

SUPREME COURT OF NIGERIA16TH MAY, 1995. SC. 186/1992

**CORAM:- M.L. UWAI, A.B. WALL, I.L. KUTIGI,
M.E. OGUNDARE, A.I. IGUH, JJSC.**

MR. GAMU YARE (CHUN MADA) APPELLANT

AND

ALHAJI ADAMU NUUKU & 3 OTHERS RESPONDENT

PUBLIC OFFICERS - Action against a public officer - Limitation prescribed within the law - Whether to avail where no public duty is in issue

STATUTES - Commencement - Failure to gazette any order bringing Edict into operation on a particular date - As provided within the Edit Whether the Edict has come into force.

STATUTES - Assent by the Governor - That normally makes a law becomes operational - Is subject to contrary indication as to commencement date.

FACTS

Before the Plateau State High Court, the Respondents filed an action against the Appellant and five other defendants challenging the Appellant's appointment as the Chum Mada of Mada in Plateau State. Pleadings were ordered, duly filed and exchanged. Thereafter, the Appellant who is the Defendant filed a motion praying inter alia, for an order striking out the suit for lack of jurisdiction, and an order dismissing the suit for being statute barred. The trial court upheld the preliminary objection and struck out action for being statute barred.

Being dissatisfied, the Plaintiffs/Respondents appealed to the Court of Appeal which allowed the appeal. The 1st Defendant/Appellant has appealed to the Supreme Court on two issues raised by him.

ISSUES FOR DETERMINATION:

1. Whether the Appellant is a public officer having been duly elected and or selected by the Mada kingmakers, and confirmed by the Plateau State Government, but failure to formally install him as the Chun Mada prevent the Appellant from availing himself of the provisions of section 2(a) of the Public officer, protection Law, of Northern Nigeria, 1963?

2. Whether failure to gazette Edict No. 16 of 1988, by Plateau State

Attorney-General renders the said Edict, a nullity? “

HELD (Unanimously dismissing the appeal per lead judgment of **OGUNDARE JSC**)

Action against a public officer

1. To avail the defendant, a complaint against him must be in respect of any act done by him in pursuance or execution or intended execution of any law or of any public duty or in respect of any alleged neglect or default in the execution of such Law or duty. I have given careful consideration to the learned counsel to the parties in their respective Briefs and their oral submissions before this court. None of the above claims complain of any act done by the 1st defendant or of any neglect or default execution or intended execution of any law or of any public duty. Consequently the court below is perfectly right in concluding that the Public Officers (Protection) Law does not avail the 1st defendant in this case. (p. 1083 D)

Statutes - Commencement

2. It is conceded by the 1st defendant that the Attorney-General of Plateau State had not, as at the time of this action, published in the state Gazette any order bringing the Edict into operation on a particular day. The position in law then is that the Edict, though it exists, has however, not yet come into force and can, therefore, not be applied until the Attorney-General of the State has by an order published in the State Gazette brought it into force. (p. 1085 A)

Statutes - Assent by the Governor

3. The argument of the 1st defendant to the effect- “Therefore the operative word is assent by the Governor, which shows that as soon as the Governor assents to a law it becomes operational, and it is the assent of the Governor that gives the law its validity,” is only valid if there is no contrary intention in the Law. But where there is, as in the Limitation Edict under consideration, it is that contrary intention that prevails. As I have stated earlier on, it is not in dispute that the Limitation Edict having been assented to by the Military Governor is valid. But in view of section 1 thereof, it does not come until the Attorney-General of the State as by order published brought it into force on a date mentioned in the said order. (p.1085 H)

NOTABLE POINTS OF INTEREST

IGUJSC

1. Effect of a statute of limitation

It is trite that a Statute of Limitation removes the right of action, the right of enforcement, the right to judicial relief and leaves the plaintiff with a bare and empty cause of action which he cannot enforce if such a cause of action is statute barred. Where, therefore, the law provides for the institution of an action within a prescribed period in respect of a cause of action accruing the plaintiff, proceedings shall not be brought after the time prescribed by the Limitation Law or Statute. (p. 1090 G)

2. When does a statute come into force

With respect, it does not appear to me that the provisions of either section 4(2) of Decree No.1 of 1984 or section 17 of the Interpretation Law. C 52, Laws of Northern Nigeria 1963 support learned counsel's propos that a statute immediately comes into force and becomes operational the moment it is assented to by the appropriate authority. The enactment statute or law must be distinguished from the date such a statute or law comes into force or becomes operational. A law, once enacted or assented to may come into force on the date of its enactment or on a specified or named date or indeed on a date in future to be appointed. Such date on which the statute comes into force or becomes operational must be ascertained from legislation itself. (p. 1092 F)

REPRESENTATION

J. S. Barau, Esq. (D. M. Mando and M. Z. Jakunda, with him) for Appellant.
E. Toro, Esq. for the Respondents.

CASES REFERRED TO

Military Governor Ondo State v. Adewumi (1988) 3 NWLR (Part 82) 200
Obmianmi Bricks and Stones (Nig) Ltd. v. A.C.B. Ltd (1992) 3 N.W.L.R (Part 229) 260 at 267
Savannah Bank of Nigeria Ltd v. Pan Atlantic Shipping and Transport Agencies Ltd. (1987) 1 N.W.L.R. (Part 49) 212
Egbe v. Adefarasin (1985) 1 N.W.L.R. (Part 3) 549
Obiefuna v. Okoye (1985) 1 N.W.L.R. 96
Atiyaye v. The Permanent Secretary Ministry of Local Government, Borno State (1990) 1 N.W.L.R. (Part 129) 728
Ojokoloba v. Alamu (1987) 3 N.W.L.R. (Part 61) 377 at 402F
Okumagba v. Egbe (1965) 1 All N.L.R. 62 at 65
Hare v. Gocher (1962) 2 Q.B. 641
Osegerby v. Rushton (1968) 2 Q.B. 461
Momoh v. Okewale (1977) 6 S.C. 81 at 88

STATUTES REFERRED TO

Limitation Edict No. 16 1988 of Plateau State ss. 1, 4(2) & 3, 18, 42, 44

Public Officers Protection Law Cap. 111 s. 2(a)

Constitution (Suspension and Modification) Decree No. 1 of 1984 s. 4(2) & (3)

Interpretation Law Cap. 52 Laws of Northern Nigeria 1963 s. 17

LEAD JUDGMENT BY OGUNDARE JSC

The appellant was appointed the Chun Mada of Mada in Plateau State on the recommendation of the 4th, 5th and 6th defendants; the appointment was approved by the then Military Governor of Plateau State. Pleadings having been ordered were duly filed and exchanged; all the six defendants filed a joint statement of defence. Thereafter, the 1st defendant who is now the appellant before us filed a motion praying the court of trial, that is, the High Court of Justice of Plateau State for the following orders:

“(i) An order granting leave to set aside the service of Amended Writ of Summons dated 16/10/90, Statement of Claim dated 29/10/90 and Motion on Notice dated 5/11/90 as same were personally served on the 1st defendant on Saturday 17/11/90, being a public Holiday.

(ii) An order granting leave to strike out the suit for lack of jurisdiction.

(iii) An order granting leave to dismiss the suit for being statute barred.

(iv) And for such other order or orders as this Honourable Court may deem fit to make in the circumstances.”

The application was heard by Naron J. and in a ruling delivered on 19/4/91 he found: *“I am constrained to observe that the submission of Mr. Akubo that the applicable law in this part of the country on limitation of action is the 1625 English Limitation Act is not only perverse but intriguing and strange. With the coming into effect of Decree No. 88 of 1966, the Limitation Act, 1623 became dead, buried and to rise no more. However, careful perusal of the Decree reveals that it is of no application to the present action. We are therefore, left with the Plateau State Limitation Edict, 1988, sections 18, 42 and 44 of which are relevant to the instant case.*

It is further, the submission of Mr. Akubo that the 1st defendant having not been installed, is not entitled to any protection under the Public Officers (protection) Law. There is no premise for this submission. A person elected or selected into the office of Chun Mada does not require any installation to become a Public Officer. All that are vital to his becoming a Public Officer are the approval and endorsement of the Plateau State Council of Chiefs and the Governor respectively.

The installation is a mere formal handing over of staff of office to the officer duly elected or selected. The Public Officers (Protection) Law provides for the protection against actions of persons acting in the execution of

public duties. There is nothing which would necessitate the exclusion of the Plateau State Government or any of its agents from application of the law. The office of the Chun Mada was created in 1980 and has remained so ever since. The 1st defendant though elected/selected on the 6th June, 1990 is merely performing the functions of an office which came into existence in 1980 and is covered by the provisions of the law."

B

He concluded thus:

"Having failed to challenge the Law which was an infraction on their rights within three months (as required by the Public Officers (Protection Law) or five years in accordance with the Limitation Edict, 1988, when the cause of action arose in 1980, cannot be heard now to challenge the law, as such action is statute barred."

C

I do not agree with Mr. Akubo that the cause of action arose only in 1990 when the 1st defendant was elected or selected; their inaction cannot be visited on the 1st defendant. What if the last incumbent had not passed away?

D

The sum total of all these, is that the preliminary objection succeeds. The action is statute barred and is hereby struck out."

Being dissatisfied with this decision the plaintiffs (who are now respondents before us) appealed to the Court of Appeal (Jos Division). The Court of Appeal after hearing arguments allowed the appeal. Mukhtar J.C.A. in a lead judgment of the court, after citing section (1) of the Limitation Edict No. 16 of 1988 of Plateau State, and section 4(2) and (3) of Decree No.1 titled Constitution (Suspension and Modification) Decree 1984 observed:

E

"The case of Military Governor Ondo State v. Adewumi (1988) 3 NWLR (Pt.82) page 200 relied upon by learned counsel for the appellants, is relevant to this issue. I am of the view that the interpretation Law and S.4(2) of Decree No.1 of 1984 supra is very clear and of assistance to the intent of the limitation Edict supra. It is not applicable to the present case, and the learned trial Judge was wrong to have applied it to strike out the appellant's case as he did. Ground of appeal No. (1) supra married to the issue discussed succeeds."

F

On the question of Public Officers (Protection) Law the learned Justice of Appeal observed:

G

"I have read carefully the pleading of the appellant, and my view is that on the face of their claim and averments therein the 1st respondent is not a Public Officer. Even if he will be, he is not as yet for it is the very action that may have resulted in his being a public servant that is being challenged by the appellant. It is the very process and machinery that is adopted and which will lead to his being made a Chun Mada that is the bone of contention. I am therefore of the view that the protection of S.3 of the Protection of Public Officers Law is not available to the 1st respondent. Ground No. (2) of appeal supra which the above issue relates thus succeeds."

H

It is against this decision that the 1st defendant has appealed to this court and

in his Brief of Argument set out the following as the issues arising for determination

“1. Whether the appellant is a public officer having been duly elected and or selected by the Mada Kingmakers, and confirmed by the Plateau State Government, but failure to formally install him, as the Chun Mada prevents the appellant from availing himself to the provisions of section 2(a) of the Public Officer Protection Law of Northern Nigeria, 1963?” B

2. Whether failure to gazette Edict No. 16 of 1988, by Plateau State Attorney-General renders the said Edict, a nullity?

Issue 1: Section 2(a) of the Public Officers (Protection) Law Cap. 111 provides:

“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 - C

(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.” D

The proviso is not relevant to this judgment. To avail the defendant, a complaint against him must be in respect of any act done by him in pursuance or execution or intended execution of any law or of any public duty or in respect of any alleged neglect or default in the execution of such law or duty. E

I have given careful consideration to the submissions of learned counsel to the parties in their respective Briefs and their oral submissions before this court. By paragraph 71 of their Statement of Claim the plaintiffs claimed as hereunder: F

“(1) A Declaration that the appointment and Deposition of Chiefs (Appointment of Chun Mada) (Amendment) Order, 1980 Vide P.S.L.N.N. 3 of 1980 is null and void being an unwarranted infraction on the cherished custom and tradition of Mada Chieftaincy Institution.

(2) A Declaration that the purported appointment, selection, election and/or approval of the 1st defendant as the Chun Mada on or about 6/6/90 is illegal, irregular, a gross violation of the native law and custom respecting the Mada Chieftaincy Institution established by Nzoja Royal Family; null, void and of no effect on the ground that: G

(a) The purported appointment, election or selection was vitiated by manifest irregularities such as improper constitution of the kingmakers or college of selectors. H

(b) The purported appointment, election or selection was prearranged, secretly conducted and not witnessed in accordance with the law.

(c) *The purported appointment, election and selection was done in bad faith calculated to frustrate and impugn on the supremacy of the Nzoja Royal Family.*

(d) *The purported appointment, election or selection was done to defeat the purpose, legendary practice and procedure governing the Mada B Chieftaincy Institution.*

(e) *Necessary and imperative procedures were not followed.*

(f) *the Panel of Traditional Selectors or kingmakers was irregular and improperly constituted.*

(3) *A declaration that the said Mr. Gamu Yare the 1st defendant C herein is not qualified for appointment to the throne of Mada Chieftaincy stool on the ground that he is not a member of the Nzoja Family.*

(4) *A perpetual Injunction restraining Mr. Gamu Yare, his agents or privies or whosoever and howsoever from parading himself or being paraded or held out as the Chun Mada or Chief of Mada for that matter, and D also an order of injunction restraining the 2nd, 3rd, 4th, 5th and 6th defendants from recommending, approving and or installing the 1st defendant as the Chun Mada.*

(5) *A consequential order directing that the 2nd, 3rd, 4th, 5th and 6th defendants allow the Nzoja Royal Family through the plaintiffs to nominate, and/or conduct necessary selection process for the office of Chief Mada E from within that family vide approved college of selectors.*

(6) *Cost of this action*

(7) *Further and other consequential reliefs that may be necessary."*

None of the above claims complained of any act done by the 1st F defendant or of any neglect or default in pursuance or execution or intended execution of any law or of any public duty. Consequently the court below is perfectly right in concluding that the Public Officers (protection) Law does not avail the 1st defendant in this case. I find it unnecessary to consider and determine whether or not he is a public officer since in any event, the law will G not affect him in respect of the claims brought by the plaintiffs.

2nd Issue: It is submitted in the appellant's Brief as follows:

"6. It is our humble submission and contention that failure (if any) by the Plateau State Attorney-General to Gazette Edict No. 16 of 1988, does not in law render the said Edict a nullity."

H This submission clearly beclouds the issue before the court. It is not being contended by either party that the Limitation Edict No.16 (of 1988) of Plateau State is a nullity. The question is whether the Edict has come into force at the time of this action. Section 1 of the Edict states:

This Edict may be cited as the Limitation Edict, 1987 and shall come into operation

on such a day as the Attorney-General may appoint by order published in Gazette.”

It is conceded by the 1st defendant that the Attorney-General of Plateau State had not, as at the time of this action, published on the State Gazette any order bringing the Edict into operation on a particular day. The position in law then is that the Edict, though it exists, had however, not yet come into force and can, therefore, not be applied until the Attorney-General of the State has by an order published in the State Gazette brought it into force. This is borne out by the provisions of section 4(2) of the Constitution (Suspension and Modification) Decree No.1 of 1984 which states:

“An edict is made when it is signed by the Military Governor (now Military Administrator) of the State to which it applies whether or not it then comes into force.” (Italics is mine for emphasis)

Sub-section 3 of the same section 4 provides:

“Where no other provision is made as to the time when the particular provision contained in a decree, edict or subsidiary instrument is to come into force, it shall, subject to sub-section (4) below, come into force on the day when the decree, edict or subsidiary instrument, as the case may be, is made.”

Sub-section (4) is not relevant to the issue under consideration. As the Limitation Edict has other provision in it for its coming into operation, it is that other provision that determines its date of commencement and that other provision is section 1 which specifically states that the Edict *“shall come into operation on such day as the Attorney-General may appoint by an order published in Gazette.”*

Until the Attorney-General has made an order published in the Gazette bringing the Edict into operation, it cannot be applied. The provisions of section 17 of the Interpretation Law Cap. 52 Laws of Northern Nigeria (applicable to Plateau State) which is cited in the appellant’s brief do not help the appellant. Rather the section supports the view taken by the court below. It provides:

“17. When any Law is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make grant or issue any instrument, to give notice or make orders, regulations or rules of court, to prescribe forms, or to do any other thing for the purpose of the law, that power may, unless the contrary intention appear, be exercised at any time after the law has been assented to by the Governor, so far as may be necessary or expedient for the purpose of bringing the law into operation at the date of commencement thereof:

Provided that orders, regulations or rules of court so made shall not take effect till the commencement of the law.”

The proviso clearly puts beyond dispute the contention of the plaintiffs in this case. The argument of the 1st defendant to the effect -

“Therefore the operative word is assent by the Governor, which shows that as soon as the Governor assents to a law it becomes operational,

1086 Yare v. Nuuku (1995) 5 KLR Ogundare JSC
and it is the assent of the Governor that gives the law its validity."

Is only valid if there is no contrary intention in the Law. But where there is, as in the Limitation Edict under consideration, it is that contrary intention that prevails. As I have stated earlier on, it is not in dispute that the Limitation Edict having been assented to by the Military Governor is valid. But in view of section 1 thereof, it does not come into operation until the Attorney-General of the State has by order published in the Gazette, brought it into force on a date mentioned in the said order.

In conclusion, I find no merit whatsoever in this appeal. The conclusions reached by the court below are correct and I affirm them. Consequently I dismiss this appeal with costs to the plaintiffs/respondents assessed at N1,000.00. The case is remitted to the trial court for it to be determined on its merit.

UWAIS JSC

I have had the opportunity of reading in draft the judgment read by my learned brother Ogundare, J.S.C. I entirely agree that the appeal has no substance and that it should be dismissed. Accordingly for the reasons contained therein, the appeal is hereby dismissed and the case is remitted to the High Court for it to proceed with the trial. I adopt the order in the said judgment.

WALI JSC

I have read in advance the lead judgment of my learned brother, Ogundare, J.S.C. and I agree with his reasoning and conclusion for dismissing the appeal.

There is no iota of doubt that the Plateau State Limitation Edict, 1988 is a valid and existing law. The dispute is whether it has come into operation from the date it was assented to and signed by the then Military Governor of the State, notwithstanding the provisions of section 1 of the Edict. Section 1 of the Edict provides that the edict "*shall come into operation on such day as the Attorney General may appoint by an order published in Gazette*".

The wording of section 1 of the Edict referred to is express and clear and does not need any further construction to ascertain its meaning. The Edict will continue to remain in abeyance until a date is published in the gazette for its coming into force. It cannot therefore apply to this action. Both section 1 of Interpretation Law Cap 52 Laws of Northern Nigeria, 1963 and section 4(3) of the Constitution (Suspension and Modification) Decree No.1 of 1984 are not apposite and therefore irrelevant.

As also clearly pointed out in the lead judgment, S.2 of the Public Officers Protection Law Cap. 111 Laws of Northern Nigeria, 1963 cannot apply

to the facts of this case since there is nothing in the pleading to show that the appellant, in his capacity as a public officer, did something whether by way of action, deed, neglect or default in the discharge or execution of any of the public duty or duties assigned to him.

There is no substance in this appeal. It is for these and the elaborate reasons contained in the lead judgment of my learned brother, Ogundare, J.S.C. that I also hereby dismiss this appeal. I subscribe to the consequential orders contained in the lead judgment, including that of costs.

KUTIGIJSC

I will also dismiss the appeal for the reasons clearly stated in the lead judgment of my learned brother Ogundare J.S.C. which I read before now and with which I agree. I endorse the consequential order made by him.

IGUHJSC

I have had the privilege of a preview of the lead judgment just delivered by my learned brother, Ogundare, J.S.C. I agree entirely with the reasoning and conclusion therein and adopt the same as mine.

The respondents, as plaintiffs, had in the High Court of Plateau State filed a civil claim against the appellant and four others, as defendants, claiming as follows:-

“(1) A declaration that the Appointment and Deposition of Chiefs (Appointment of Chun Mada) (Amendment) Order, 1980 Vide P.S.L.N. No.3 of 1980 is null and void being an unwarranted infraction on the cherished custom and tradition of Mada Chieftaincy institution.

(2) A declaration that the purported appointment selection, election and/or approval of the 1st defendant as the Chun Mada on or about 6/6/90 is illegal, irregular, a gross violation of the native law and custom respecting the Mada Chieftaincy Institution established by Nzoja Royal Family; null and void and of no effect on the grounds that

(a) the purported appointment, election or selection was vitiated by manifest irregularities such as improper constitution of the kingmakers or college of selectors

(b) the purported appointment, election or selection was pre-arranged, secretly conducted and not witnessed in accordance with the law.

(c) the purported appointment, election and selection was done in bad faith calculated to frustrate and impugn on the supremacy of Nzoja Royal Family

(d) *the purported appointment, election or selection was done to defeat the purpose, legendary practice and procedure governing the Mada Chieftaincy Institution.*

(e) *necessary and imperative-procedures were not followed.*

(f) *the panel of Traditional Selectors or Kingmakers was irregular and improperly constituted.*

B (3) *A declaration that the said Mr. Gamu Yare the 1st defendant herein is not qualified for appointment to the throne of Mada Chieftaincy Stool on the ground that he is not a member of the Nzoja Royal Family.*

C (4) *A perpetual injunction restraining Mr. Gamu Yare, his agents or privies or whosoever and howsoever from parading himself or being paraded or held out as the Chun Mada or Chief of Mada for that matter, and also an order of Injunction restraining the 2nd, 3rd, 4th, 5th and 6th defendants from recommending, approving and/or installing the 1st defendant as the Chun Mada.*

D (5) *A consequential order directing that the 2nd, 3rd, 4th, 5th and 6th defendants allow the Nzoja Royal Family through the plaintiffs to nominate, and/or conduct necessary selection process for the office of Chief of Mada from within that family vide approved college of selectors.*

(6) *Cost of this action.*

E (7) *Further and other consequential reliefs that may be necessary.*”
Pleadings were duly ordered, settled and exchanged.

By a motion on notice dated the 6th December, 1990, the 1st defendant/appellant moved the trial court, inter alia for the following orders, namely

- F “(i)
(ii) *An order granting leave to strike out the suit for lack of jurisdiction.*
(iii) *An order granting leave to dismiss the suit for being statute barred.*
(iv)

G It ought to be observed that the plaintiffs’ action was sought to be struck out and/or dismissed by virtue of the Plateau State Limitation Edict, No. 16 of 1988 and the Public Officers Protection Law, Cap. 111, Laws of Northern Nigeria, 1963 as applicable to Plateau State.

At the conclusion of the submissions by learned counsel for the parties, the learned trial Judge in a reserved ruling upheld the appellant’s contention and struck out the suit on the grounds that -

H (i) The action was not instituted within a period of five years from the date of the enactment of the Appointment and Deposition of Chiefs (Appointment of Chun Mada) (Amendment) Order, 1980 and that therefore the action was statute barred by virtue of the provisions of the Plateau State Limitation Edict No. 16 of 1988 and

(ii) The action was also statute barred not having been instituted

within three months after the cause of action arose, namely, from the making of the said Chieftaincy order of 1980 pursuant to the provisions of the Public Officers Protection Law, Cap. 111, Laws of Northern Nigeria 1963.

Aggrieved by the said decision, the plaintiffs lodged an appeal to the Court of Appeal, Jos Division which on the 4th June, 1992 allowed the same, set aside the decision of the trial High Court and remitted the case to the High Court of Plateau State for trial before another Judge. The 1st defendant/appellant being dissatisfied with the said judgment of the Court of Appeal, filed an appeal to this court on the same legal issues that were canvassed and determined by both the High Court and the Court of Appeal. I will in this judgment only deal with the two main issues that were raised by the appellant for the determination of this court.

The said main issues are as follows:-

(i) In the absence of any legal Notice or Order made by the Attorney-General of Plateau State, can the Limitation Edict No. 16 of Plateau State be said to have come into operation so as to bar the respondents' claims in this suit.

(ii) Whether the appellant is entitled to benefit from the protection enshrined in section 2(a) of the Public Officers Protection Law, Cap.111, Laws of Northern Nigeria, 1963.

The first issue for determination concerns the provisions of section 1 of the Plateau State Limitation Edict No. 16 of 1988. This Edict which was promulgated into law by the Military Governor of Plateau State on the 25th November, 1987 provides under section 1 thereof as follows -

"TITLE AND COMMENCEMENT.

1. This Edict may be cited as the Limitation Edict, 1987 and shall come into operation on such day as the Attorney-General may appoint by order published in Gazette" (Italics supplied for emphasis)

Learned counsel for the appellant, J.S. Barau Esq while conceding that the Attorney-General of Plateau State had not appointed the commencement date of the Edict submitted that failure to do this did not in law render it ineffective. He referred to the provisions of section 17 of the Interpretation Law, Cap. 52, Laws of Northern Nigeria 1963 and contended that a Law becomes operative as soon as it is signed or assented to by the appropriate authority, in this case, the Military Governor of Plateau State. He argued that the moment the Military Governor assented to the Edict, it became immediately operative and stressed that it is the assent of the Military Governor that gives the law validity. He called in aid section 4(2) of the Constitution (Suspension and Modification) Decree No.1 of 1984 which provides as follows:-

"4(2) An Edict is made when it is signed by the Military Governor

1090 Yare v. Nuuku (1995) 5 KLR Iguh JSC
of the State to which it applies, whether or not it then comes into force”
(Italics supplied)

He also cited the case of Obmianmi Brick and Stones (Nig) Ltd. v. A.C.B. Ltd. (1992) 3 NWLR (Pt.229) 260 at 267 and submitted that Edict No. 16 of 1988 having been signed into law by the Military Governor of Plateau State remained the relevant operative law as at the time the cause of action in this case
B arose.

Learned appellant’s counsel referred to section 18 of the Plateau State Limitation Edict No. 16 of 1988 which provides thus -

“18. No action founded on contract, tort or any other action not specifically provided for in parts 1 and 11 of this Edict shall be brought after
C the expiration of five years from the date on which the action accrued”.
(Italics supplied)

He also referred to section 42 of the same Edict which provides as follows:-
“42. Notwithstanding anything contained in any Edict on the Limitation Law to the contrary, all actions to which this Edict applies howsoever arising against the State or
D against any State Public Authority or officer thereof or any person acting in the stead of such public authority or officer thereof, for anything done or intended or omitted to be done in pursuance or execution of any such act, duty or authority or in respect of any neglect or default in the execution of any such act, duty or authority shall be commenced within the same period of time after the cause of action arose as if such action were brought by or against a private individual” (Italics supplied).

Mr. Barau then argued that the plaintiffs’ cause of action having arisen in 1980 when the Appointment and Deposition of Chiefs (Appointment of Chun Mada) (Amendment Order) Edict No.3 of 1980 which is being challenged in this action was promulgated, the plaintiffs’ right of action lapsed in 1985 pursuant to the provisions of sections 18 and 42 of Edict No. 16 of 1988
F and that this suit is therefore statute barred.

Learned respondents’ counsel, E.J.J. Toro Esq, in his reply contended that the plain, simple and ordinary meaning of section 1 of the Limitation Edict No. 16 of 1988 reproduced earlier on in this judgment is that even though the Edict had been enacted into law and is therefore an existing law in the statute books of Plateau
G State, it shall not come into force or operation unless and until an order to that effect is made and published in the official Gazette by the Attorney-General of the State appointing the date the said Edict shall come into operation. He pointed out that although the Edict was assented to by the Military Governor of Plateau State on the 25th November, 1987, its clear and unambiguous provision is sufficient to dislodge
H any presumption that the Edict came into force on the said 25th November, 1987.

It is trite that a Statute of Limitation removes the right of action, the right of enforcement, the right to judicial relief and leaves the plaintiff with a bare and empty cause of action which he cannot enforce if such a cause of action is statute barred. Where, therefore, the law provides for the institution

of an action within a prescribed period in respect of a cause of action accruing to the plaintiff, proceedings shall not be brought after the time prescribed by the Limitation Law or Statute. See *Savannah Bank Of Nigeria Ltd. v. Pan Atlantic Shipping and Transport Agencies Ltd. and Another* (1987) 1 NWLR (pt.49) 212; *Fred Egbe v. Adefarasin* (1985) 1 NWLR (pt.3) 549; *Michael Obiefuna v. Alexander Okoye* (1964) 1 All NLR 96; *Alhaji Mohammed Atiyaye v. The Permanent Secretary Ministry of Local Government, Borno State and Another* (1990) 1 NWLR (Pt.129) 728 etc. etc. There can be no doubt that the Plateau State Limitation Edict No. 16 of 1988 is a limitation law which is intended to remove the right of action, the right of enforcement and the right to judicial relief from a plaintiff thus leaving him with a bare cause of action which he cannot enforce if the category of action covered by it is brought before the court after the expiration of five years from the date on which the cause of action accrued. The main issue for consideration is whether or not Edict No. 16 of 1988, although an existing law, has yet come into force or operation.

It cannot be disputed that in the area of construction of statutes, the cardinal principle governing the courts is the ascertainment of the intention of the legislature or the law makers. What this court must therefore concern itself with is the ascertainment of the intention of the law makers in the matter of whether or not Edict No. 16 has come into force or operation and, in particular, whether the plaintiffs' present action is caught by its provisions. The function of the court being *jus dicere* and not *jus dare*, if the language of the legislation is clear, explicit and unambiguous, the court must give effect to it, for in that case, the express words of the statute speak the intention of the legislature and must therefore not be overturned. See *Ojokolobo v. Alamu* (1987) 3 NWLR (Pt.61) 377 at 402F and *Okumagba v. Egbe* (1965) 1 All NLR 62 at 65

In the case of Plateau State Limitation Edict No. 16 of 1988, it is clear that the statute was assented to by the Military Governor of Plateau State on the 25th November, 1987.

It is equally plain from the express provision as to its commencement date that it shall come into force or operation on such a date in futuro as the Attorney-General may appoint by order to be published in the official Gazette. In my view, therefore, although that Edict, without doubt, exists in the statute books of Plateau State, having been assented to by the appropriate authority, it has not come into force. It shall only come into force or operation on such date as the said Attorney-General may appoint by order published in the Gazette. In other words, the Edict remains in abeyance unless and until the legislative power delegated to the Attorney-General of Plateau State is exercised. It is conceded by the learned counsel for the appellant that the Attorney-General had not, as at the time of this action, appointed by order published in the state Gazette, any date on which the Edict shall come into operation. I entertain no doubt, therefore, that

the Edict not having yet come into operation cannot be applied until its commencement date is duly appointed and published by the Attorney-General.

My above view has considerable support from the observations of the learned authors of Halsbury's Laws of England, 4th Edition, Vol. 44. Paragraph 917 where they stated thus-

B "Date of coming into operation

A statute which contains no express provision as to its commencement comes into force at the beginning of the day in which it receives royal assent. The commencement of many modern statutes is, however, expressly postponed; the provision in question in some cases itself fixing the date and C in others empowering Her Majesty, or specified Minister of the Crown to appoint a date by order.

Different dates may be fixed for the commencement of different provisions of the same statute or authority may be given to appoint different dates for different provisions or for different purposes " (italics supplied for

D emphasis)

See too Hare v. Gocher (1962) 2Q.B. 641 and Osgerby v. Rushton (1968) 2Q.B. 466.

Reference was made by learned counsel for the appellant on the provisions of section 4(2) of the Constitution (Suspension and Modification)

E Decree No.1 of 1984 and section 17 of the Interpretation Law, Cap. 52, Laws of Northern Nigeria, 1963. The former enactment has already been reproduced earlier on in this judgment. Section 17 of the Interpretation Law, Cap. 52 on the other hand provides thus -

F "17. When any law is not to come into operation immediately on the passing thereof, and confers powers to make any appointment, to make grant or issue any instrument, to give notice or make orders, regulations or rules of court to prescribe Forms, or to do any other thing for the purpose of the Law, that power may, unless the contrary intention appears, be exercised at any time after the Law has been assented to by the Governor; so far as may be necessary or expedient for the purpose of bringing the Law into operation at the date of commencement thereof: Provided that orders, regulations or rules of court so made shall not take effect till the commencement of the Law." (Italics supplied for emphasis).

With respect, it does not appear to me that the provisions of either section 4(2) of Decree No.1 of 1984 or section 17 of the Interpretation Law, Cap. 52, Laws of Northern Nigeria 1963 support learned counsel's proposition that a statute immediately comes into force and becomes operational the moment it is assented to by the appropriate authority. The enactment of a statute or law must be distinguished from the date such a statute or law comes into force or becomes operational. A law, once enacted or assented to, may come into force on the date of its enactment or on a specified or named date or indeed on a date infuturo to be appointed. Such date on H which the statute comes into force or becomes operational must be ascertained from

In the present case, however, section 1 of the Limitation Edict No. 16 of Plateau State, 1988 prescribes that the same shall come into force or become operational on such date as the Attorney-General may appoint by order published in the official Gazette. No such date has yet been appointed. It therefore seems to me clear that the provisions of the said Edict No. 16 of Plateau State, 1988 cannot be said to have come into operation to constitute a bar against the plaintiffs' claims. B

Learned appellant's counsel next took refuge in the provisions of section 4(3) of the Constitution (Suspension and Modification) Decree No. 1 of 1984 in his contention that a statute comes into force and becomes immediately operational once it is assented to. These provide as follows - C

"4(3) Where no other provision is made as to the time when a particular provision contained in a Decree, Edict or subsidiary instrument is to come into force, it shall, subject to subsection (4) below, come into force on the day when the Decree, Edict or subsidiary instrument, as the case may be, is made. D

4(4)(not relevant) (Italics mine).

With due respect, once again, the above provisions of the law are clearly of no assistance or relevance whatever to the contention of learned counsel for the appellants. On the other hand, they would appear to support the respondents' arguments on the point. Section 4(3) of Decree No.1 of 1984 governs cases where there is no provision in a statute as to the time when a particular provision contained in a Decree Edict of subsidiary instrument is to come into force. In such a situation, such a particular provision or provisions shall, subject to subsection (4) of the said Decree No.1 of 1984, come into force on the day when the Decree, Edict or subsidiary instrument is made. E F

In the present case, however, the Plateau State Limitation Edict No. 16 of 1988 expressly provided that the making of a duly gazetted legal instrument or order by the Attorney-General of Plateau State is a *conditio sine qua non* to the coming into force of that Edict. This Edict has not come into force and consequently the questions of its application to the present suit should not have arisen. The learned trial Judge was in my view, in grave error when he placed reliance on the provisions of Edict No. 16 of 1988 that was yet to come into force to strike out the plaintiffs' claims. I agree entirely with the finding of the Court of Appeal per Mukhtar, J.C.A. that the Edict in issue is inapplicable to the present case. Issue number 1 is accordingly answered in the negative. G

Issue number 2 is whether the appellant in the instant case is entitled to the protection afforded by section 2(a) of the Public Officers Protection Law, Cap. 111, Laws of Northern Nigeria, 1963, applicable to Plateau State. Learned counsel for the appellant referred to the definition of the term "Public Officer" in section 3 of the Interpretation Law, Cap. 52, Laws of Northern H

Nigeria, 1963 and submitted that the appellant being the Chun Mada whose selection was approved by the Government of Plateau State is a public officer and is therefore covered by the provisions of section 2(a) of the Public Officer

ers Protection Law. Learned counsel for the respondents, on the other hand, submitted that the protection afforded by the Public Officers Protection Law is not applicable to the appellant. I will firstly examine this law.

The Public Officers Protection Law, Cap. 111, Laws of Northern Nigeria, 1963, as its name implies, is a law to provide for the protection, against actions of persons in the discharge or execution of their public duties. Its purpose is to protect public officers as individuals in the discharge of their public duties. See *Rufus Momoh v. Afolabi Okewale and Another* (1977) 6 S.C. 81 at 88. Section 2 thereof provides as follows:-

“S.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 or 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.”

Without wading into the question whether or not the appellant is a public officer, I must firstly ask what act, deed, neglect or default was alleged against the appellant in the discharge of his public duties for which he was sued and in respect of which he may invoke the defence afforded by the Public Officers Protection Law. On the facts of the present action, it is plain to me that the appellant had no hand whatever in the enactment of the Appointment and Deposition of Chiefs (Appointment of Chun Mada) (Amendment) Order 1980 which the plaintiffs now seek to be declared null and void. It is not even pleaded anywhere in the plaintiffs’ statement of claim that the said appellant in the discharge of his public duties was the maker or a party to the making of the order in question.

I think it ought to be emphasized that for a defendant to avail himself of the protection afforded by section 2 of the Public Officers Protection Law, he must, as a public officer, have done something whether by way of action, deed, neglect or default in the discharge or execution of his public duties for which he is sued and in respect of which he may seek protection under the Public Officers Protection Law as a defence to the plaintiff’s action against him. In other words, it is only where a public officer, in the discharge or execution of his public duties, does something, whether by way of action, deed, neglect or default in respect of which he is sued that he is entitled to seek for protection under the Public Officers Protection Law if the action against him is not instituted within three months next after the act,

In the present case, the appellant had done nothing in the discharge of his public duties for which he was sued and in respect of which he would lawfully require any protection under the Public Officers Protection Law. I am therefore of the firm view that the learned trial judge was in gross error when he struck out the claims against the appellant on the ground, inter alia, that the defence under the Public Officers Protection Law was available to him. The court below, with respect, was quite right when it reversed this finding of the trial court. Consequently my answer to the second issue for determination in this appeal is in the negative.

On the whole, I find no substance in this appeal and I, too, dismiss it with costs as assessed in the lead judgment. The case is remitted to the trial court for it to be determined on its merit.

D

E

F

G

H