

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

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 14

CASE NUMBER : SUIT NO: CV/1605/2020

DATE: : TUESDAY 14TH JUNE, 2022

BETWEEN

ENED ENGINEERING LIMITED

**CLAIMANT/
RESPONDENT**

AND

1. MRS. GRACE BALLAH
2. ENG. RABIU MUSA KWANKWASO
3. ABUJA METROPOLITAN MANAGEMENT COUNCIL
4. HON. MINISTER OF FCTA

**DEFENDANTS/
OBJECTORS**

RULING

The 1st and 2nd Defendants/Objectors approached this Honourable Court vide a Notice of preliminary objection dated and filed on the 14th July, 2020.

The Applicant are praying this Honourable Court for the following:-

1. An Order striking out the Claimant's suit as incompetent and therefore divesting the court of the requisite jurisdiction to entertain the suit and the reliefs sought therein in their entirety.

The grounds upon which this application is brought are as follows:-

- i. That the Claimant's action against the Defendants is statute barred by virtue of the Public Officers Protection Act.
- ii. That the Court cannot exercise jurisdiction on a matter which is statute barred.

In compliance with the rules of this court, learned counsel filed a written address wherein a sole issue was formulated for determination to wit:-

Whether this suit is statute barred thereby robbing the court of jurisdiction to adjudicate on the matter.

It is the argument of learned counsel, that the suit instituted against a public office or public officer was not instituted within 3 months of the act complained of but twenty three months after

this omission makes this suit incompetent and therefore this court cannot entertain same.

It is submitted that the 3rd and 4th Defendants are covered by the definition of the term “Public Officers” used in the Public Officers Protection Act. Section 2 (a) of Public Officers Protection Act; *ATTORNEY GENERAL OF THE FEDERATION VS ALH. ALI ABACHA (2010) 17 NWLR (Pt. 1221) were cited.*

It is further submitted that at this stage, it is not the issue of rightfulness or wrongfulness of the complained default, neglect or inaction that matters, but rather whether the action is not caught by the said limitation Act. In doing so, counsel respectfully submits that all the court needs to consider is the originating processes filed by the Claimant i.e, the writ of summons

and statement of claim to determine when the Claimant approached the altar of justice.

Counsel submits, that all actions taken by the Claimant thereafter the 30th of September, 2018 belong to the realm of future acts and not the immediate past which is material and determines the date of the accrual of cause of action.

***ATTORNEY GENERAL OF LAGOS STATE
VS EKO HOTELS LTD & ANOR (2007) 9
WRN 1 at 66 was cited.***

On the effect of statute barred action, counsel submits that the essence of limitation law is that the legal right to enforce an action is not a perpetual right but a right generally limited by statute. Where a statute of limitation prescribes a period within which an action should be brought, legal proceedings cannot be properly

and validly instituted after the expiration of the prescribed period. Such action robs the court off its jurisdiction to adjudicate on such matter.

***ONIOTA VS TEXACO NIG.PLC. (2016)
LPELR 41483;***

NEPA VS OLAGUNJU (2005) 3 NWLR (Pt. 913) 602 at 162 were cited.

It is the 1st and 2nd Defendants humble submission, that jurisdiction of courts are respectfully conferred by statutes, including the constitution of the Federal Republic of Nigeria 1999 (as amended). ***SAMUEL IWUAGOHI VS CHIZEA AZYKA (2007) 29 WRN Page 120 at 140 was cited.***

Counsel finally urged the court to sustain this preliminary objection and strike out or dismiss the Claimant/Respondent's suit.

In compliance with the law, Claimant/Respondent filed reply to 1st and 2nd Defendants preliminary objection.

It is the submission of counsel that in determining whether an action is statute barred to rob the court of jurisdiction, the relevant processes which a court must peruse through are the writ of summons and statement of claim where one has been filed and served.

The statement of defence is not one of the relevant materials for that purpose. *USMAN VS BAB (2005) 5 NWLR (Pt. 917) 113 at Ratio 5 was cited.*

That a careful perusal of the Claimant's writ of summons and statement of claim will leave one with no doubt that the Claimant's suit is predicated primarily on the trespass acts committed by 1st and 2nd Defendants' Agents on plot 1178, Cadastral Zone B06, Mabushi, Abuja – FCT.

Counsel therefore submits, that action of trespass against the 1st and 2nd Defendants and their Agents is maintainable against them at any time and cannot be affected by operation of any statute of limitation including the public officers protection Act.

Counsel further contends, that in considering whether or not an action is statute barred, the most crucial consideration is the date when the

cause of action arose or accrued. ***ADEJUMO VS OLAWAIYE (1996) 1 NWLR (Pt. 425) 436; ADEKOYA VS FHA (2008) 11 NWLR (Pt. 1099) 539 were cited.***

Based on the foregoing, counsel prayed the court to dismiss the 1st and 2nd Defendants preliminary objection for lacking in merit and proceed with the hearing of this suit in overall interest of justice.

COURT:-

I wish to observe that when there is limitation period, such period is determined by looking at the writ of summons and the Statement of Claim, which alleges when the wrong was committed giving rise to the cause of action, and comparing it with the time when the matter was

commenced, that is, when the Writ of Summons was filed.

Time can, however, only begin to run when there is an existence of a person who can sue and be sued, and material facts that must be proved to entitle the Plaintiff to the sought relief.

EBENOGWUVS. ONYEMAOBA (2008) 3 NWLR (Pt. 1074) 396 P. 422 Paragraph A – C was cited.

The Public Officers Protection Act is a statute of limitation which removes the right of action, the right of enforcement and the right to judicial reliefs in a Plaintiff and leaves him with a bare and lifeless cause of action, which cannot be enforced having been initiated after the three months prescribed by the said Law.

OSUN STATE GOVERNMENT VS. DALAMI NIGERIA LTD. (2007) ALL FWLR (Pt. 365) 436 at 467 Paragraph A – B is cited.

The Public Officers Protection Act, Cap 379 Laws of the Federation of Nigeria, 1990 is designed to protect the officers who act in good faith and does not apply to acts done in abuse of office and with no semblance of legal justification.

UNIVERSITY OF ILORIN VS. ADENIRAN (2007) ALL FWLR (Pt. 382) 1871 at 1913, Paragraphs E – G (CA) is cited.

Learned counsel for the Defendant/Applicant contended that all actions taken by the Claimant thereafter the 30th of September, 2018 belong to the realm of future acts and not the immediate

past which is material and determines the date of the accrual of cause of action.

ATTORNEY GENERAL OF LAGOS STATE VS. EKO HOTELS LTD. & ANOR (2007) 9 WRN 1 at 66 was cited.

That it is the factual situation which gives a person a right to judicial relief.

It is the contention of learned counsel that the suit, instituted against a public office or public officer was not instituted within 3 months of the act complained of but twenty three months after this omission makes this suit incompetent and therefore this court cannot entertain same.

I must state here that it is a general principle of Law, that where the Law provides for the bringing of an action within a prescribed period

in respect of a cause of action accruing to the Plaintiff, proceedings shall not be brought after the time prescribed by statute.

I have gone through the arguments in support of The Notice of Preliminary Objection on the part of the Defendants/Applicants on one hand, and the Plaintiff/Respondent's Reply written address on the other hand.

It is my considered opinion that the salutary approach here is to closely look at the Plaintiff/Respondent's statement of claim which are germane for consideration in establishing whether or not suit No. **FCT/HC/CV/1605/2020** is statute barred by virtue of section 2(a) of the Public Officers Protection Act.

For avoidance of doubt, the section provides thus; section 2(a) *“where an action,*

prosecution, or other proceeding is commenced against any person or any act done in pursuance 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 provision shall have effect”;

Limitation of time, 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 cessation thereof.

In the case of *N.E.P.A VS OLAGUNJU (2005) 3 NWLR, (Pt. 913) Page 602 at Page 623* the court in interpreting the provision of section 2(a)

of the public Officer Protection Act stated that by virtue of section 2(a) of the Public Officers Protection Act Cap 379, Laws of the Federation of Nigeria 1990, where any action, prosecution or other proceeding is commenced against any person for an act done in pursuance or execution or intended execution of any act or law or of any public duty authority or in respect of any act or law, duty or authority, the action prosecution or proceeding shall not lie or be instituted unless it is commenced within (3) three months next after the act, neglect or default complained of or in the case of a continuance of the damage or injury, within three months next after the ceasing thereof.

Indeed, a careful perusal of the Claimant's writ of summons and statement of claim will leave

one with no doubt that the Claimant's suit is predicated primarily on the trespass acts committed by 1st and 2nd Defendants' Agents on Plot 1178, Cadastral Zone B06, Mabushi, Abuja – FCT.

I wish to state the elementary law that, the rules and principles of equity helps only the vigilant and they do not assist an indolent party who fails to pursue his right diligently within a reasonable time. I refer you to the case of ***A.G RIVERS STATE VS.UDE (2007) ALL FWLR (Pt.347) 600 at 614 Paragraph C, Per Mustapha JCC.***

And since in computing the time to ascertain whether a case is statute barred it is the writ of summons and statement of claim that are considered, and in view of the fact that the Plaintiff/Respondent in his paragraph 10 of

statement of claim acknowledged the fact that the cause of action arose sometime in 2014, which is more than 6 years now, it is my considered opinion that section 2(a) of the public officers protection Act., has caught up with the Plaintiff/Respondent's suit.

Similarly, paragraphs of the Plaintiff/Respondent's statement of claim has been properly taken care of by the learned justices of the Supreme Court in the case of *AJIBONA VS. KOLAWOLE (1996) 10 NWLR (Pt. 476)*, when "Ogwuegbu JSC, as he then was stated thus;

"The limitation law and all laws of this description ought to receive beneficial construction. They should be construed liberally but not in such a way as to read

into them words not intended by the lawmakers as the majority decision of Court below portrayed. All limitation laws have for their object the prevention of the rearing up of claims that are stale. To contend that the Defendant must prove Plaintiff's knowledge of such adverse possession for time to start to run, import a strange condition into the limitation law."

On the whole, therefore, I find the argument of learned counsel for the Plaintiff/Respondent halfhearted, whimsical and unsustainable in law.

On the other hand, I find the legal argument of learned counsel for the Defendant/Applicant trite and rooted in law and thereby sustainable.

I most importantly wish to re-state the already established position of law that, for a Court of

law to assume jurisdiction over a matter, the said subject matter of the case shall be within jurisdiction, and there shall be no feature in the case which prevents the Court from exercising its jurisdiction, as in this present case.

See the cases of; ***WAEC VS ADEYANJU (2008) VOL. 6 M.J.S.C. 1 at 23 – 24 Paragraph E – A;***

MADUKOLU VS. NKEMDILIM & ORS (1962) 2 SC NLR 341.

It is clear from all that has played-out in the preceding part of this ruling vis-à-vis the settled position of law, through a long list of cases afore-cited that Plaintiffs/Respondents who had a good cause of action, slept on their rights which by the operation of the law i.e statute of

limitation has become unenforceable at this point in time.

It is very correct and good argument to say suit No. **FCT/HC/CV/1605/2020** is defeated by reason of Section 2(a) of Public Officers Protection Act.

Like a lame duck which can't fly and or a death horse, this matter cannot be revived without infusion of judicial blood. I refuse to order for transmission of such blood and the matter having died by reasons aforementioned shall remain dead.

Consequently, suit is hereby dismissed.

Justice Y. Halilu

Hon. Judge
14th June, 2022