

SUPREME COURT OF NIGERIA
5TH NOVEMBER, 1993. SC 280/1988.
CORAM:- A.G. KARIBI-WHYTE, S.M.A BELGORE,
O. OLATAWURA, U. MOHAMMED, S.U. ONU, JJSC.

SAMUEL A. ADIGUN

.... PLAINTIFF/APPELLANT

AND

- | | |
|--------------------------------|---------------|
| 1. I.O. AYINDE | |
| 2. PERMANENT SECRETARY FEDERAL |] DEFENDANTS/ |
| MINISTRY OF AGRICULTURE |] RESPONDENTS |
| 3. FEDERAL CIVIL SERVICE |] |
| COMMISSION |] |

COURTS - *Provisions of the Law and Procedure there under - court to only act in accordance there with-whether an action is to be predicated on law or sentiments.*

LIMITATION OF ACTIONS - *Public Officers Protection Law where action was filed almost 3 years after the accident- instead of the prescribed 3 months - whether the action is statute barred.*

TORTS - *State immunity the 1963 Constitution- whether the state is liable in tort.*

FACTS

The plaintiff was until the time of his accident a civil servant in the Federal Civil Service. He was on an official tour when the Range Rover belonging to the Federal Government of Nigeria was involved in accident which resulted in severe injuries sustained by the plaintiff in 1978. The 1st Defendant also an employee of the Federal Government was the driver of the said vehicle and it is not denied that both parties were on an official assignment when the accident occurred. The plaintiff alleged negligence against the 1st Defendant and filed an action for damages before the Minna High Court, Niger State. The Defendants denied the negligence and raised

two defences - that the Federal Government or any of its departments cannot be sued in tort and that the action not being brought within 3 months of the cause of action as the defendant was a public officer.

The learned trial judge dismissed the action in limine upon the preliminary objection and held that the action was statute barred. Plaintiffs appeal to the Court of Appeal, Kaduna Division, was also dismissed. The plaintiff had further appealed to the Supreme Court which had to determine the issues of statutory bar and state immunity.

HELD (unanimously dismissing the appeal whilst the 3rd Respondent was ordered to determine what was due to the Appellant)

1. Where after the accident took place, the Plaintiff/Appellant did not issue a writ until 3 years as against 3 months prescribed under the Public Officers Protection Law, the action is Statute barred being clearly against the Law meant for the protection of public Officers. (P206 L18).
2. The State is not liable in tort under the provisions of the 1963 Constitution and since the cause of action occurred before the 1979 Constitution, the limitation imposed by the Public Officers Protection Law still applies. (P207 L5)
3. Since the Court can only do what the Law permits, it can only act in accordance with the Law and procedure thereunder. An action must be predicated on law and not on sentiments which has no specific boundaries whereas the law applicable to any cause of action must be specific and certain. (P207 L13)
4. The Plaintiff is caught up by the doctrine of State immunity as the State is not liable in tort. (P207 L17)

PER OLATAWURA JSC *"This unfortunate incident occurred when the appellant was on duty. The joy of service is the benefit due to dutiful and loyal public servants after retirement. If his service is cut short through no fault of his as in this case, he should not be cast away in his hour of need To leave him without any compensation based on the usual computation will demoralise public servants. His service has been cut short by an event over which he had no control.... I will therefore order that a copy of this judgment be sent to the 3rd defendant to consider what is due to the plaintiff whose services were terminated by the accident suffered in the course of duty".* (P208 L23)

REPRESENTATION:

J.O. Ijaodola for the Appellant

S.N.C. Harris Eze, for the Respondents.

CASES REFERRED TO

1. *Adimora v. Ajufo* (1988) 6 SCNJ. 18, (1988)1 NSCC 1005
2. *Obiefuna v. Okoye* (1964) NSCC 52
3. *Egbe v. Adefarasin* (1985)1 NWLR (Pt. 3) 549
4. *Ogunsan v. Iwuagwu* (1968)2 ALL NLR 124
5. *Ekeogu v. Aliri* (1991)3 NWLR (Pt. 179) 258
6. *Ransome-Kuti v. A-G & Commissioner for Justice* (1985)2 NSCC 579
7. *Aina v. Trustees Nigerian Railway Corporation Pension Fund* (1970)1 ALL NLR 281
8. *Toriola v. Williams* (1982)7 SC. 27
9. *Letana v. Cooper* (1964)2 ALL ER 929
10. *Bello & Ors. v. A - G for Oyo State* (1986)5 NWLR (Pt. 43) 828
11. *Bronik Motors v. Wema Bank* (1983)1 SCNLR 296
12. *Ogbuinyinya v. Okudo* (1979)6-9 SC 32
13. *Ifezue v. Mbadugha* (1984)1 SCNLR 427
14. *Adeyemo v. Adegboyega & Commissioner of Police* (1973) Vol. 3 (Pt. 111) ECSLR 991
15. *Madukolu v. Nkemdilim* (1962)1 ALL NLR (Pt. 4) 587
16. *Mills v. Renner* (1940)6 WACA 44 at Pt. 45
17. *Fritz-Williams v. A-G of Nigeria* (1932)1 NLR 49
18. *Agu v. Ikwewibe* (1991) NWLR (pt. 180) 385
19. *Egbe v. Alhaji* (1990)1 NWLR (Pt. 127) 546, at 590
20. *Osinupebi v. Saibu* (1982)7 S C 104
21. *Western Steel Works v. Iron Steel Workers Union* (1987) NWLR (Pt. 49) 284

STATUTES REFERRED TO

1. Public Officers Protection Law Cap. 111, Laws of Niger State s, 2(a)
2. Constitution 1979 ss. 6(6) (b), 236
3. Constitution 1963 s. 165 (1)
4. High Court Law Cap. 49 Laws of Niger State s. 28
5. Interpretation Law Cap 52 Laws of Niger State s. 3
6. Interpretation Act Cap. 89 Laws of the Federation of Nigeria and Lagos s. 45
7. Halsbury's Laws of England 3rd Edition Vol. 30, Art, 573 Pt. 314

LEAD JUDGMENT BY OLATAWURA JSC

The nub of this appeal is whether the plaintiff's action is statute barred. The plaintiff was up till the time of his accident a civil servant in the Federal Civil Service of Nigeria and was on an official duty when the vehicle, a Range Rover, belonging to the Federal Government of Nigeria and registered as FGN.5020 was involved in an accident which resulted in severe injuries sustained by the plaintiff. At the time of the accident the 1st defendant who was also an employee of the Federal Government of Nigeria and employed by the 3rd defendant was the driver of the said vehicle. It was not denied that both the plaintiff and the 1st defendant were on official assignment to Monai near Bussa to commission the Monai Fishing Pond which belongs to the Federal Government when the accident occurred. The plaintiff attributed the cause of the accident to the negligence of the 1st defendant. The particulars of negligence pleaded are not necessary for the just determination of the appeal. The negligence was denied by the defendants in their joint defence and they raised two main defences; that the Federal Government or any of its departments cannot be sued in tort and that the action is statute barred in that it was not brought within 3 months of the cause of action as the 1st defendant was a public officer.

The preliminary objection was taken in limine by the learned trial Judge because if successfully raised would dispose of the action. The learned trial Judge in a well considered ruling dismissed the action on the ground that the action was statute barred. The plaintiff was not satisfied with that ruling, he appealed to the Court of Appeal, Kaduna Division. In a unanimous decision; Coram: Wali, Maidama and Ogundare, J.J.C.A, the Court dismissed the appeal on 11/12/86. The plaintiff has now appealed to this court. Briefs were filed by both parties but suffice it to say that the appellant's brief offends against all the rules and authorities on the filing of briefs. However I will refer to the issues raised by the appellant, namely:

- (i) *Whether or not the doctrine of state immunity applied after promulgation of 1963 Constitution.*
- (ii) *Whether or not the trial court would validly dismiss the plaintiff's case without taking of evidence when the plaintiff in his pleading claimed that the injury/damage was continuous and*
- (iii) *Whether or not the public officers protection law applied to the case when the plaintiff and the 1st defendant were public officers."*

The defendants while agreeing with the issues raised by the plaintiff summarised the issues in an elegant manner into two:

- "(i) *Whether the procedure adopted by the High Court and upheld by the Court of Appeal, in dealing with the preliminary objections was right,*
- (ii) *Whether the interpretation and application of the law by the High Court upheld by the Court of Appeal, is right with respect to -*
 - (a) *Public Officers Protection Law Section 2(a) Cap. 111, Laws of Niger State. (See Ruling of H/ct; reproduced) and*
 - (b) *The Common Law Doctrine of State Immunity."*

I will prefer the issues raised by the defendants as they cover the issues arising from the pleadings.

It was agreed that both the plaintiff and the 1st defendant were, at the time the cause of action arose, public officers. This was clearly brought out in the pleadings. See paragraphs 1, 2 and 4 of the Statement of Claim and paragraph 10 of the Statement of Defence.

The plaintiff has contended that time did not start to run from the date the cause of action arose in view of the nature of the injuries sustained by the plaintiff "since there was no cessation of damage and/or injury" and relied on *Adimora v. Ajufo* (1988) 3 NWLR (Pt.80) 1; (1988) 6 SCNJ. 18/30-31 or (1988) 1 N.S.C.C. 1005 for this submission. In other words the plaintiff on this issue is not denying that the Public Officers Protection Law applies. Since it is the contention of the plaintiff that the law does not apply, I will reproduce the relevant section 2(a) Cap. 111 Laws of Niger State which provides:

"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 law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such 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 the case of a continuance of damage or injury, within three months next after the ceasing thereof."*

I will say straight away that the case of *Adimora v. Ajufo* (supra)

relied upon by the plaintiff is not applicable to this case. It will be helpful to state the facts in ADIMORA'S case if only to show that reliance placed on it by the plaintiff shows a misconception of the issues raised in that case. The plaintiff in that case bought about 11 plots of land from the defendants through the 2nd defendants who represented the defendants' family.

5 Receipts were issued by the 2nd defendant. This contract was before the Nigerian Civil War. The defendants' family had a dispute with a different party in respect of the same parcel of land out of which the 11 plots formed a part. The defendants succeeded in their action and thereafter the plaintiff asked for a conveyance of the 11 plots to him.

10 After the civil war the plots of land attracted a higher price. The plaintiff then sued for specific performance or the value of the plots at the current market value. At a later stage the plaintiff was called to the family meeting and it was at that meeting that the defendants' family refused to convey the plots the plaintiff purchased to him. The issue was, when did the
15 cause of action accrue because the plaintiff filed his action 3 months and 3 days after the defendant refused to convey the 11 plots he bought before the civil war to him? It was held that the cause of action accrued when the plaintiff could prosecute the action effectively, that is, after the defendants' refusal to convey.

20 That is not the position in this appeal.

The accident took place on 10th February, 1978 and the plaintiff in this case did not issue a writ until January 1981 which was almost 3 years as against the 3 months under the Public Officers Protection Law. This is clearly against the law meant for the protection of public officers and the
25 action is therefore statute barred: Obiefuna v. Okoye (1964) 1 ANLR 96; (1964) N.S.C.C. 52; Egbe v. Adefarasin (1985) 1 NWLR (pt. 3) 549; Ogunsan v. Iwuagwu (1968) 2 All NLR 124; John Ekeogu v. Elizabeth Aliri (1991) 3 NWLR (pt.179) 258.

I now come to the State Immunity under the Common Law Doctrine. It has its historical origin in the Common Law of England that "the king can do no wrong". In the case of Ransome-Kuti v. Attorney-General & Commissioner/or Justice & Ors (1985) 2 NWLR (Pt.6) 211; (1985) 2 NSCC 879, this principle was examined, explained and this court held that since the case of the plaintiff was founded on that and that as at the time the
35 cause of action arose in 1977 the State cannot be liable for the tortuous acts of its servants and agents. Having held earlier in this judgment that the cause of action in this case arose on 10th February, 1978, it appears to me that learned counsel for the appellant did not appreciate fully the ratio decidendi in Ransome-Kuti's case. Learned counsel's reliance on the Re-

publican Status of the country brought about by the 1963 Constitution appears to me he was in fundamental error of the meaning of a State. A state has been defined as "the organised community, the central political authority". Dicey's Conflict of Laws 7th Edition defines State: The word "State" has various senses. It is often used as meaning a political society, governed by one and the same sovereign power". This definition is in contrast with the meaning of a country which is "the entire territory under one sovereign power". What is enforced is the authority of the country as laid down in the laws of the country. I do not see where under the provisions of the 1963 Constitution that the State is liable in tort. What the appellant seeks to achieve is what the Public Officers Protection Law prohibits. Since the cause of action occurred before the 1979 Constitution: the Limitation imposed by the Public Officers Protection Law still applies. I will refuse to be drawn into an issue not before us, i.e. the provision of section 6(6)(b) and 236 of the 1979 Constitution. As the facts of this appeal before use are concerned, it will be a hypothetical question. An action must be predicated on law and not on sentiments. The court can only act in accordance with the law and procedure thereunder since the court can only do what the law permits. Sentiment has no specific boundaries whereas the law applicable to any cause of action must be specific and certain. It is my firm view that the State is not liable in tort and the plaintiff is caught by the doctrine of State Immunity.

Although I have adopted the issues raised by the respondents in view of the fact that they are concise and relate directly to the matter before the Court, but since there is no appeal against the procedure followed and approved by the Court of Appeal, it is in my view irrelevant to consider that issue not covered by the ground of appeal. I will therefore not bother to question what by implication the appellant has accepted to be true. Any part of the decision not question by way of appeal should not be a matter to be raise by the respondent more so where there has been no cross-appeal.

In the final analysis, this appeal has no merit and is dismissed.

I now come to an issue which should not escape our attention in view of the pleading by the defendants and the facts pleaded in the Statement of Claim and which facts were admitted. Paragraph 11 of the Joint Statement of Defence reads:

"11. *The plaintiff is not entitled to his claim as the computation of damages in the case of injuries by civil servant in the course of their duty is regulated to be awarded.*"

I take this pleading to mean that there is a provision whereby civil servants involved in accidents which led to injuries are paid some damages. The plaintiff was brought to court on a wheel chair. If the matter has gone to trial, I am sure paragraph 2 of the Statement of Defence which avers that the defendants" are not in a position to admit or deny" the paragraphs
5 dealing with the nature of injuries, the hospital where he was treated would have been disallowed as it was not a proper traverse. The defendants admitted paragraphs 1, 2, 3, 4 which read thus:

- 10 *"1. The plaintiff is a servant in the public service of the Federal Government of Nigeria.*
- 2. The plaintiff was a passenger in the Federal Government of Nigeria Range Rover FGN 5020 driven by the first defendant as the servant and/or agent of the second and third*
15 *defendants on 10/2/78 which had an accident at the vicinity of Mokwa.*
- 3. The plaintiff and other officers in the said vehicle were on the way to Monai near New Bussa to commission the Federal Government Monai Fishing Pond.*
- 20 *4. The plaintiff and the first defendant were servants and/or agents of the Federal Government of Nigeria under the general control of the third defendant and were serving in the second defendant's Ministry."*

This unfortunate incident occurred when the appellant was on duty. The joy of service is the benefit due to dutiful and loyal public servants after
25 retirement. If his service is cut short through no fault of his as in this case, he should not be cast away in his hour of need. As at the time of the accident he was just 33 years of age. He is now unable to fend for himself, his wife and children. These are his dependants. To leave him, without any compensation based on the usual computation will demoralise public ser-
30 vants. His services to the nation has been cut short by an event over which he had no control. He carries a scar, a deformity and all other disadvantages for the rest of his life. He should not be cast away like a rag no longer useful for even a dirty job. He might have been wrongly advised, but the public service had up till that unfortunate day served should be magnani-
35 mous not to deny him any entitlement due to him. He deserves pity and compassion. I will therefore order that a copy of this judgment be sent to the 3rd defendant to consider what is due to the plaintiff whose services were terminated by the accident suffered in the course of duty.

In view of the peculiar facts of this case and the unfortunate present

position of the appellant, I will make no order as to costs.

KARIBI-WHYTE JSC

Plaintiff has appealed to this court against the judgment of the Court of Appeal dismissing his appeal to that court. The facts are not in dispute. The claim jointly and severally against the defendants in the Minna 5 High Court was for the sum of N700,000 as special and general damages, for the injury sustained by him as a result of the alleged negligent driving of the 1st defendant.

The facts of the case are that the plaintiff and 1st defendant who were employees of the Federal Government were at all material times em- 10 ployees of the Federal Ministry of Agriculture. 1st defendant was the driver of the Range Rover Vehicle No. FGN 5020 in which plaintiff was a passenger. They were on their way on official assignment to Monai near New Bussa to commission the Federal Government Monai Fishing Pond. The said Range Rover Vehicle No. FGN 5020 driven by 1st defendant ran into 15 an embankment by the side of the Mokwu/New Bussa Road. The back tyre of the vehicle burst, and they were involved in a near fatal accident. Plaintiff sustained severe injuries, resulting in his permanent incapacitation. Plaintiff was hospitalised at the University College Hospital, Ibadan for 18 months. He was also referred to the spinal paralysis service in Edinburgh for further 20 treatment. Plaintiff is now paraplegic, being paralysed from the waist down to his toes. He is also now incontinent, having lost control of his bladder. Plaintiff has also developed pressure sores over the sacrum, the greater trochanters and the heels and ankles.

Plaintiffs disability has been assessed at 100%. All defendants 25 denied liability.

In paragraphs 6, 7, 8, 9, 10. Defendant pleaded as follows:-

- "6. The defendants will contend at the trial that the principle of *res ipsa loquiter* does not apply to this case.
7. The defendants will contend at the trial that the Federal 30 Government or any of its department cannot be sued in tort.
8. The defendants will content al the trial that the present action is not maintainable in law as no action in tort can be maintained against the government of the federation or its departments.
9. The defendants will contend at the trial that the 2nd defendant 35 is not a juristic person and therefore cannot be sued.
10. The defendants will further contend at the trial that this present action is statute barred, since it was not commenced within 3 months of the plaintiff's injury and as the 1st defendant a public officer whose com-

mission or omission resulted into the plaintiff's injuries was done in the course of his duty."

After the close of pleadings learned counsel to the defendant relying on his averments above stated which raised issues of law, which if successful, would terminate the case in limine, chose to argue the points of law raised therein. A defendant is perfectly entitled to adopt this approach, where he conceives that the point of law relied upon will determine the case in his favour.

It is well settled that where a defendant conceives that he has a good legal or equitable defence to an action he is entitled as a matter of preliminary objection to the action to raise such a defence. - See *Aina v. Trustees Nigeria Railway Corporation Pension Fund* (1970) 1 All NLR 281.

The points of law raised and argued as preliminary points were on

- (i) The immunity of the Federal Government in respect of actions in tort
- (ii) whether Permanent Secretary, Ministry of Agriculture is or juristic person.
- (iii) the application of section 2(a)(iii) of the Public Officers Protection Law to the facts of this case.
- (iv) Whether the action was statute-barred.

The learned trial Judge sustained the objection and struck out the action in limine. He held that the Federal Government was immune from liability in actions in tort.

He also held that the Permanent Secretary, Ministry of Agriculture is a juristic person, capable of suing and being sued. He finally held that by virtue of section 2(a) of the Public Officer's Protection Law, the action was statute-barred.

Plaintiff dissatisfied with this ruling, appealed to the court below. He relied on three grounds of appeal. The appellant on the first ground of appeal challenged the finding of the immunity of the state from tortious liability. On the second ground the trial Judge was said to have erred for holding that the action was statute-barred, without taking evidence. On the third ground, the judgment was challenged for holding that section 2(a) of the Public Officers Protection Law applied even though the plaintiff was himself a public officer.

The Court of Appeal found against the appellant on each of the grounds of appeal and dismissed the appeal. Appellant has come before us on appeal against the judgment of the court below. He has raised the same grounds of appeal as in the court below.

Both parties have filed briefs of argument which they adopted and relied upon in their oral expatiation of the arguments in their brief.

Learned counsel to the appellants formulated three issues for determination which are as follows:-

1. *Whether or not the doctrine of state immunity applied after the promulgation of the 1963 Constitution.*
2. *Whether or not the trial court could validly dismiss a case without taking of evidence when plaintiff in his pleading claimed that the injury/damage was continuous.*
3. *Whether or not the Public Officers Protection Law applied to the case when plaintiff and defendant are public officers."*

Learned counsel to the defendants whilst accepting the above formulation of the issues for determination as ample could not adopt them. Rather he suggested a formulation which in his view is more compact and narrower. His own formulation of two main issues which I consider more appropriate, cover the three issues formulated by learned counsel to the appellant. They are as follows:-

(a) Whether the procedure adopted by the High Court and upheld by the

Court of Appeal, in dealing with the preliminary objections was right.

(b) Whether the interpretation and application of the law by the High

Court upheld by the Court of Appeal, is right with respect to

- (i) Public Officers Protection Law section 2(a) Cap. 111 Laws of Niger State (See Ruling of N/Ct. Page 6 where the section is reproduced;
and

- (ii) The common Law Doctrine of state immunity.

The formulation (i) covers the same issues as (ii) in the appellant's formulation questioning the procedure adopted by the learned trial Judge who determined the preliminary objection without taking evidence. The formulation in (b) above covers issues (1) and (3) of the appellant. The respondent's formulation is preferable because it is consistent with the nature of the application which is a preliminary objection to dismiss or strike out the action on grounds of law.

I consider it convenient to adopt the issues as formulated by learned counsel to the respondent. The first issue which relates to the procedure adopted by the learned Judge in dealing with the preliminary objection of the defendants is also the second in the appellant's issues. However, this issue was not formulated from any of the grounds of appeal.

Learned counsel to the appellant has not made any submission in his brief of argument with respect to the procedure adopted by the learned

trial Judge in dealing with the preliminary objection. This issue is therefore not an issue in the determination of this appeal. I will therefore refer to it not as an issue but as part of the argument.

The action was struck out on the preliminary objection of the respondents inter alia that (a) the action was statute-barred, having been 5 caught by the provisions of section 2(1) of the Public Officers Protection Law, of Niger State.

(b) That the common law doctrine of state immunity applied, and that defendants are not liable.

In his brief of argument, Mr. Ijaodola submitted that the action 10 was not statute-barred, as time could not start to run since there was no cessation of injury/ damage. His interpretation of the law is that the injury resulting in a continuous damage time could not run. Accordingly although the accident happened on 10/2/78 and the suit was only filed in January, 1981, the action was not statute-barred. It was submitted that in any event 15 the issue cannot be determined without the trial Judge first taking evidence from the parties.

It was further submitted that the provisions of section 2(a) of the Public Officers Protection Law do not apply to actions brought by a public officer.

In his reply SNC Harris-Eze, Esq., learned counsel to the respondents 20 submitted that the Public Officers Protection Law was applicable. He argued that time to institute action begins to run when the cause of action arose. The cause of action in this case arose on 10/2/78 when the accident resulting in injury to the plaintiff occurred. Plaintiff filed the action on 21st January, 1981, outside the period of three months prescribed by the stat- 25 ute.

This issue depends entirely upon the proper construction of the enabling statute and consideration of the judicial decisions on the section. The construction of the provision is not lacking in judicial authority. In fact decided cases are replete. It is convenient to reproduce the relevant section 30 of the Public Officers Protection Law which 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 execution of any Law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such 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.

Provided that if the action, prosecution or proceedings be at the instance of any person or cause arising while such person was a convict prisoner, it may be commenced within 3 months next after the discharge of such person from prison. 5

The argument of Mr. Ijaodola on the meaning of the section raises two major issues, both of them novel, even if somewhat mistaken. First the contention that time does not begin to run till the cessation of damage or injury. Secondly, it was submitted that the section does not apply where the plaintiff is himself a public officer. The contention is presumably based on the consideration that an action brought by a public officer who is entitled to the defence if sued cannot be defeated by the same offence. 10

Although learned counsel to the defendant replied to the submission of Mr. Ijaodola in respect of the first argument, there has been no attempt to reply the second. This is not to suggest admission of the novel submission. 15

The defence provided in section 2(a) Public Officers (Protection) Law is statutory. Accordingly the extent and scope of the defence can be gathered within the provisions of the section. I have already reproduced the section in this judgment. The main part of the section provides for actions in respect of, 20

"any action, prosecution or other proceeding ...commenced against any person for any act done in pursuance or execution or intended execution of any law or any public duty or authority, or in respect of any alleged neglect or default in the execution of any such law, duty or authority."

The words of this section appear to me unambiguous and clear, it relates 25 and applies to actions against public officers or authorities for acts done, or in respect of neglect or default in the execution of their duties. Applying the literal rule of statutory construction, the section applies to "any action against a public officer or authority, without exception as to who or in respect of who the action was instituted. The phrase "any action" must be given its 30 natural and ordinary meaning. - See *Toriola v. Williams* (1982) 7 S.C. 27. The section relates to and unequivocally refers to actions against public officers and authorities for injury/damage caused in the execution of duty. It does not seem to me to exclude actions by public officers in the same situation. In the instant case, it is common ground that 1st respondent is a 35 public officer, the 2nd and 3rd respondents are public functionary and authority. The action instituted by appellant against the respondents for injury/damage caused to him through the driving of the 1st respondent, is in respect of an act done in pursuance or execution of a public duty, or in

respect of an alleged neglect or default in the execution of such duty within the meaning of section 2(a) Public Officers (Protection) Law above.

The defence of the public officer is provided in paragraph (a) of section 2 where it declares that,

"the action prosecution 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....."

The proviso which applies to persons in the above circumstances but serving, terms of imprisonment is not applicable to the instant case.

The defence provided in section 2(a) is that actions caught by the provision must be commenced within three months next after the cause of action arose. - See *Obiefuna v. Okoye* (1961) 1 All NLR 357. This is consistent with the general principle that where the law provides for the bringing of an action in respect of a cause of action accruing in the plaintiff within a prescribed period, proceedings shall not be brought after the time prescribed in the statute. The action brought in respect of the cause of action outside the prescribed period offends against the provision and does not give rise to any cause of action, in order words, the action is statute-barred.

Mr Ijaodola has submitted that the instant action is not statute-barred and that there is a continuing damage.

Learned counsel argued that plaintiff is still sick and has not recovered from the injury done to him and which gave rise to the action, Mr. Harris-Eze, for the defendants submitted and I entirely agree with him that the cause of action, namely the injury in respect of which plaintiff has brought the defendant to court, arose on the 10th February, 1978. That was the day on which the accident in which plaintiff sustained the injuries occurred.

Now, the cause of action of the plaintiff is the factual situation relied upon by him as entitling him to a remedy against the defendant - See *Letang v. Cooper* (1964) 2 All ER 929; *Bello & Ors v. A-G. of Oyo State* (1986) 5 NWLR (Pt.45) 828. In the instant case plaintiff has relied on the injury sustained by him on the 10th February 1978, in the vehicle driven by 1st respondent for this action. The cause of action therefore arose on the 10th February, 1978. This action was filed on the 17th August, 1981, which is not only more than three months, but clearly more than three years after the act, neglect or default complained of is as pleaded in paragraph 5 of the statement of claim where it was averred as follows:-

"5. The first defendant drove the said vehicle negligently and/or recklessly as follows:-

(i) he drove too fast to the extent that he could not control the said

vehicle and had to run on to an embankment by the side of the Mokwa/ New Bussa Road, and in turn led the back tyre of the Range Rover to burst.

(ii) *he did not apply the brakes at all and/or properly.*

(iii) *.... circumstances the accident would not have happened at all i.e. the plaintiff shall contend that the principle of res ipsa loquitur applies in the peculiar circumstances,"* 5

This is the act, neglect or default complained of. It is clear the sickness of the plaintiff is the result of consequence of the act, neglect or default complained of. It is not the cause of action. Mr. Ijaodola was wrong in relying on the condition of a continuance of damage or injury. 10

It may be argue that the section could mean, (i) actions in respect of the act., neglect or default complained of, shall be brought within three months of the cause of action, (ii) It could also mean where there is a continuance of damage or injury, within three months after the ceasing thereof Thus even though the cause of action arose the same day, actions in respect of the latter can not be brought until within three months after cessation of the damage or injury. If so construed actions in this latter category may never be brought where there is a chronic injury, or where the damage is continuous affecting different parts of the body at different times after the cause of action has arisen. The construction suggested by Mr. Ijaodola cannot be gathered from the words of the section. It seems to me preposterous to expect the victim to await the cessation of damage or injury before bringing an action for his remedy. The law could not have contemplated such an absurd situation, and I cannot so construe the section :- Bronik Motors v. Wema Bank (1983) 1 SCNLR 296; Ogbuinyinya v. Okudo (1979) 6-9 S.C. 32 Ifezue v. Mbadugha (1984) 1 SCNLR 427. 20 25

However, as I have already stated, actions are instituted on the basis of the factual situation which give rise to the damage or injury and not on the damage or injury complained of. I have found nothing in the section to modify or alter the provisions of the section to what Mr. Ijaodola suggests, it means. 30

I therefore conclude on the construction I have adopted that the cause of action having arisen on the 10th February, 1978, and plaintiff having filed this action on the 21st January, 1981, the action was not commenced within three months of the act, neglect or default complained of as prescribed by section 2(a) of the Public Officers (Protection) Law. Plaintiff therefore had lost his right of action on the 21st January, 1981 when plaintiff filed the action. 35

This is because section 2(a) clearly states that:-

"the action, prosecution or proceeding shall not be or be instituted unless it is commenced within three months, next after the act, neglect or default complained of."

Thus, an action for any act done in pursuance of or in execution of any public duty, alleging neglect or default which is not brought against a Public Officer within three months of the accrual of the cause of action shall not lie - See *Adeyemo v. Adegboyega & Commissioner of Police* (1973) Vol. 3 (Pt. 111) ECSLR 991. The preliminary objection is that the action does not lie. In other words, it is that the action is incompetent. Plaintiff not being competent to bring it, the court lacked the requisite jurisdiction - See *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341; (1962) 1 All NLR (Pt. 4) 587.

Mr. Ijaodola contended that it was important for the learned trial Judge to hear evidence before ruling on the preliminary objection. He therefore submitted that the learned trial Judge was wrong not to have done so. I do not consider it necessary to spend considerable time on this submission. More than fifty years ago the West African Court of Appeal in *Mills v. Renner* (1940) 6 WACA 44 at p. 45 answering an identical submission, stated it succinctly, thus:-

"It would be manifestly absurd to suggest that a court should take lengthy evidence of the parties to a suit where it appeared that the whole suit could be decided upon the pleadings without any evidence being called."

This practice has been followed ever since. In *Aina v. The Trustee of the Nigerian Railway Corporation Pensions Fund* (1970) 1 All NLR 281. It was also held that where it is absolutely clear that the determination of an issue is likely to dispose of the action, a point of law which could lead to such a result could be taken and argued without taking evidence in the matter. In *Aina's* case (supra), the Court stated that the whole basis of the taking of a preliminary point of law is to show that the action founded on the writ and statement of claim cannot be maintained - See *Egbe v. Adefarasin* (1985) 1 NWLR (Pt. 3) 549. This is the position in the instant case.

I now turn to the other issue, namely, the immunity of the State from actions in tort. Mr. Ijaodola based his argument on the interpretation of the 1963 Constitution. In his view, on the assumption by this country of the Republican Constitution in 1963, the common law doctrine of state immunity was impliedly abrogated, as from October 1, 1963. Mr. Ijaodola admitted his diffidence in the submission but nevertheless urged us to hold that as from 1st October, 1963 this country threw off every vestige of royalty and any law which has its foundation in royalty.

Mr. S.N. Harri-Eze for the defendants argued and relied on S.28 High Court Law of Niger State that up to 1st Oct., 1979 i.e. when the Constitution came into force, the common Law Doctrine that the State can neither do wrong, nor authorize wrong doing, was the accepted law. This it was submitted, and correctly too, was clearly brought out in *Mrs. O. Ransome-Kuti v. Attorney-General for the Federation & Ors.* Doubting 5 whether section 6(6) and 236 of the Constitution is sufficient to reverse the common law doctrine, but the case of *Mrs. O. Ransome-Kuti & Ors v. Attorney-General & Ors*, which was relied upon was decided before coming into force of the 1979 Constitution on the 1st October, 1979.

It is settled law that the law governing a case is the law at the time 10 in force. I have already pointed out that the cause of action came into force on the 10th February, 1978. This was before the coming into force of the 1979 Constitution. Before the 1979 Constitution none of the earlier Constitutions contained provisions which could be construed as annulling the common law principle of the states immunity from liability in Tort. The 15 common law principle of state immunity was received into Nigerian Law by virtue of section 28 of the High Court of Niger State.

The Common Law principle expressed in Latin is "Res non potest peccare" (the king can do no wrong). Before 1st October 1979 by virtue of section 28 (supra), the Crown/State in our circumstance enjoyed immunity 20 from legal action and could not be impleaded in its own Court for the tortious acts of its servants. This common law rule was automatically part of the common law of this country as a colony and on independence. See *Ransome-Kuti v. A-G. of the Federation* (1985) 2 NWLR (Pt.6) 211 - See *Fritz Williams v. A-G. of Nigeria* (1932) 1 NLR 49. It was not altered by the 25 nominal change to a Republican Constitution in 1963.

The 1963 Constitutions made no alteration in substance. It merely substituted the President for the Governor-General, who continued to enjoy the doctrine of the sovereign's immunity from suit derived from the English 30 Common Law. There were no words in any of the sections of the 1963 Constitution which could even by implication be construed as abrogating the common law doctrine of the immunity of the crown. The provisions of section 6(6)(b) and 236(1) of the Constitution 1979 are not in the 1963 Constitution. The common law rule of the immunity of the crown was therefore properly applicable in 1978 when the cause of action arose. The 35 defendants were right to have relied on the defence, and the courts below to have granted the preliminary objection and struck out the action.

All the issues having been resolved against the plaintiff, the appeal fails and is accordingly dismissed.

This should not be the end of this case. The defendant has succeeded on technicality, which is not only undeserved but also exposes the injustice in the protection of the Public Officer. It is unconscionable that a Public Officer should be deprived of a remedy he ordinarily would have enjoyed merely because the injury was caused by another public officer, where both of them were lawfully carrying out their duty. Again, the public officer was unable to bring action within the prescribed period because the defendants were undertaking his treatment in accordance with his conditions of service.

I think the 2nd and 3rd respondents should review the case with especially sympathy in the interest of the public service and the morale of serving officers, and pay to the plaintiff whatever is due to him.

I have read the judgment of my learned brother Olatawura. J.S.C. I agree entirely with his reasoning. I adopt entirely his reasoning and conclusion recommending payment due to the appellant.

There is no order as to costs.

BELGORE JSC

I had the privilege of reading in advance the judgment of my learned brother. Olatawura, J.S.C, with which I agree. On the legal basis alone I find no merit in this appeal. But I share the sentiments expressed in the penultimate paragraph of the judgment that the law has been cruel to the appellant. The appellant has been caught in the straight jacket of computation of time within which to sue and legally seems to have no remedy. The remedy he cannot enforce is that of the litigation in Court of law because his suit is statute-barred. That notwithstanding there is the inbuilt remedy against this type of situation in all civilised governments, which I believe will be available to the appellant. Administratively, from the Head of Department to the Governor in the State, from Head of Department along communication line to Head of State at Federal level, extra-gratia payments are usually made to victims of this type of misfortune. I am very sure that if pursued, this legal decision will not be a bar to extra-gratia payment once a petition is written with this judgment attached.

MOHAMMED JSC

My learned brother, Olatawura, J.S.C. has considered all the salient issues raised in this appeal, in his judgment, the draft of which he permitted me to read in advance, I have nothing more I can add to his opinion. I too would dismiss this appeal.

I have some sympathy with the appellant having been caught up by

the provisions of a statute which, in my view, needs to be reviewed, considering the short limitation period in its provisions. The three months period provided in the Public Officers Protection Act, Cap. 379, Laws of the Federation of Nigeria, within which an action could be instituted against actions of persons acting in the execution of public duties is too short. Preparation for filing a suit nowadays, including the provision for the expenses 5 attached to litigation may be difficult to accomplish within three months.

I am therefore entirely in agreement that the 2nd and 3rd respondents should look into the plight of the appellant with a view to granting him compensation which is due to him in the quickest way possible.

I abide by all the orders and recommendations made in the lead judgment. 10

ONU JSC

I have had a preview of the lead judgment of my learned brother Olatawura, J.S.C. just delivered and with it I am in full agreement that the appeal fails. I wish, however, to add by way of expatiation or emphasis as 15 follows:-

The judicial course charted by the case giving rise to the instant appeal began in the High Court of Niger State holden at Minna. There, the plaintiff now appellant, took out a writ of summons dated 21st January, 1981 in which he claimed against the defendants, now respondents, jointly 20 and severally the sum of seven hundred thousand naira (N700,000.00) being special and general damages for injuries he sustained on February 10, 1978, resulting from the alleged negligent driving by the 1st respondent involving a Federal Government Range Rover registered No. FGN 5020, 25 then under his (1st respondent's control) in the course of the joint performance of his (1st respondent's) and appellant's duties in the vicinity of a town called Mokwa, also in Niger State. In joining the 2nd and 3rd respondents in the action, it was appellant's contention that they were vicariously liable for the act of the 1st respondent.

The learned trial Judge (Awoniyi, J.) in what appears to me to be a 30 well considered ruling held, after listening to a 3 point preliminary objection raised at the instance of the respondents, that the appellant's suit lacked merit and so dismissed it in limine. After appealing unsuccessfully to the Court of Appeal from that decision, the appellant has further appealed to this court on three grounds of appeal similar to those from the court of first 35 instance to the court below.

I wish to emphasise that before proceeding any further firstly that except for Issues Nos. 1 and 3 formulated by the appellant which can be said to have been distilled from grounds one and three respectively, the

remaining issue i.e. Issue No. 2 submitted by him is clearly unrelated to ground two. For instance, while ground 2 of the appeal grounds complains that *"The Court of Appeal ought to have set aside the High Court's judgment and ought to have directed that the case be heard on merit. Issue No.2 which ought to overlap or emanate therefrom asks "whether or not the trial court could validly dismiss the plaintiff's case without taking evidence when the plaintiff in his pleading claimed that the injury/damages was continuous."* It is now firmly settled by a plethora of decided cases that issues for determination should not merely be consistent with and fall within the scope and confines of the grounds of appeal relied upon (See *Agu v. Ikwewibe* (1991) 3 NWLR (Pt. 180) 385 at 401 and *Egbe v. Alhaji* (1990) 1 NWLR (Pt.128) 546 at 590, but they should be framed from the grounds before the Court. Consequently, any issue, argument or other part of a brief which has no ground or grounds of appeal to support it or which is based on a ground of appeal for which no leave is sought and obtained, is not only incompetent but completely valueless in the appeal. See *Osinupebi v. Saibu* (1982) 7 S.C. 104 and *Western Steel Works v. Iron Steel Workers Union* (1987) 1 NWLR (Pt.49) 284. Issue 2 being in, my view, incompetent and completely valueless in the appeal be and is accordingly hereby struck out.

Turning to the two issues left for me to consider which I view strictly and purely turn on law, I shall take issue 1 first. The doctrine of state immunity derives its origin from the common Law Doctrine that the state can do no wrong nor can it authorise wrong-doing. It is founded on the premise that actions in tort are not maintainable against the state whether for injuries, damage or death. As at the time of the injury for which the appellant's cause of action took root. i.e. in 1978, the Constitution then in force was the Constitution of Nigeria, 1963. It relevantly provided in respect of 3rd appellant in section 165(1) (Now repealed) thus:

"The Public Service of the Federation" means the service of the Republic in a civil capacity in respect of the government of the Federation. "

As to the applicable law when the appellant's suit was commenced, one can but fall on section 28 of the High Court law, Cap. 49, Laws of Niger State which is in pari materia with section 45(1) of Interpretation Act, Cap. 89, Laws of the Federation of Nigeria and Lagos for a guide. Section 28 of the High Court Law Cap. 49 (ibid) provided:

"28. Subject to the provisions of any written law and in particular of this section and of sections 26, 33 and 35 of this law:-

(a) the common law

(b) the doctrines of equity; and

(c) the statutes of general application which were enforce in

England on the 1st day January, 1900 shall, in so far as they relate to any matter in respect to which the Legislature of Niger State is for the time being competent to make laws, be in force within the jurisdiction of the court."

Hence, as at the time the cause of action arose, the suit commenced particularly against the third respondent was by law not maintainable. This is irrespective of the adoption by Nigeria of a Republican form of government as from October 1, 1963. Indeed the status quo remained until the coming into force on 1st October, 1979 of the Constitution of the Federal Republic of Nigeria of that year. Be it noted that in England whose laws we adopted, the Crown Proceedings Act of 1947 had made it possible for a person against whom a tort was committed to sue the Government or its agents without obstacles claiming damages whereas in Nigeria the received English Laws continued to be applied. Hence, when the case of Mrs. Olufunmilayo Ransome-Kuti & 6 Ors. v. The Attorney-General of the Federation (1985) 2 NWLR (Pt. 6) 211; (1985) 6 S.C. 246 came up for consideration the Supreme Court dismissed the appeal of the appellants therein on the 'technical' ground that when the cause of action arose in 1978, the Constitution applicable to Nigeria was the Constitution of the Federal Republic of Nigeria, 1963 (the Constitution of the Federal Republic of Nigeria, 1979) which by the combined operation of its sections 6(6)(b) and 236 invested in the citizen the enforcement of his civil rights and obligation vis a vis the Government.

The situation even though a sad commentary on our inability to legally move with the times, would not derogate from the state of the Law as it then was. Ironically the status quo remained in Nigeria at least until the 1979 Constitution came into force on 1st October, 1979.

Having held that as at the time the cause of action which gave rise to the case herein on appeal an action was not maintainable against the 3rd respondent. I will now proceed to briefly consider Issue No.3 whose purport is whether or not the Public Officers Protection Law (of Niger State) applied to the case when the appellant and the 1st respondent were public officers. This issue which I view as wrongly couched in that it should have been talking of "*when the 1st and 2nd respondents were public officers*" instead of "*when the appellant and 1st respondent were public officers*" ought to be allowed to be argued by correcting the error attendant thereto, It is note-worthy that the error is understandable in that appellant and 1st respondent were co-public officer who not only worked in the same Federal Ministry of Agriculture but were both involved in the accident giving rise to the case leading to this appeal. Now, section 3 of the Interpretation Law,

Cap. 52 Laws of Niger State defines "Public Officer" or "Public Department" as extending to and including every officer or department invested with or performing duties of a public nature whether under the immediate control of the President or of the Governor of Niger State or not. That the 1st and 2nd respondents are public officers can be gleaned from the
 5 appellant's Statement of Claim in paragraphs 2 and 4 at pages 1 & 9 of the Record as well as in the joint respondents' Statement of Defence in paragraphs 1 and 10 at pages 10 and 11 of the record. By virtue of section 2(a) of the Public Officers (Protection) Laws. Cap. 111 of Niger State:

*"Where any action, prosecution, or other proceeding is commenced
 10 against any person for any act done in pursuance or execution or intended execution of any law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such law, duty or authority, the following provisions shall have effect;*

*(a) "the action, prosecution, or proceeding shall not lie or he instituted
 15 illness 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:*

*Provided that if the action, prosecution or proceeding be at the instance of any person for cause arising while such person was a convict
 20 prisoner, it may be commenced within three months after the discharge of such person from prison."* (Emphasis mine).

In the instant case, the cause of action as pleaded arose on 10th February, 1978 vide paragraph 2 of the Statement of Claim and paragraph 1 of the Statement of Defence whereas the appellant filed his action on
 25 17th August, 1981, outside the three months period allowed by the law. One may ask, when does time begin to run? The law is unequivocal that time begins to run when the cause of action arises, i.e. when there is in existence a person who can sue and another who can be sued, and when all the facts have happened which are material to be proved entitle the
 30 plaintiff to succeed. See *Lasisi Fadare & Ors. v. Attorney-General of Oyo State* (1982) 4 S.C. 1 at pages 6/7. For further definitions of what constitutes a cause of action See *Alhaji Abubakar Alhaji & Anor v. Fred Egbe & Anor* (1986) 1 NWLR (Pt. 16) 361; *Fawehinmi v. Akilu* (1987) 4 NWLR (Pt. 67) 797 at 970; *Aminu Ibrahim v. Felix Osim* (1987) 4 NWLR (Pt. 67)
 35 965 at 970 and *Halsbury's Laws of England*, 3rd Edition Vol. 30, Article 573, pages 314.

In the instant case, the appellant filed his action on 21st January, 1981 i.e. outside the 3 months period allowed by law. See section 2(a) of the Public Officer's Protection Law (*ibid*). As a result, his action is statute-

barred. See *Ogunsan v. Iwuagwu & Anor* (1968) 2 All NLR 124 and *Lasisi Fadare v. Attorney-General of Oyo State* (supra). It is in my candid view a futile argument as learned counsel for appellant in his brief urged that the cause of action did not fully arise until the appellant's injury and/or damage which was continuous had ceased. See the case of *Michael Obiefuna v. Alexander Okoye* (1961) 1 All NLR 357, a case whose facts are similar in the sense that the defendant there was at the time of the accident, a public officer within the meaning of the section 2 of the Public Officer's Protection Ordinance, Cap. 168 and where it was held, inter alia, that the continuance of injury or damages means continuance of the legal injury, and not continuance of the injurious effects of a legal injury. It was further held that the plaintiff therein (as in the present case) should have commenced the proceedings within three months after the date of the accident and not after the date of his final discharged from hospital. See also the decision of this court in *Fred Egbe v. Justice A. Adefarasin & Anor* (1985) 1 NWLR (Pt.3) 549; (1985) 5 S.C. 50; (1985) 1 NWLR (Pt. 3) 549 on the scope of the immunity of judges of superior courts, the protection of public officers in the discharge of their duties and the fundamental right of the aggrieved to seek and obtain redress in the law court.

The case of *Adimora v. Ajufo* (1988) 3 NWLR (Pt. 80) 1 cited to us by learned counsel for appellant on continuance of injuries sustained and the resultant restraint on the time to commence action by an aggrieved person, is in my respectful view, in the circumstances of the case in hand, not apposite.

For these and the fuller reasons proffered in the judgment of my learned brother, Olatawura, J.S.C. with which I am in entire agreement, I too will dismiss this appeal and affirm the decisions of the two courts below which, as indeed they did, came in for consideration on law pure and simple.

The tendering of the appellant, a hapless invalid in the well of the Supreme Court where we are mainly concerned with the arguments of counsel in relation to the cold sullen prints of the Records was uncalled for, though we cannot be oblivious of or close our eyes to the general outlay of the case as disclosed on the pleadings, consideration of which my learned brother has taken care of. What learned counsel for the appellant did by his production of the appellant in open court may have been aimed at playing to the gallery or to elicit our sympathy but he should be reminded that a court of law is, equally a court of justice. I abide by all the consequential orders as contained in the lead judgment. I make no order as to costs. Appeal dismissed.