NIG) LTD VS AFRICAN & ANOR as follows: -

“Being joint tortfeasors therefore a Plaintiff (in this case Claimant) is at liberty to choose a victim. He may decide to

sue either the master or the servant or both of them Jointly....

I find that the Claimant is at liberty in this matter to sue the 3 Defendants as she did. I so hold and resolve this issue against the objectors.

By reason of these findings in the preceding part of this ruling, I hold that the Preliminary objection is misconceived and lacking in merit and accordingly fails and it is hereby dismissed. No cost is awarded.

Signed
Hon. Judge
28/9/2021.