

IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA  
IN THE BENIN JUDICIAL DIVISION HOLDEN AT BENIN CITY

BEFORE

HIS LORDSHIP, HON. JUSTICE N.A. IMOUKHUEDE ON TUESDAY THE 29TH DAY OF SEPTEMBER, 2014

**BETWEEN:**

1. ELDER J. O. AGHIMIEN (SAN)
2. LUCAS OKOJIE ESQ
3. T. E. OGBEIDE-IHAMA ESQ
4. EDWARD AIBANGBEE ESQ
5. CHIEF TOYE OWOLABI

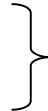


**SUIT NO.: B/375/OS/2009**

APPLICANTS

**AND**

1. THE EXECUTIVE GOVERNOR, EDO STATE
2. THE ATTORNEY GENERAL EDO STATE
3. THE EDO STATE HOUSE OF ASSEMBLY



RESPONDENTS

**J U D G M E N T**

The Claimants filed a Writ of Originating Summons on the 31st July 2009 praying this Honourable Court for the determination of the following questions:

(a) Whether under the 1999 Constitution of the Federal Republic of Nigeria and the 2006 Electoral Act, all executive actions done or decisions taken by the declared winner of a Governorship election by Independent National Electoral Commission (INEC) and who is subsequently removed from office by the Court of Appeal as in the present case are rendered null and void by reason of such removal from office at the Court of Appeal ?

(b) Whether the judgment of the Court of Appeal, Benin Division dated 11th day of November 2008 which nullified the election of Senator (Prof.) Oserhiemen Osunbor as the Executive Governor of Edo State and upheld the election of Comrade Adams Oshiomole as the Executive Governor of Edo State, declared constitutionally null and void all the executive acts or decisions of Senator Prof. Oserhiemen Osunbor done or taken in accordance with the existing laws of Edo State prior to the said judgment of the Court of Appeal?

(c) Whether by the extant provisions of the law establishing/setting up the Edo State Law Review Commission, the 1st Defendant, (i.e. the present Executive Governor of Edo State, Comrade Adams Oshiomole), has the power or authority to dissolve the said Statutory Commission set up and or appointed by his predecessor in office without due regard to or compliance with the provisions of the law?

(d) Whether the existing Law establishing the Edo State Law Review Commission has any provision in it empowering the 1st Defendant (the Governor of the State) to dissolve the Commission before the completion of its assignment as set out in the extant Law?

(e) Whether the 1st Defendant is empowered to relieve the Plaintiffs (the Chairman and members of the Commission) of their statutory appointments before the completion of their assignment without due compliance with the provisions of the Law establishing the Commission?

The Claimants then claimed against the Defendants jointly the following reliefs:

a. A declaration that the dissolution of the Edo State Law Review Commission and consequent wrongful termination of the appointments of the Chairman and Members of the Commission before the completion of their assignment without due compliance with provisions of the Law establishing the Commission by the 1st Defendant, the Executive Governor of Edo State, is null, void and of no effect whatsoever.

b. An order setting aside the 1st Defendant's letter with REF No. SGA. 470/T/7 dated the 24th day of November, 2008 and signed by Hon. Pally Iriase, Secretary to the Edo State Government on behalf of the 1st Defendant, the letter having been issued without compliance with the existing Law establishing the Commission.

c. An order, for the avoidance of doubt, reinstating the Plaintiffs to their aforesaid positions as Chairman and members of the Edo State Law Review Commission with effect from the date of the purported letter of dissolution (until the completion of their assignment), with all their entitlements, allowances, privileges, rights, duties and obligation thereto paid to them or, in the alternative, an order directing the 1st and 2nd Defendants to comply fully with resolution of the 3rd Defendant at one of its plenary sessions on 8th May 2009 regarding the illegal dissolution of the Commission.

d. An order of perpetual injunction restraining the 1st and 2nd Defendants by themselves, their servants or agents in any manner whatsoever from interfering with the Plaintiffs' rights as Chairman and members of the Edo State Law Review Commission pending the final determination of this suit and/or the Plaintiffs' completion of their work as set out in the Law establishing the Commission.

e. An order restraining the 1st and 2nd Defendants, their agents or servants from expending any funds on any person or agent of the 1st and 2nd Defendants purporting to act or perform the functions of the Chairman or members of the Commission except for the purpose appropriated by the 3rd Defendant for the running of the Commission and/or as approved or authorized by the Plaintiffs.

f. An order restraining the 3rd Defendant from giving effect, in any manner whatsoever, to the purported letter of dissolution of the Commission and also an order directing the 3rd Defendant i.e. the Edo State House of Assembly, in its oversight functions, to ensure that any approved budget by it for the Commission are expended for the purpose for which the Commission was originally constituted, under the Plaintiffs.

Counsel to the Respondents raised two preliminary objections bordering on the jurisdiction of this

Court to hear this matter:

(i) That the claims of the Plaintiffs which can be seen from their Originating Summons shows that this matter falls within the exclusive jurisdiction of the National Industrial Court as provided under Section 254 (c) (a) and (k) of the Constitution of the Federal Republic of Nigeria, 1999.

(ii) This suit is statute barred in view of the provisions of section 2(a) of the Public Officers (Protection) Law, Laws of the defunct Bendel State of Nigeria, 1976 as applicable in Edo State, having been commenced outside the three months period required by the said law.

It is expedient that I take the preliminary objection first. In the case of Hassan v. Aliyu (2010) 17 NWLR (Pt. 1223) 547 S.C., Adekeye JSC stated that 'the preliminary objection is meant to consider the issue of jurisdiction or competence of the court to entertain this suit.'

On whether or not this suit is not statute barred in view of the provisions of section 2(a) of the Public Officers (Protection) Law, Cap 137, Volume V, Laws of Bendel state of Nigeria, 1976 as applicable in Edo State, having being commenced outside the three months period required by the said Law, Counsel to the 1st and 2nd Respondents submitted that this action is statute barred by virtue of the provisions of the Public Officers (Protection) Law, Cap 137, Volume V, Laws of the defunct Bendel State of Nigeria, 1976, as applicable in Edo State.

Counsel to the 1st and 2nd Respondents submits that for Section 2(a) of the said law to operate, two conditions must be satisfied to wit:

(1) That the person against whom the action is brought must be a public officer acting in the execution of a public duty within the meaning of the law.

(2) That the act complained of must have been done in pursuance or execution of a law, public duty or authority or in respect of an alleged neglect or default in the execution of any such law, duty or authority and relies on the case of John Ekuagu Vs. Elizabeth Aliri (1990) NWLR (Pt. 126) page 345.

Counsel to the 1st and 2nd Defendants refers Court to item 19 of the 5th Schedule to the Constitution of the Federal Republic of Nigeria, 1999 entitled "interpretation" wherein the term "public officer" is defined as "a person holding any of the offices specified in part II of the schedule."

Counsel to the 1st and 2nd Respondents further submits that in part II of the said Schedule, the 1st and 2nd Defendants are mentioned in items 4 and 6 thereof as public officers. Counsel to the 1st and 2nd Respondents submits that the 1st Defendant carried out the act complained of in his capacity as a public officer and the said act was also done in exercise or pursuance or execution of a public duty.

Counsel to the 1st and 2nd Respondents submits that in order to determine whether the Claimants' action was filed outside the period provided for by the law to enable the 1st and 2nd Defendants take the benefit of the Law, this Court must determine when the cause of action arose in this case.

That the cause of action arose when the Commission was dissolved and the Claimants were removed from office.

Counsel to the 1st and 2nd Respondents submits that the letters issued on the instruction of the 1st Defendant dissolving the Commission were dated 24th November, 2008. Counsel to the 1st and 2nd Respondents submits that , the 1st Claimant admitted having received the letter of dissolution on the 2nd of December, 2008.

Counsel to the 1st and 2nd Respondent submits that from the tone of the letter of dissolution of the Commission and the removal of the Claimants is clear and final and there is absolutely nothing conveyed therein, admitting of any intention to negotiate the decision conveyed therein with the Claimants.

Counsel to the 1st and 2nd Respondents submits that the Originating summons in this case was filed on the 31st of July, 2009 about eight months after their removal from office.

Counsel to the 1st and 2nd Respondent submits that the refusal or failure by the 1st Respondent to comply with the directive of the 3rd Defendant did not give rise to a fresh cause of action.

Counsel to the 1st and 2nd Respondent submits that the 1st Respondent acted in good faith and the action was legally justified since the enabling law pursuant to which the Claimants were appointed did not provide for any specified tenure for the Claimants. Counsel to the 1st and 2nd Respondents submits that the appointment and removal of the Claimants were at the pleasure of the 1st Defendant as Governor of Edo State. Counsel to the 1st and 2nd Respondents refers this Court to Section 208 (5) of the Constitution of the Federal Republic of Nigeria 1999 which gives the Governor power to appoint and remove certain persons from office.

Counsel to the Claimants submits that the Public Officers (Protection) Act does not avail the 1st and 2nd Respondents, refers to section 2 of the said law and submits that there was a continuance of damage and injury to the Claimants herein which constitutes an exemption to the applicable three months period .

Counsel to the Claimants submits that the 1st, 2nd and 3rd Defendants collectively constitute the Government that issued the purported letters of dissolution, failure and /or refusal of the 1st and 2nd Defendants/Applicants to comply with the resolution of the 3rd Defendant (Exhibit 2) to reinstate the Claimants depicts a continuance of the damage of injury till date. Counsel to the Claimant submits that Exhibit 2 conveying contradictory decisions to the Claimants, the combination of which makes the matter still enforceable and an actionable wrong and refers to the case of *Ezerobo v. IGP* (2009) 11 NWLR (PT 1151) 117 at 120, Ratio 2 at page 121.

Counsel to the Claimants submits that the Court is duty bound to consider the Originating Summons in order to consider the limitation period and refers to the case of *MBONU V NIGERIA MINING CORP.* (2006) 13 NWLR (PT 998) 659 AT 662 .

Counsel to the Claimant submits that that where there has been an admission of liability during

negotiation as was done by the Defendants in this case, who assured the Claimants that something would be done about their case upon receipt of Exhibit 2, which was written within three months of their purported removal, and it remained only the fulfilment of the agreement; it cannot therefore be just and/or equitable that the action would be barred after the statutory period of limitation giving rise to the action, if the Defendant(s) are to resile from the agreement during negotiation.

Counsel to the Claimants submits that the dissolution of the Law Review Commission was done without any semblance of legal justification, that it was done in bad faith, was an abuse of office or was actuated by malice or ulterior motive. Counsel to the Claimants submits that the 1st and 2nd Defendants are therefore not covered by the Public (Officers) Protection Law and relies on the case of UNILORIN V. ADEDIRAN (2007) 6 NWLR (PT 1031) 498 AT 535.

Section 2 of the Public Officers (Protection) Law provides thus:

“Where any action, prosecution or other proceedings 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 any such Act, duty or authority, the following provisions shall have effect:-

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

In the case of John Ekuagu V Aliri (supra) Kolawole JCA stated inter alia that

‘Section 2 of the Public Officers Protection Law gives cover to a public officer who has acted within the confines of his public duty. Once the officer steps out of the bounds of his public authority he is open to prosecution ...In order words, such public officer can be sued outside the limitation period..’

Kolawole JCA had earlier stated at page 353 that ‘I am firmly of the view that a public officer is only protected under Section 2(a) of the Public Officers Protection Law in respect of acts done in execution of any public duty. If a public officer is driving his vehicle and knocks down a pedestrian, he cannot if any action, prosecution or other proceedings against him, call in aid the provisions of that Section 2 of the Public Officers’ Protection Law simply because he is a public officer. Such action for which he seeks protection must be done in pursuance of a public duty.’

Item 19 of the 5th Schedule to the Constitution of the Federal Republic of Nigeria, 1999 titled “interpretation” defines “public officer” as : “a person holding any of the offices specified in part II of the schedule.”

In Part 11 of the said schedule , 1st and 2nd Defendants are mentioned as public officers in items 4 and 6.

Counsel to the Claimants contend that the act of the 1st Defendant was done outside his public duty. What is the act complained of? The Claimants in their originating summons are complaining that by a letter dated 24th of November 2008, the 1st Defendant wrongfully terminated their appointments.

This Court therefore has to determine if the 1st Defendant had the powers to terminate the appointment of the Claimants. The Claimants are the Chairman and members of the Edo State Law Review Commission who were appointed by the then Executive Governor of Edo State, Chief Lucky Igbinedion.

Section 208 (1) of the Constitution of the Federal Republic of Nigeria 1999 gives the Governor power to appoint and remove certain persons from office. The offices are listed in subsection 2(a) to (d) of the said section 208 of the Constitution. Subsection (c) mentions 'Permanent Secretary, or any other Chief Executive in any Ministry or Department of the Government of the State howsoever designated.'

From the above, it is clear that the Claimants fall under sub section (c) of the category of officers the Governor has the power to appoint and remove. This is therefore a constitutional power vested in the office of a State Governor.

Counsel for the Claimants argued that their removal by the 1st Defendant was done in bad faith. I have not found evidence of bad faith in their removal by the Governor and I so hold. Counsel to the Claimant further argued that the enabling law appointing them made no provision for their removal and therefore the act of the Governor is contrary to the law. I have earlier held that the Governor had constitutional powers to appoint and remove the Claimants. Section 1 (3) of the 1999 Constitution provides that:

If any other law is inconsistent with the provision of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.

In *MARWA & ORS. v. NYAKO & ORS* (2012) LPELR-7837(SC) The Supreme Court stated: This Court had given recognition to this supremacy and had expatiated on the Constitution through various judgments in its interpretative jurisdiction. The Constitution is described as the grundnorm and the fundamental law of the land. All other legislations in this country take their hierarchy from the provisions of the Constitution. It is not a mere common legal document. It is an organic instrument Which confers powers and also creates rights and limitations. It regulates the affairs of the nation state and defines the powers of the different components of government as well as regulating the relationship between the citizens and the state. Once the powers, rights and limitations under the constitution are identified as having been created, their existence cannot be disputed in a court of law.

I find therefore that the 1st Defendant acted within his constitutional Powers and I so hold. The next issue for this Court to determine is when the Cause of action arose. The Black's

Law Dictionary defines cause of action as 'a factual situation that entitles one person to obtain a remedy in court from another person.'

In determining when the cause of action arose, the court is enjoined to look only at the Writ of Summons and Statement of Claim and not the Statement of Defence see MBONU V NIGERIA MINING CORP. (2006) 13 NWLR (PT 998) 659 AT 662. In Ela Banjo Vs. Dawodu (2006) 50 WRN 79 Ratio 6 the Supreme Court stated the law in the following terms:

"The period of limitation in any limitation statute is determined by looking at the Writ of Summons and Statement of Claim alleging when the wrong was committed which gave rise to the cause of action and comparing that date with the date on which the writ of summons was filed. If the time on the writ of summons is beyond the period allowed by the limitation law the action is statute barred"

On the authority of Ela Banjo Vs. Dawodu (supra) this Court is obligated to look only at the Writ of Summons and the Statement of Claim in considering the when the cause of action arose,

I have carefully read the Claimant's Originating Summons and I find that the cause of action emanated from the termination of the Claimants appointment vide a letter dated 24th of November 2008. I do not agree with the Counsel for the Claimants that the 1st, 2nd and 3rd Defendants collectively constitute the Government that issued the purported letters of dissolution, failure and /or refusal of the 1st and 2nd Defendants/Applicants to comply with the Resolution of the 3rd Defendant (Exhibit 2) to reinstate the Claimants depicts a continuance of the damage or injury till date.

From the facts of this case it is clear that 1st Defendant not 3rd Defendant terminated the Claimants' appointment.

The 3rd Defendant has no power to appoint or terminate the office of Chairman and members of the Law Review Commission and I so hold. It was the Claimants who brought the 3rd Defendant into the matter by writing a Petition to the 3rd Defendant. I don't agree with the Claimants that the time within which the 3rd Defendant considered their Petition should be regarded as a continuance of the damage or injury till date. I find that the cause of action arose on the 24th day of November 2008 and time began to run from that date and I so hold.

Counsel to the Claimants made heavy weather on the so called negotiations with the House of Assembly, I find no evidence before me that 1st and 2nd Defendants entered into any form of negotiations and I so hold. The letter of dissolution dated 3rd of November 2008 was final in nature. Counsel to the Claimants referred this Court to the case of Ezerobo v. IGP (2009) 11 NWLR (PT 1151) 117(supra) which I find is distinguishable from the facts of this case because in that case the Plaintiff was suspended, an act which was not final in nature unlike this action where the appointment of the Claimants were terminated.

In John Egboigbe Vs. The Nigeria National Petroleum Corporation (1994) 5 NWLR (Pt. 347) 649 &

659 paras F-H the Supreme Court stated:

“As for the period during which the parties engaged in negotiation the law is that when in respect of a cause of action, the period of limitation begins to run, it is not broken and it does not cease to run merely because the parties engaged in negotiation. The best recourse for a person whom a right of action accrues is to first institute an action against the seemingly erring party so as to protect his interest or right in case the negotiations fail. If however, the negotiations do not result in settlement or in an admission of liability the law will not allow the time devoted to negotiations to be excluded from the period which should be taken into consideration for the determination of the question whether a claim has become statute barred”.

I therefore hold that the cause of action arose and accrued to the Claimants when they received their letter dated the dated 3rd of November 2008 on which they predicated their claims against the Respondents. From that date as far as the Respondents were concerned the Claimants was no longer their Employment.

This Court has to then determine if this Suit is statute barred since time begins to run from the date the Cause of Action arose.

This Suit was signed by the Registrar on the 31st of July 2009. Order 5 Rule 15 of the High Court (Civil Procedure) Rules 1988 which was the applicable law at the time of filing of the suit provides that the Writ of Summons commences the action when it is signed and dated by the Registrar or other officer of the court duly authorised to sign the Writ. The 31st of July 2009 clearly falls outside the three months limitation period and I so hold. This suit is therefore statute barred and is dismissed for lack of jurisdiction.

I must however commend Counsel for their well researched written addresses which assisted the Court immeasurably in coming to its decision.

HON JUSTICE NOGI IMOUKHUEDE  
JUDGE  
29/9/2014

J.O.Aghimien  
SAN for himself,with him is I.I. Idahosa Esq.

T. E.  
Ogbeide- Ihama Esq for himself.

E.Aibangbee  
Esq for himself.



A.O. Okungbowa Esq for 1<sup>st</sup> and 2nd Respondents.  
O.O.P. Iyamu for the 3<sup>rd</sup> Respondents.