IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

THIS WEDNESDAY, THE 22ND DAY OF MARCH, 2023

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/173/2022
MOTION NO: M /2972/2022

BETWEEN:

WEB ASSETS NIGERIA LIMITED ……. CLAIMANT

AND

1. **NIGERIA POLICE FORCE (NPF)**
2. **INSPECTOR GENERAL OF POLICE (IGP)** **…. DEFENDANTS**
3. **HON. ATTORNEY GENERAL OF THE FEDERATION (HAGF)**

RULING

By an Originating Summons filed on 18th May, 2022, the Plaintiff prayed for a determination of certain questions and upon resolution of the questions, it prayed for Reliefs as streamlined in the summons.

The processes were duly served on defendants. The 1st and 2nd defendants did not react at all. In response, the 3rd defendant raised a preliminary objection filed on 6th May, 2022 challenging the jurisdiction of this court to entertain the matter which is the subject of this Ruling.

The Grounds upon which the objection is premised are as follows:

1. **The Claimant's suit is caught by limitation period under Section 2 (a) of the Public Officers Protection Act.**
   Particulars:

i. **The 3rd Defendant is the Chief Law Officer of the Federation and a Public Officer.**

ii. **The alleged cause of action arose on May 2019 and the Claimant commenced this suit on 20th January, 2022 three years after the alleged cause of action arose, and outside the three months limitation period allowed for the commencement of action against a public officer.**

iii. **The action is statute barred, hence incompetent before this Honourable Court.**

2. **No cause of action against the 3rd Defendant.**

That the 3rd Defendant is not a necessary party in this suit, this matter can be determined without necessarily joining the 3rd Defendant.

The application is support by a 5 paragraphs affidavit and a written address in which 4 issues were raised as arising for determination to wit:

1. **Whether the Claimant's suit is not caught by statute of limitation?**

2. **Whether the suit can be resolved by way of affidavit evidence?**

3. **Whether the Claimant's suit discloses a (reasonable) cause of action against the 3rd Defendant.**

4. **Whether the Claimant's suit can be properly, completely and effectually determined without joining the 3rd Defendant.**

Submissions were made on the above issues which forms part of the Record of Court. I will only highlight the essence of the submissions.

On **Issue 1**, the case made out is that the claimant commenced this case outside the limitation period of three months within which to file an action against a Public Officer as provided for by **Section 2(a) of the Public Officers Protection Act LFN 2004**. That the cause of action arose in **May 2019** but that the claimant commenced this action against 3rd defendant, a public officer outside the 3 months limitation period and accordingly that the action is statute

barred. The case of **Francis Ofili V C.S.C (2008) All FWLR (pt.4340) 1623** was cited.

On **Issue 2**, it was submitted that the case filed raises serious issues of facts relating to the claims of plaintiff that 1st and 2nd defendant cannot validly terminate the claimants Hawk Eyes crime reporting monitoring and response system project and rescind its obligations owed to claimant on grounds of Bribery and Corruption and the refusal of claimants Directors to yield to solicitation for Bribe by the hierarchy of the 1st defendant but only on technical grounds are in the circumstances of the case hugely contentious in nature which cannot be conveniently dealt with by trial based on affidavit evidence without going into a full trial but will require the calling of evidence and tendering of documents and that the present course adopted by claimants will hardly resolve the dispute involving clear disputed facts. The case of **Oba Adegbonyiga Osunbade & 4 ors V Oba Jimoh Oladunni Oyewunmi & 2 Ors NSQLR vol. 30** was referred to.

On **Issues 3** and **4** which was argued together, the case made out is that throughout the gamut of the originating summons, no reasonable cause of action was disclosed against the 3rd defendant as no wrong doing of any kind was attributed or linked to 3rd defendant and accordingly since no cause of action was disclosed against 3rd defendant, that his name be struck out. The case of **A.G. Abia V A.G. of the Fed. (2009) All FWLR (pt.362) 1818** was cited.

At the hearing, counsel to the 3rd Defendant/Applicant relied on the paragraphs of the supporting affidavit and adopted the submissions in the written address in urging the court to grant the application.

In response, the claimant filed a 5 paragraphs counter-affidavit with 2 annexures marked as **Exhibits WA1-WA2**. A written address was filed in compliance with the Rules of Court in which Four issues were raised as arising for determination as follows:

1. **Whether the Public Officers Protection Act (POPA) is applicable to the case of the claimant.**
2. **Whether issue 2 in the 3rd defendants address in support of her preliminary objection is competent, and if so, whether it has any merit.**
3. **Whether the conduct of the 3rd defendant in the circumstances is deserving of the sanction of the Honourable Court by the award of costs against it; and**

4. **Assuming without conceding that the Public Officers Act applies to this case, when did the cause of action arise.**

Submissions were then made on all the above issues which forms part of the Record of Court. I shall here equally highlight the essence of the submissions made.

On **Issue 1**, it was submitted that on the basis of the cause of action forming the grievance of claimant which essentially is found on contract, and that the 1st and 2nd defendants breached their obligations under the Agreement, that the public officers protection Act (POPA) has no application. The cases of **NPA V C.G.F.G.S & Anor (1974) All NLR 463; Cil Risk and Asset Management Ltd V Ekiti State Govt. & ors (2020) LPELR – 49565 (SC)** among others were cited.

On the question of whether the 3rd defendant is a necessary party which was addressed under Issue 1, it was contended that the AG as the Chief Law Officer is vested with the constitutional responsibility of initiating and defending actions against the state and accordingly that he is a proper party in this case.

On **issue 2**, it was contended that the Applicant did not raise any complaint in the affidavit in support of the notice of objection questioning the mode of the **commencemen**t of claimant's suit. Rather that the facts to support this complaint are in the written address which makes the complaint incompetent. That the complaint here relate to **facts** which were not placed before the court. It was further argued that if the complaint is availing and competent, that the facts contained in the originating summons are not contentious. That the conception of the case of claimant by Applicant is erroneous. That the essence of the claim as captured in questions 1-4 and Reliefs 1-4 and 8-11 of the Reliefs sought relate to the interpretation of the MOU contract made between parties which can be properly commenced by the extant procedure. The case of **Stanbic IBTC Holding Plc V FRCN (2020) 5 NWLR (pt.1716) 91 at 133** was referred to.

On **issue 3**, it was submitted that the conduct of 3rd defendant in not responding to processes served on them in good time is a clear manifestation of bad faith which should incur sanctions as it has affected the early resolution of this case.

Finally on **issue 4**, it was contented that even if the POPA was applicable, the cause of action involved serves of events spanning from 2015 to December

2022 as pleaded in paragraphs 50-54 of the affidavit in support of the summons and **Exhibits WA1** and **2** attached to the counter-affidavit. That in situations of this nature, where the cause of action involves series of events or wrongs, that it is the date that the last event or wrong occurred or the ceasure of the continuing wrong that the cause of action is said to have arisen. That in this case, the last event of the continuing wrongs done to the claimant by the 1st and 2nd defendants occurred in December, 2021 while the suit was filed in January, 2021 approximately 1 month after and within the 3 months period allowed by POPA. The case of **Aremo L.I. V Adelenye (2004) 42 NLR 1 at 21** was cited.

At the hearing, counsel to the claimant relied on the contents of the counter-affidavit and adopted the submissions in the written address in urging the court to dismiss the objection.

I have carefully considered the processes filed on both sides of the aisle together with the oral submissions made in addition. In the courts opinion, the issues raised by the application and the submissions made are as follows:

1. **Whether the Public Officers Protection Act (POPA) is applicable to the case of claimant.**
2. **Whether the case discloses a reasonable cause of action against 3rd defendant.**
3. **Where the present action is cognizable under the originating summons? If the answer is in the negative, what then is the effect on the substantive action.**

I start with issue (1). In addressing this point, I immediately note the ambivalence in terms of the case presented by 3rd defendant. In the affidavit in support of the objection, the 3rd defendant stated as follows:

"4. That I was informed by G.A. OLADIMEJI Esq., counsel handling this matter on the 20th of March 2022 at the house of 12:00 noon in their office 5D 29, 5th Floor, Federal Ministry of Justice, Maitama, Abuja and I verily believe him, as follows: …

b. That the 3rd Defendant is the Chief Law Officer of the Federation and a Public Officer.

c. That the alleged cause of action arose in July 2019 and the Claimant commenced this suit on 21st January, 2022, three years after the

cause of action arose, and outside the three months limitation period allowed for the commencement of action against a Public Officer.

d. **That from the Originating Summons filed by the Claimants, there is nothing connecting the 3rd Defendant/Applicant to the Claimant's suit.**

e. **That the Claimant's claims are for breach of contract and allegation of bribery between the Claimant and the 1st – 2nd defendants.**

f. **That the 3rd Defendant/Applicant was not consulted before the 1st – 2nd defendants entered contractual agreement with Claimant, the 3rd Defendant/Applicant should not be joined in this suit.**

g. **That the 3rd Defendant/Applicant is not privy to the Memorandum of Understanding between the Claimant and 1st – 2nd Defendants.**

h. **That 1st Defendant is not a subsidiary department under the 3rd Defendant/Applicant.**

i. **That the Claimant's suit does not affect the 3rd Defendant directly.**

j. **That the 3rd Defendant is not a necessary or proper party to this suit.**

k. **That the Justice of this case demands that the name of the 3rd Defendant be struck out."**

The above averments are clear and unambiguous. It is logical to say that if 3rd defendant on the basis of the averments they made have nothing to do with the MOU or Agreement which forms the crux or fulcrum of the grievance of claimant, then on what basis do they then seek the application of the POPA Act? I just wonder.

The POPA Act does not and cannot act in a vacuum. Its application is fixated on facts of a particular dispute. It is the contested facts or the cause of action that provides basis to apply the Act.

Where a party as the 3rd defendant projects a position that it has nothing to do with a cause or complaint and infact wants out or that its name be struck out, it

appears to me that it cannot factually and legally seek to take benefit of the provisions of the POPA Act. It appears to me that this arm of the objection is entirely an academic exercise which the court does not have the luxury or indulging in.

Out of abundance of cause, let me express some few words on the issue of the POPA Act.

Now it is true that certain enactments stipulate a time limit within which a party who alleges that his civil rights and obligations are stamped on must approach the court for redress. If such a wronged party fails or neglects to institute an action on schedule, as permitted by that enactment, his suit becomes stale and statute-barred. Such a party is taken to be an indolent who has sleeped on his violated rights. His allowing grass to grow under his feet or tardiness, in not taking action within the statutory period, makes the court to lose the jurisdiction to entertain his claim. Approving this position of the law in **Ajayi V Military Administration of Ondo State (1995) 5 NWLR (pt.504) 237 at 254**, Eso, JSC stated:

> ***The issue of whether or not an action has been statute-barred is one touching on jurisdiction of Court for once an action has been found to be statute-barred, although a plaintiff may still have his cause of action, his right of action, that is, legal right to prosecute that action has been taken away by statute. In that circumstance, no Court has the jurisdiction to entertain his action.***

In this case, the legislation on which the objection is based, the POPA in **section 2 (a)** circumscribes the time for initiation of action against a public officer to three months next after the happening of the act, neglect or default complained of or cessation thereof or continuance of damage or injury.

Now it is settled principle of general application that the POPA Act is not an inflexible legislation and admits of certain exceptions. One of such exceptions is undoubtedly a cause of action founded on contract. See **NPA V C.G.F.G.S.P.A & Anor (1974) 1 All NLR 463; Osun State Govt. V Dalami (Nig.) Ltd (2007) 9 NWLR (pt.1038) 661; Bakare V NRC (2007) 17 NWLR (pt.1064) 606 and CIL Risk and Asset Management Ltd V Ekiti State Govt. & ors (2020) LPELR – 49565 (SC).** These cases project the position clearly that the POPA does not extend to actions on contracts.

Accrual of a cause of action and its constituent elements can only be determined from the originating process. As far as can be evinced from the facts in the affidavit in support of the originating summons, the cause of action in this case is undoubtedly rooted on allegations of breach of contract related to the MOU between the parties. Accordingly the provision of the **Section 2 (a) of POPA** do not apply, for the purpose of limitations of actions, to actions such as presented by claimant predicated on contract.

On the issue of disclosure of a reasonable cause of action, it is settled law that in deciding whether there is a reasonable cause of action, the determining factor is the Statement of Claim or in this case the facts situated in the affidavit in support of the summons. The Court needs only to look at and examine the averments in either of these processes of the Plaintiff. See **Ajayi V Military Admin. Ondo State (1997) 5 NWLR (pt.504) 237; &up Bottling Co. Ltd V Abiola (2001) 29 WRN 98 at 116**. The facts as contained in the affidavit in support of the preliminary objection cannot form the basis on which to determine if there is a reasonable cause of action. The answer to the question of whether the originating summons discloses a reasonable cause of action is to be found in the summons and the affidavit in support itself and not in any objection or other extraneous document.

In considering whether there exists a reasonable cause of action, it is sufficient for a Court to hold that a cause of action is reasonable once the Statement of Claim in a case or the summons discloses some cause of action or some questions fit to be decided by a Judge notwithstanding that the case is weak or not likely to succeed. The fact that the cause of action is weak or unlikely to succeed is no ground to strike it out. See **A.G. (Fed.) V A.G Abia State & ors (2001) 40 WRN 1 at 52; Mobil Producing Nig. Unltd V LASEPA (2003) 1 MJSC 112 at 132.**

What then is a cause of action, which has to be reasonable failing which the court would strike out the pleadings? The phrase cause of action has been given different definitions in a plethora of cases by our courts. It is however soothing that the array of definitions bear the same meaning and connotation. See the cases of **Egbe V Adefarasin (1987) 1 NWLR (pt.47) 1 at 20; Omotayo V NRC (1992) 7 NWLR (pt.234) 471 at 483**.

In **Akibu V Oduntan (2000) 13 NWLR (pt.685) 446 at 463**, the Supreme Court defined cause of action as:

"**A cause of action is defined as the entire set of circumstances giving rise to an enforceable claim. It is in effect the fact or combination of facts which give rise to a right to sue and it consists of two elements:**

(a) The wrongful act of the Defendant which gave the Plaintiff his cause of complaint, and
(b) The consequent damage."

Now in so far as can be evinced from the affidavit in support of the originating summons, the fact or combination of facts on which the claimant has formulated the questions and premised the Reliefs sought are as averred in paragraphs 9 to 70 of the affidavit in support and the exhibits attached particularly the MOU involving plaintiff and 1st and 2nd defendants. The MOU involves plaintiff and 1st and 2nd defendants and the grievance is clearly and specifically leveled, again only at 1st and 2nd defendants.

The wrongful acts of the 1st and 2nd defendants in terms of the alleged failure to adhere to the terms of the MOU and the damage suffered has clearly been set out or streamlined.

The affidavit in support of the originating summons has disclosed clearly a reasonable cause of action against 1st and 2nd defendants as it sets out the legal rights of the claimant and the obligations of the 1st and 2nd defendants. It has also set out the actions constituting the infraction of claimant's legal right(s) and also the failure of the 1st and 2nd defendants to fulfill their obligations in such a way that if there is no proper defence, the claimant would succeed in the Reliefs it seeks. See **Nwaka V Shell (2003) MJSC 136 at 149; Ibrahim V Osim (1988) 3 NWLR (pt.82) 257 at 271-272.**

After a careful consideration of the affidavit in support of the originating summons, I am satisfied that it has clearly set out the legal rights of claimant and the obligation of 1st and 2nd defendants. It has also further set out the failure of the 1st and 2nd defendants to meet its obligations. There is however absolutely nothing on the materials, as I have demonstrated at length to situate any link or nexus of 3rd defendant with the subject or crux of the complaint or grievance of claimant or indeed any complaint of wrong doing related to the MOU. There is really no dispute between the claimant and 3rd defendant and there is no single complaint against 3rd defendant in the process filed. The 3rd defendant equally has no connection with the MOU entered into by claimant and 1st and 2nd defendants.

It is to be noted, that the MOU in this case binds only parties subject of the agreement. It contains the basis for the mutual reciprocity of legal obligations between parties and cannot be added to or interpolations made to it to suit a particular purpose. See **Section 128 of the Evidence Act.**

It is true that the 3rd defendant may be the **Chief Law Officer under Section 150 of the Constitution** but this cannot be construed to mean that he must be made a party to all cases involving agencies of the Federal Government even where it has no business at all being a party to the case. The nature and character of the grievance should determine whether the AGF should really be made a party to any case. The joinder of the AGF to any case cannot be one to be made on whimsical grounds or as a matter of course. There must be firm basis for the joinder.

In any event, by **Sections 214 and 215 (1) (a) of the Constitution** and under extant provisions of the Police Act, the 1st and 2nd defendants are liable to be sued by any aggrieved person and they themselves can also sue.

In the context of the specific complaints in this case rooted in breach of contract against 1st and 2nd defendants, the 3rd defendant clearly has no business being a party to the extant action.

The question I have asked myself and that should be the relevant material test is whether the 3rd defendant is a person whose presence before the court as a defendant will be necessary in order to enable the court to effectually and completely adjudicate or settle all the questions involved in the cause or matter? If the answer is in the affirmative, then he ought to be a party, if not, as in this case, then he has no business in such a case. See **Ayanwoko V Okoye (2010) 5 NWLR (pt.1188) 497 at 519 – 520 H-B.**

On the whole, I incline to the view that it is improper to join as co-defendant persons against whom the claimant has no cause of action or complaint. I leave it at that. See **Ajayi V Jolayemi (2001) 10 NWLR (pt.722) 516 at 537-538 H-A**.

This then leads to the last issue of whether the case can be determined vide the originating summons. The 3rd Applicant contends that the cause of action involves disputed facts that can only be established by oral evidence while the claimant contends otherwise.

Before dealing with the substance of the issue, let me address the point made by claimant, that the issue is incompetent because it was not raised as a ground of complaint and facts were not disclosed in the affidavit to support the complaint. That the issue was only raised in the written address.

Now it is trite principle that where there is a point of law which if decided one way of the other will be decisive of the entire litigation, advantage ought to be taken of the facilities afforded by the Rules of Court or other statutory provisions to have it disposed of without delay. Preliminary objections are therefore raised where a defendant feels that on the face of the process filed, a suit is patently unsustainable in the sence that it does not meet some requirements of court or relevant statutes or that it is lacking in materials to sustain it and therefore incompetent.

The objection however has to be properly formulated situating the grounds and relevant provisions of the Rules or statute in question putting the adversary on notice of the nature of the objection. It is not a matter of hide and seek.

In this case, I have carefully gone through the grounds of the objection and the affidavit in support and no where was the issue that the case was wrongly commenced by originating summons raised as a defined ground of objection.

A preliminary objection just like a motion must contain clear defined reliefs sought. The objective of any motion or objection is targeted ultimately at the realization of these defined Reliefs. A court of law qua justice cannot determine a motion outside the context of the issues raised by the application and the Reliefs sought.

The issue of the wrong conduit for the presentation of this dispute was only raised in the **address** of Applicant but the address on the issue is completely disconnected from the issue raised in the motion and it is the issues raised in the objection that defines the issues in dispute, not the address.

The bottom line here is there is absolutely no **Relief** relating to alleged wrong use of the originating summons in this case in the preliminary objection. It is not a matter of form. It is much more fundamental as a court can only grant a Relief **properly** claimed by the party seeking the Relief and then **creditably** established.

The flawed approach here is akin or analogous at trial to raising an issue outside the confines of the **pleadings** which has defined or streamlined the issues in

dispute. A party is bound by his pleadings and cannot go outside it to lead evidence or rely on facts which are extraneous to those pleaded. See **Kyari V Alkali (2001) 11 NWLR (pt.724) 412 at 433-434**. The court is similarly bound by the pleadings and any matter not pleaded will have no bearing on the decision. See **Balogun V Adejobi (1995) 2 NWLR (pt.376) 131 at 158 F**.

As a logical corollary and by the same token, an issue or question not raised or defined in the motion or objection cannot have any bearing on the decision subject of that particular application, notwithstanding that parties addressed the issue. The address on this issue in this case has no foundation, which ought to be the point of law raised in the objection and must therefore collapse. You can't put something on nothing and expect it to stand is a well known legal truism. The address here again in the absence of any issue or ground to sustain it in the motion or preliminary objection is akin to leading evidence to support facts not pleaded. In such situation, the evidence led goes to no issue and will be abandoned.

In the absence of any issue or ground on the application situating a challenge or complaint against the mode of commencement of the present action, I hold that the address on it is incompetent and same is accordingly struck out.

On the whole, the preliminary objection only partially succeeds. Having found that the 3rd defendant has no business being a party to the instant case, its name is accordingly hereby struck out. All the other grounds are however not availing.

The claimant should file amended processes reflecting the present parties in the action and same should be served on all parties.

There shall be no order as to cost.

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Hon. Justice. A.I. Kutigi

<u>Appearances</u>:

1. ***Hezekiah Ivoke, Esq., for the Claimant/Respondent.***

2. ***G.A. Oladimeji, Esq., for the 3rd Defendant/Applicant.***