

SUPREME COURT OF NIGERIA
18TH DECEMBER, 1998. SC. 130/1990
CORAM:- A. B. WALI, I. L. KUTIGI, M. E. OGUNDARE,
S. U. ONU, A. I. IGUH, JJSC

ALHAJI ALIYU IBRAHIM APPELLANT

AND

JUDICIAL SERVICE COMMITTEE

KADUNA STATE RESPONDENTS
ATTORNEY-GENERAL OF KADUNA STATE

ADMINISTRATIVE LAW - Public Officers - Limitation of actions Public Officers acting outside the bounds of their public authority - Automatically lose protection of the Limitation Law.

COURTS - Suo motu raising of issue - By the court below - Is erroneous - But it will not result in the appeal being allowed - As no miscarriage of justice was occasioned.

INTERPRETATION OF STATUTES - Clear statutory provisions - Cannot be stretched beyond its context - Powers of court to travel outside the words used by the legislature - Are strictly limited.

INTERPRETATION OF STATUTES - Duty of the courts - In interpreting words used by the legislature - Is to state the law and not to enact law.

LIMITATION OF ACTIONS - Public Officers Protection Law - The phrase "any person" used therein - Is not limited to human beings or natural persons - But includes artificial persons known to law.

LIMITATION OF ACTIONS - Statute bar - Action instituted after limitation period - Is totally barred - As right to commence the action is

extinguished by law.

LIMITATION OF ACTIONS - *Statute bar - Public Officers Protection Law - Respondents having been held to be public officers - Action against them commenced after 3 months - Is statute barred.*

WORDS & PHRASES - *"Individual" - The word may be construed in law - As extending not only to natural person - But to artificial persons as well.*

WORDS & PHRASES - *"Person" - When used in a legal parlance - Connotes both a legal and artificial person.*

WORDS & PHRASES - *"Public Officers" - Used within the Limitation Law - Government positions such as attorney-general although public offices - Are public officers in law.*

FACTS

Before the Kaduna High Court, the plaintiff/appellant filed an action vide originating summons against the defendants/respondents claiming inter alia, a declaration that his purported retirement as an Upper Area Court Judge by the 1st defendant is invalid. The 1st defendant acted pursuant to the provisions of the Public Officers (Special Provisions) Decree No. 17 of 1984 in compulsorily retiring the plaintiff from service. The defendants filed a formal notice of preliminary objection pursuant to ss.1 (2) (b) (i), 3(3) and 3 (3) of Decrees Nos. 13, 16 and 17 of 1984 respectively, urging the trial court to declare the suit incompetent and to strike it out. The trial court upheld the preliminary objection. But the plaintiff's appeal to the Court of Appeal was successful as that court remitted the suit to the High Court of Kaduna State for determination before another Judge

Thereafter, the defendants filed another preliminary objection this time based on s. 2 (a) of the Public Officers (protection) Law contending that the plaintiff's action was statute barred in that it was not commenced

within three months next after the act complained of.

The trial judge upheld the objection and dismissed the plaintiff's suit as statute barred. The plaintiff's appeal to the Court of appeal was dismissed. He has further appealed to the Supreme Court raising 2 issues. The major contention is whether the defendants not being natural persons are covered by the Public Officers (Protection) Law.

ISSUES FOR DETERMINATION

"1. Whether the respondents in this matter i.e. the Judicial Service Committee of Kaduna State and the Attorney-General of Kaduna State, howsoever defined, fall within the contemplation of the protection afforded public officers by the Public Officers (protection) Law, Cap. 111, Laws of Northern Nigeria 1963 as applicable to Kaduna State?"

2. Whether it is proper for the Court of Appeal to decide on an important issue raised by it suo motu without inviting the parties or their counsel to address the court on same particularly when that issue had in an earlier decision between the parties been finally determined by the Court of Appeal?"

HELD (Dismissing the appeal per lead judgment of **IGUH JSC** Ogundare JSC dissenting)

Action instituted after limitation period

1. It suffices to state that a Statute of Limitation, such as the Public Officers (Protection) Law, Cap. 111, Vol. 3, Laws of Northern Nigeria, 1963 removes the right of action, the right of enforcement, and the right to judicial relief in a plaintiff and this leaves him with a bare and empty cause of action which he cannot enforce if the alleged cause of action is statute barred, that is to say, if such a cause of action is instituted outside the three months statutory period allowed by such Law. The general principle of law is that where a statute provides for the institution of an action within a prescribed period, proceedings shall not be brought after the time prescribed by such statute. Any action that is instituted after the period stipulated by the statute is totally barred as the right of the plaintiff or the injured person to commence the action would have been extinguished by such law. See Michael Obiefuna v. Alexander Okoye (1961)

Administrative law - Public officers

2. It can therefore be said that Section 2(a) of the Public Officers (Protection) Law, 1963 gives full protection or cover to all public officers or persons engaged in the execution of public duties who at all material times acted within the confines of their public duty. Once they step outside the bounds of their public authority and are acting outside the colour of their office or employment or outside their statutory or constitutional duty, they automatically lose protection of that law. In other words, a public officer can be sued outside the limitation period of three months if at all times material to the commission of the act complained of, he was acting outside the colour of his office or outside his statutory or constitutional duty. Where, however, he acted within the colour of his office, he can only lose protection of the Limitation Law if he is sued within three months of the act, neglect or default complained of. See Nwankwere v. Adewunmi (1967) N.M.L.R. 45 at 49. (p. 2512 C)

Interpretation of statutes - Clear statutory provisions

3. Accordingly, where a statutory provision is clear, it cannot be constructed and stretched beyond its context. If its language and legislative content are apparent, a court of law is not clothed with jurisdiction to distort its plain meaning in order to make it conform with its own views of sound social justice, See Osadebay v. Attorney-General of Bendel State (1991) 1 N.W.L.R. (part 169) 525 at 574. So, a mere conjecture that Parliament entertained a purpose which, however natural, has not been embodied in the words it has used, if they be literally interpreted, is no sufficient reason for departing from the literal construction. See Lumsden v. Inland Revenue Commissioners (1914) A.C. 877 at 892. The duty of the court is to interpret the words that the legislature has used; and even where those words infact present some ambiguity, the powers and duty of the court to travel outside them on a voyage of discovery are strictly limited. See Assam Railways and Trading Co. v. Internal Revenue Commissioners (1935) A.C. 445 at 458. (p. 2515 H)

Words & Phrases - "Person"

4. It is beyond dispute that the word "person" when used in a legal parlance, such as in a legislation or statute connotes both a "natural person", that is to say, a "human being" and an "artificial person" such as a corporation sole or public bodies corporate or incorporate. See Royal Mail Steam Packet Co. v. Braham (1877) 2 A.C. 381 at 386 (P.C.). So, too, in the Australian case of Leske v. S.A. Real Estate Investment Co. Ltd. (1930) 45 C.L.R. 22, the position was stated per Rich and Dixon, JJ. at page 25 as follows:-

"The time has passed for supposing that the Legislature would used the word 'person' only to signify a natural person in dealing with a class of business in which the utility of the proprietary has long been made manifest. Indeed, it may be said that in modern business, as elsewhere, few 'persons' remain natural".

Without, therefore, seeking guidance from any where else, it seems to me plain that the definition of the word "person" in the legal sense under the Nigerian law is not limited to natural persons or human beings only as the appellant now vigorously appears to contend. It clearly admits and includes artificial persons such as a corporation sole, company or any body of persons corporate or incorporate. In this regard, and again without making reference to decisions of any foreign jurisdiction, it is clear to me that it cannot be right that the definition of "any person" in the Public Officers (Protection) Law of Northern Nigeria, 1963 must be read as meaning any person in any limited sense, that is to say, as referring only to natural persons or human beings. I am not with respect, prepared to accept this interpretation as well founded. This is because, to ascribe to those words any limited meaning would tantamount to importing into the words of a statute, such qualifying or additional words that were not provided there in the first instance by the legislature. This exercise, the courts are not permitted in law to indulge in. See Obafemi Awolowo v. Shehu Shagari (1979) 6 - 9 S.C. 51 at 68, Okumagba v. Egbe (1965) 1 ALL N.L.R. 62 etc. (p. 2517 B/2518 C)

Interpretation of statutes - Duty of the Courts

5. In the construction of a statute, as I have earlier indicated, the duty of the courts of law is limited to interpreting the words used by the legislature and it is neither the function of the courts nor do they have any power to fill in what it conceives to be any gaps in an Act of Parliament. To do so would naturally mean to usurp the function of the legislature under the guise of judicial interpretation. See Magor Corporation (1952) A.C. 189 (H.L.). As has been pointed out repeatedly, the office of a Judge is jus dicere, that is to say, to state that law, not jus dare, that is, to enact law. Any amendment of an enactment is the function of the Legislature and the courts cannot fill a gap which it conceives has come to light by altering the words of a statute to make it read the way, they think, it should have been enacted. See too Okumagba v. Egbe (supra).

D The Law makers, if they had intended the words "any person" in the Public Officers (Protection) Law to mean "any person" in a limited sense should have clearly so stated in the legislation. This, it did not do, and I do not conceive that it is the duty of this court, or indeed, of any court of law to go in for judicial legislation by limiting the clear and plain meaning of the words employed in the Law in issue. (p. 2518 H)

Limitation of Actions - "Any person" is not limited to human beings

F 6. I have also referred to the definition of the word "person" under Section 3 of the Interpretation Law and Section 18 of the Interpretation Act respectively. This is defined to include any body of person of persons corporate or unincorporate. It is my view therefore that the words "any person" as provided in Section 2 of the Public Officers (Protection) Law of Northern Nigeria, 1963 are not limited only to natural persons or human beings or to persons sued in their personal names. Unless the contrary intention is indicated, and no such intention is therein manifested, those words in the Public Officers (Protection) Law include persons known to law, inclusive of artificial persons, public bodies or body of persons corporate or incorporate as well as statutory bodies or persons, whether sued by their official titles or not, so long as they are sued in respect of an act or acts done in pursuance or execution of any Law or

of any public duty or authority.¹ (p. 1519 F)

Words & Phrases - "Public Officers"

7. Although the title of the relevant Law implies a Law to protect "public officers" and not "public offices", it is beyond argument that Govern- B
ment positions such as Attorney-General, Permanent Secretary, Inspec-
tor-General of Police etc. although "public offices", they are none-the-
less "public officers" in Law. I cannot, with respect, accept that an
Attorney-General, Permanent Secretary or the Inspector-General of Po- C
lice is not a "public Officer" as known to law. It is thus clear to me that
the term "public officer" has by law been extended to include a "public
department" and, therefore, an artificial person, a public office or a pub-
lic body. I do not think that it can be suggested with any degree of
seriousness that the Public Officers (Protection) Law, Cap. 52 of North- D
ern Nigeria, 1963 while it protects public officers, cannot in the same
wise protect a public department, an artificial person or a public body, so
long as they are sued for an act done in the execution of their public
duties. Nor am I able to accept that Cap. 52 does not protect persons, E
offices, bodies or institutions created by statute or the Constitution or
persons sued by their official titles, such as Attorney-General, Inspector-
General of Police or Permanent Secretary. As I have repeatedly stated,
the words of the section of the Law under interpretation are clearly not in F
themselves ambiguous. (pp. 2520 D/2521 G)

Words & Phrases - "Individual"

8. In my view, the word "individual" may, in appropriate cases, be con- G
strued in law as extending not only to natural persons but to artificial
persons as well. So, by Section 9 of the English Railway and Canal

¹ By this decision and in view of the interpretation of the word "person", does it mean that
actions taken against government organizations such as NEPA, NITEL, etc, will be H
statute barred if commenced after 3 months? That may seem to be the case. We therefore
call on the legislature to come up urgently with a clear declaration if its intention in this
matter.

Traffic Act, 1888, the Railway and Canal Commissioners are conferred with jurisdiction to hear complaints where an enactment in a special Act imposes on a Railway company an obligation in favour of the public or any individual. It was held that the words "any individual" in the Act includes not only what is commonly called an individual person, but also a company or corporation, that is to say, "any legal person who is not the general public". See Great Northern Railway Co. v. Great Central Railway Co. (1899) 10 Ry. and Canal Traffic Cas. 266 at 275 - 276. Said Wright, J.:-

"It seems to me that the word individual must be construed as extending, not merely to what is commonly called an individual person, but to a company or corporation 'Individual' seems to me to be any legal person who is not the general public."

I accept the above proposition of law as well founded. Similarly in Commissioner of Taxation (6th) v. Cappid Property (1971) 45 A.L.J.R. 329 the words 'individual members' in Section 103 A (2) (c) of the English Income Tax Assessment Act 1936 were construed as including corporate members. It cannot be therefore, right to suggest that the word "individual" necessarily means 'natural persons' at all times to the exclusion of "artificial persons". (p. 2530 D)

Public Officers - Action Commenced after 3 months

9. Having held that the act complained of by the appellant was an act done by the respondents in the direct execution or in the discharge of a public duty, the conclusion I therefore reach is that the said respondents fall within the contemplation of the protection afforded by the Public Officers (Protection) Law, Cap. 111, Laws of Northern Nigeria, 1963. The cause of action in the suit arose on the 8th February, 1984 on which date the appellant was retired from the Judicial Service of Kaduna State. The present action, however, was not commenced until the 28th April, 1986, a period of over two years since the cause of action in the suit arose. It is clear that the appellant's suit is caught by the provisions of the Public Officers (Protection) Law, 1963 and is therefore statute-barred. Issue 1 is accordingly resolved against the appellant. (p. 2533 G)

Courts - Suo motu raising of issue

10. In the present case, the court below not only raised suo motu the question of the competence of the appellant's action but proceeded to hold, without hearing the parties or any of them, that it was caught by Decree No. 17 of 1984 which ousted the jurisdiction of the court. The matter was neither raised nor constituted an issue before it. This, without doubt, is clearly an error in law. It is, however, not every mistake or error in a judgment that will result in an appeal being allowed. It is only when the error is substantial in that it has occasioned a miscarriage of justice that the appellate court is bound to interfere. See Onajobi v. Olanipekun (1985) 4 S.C. (part 2) 156 at 163. In the present case, it seems to me clear that no miscarriage of justice was thereby occasioned as a result of the said error of the court below. This is because, the appellant's action, at all events, was caught by the provisions of the Public Officers (Protection) Law, 1963 and was therefore liable to fail. The resolution of issue 2 in favour of the appellant cannot therefore be any matter of great comfort to him as his action, at all events and in all the circumstances of the case, is bound to fail. (p. 2534 G)

NOTABLE POINTS OF INTEREST

IGUHJSC

1. Observation of Udoma JSC in Okewale's case is not a ratio decidendi
As I have already stated, I cannot accept that proposition of law by learned counsel as well founded. This is for the simple reason that the observation in issue is not a ratio decidendi in the case which will be regarded as binding until departed from. The 1st respondent in that case was admittedly sued as a human being or a natural person and in his personal names. The question whether he was sued as an individual or a natural person did not therefore arise for decision or constitute an issue for consideration in that case. Nor was the issue in fact canvassed by the parties. I think I ought to mention that it does appear clear that the chain of the decided cases of the Court of Appeal in support of the appellant's contention invariably relied on the said observation of Udoma, J.S.C. in the Okewale case as a binding precedent, as a result of which it arrived at

its decisions. I think, with respect, that the Court of Appeal was wrong in this exercise. (p. 2524 B)

2. Balogun's case is binding on the Court of Appeal

B The issue, to quote the judgment of this court, was "sternly" argued and a clear decision was taken to the effect that the plea of time-bar raised by the Permanent Secretary, Ministry of Works, Kwara State, an artificial person or institution sued by an official title and not as an individual natural person was wrongly overruled by the trial court. This court held
C that this plea of the Permanent Secretary under the Public Officers (Protection) Law succeeded. In my view, the decision of this court in the Balogun case is binding on the Court of Appeal. This is as against the mere obiter dictum in the Okewale case which, regrettably, would appear
D to have been erroneously applied in some decisions of the Court of Appeal. (p. 2528 H)

3. Cases that followed Okewale's case were decided per incuriam

E In my view, the set of cases of the Court of Appeal which purports to have applied the decision in the Okewale case were decided per incuriam and ought not be allowed to stand. Speaking for myself, and for all the reasons I have advanced earlier on in this judgment, I entertain no doubt that the decision of this court in the Balogun case remains good law. It
F seems to me that to hold that the Public Officers (Protection) Law only covers public officers as individuals or as natural persons only will tantamount to an amendment of the relevant Law by the addition of the words "as individuals" after the words against "any person" in line 2 of Section
G 2 of the Public Officers (Protection) Law, 1963. This exercise, as I have pointed out, is not the duty of any court of law. It is the legitimate duty of the Legislature to carry out any amendments they consider necessary in any legislation. (p. 2532 F)

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WALI JSC

4. Construction of statute - Its title may be consulted as a guide

Where there is doubt or obscurity in a statute, its title or heading may be

consulted as a guide; the preamble may also be consulted to determine its rationale, thus the true construction of terms while section heads may be looked at as forming part of the statute. A title of a statute, both long and short are to provide a guide for its construction but not to control its clear provision as in the present case. (p. 2538 H)

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OGUNDARE JSC (Dissenting)

5. "*Any person*" - Refers to "any public officer"

Bearing in mind the purpose of Public Officers (protection) Law as particularly shown by its title, it is meant to protect public officers in the discharge of their public duties. The expression "any person" in section 2 cannot refer to that expression in its wider sense but rather in a limited sense as referring to "any public officer". This, in my respectful view, is the only reasonable construction that can be placed on the expression as used in section 2. To place on the word "person" as used in section 2 its definition in section 3 of the Interpretation Law is to say that where proceedings are taken against any sort of person be he a natural person, company or association or body of persons corporate or incorporate, for an 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 ordinary right of the citizen to his remedy is to be cut down by stringent provisions as to time and costs. In such a restriction of ordinary rights it is my respectful view that the words used must not have read into them more than they express or of necessity imply. (p. 2567 D)

6. *Ratio decidendi* - How determined

What is the ratio decidendi of a case? In my respectful view, it is the principle of law upon which a particular case is decided, that is, the legal reasoning leading to the court's decision. The effect of it, of course is to serve as basis of the doctrine of judicial precedent in subsequent cases with similar facts. The Ratio decidendi must necessarily, therefore, be the general legal principle enumerated in the case and upon which the case, after its facts have been applied to the principle, is eventually de-

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cided. The decision itself cannot be the ratio decidendi in the case - See: Ofunne & Ors. v. Okoye and Ors. (1966) ANLR 91, 93. An obiter dictum, on the other hand, is a statement made in passing by a Judge which is not necessary to the determination of the case in hand; it has no binding effect for the purpose of the doctrine of stare decisis - see; Ofunne & Ors. v. Okoye & Ors. (supra), where Brett JSC delivering the judgment of this court said;

"..... if a judge either at first instance or on appeal sets out the principle of law which he is applying to the facts of the case in hand it cannot be described as unnecessary for the determination of the case merely because, as a principle, it is capable of being applied to other cases; that is the essential quality of a principle." (p. 2575 B)

D 7. *Momoh v. Okewale is still the applicable authority*

Having regard to the facts and the issues in controversy in Momoh v. Okewale (supra) I can only, with profound respect, say that, in the words of Talbot J. it seems to me, to be an abuse of language to describe as obiter dicta the deliberate pronouncements of this Court in that case which were all made expressly as reasons for the decision to which this Court there came. Momoh v. Okewale is a well-reasoned judgment of this Court and we are bound by it although we have power to depart from it in the interest of justice, if and when circumstances so dictate - per Idigbe JSC in Bucknor-Maclean v. Inlaks Ltd. (1980) 8-11 SC 1. We have not been invited in this case to overrule Momoh v. Okewale and I can see no justification for so doing under any guise or pretence. This Court and the Court below that have followed it have acted properly and their decisions based on it are undoubtedly sound. (p. 2576 H)

8. *Defendants are not covered by the Public Officers (Protection) Law*

Turning to the case on hand, the Judicial Service Committee is a creation of the Constitution (as amended). It is a corporation aggregate with perpetual succession and it is distinct from the individual persons constituting them. While such individuals if sued for acts of theirs coming under the purview of section 2(a) of the Law, may take advantage of the

protection offered by the Law, they cannot if sued in their corporate name. The same applies equally to the office of the Attorney-General. Indeed the office of the Attorney-General is usually sued as a nominal party, as in the case on hand - see paragraph 23 of the Plaintiff's affidavit, as representing the Government and rarely for what the individual holder, B for the time being, of the office has done. Bearing in mind the aim, object and purpose of the Law, it sounds to me absurd to say that the defendants in this case come within the purview of the Public Officers (Protection) Law or Act. (p. 2586 E)

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REPRESENTATION

Kola Awodein Esq. for the Appellant

M. B. Wakili, Director Legal Drafting, Kaduna State with S. A. Balarabe, Assistant Director, Legal Drafting, for the Respondents

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CASES REFERRED TO

Obiefuna v. Okoye (1961) ALL N.L.R. 357

Nwankwere v. Adewunmi (1967) N.M.L.R. 45 at 49

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Osadebay v. Attorney-General of Bendel State (1991) 1 N.W.L.R. (part 169) 525 at 574

Lumsden v. Inland Revenue Commissioners (1914) A.C. 877 at 892

Assam Railways and Trading Co. v. Internal Revenue Commissioners (1935) A.C. 445 at 458

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Royal Mail Steam Packet Co. v. Braham (1877) 2 A.C. 381 at 386

Leske v. S.A. Real Estate Investment Co. Ltd. (1930) 45 C.L.R. 22

Awolowo v. Shagari (1979) 6 - 9 S.C. 51 at 68

Okumagba v. Egbe (1965) 1 ALL N.L.R. 62

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Great Northern Railway Co. v. Great Central Railway Co. (1899) 10

Onajobi v. Olanipekun (1985) 4 S.C. (part 2) 156 at 163

Ukejianya v. Uchendu 13 W.A.C.A 45 at 46

Ike v. Ugboaja (1993) 6 N.W.L.R. (part 301) 539 at 556

H

Anyanwu v. Mbara (1997 5 N.W.L.R. (part 242) 386 at 400.

Ofunne v. Okoye (1966) ANLR 91, 93

STATUTES REFERRED TO

Decrees Nos. 13, 16 and 17 of 1984

Public Officers (Protection) Law Cap. III Vol. 3 Laws of Northern Nigeria 1963 s. 2(a)

B Constitution of Nigeria 1979 ss. 178(1) (d), 176 (1)

Interpretation Law Cap. 52 Laws of Northern Nigeria 1963 ss. 2, 3, 42 (b), 55

Interpretation Act Cap. 192 LFN 1990 s. 18 (1) English Railway and Canal Traffic Act 1888 s. 9

C English Income Tax Assessment Act 1936 s. 103 A (2) (c)

English Public Authorities Protection Action 1893 s. 247

LEAD JUDGMENT BY IGUH JSC

D The proceedings leading to this appeal were first initiated in the High Court of justice of Kaduna State of the Federal Republic of Nigeria, holden at Kaduna on the 28th day of April, 1986. In that court, the appellant, as plaintiff, claimed against the respondents, then defendants
E by way of an originating summons as follows:-

"1. A declaration that the purported retirement of the plaintiff as an Upper Area Court Judge in Kaduna State by the first defendant is invalid, null and void and of no effect.

F *2. A declaration that the retirement of the plaintiff as conveyed by the first defendant's letter reference No. S. CAC/549/72 of 8th February, 1985 in so far as it purports to be in accordance with the provisions of the public Officers (special Provisions) Decree No. 17 of 1984 is illegal, null and void and of no effect.*

G *3. An order restoring the plaintiff to his Office and duty as an Upper Area Judge and to continue to so function until he reaches the retirement age or he elects to retire.*

H *4. An order on the defendants to pay the plaintiff general damages in the sum of N50,000.00 only"*

The originating summons was supported by an affidavit in which the plaintiff deposed that he was at all material times an Upper Area Court Judge at Kankia in Kaduna State and that he discharged his duties credit-

ably and to the best of his ability. By a letter reference No. S. CAC/549/72 of the 8th February, 1985, the first defendant, acting pursuant to the provisions of the public Officers (Special provisions) Decree No. 17 of 1984 retired the plaintiff from the services of the Kaduna State Judiciary with effect from the 8th day of February, 1985. The said letter reads as follows:-

No. S.CAC/549/72,
Judicial Service Committee.
High Court of Justice, kaduna State,
KADUNA.
8th February, 1985.

Alhaji Aliyu Abba Ibrahim,
Upper Area Court Judge,
Upper Area Court.
Kankia.

LETTER OF TERMINATION OF APPOINTMENT/ DIS-MISSAL/ RETIREMENT

The judicial service committee kaduna State, at its meetings held on 5th and 7th February (1985 decided to dismiss terminate your appointment with effect from the date of this letter and this is to notify you of your dismissal/retirement/termination.

2. This exercise was undertaken by virtue of the provisions of the Decree No.17, public officers (Special Provisions) Decree, 1984.

(Sgd) J.B. Onoba
(Secretary.

It is as a result of this compulsory retirement that the plaintiff was obliged to institute the present action against the defendants jointly and severally as aforesaid.

On the 17th July, 1986, the defendants filed a formal notice of preliminary objection founded on the provisions of Sections 1 (2) (b) (i), 3(3) and 3 and of Decrees Nos. 13, 16 and 17 of 1984 respectively urging the trial court to declare the suit incompetent and to strike it out accordingly.

After hearing arguments on the objection, the learned trial Judge in a reserved ruling delivered on the 28th July, 1986 upheld the same and dismissed the plaintiff's action. The plaintiff, being dissatisfied with this decision, lodged an appeal to the Court of Appeal, Kaduna Division, which
 B court on the 5th day of march, 1987 allowed the appeal, set aside the decision of the learned trial Judge and remitted the suit to the High Court of Kaduna State for hearing and determination before another Judge.

On the 10th November, 1987, the defendants filed another notice of preliminary objection to the plaintiff's action. This time, the contention of the defendants was that by virtue of section 2 (a) of the Public
 C Officers (protection) Law, Cap. III, Vol. 3, Laws of Northern Nigeria, 1963, applicable to Kaduna State, the action instituted by the plaintiff was statute-barred, in that it was not commenced within three months next
 D after the act complained of, and to that extent, the suit, as filed, was incompetent and should be dismissed.

The substance of the defendants' objection was that the cause of action, namely, the plaintiff's letter of retirement, was dated the 8th
 E February, 1984 but that the originating summons was not filed until the 28th April, 1986. The submission was that by virtue of the provisions of section 2 (a) of the public Officers (protection) Law, 1963, the plaintiff's action was statute-barred as it was instituted outside the three months
 F period prescribed by law.

The plaintiff, in reply, argued that the law refers to Public Officers (protection) Law and not public offices (protection) Law. It was further submitted on his behalf that the intendant of the law is to protect
 G natural persons occupying public office or offices and carrying out public duties. He contended that public officers, to avail themselves of the protection laid down by that law, must be sued in their individual or personal names. According to the plaintiff, the defendants were not sued
 H in the individual names of the persons concerned but by their designated offices and could not therefore benefit from the protection afforded by the public officers (protection) Law, 1963.

At the conclusion of arguments the learned trial Judge, Akaahs, J. in a well considered ruling on the 4th day of December, 1987 upheld

the defendants' objection and dismissed the plaintiff's suit as statute-barred. The plaintiff being aggrieved by this decision filed a notice of appeal; to the Court of Appeal, Kaduna Division. The Court of Appeal, at the conclusion of hearing on the 3rd day of May, 1989, unanimously dismissed the plaintiffs appeal and affirmed the decision of the trial court. Being B dissatisfied with this decision of the Court of Appeal, the plaintiff has further appealed to this court. I shall hereinafter refer to the plaintiff and the defendants in this judgment as the appellant and the respondents respectively.

Pursuant to the Rules of this court, the appellant, through his C learned counsel, settled and filed his brief of argument on the 31st day of August, 1990. The respondents, also duly filed their joint brief of argument on the 30th day of September, 1998 after obtaining the leave of this D court to file it out of time.

In the appellant's brief of argument, the following two issues are identified as arising for determination in this appeal, namely:-

"1. Whether the respondents in this matter i.e. the Judicial service Committee of Kaduna State and the Attorney-General of Kaduna State, howsoever defined, fall within the contemplation of the protection afforded public officers by the Public Officers (protection) Law, Cap. 111, laws of Northern Nigeria 1963 as applicable to Kaduna State?" E

2. Whether it is proper for the court of Appeal to decide on an F important issue raised by it suo motu without inviting the parties or their counsel to address the court on same particularly when that issue had in an earlier decision between the parties been finally determined by the Court of Appeal?"

The respondents, for their own part, submitted no issues in their G brief of argument as arising in this appeal for the determination of the court. What they would appear to have done is to advance their arguments on the appellants grounds of appeal, a procedure which has been condemned repeatedly by this court since the introduction of brief writing H several years ago. The respondents' brief in this regard may therefore be described as defective and faulty. One may not, however, close his eyes to the fact of its existence, particularly as it attempted as much

as possible to cover the two issues raised by the appellant in his brief. See Philip Obiora v. Paul Osele (1989) 1 N.W.L.R. (Part 97) 279 at 300. Akpan v. The State (1992) 6 N.W.L.R. part 248) 439. I am therefore prepared to take it that the respondents by their failure to submit their own issues for resolution have adopted those formulated by the appellant for the determination of this appeal. See Ajibade v. Pedro (1992) 5 N.W.L.R (part 241) 257 at 267. I shall, therefore, adopt in this judgment, the questions identified in the appellant's brief for my consideration of this appeal.

At the oral hearing of the appeal before us, both learned counsel for the parties adopted their respective briefs of argument and proffered additional submissions in amplification thereof.

The main contention of learned counsel for the appellant, K. Awodein, Esq. is that both respondents were not natural persons sued in their personal names and that they are therefore not covered by the said provisions of section 2 (a) of the public Officers (protection) Law, 1963. He explained that the first respondent, the Judicial Service Committee, Kaduna State is not a natural person or a human being but an amorphous body and that no single officer of that Committee was sued as an individual. In the same vein, he further argued that the second respondent, the Attorney-General, Kaduna State, who was also not sued in his personal name as an individual but by his official title cannot take cover under that Law.

Briefly put, the essence of the submission of learned counsel for the appellant, as far as I can see it, is that the Public Officers (Protection) Law, Cap.. 111, Vol. 3, Laws of Northern Nigeria, 1963, applicable to Kaduna State only applies to individuals and natural persons but not either to artificial person, such as public and corporate bodies, or to public officers sued by their official titles, such as a Federal or State Attorney-General, a Minister or a Permanent Secretary of a Government Ministry. For this proposition, learned counsel relied on the decision of this court in Rufus Momoh v. Okewale and Another (1977) 11 N.S.C.C. 365 at 368-369 and to those of the Court of Appeal in Alapiki v. The Governor of Rivers State and Another (1991) 8 N.W.L.R. (part 211) 575 at 588

DE, Judicial Service Commission v. Alaka (1982) C.A. 42, Tafida v. Abubakar and others (1992) 3 N.W.L.R. (Part 230) 511 at 522 H and 523 A-G, and Utih v. Egorr (1990) 5 N.W.L.R. (part 153) 771. He submitted that the Court of Appeal could not be right in the present case when it held that the 1st and 2nd respondents were entitled to protection under the relevant law. He submitted that in-as-much as the words "any person" in the English Public Authorities Protection Act. 1893 were interpreted to be limited only to the protection of Public Authorities under that law, mutatis Mutandis the Nigerian Public Officers (Protection) Law was aimed at protecting public officers as individuals only and no more than that. Learned counsel felt obliged to draw the attention of the court to the decision of this court in Permanent Secretary, Ministry of Works, Kwara State and Another v. Balogun (1975) N.S.C.C. 292 and to the decisions of the Court of Appeal in Atiyaye v. Permanent Secretary, Ministry of Local Government, Borno State and Attorney-General, Borno State (1990) 1 N.W.L.R. (Part 129) 728 and Hassan Amao v. Civil Service Commission and 2 others (1992) 7 N.W.L.R. (pt. 252) 214, all of which do not appear to support his contentions. He invited the court to prefer the line of reasoning in the Alapiki v. Governor of Rivers State and Another and Tafida v. Abubakar and others cases to that in the Atiyaye v. Permanent Secretary, Ministry of Local Government, Borno State case. He was of the opinion that the Court of Appeal in the first set of cases was in order to have applied what he described as the latter decision in Momoh v. Okewale than that in the earlier case of Permanent Secretary, Ministry of Works, Kwara State and Another v. Balogun.

On the second issue, it is the complaint of the appellant that the court below was in gross error when it raised suo motu the question of whether or not the trial court had jurisdiction to entertain the appellant's claims, having regard to the provisions of section 3(3) of the Public Officers (Special Provisions) Decree No. 17 of 1984 which oust the jurisdiction of the trial court to entertain the appellant's action. The appellant contended that this issue was not before the court below and that the Court of Appeal was therefore wrong to have raised the matter suo motu and to have proceeded to rule against the appellant without afford-

ing the parties opportunity to be heard thereupon. He urged the court to resolve both issues in favour of the appellant.

Learned counsel for the respondents, Mr. M.B. Wakili, in his own reply pointed out, that there was apparent misconception in the
B submissions of the appellant in respect of the first issue. He argued that both the 1st and 2nd respondents, the Judicial Service Committee and the Attorney-General, Kaduna State respectively are both legal personae, that is to say, legal persons or legal entities, capable of suing or being sued
C under our law. He contended that the words "any person" contained in Section 2 of the Public Officers (Protection) Law of Northern Nigeria connote nothing other than their plain, ordinary and natural meaning and include any person or persons against whom any action is commenced for any act done in pursuance of any Law, public duty or authority.
D Learned counsel submitted that both respondents being "persons" sued in the discharge of their official duties are covered by the relevant Law. He contended that any limitation placed on the words "any person" in the Nigerian Public Officers (Protection) Law cannot be justified and must
E be regarded as unacceptable in the face of the clear provisions of that Law.

Learned counsel submitted that the Public Officers (Protection) Law of Northern Nigeria is intended to be broader in operation and covers a wider class of persons than the United Kingdom Public Authorities
F Protection Act, 1893. He explained that this is because although the words "any person" could include an Authority or an artificial person, an Authority or artificial person does not necessarily include a natural person. He argued that the Attorney-General is, without doubt, a public
G officer together with the Judicial Service Committee which is a body of public officers and that both respondents are fully covered by Section 2 of the Public Officers (Protection) Law of Northern Nigeria. He cited in support, the decision of this court in Permanent Secretary, Ministry of Works, Kwara State and Another v. Balogun (supra) and he urged the
H court to resolve issue 1 in favour of the respondents.

Turning to issue 2, learned counsel conceded that the complaint of the appellant was well founded as the court below waded into a matter

that was neither an issue before it nor was it canvassed by the parties. He, however, argued that no miscarriage of justice was thereby occasioned as, at all events, the appellant's action was caught by Section 2 of the Public Officers (Protection) Law, 1963 and was therefore liable to fail. He urged the court to dismiss the appeal.

I have carefully considered all the relevant authorities of both this court and the Court of Appeal on the interpretation of this Section of the Law in issue. Only three decided cases of this court came into focus. These are the decisions in Rufus Momoh v. Afolabi Okewale and Another (1977) N.S.C.C. 365 relied upon by the appellant and Permanent Secretary, Ministry of Works, Kwara State and Another v. Balogun (1975) N.S.C.C. 292 which constituted the main plank upon which the respondents' arguments rested. There is also the decision in Adigun v. Ayinde (1993) 8 N.W.L.R. (part 313) 516 at 533.

As against the above two decided cases of this court is an array of conflicting decisions of various Divisions of the Court of Appeal on the subject. The first set of cases considered an observation of Udoma, J.S.C. in the Okewale case as binding on the court. I will later in this judgment deal with the observation in issue. It suffices to state at this stage that as a result of the said observation, the Court of Appeal, in the first set of cases, interpreted the Law in issue as applying only to human beings sued in their personal names. It accordingly held that in-as-much as the words "any person" in the English Public Authorities Protection Act, 1893 were interpreted in the united Kingdom to be limited only to the protection of "Public Authorities" under that Act, the Nigerian Public Officers (Protection) Law was aimed at the protection of "public Officers" sued in their personal names, that is to say, the protection only of natural persons as against artificial persons, public bodies or person sued by their official title.

The second set of these decisions of the Court of Appeal is of the view that the said observation of Udoma, J.S.C. is a mere obiter dictum and not the ratio decidendi in the case. This school of thought relied on the earlier decision of this court in the Balogun case and came to the conclusion that the words "any person" in our Public Officers (Pro-

tection) Law covered all persons, whether sued as individuals in their personal names, or as artificial persons, bodies or by their official title, so long as the act for which they are sued was done in the execution of any Law, or of any public duty or authority.

B I have given a most careful consideration to the observation of my learned brother, Udoma, J.S.C. in the Okewale case and, with profound respect, find it difficult in the first place to accept that it forms any part of the ratio decidendi in that case. In my view, it is, at best, an obiter dictum.

C A careful study of the decision of this court in the Balogun case clearly shows that it is to the effect that the provisions of the Public Officers (Protection) Law, 1963 covered and were available to the first respondent therein, namely, the Permanent Secretary, Ministry of Works,
D Kwara state, a person sued by his official title and not in his-personal name. The point decided in that case is plain, direct and relevant to the issue that has arisen for consideration in this appeal. I think that the Court of Appeal in the second set of cases rightly felt bound by the
E decision in the Balogun case. The issues for decision in the present appeal are, however, much wider in scope than those pronounced upon in the Balogun case. I therefore, propose to proceed with a consideration of the various issues that call for decision in this appeal. I will later in this
F judgment return to a fuller consideration of the conflicting decisions of the Court of Appeal that were relied upon by the parties in this appeal.

Section 2 (a) of the Public Officers (Protection) Law, Cap. 111, Vol. 3, Laws of Northern Nigeria, 1963 around which this appeal revolves provides as follows:-

G "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,*
H *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:

..... "

(Underlining supplied for emphasis)

It is mainly the interpretation of the above section of the Law, short and plain as it seems to be, that calls for decision in this appeal. B

The Public Officers (Protection) Law, as its head note indicates is a Law:-

"to provide for the protection against actions of Persons acting in the execution of public duties". C

It is a Limitation Law and the substance of Section 2 (a) is that where any action, prosecution or proceeding is commenced against any person, for any act done in pursuance or 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 action, prosecution or proceeding shall not lie or be instituted unless it is commenced within three months of 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. There is a proviso to Section 2 (a) of this enactment. E
With this proviso, this appeal is not now concerned. **It suffices to state that a Statute of Limitation, such as the Public Officers (Protection) Law, Cap. 111, Vol. 3, Laws of Northern Nigeria, 1963 removes the right of action, the right of enforcement, and the right to judicial relief in a plaintiff and this leaves him with a bare and empty cause of action which he cannot enforce if the alleged cause of action is statute barred, that is to say, if such a cause of action is instituted outside the three months statutory period allowed by such Law.** F G

The general principle of law is that where a statute provides for the institution of an action within a prescribed period, proceedings shall not be brought after the time prescribed by such statute. Any action that is instituted after the period stipulated by the statute is totally barred as the right of the plaintiff or the injured person to commence the action would have been extinguished by such law. See Michael Obiefuna v. Alexander Okoye (1961) ALL H

N.L.R. 357, Fred Egbe v. Adefarasin (1985) 1 N.W.L.R. (part 3) 549, Fadare v. Attorney-General, Oyo State (1982) N.S.C.C. 643.

However, for Section 2(a) of the Public Officers (Protection) Law to avail any person, two conditions must be satisfied, namely:-

B (i) It must be established that the person against whom the action is commenced is a public officer or a person acting in the execution of public duties within the meaning of that Law;

C (ii) The act done by the person in respect of which the action is commenced must be an act done in pursuance or execution of any Law, public duty or authority or in respect of an alleged neglect or default in the execution of any such Law, duty or authority.

D See John Ekeogu v. Elizabeth Aliri (1990) N.W.L.R. (part 126) 345. It can therefore be said that Section 2(a) of the Public Officers (Protection) Law, 1963 gives full protection or cover to all public officers or persons engaged in the execution of public duties who at all material times acted within the confines of their public duty. Once they step outside the bounds of their public authority and are acting outside the colour of their office or employment or outside their statutory or constitutional duty, they automatically lose protection of that law. In other words, a public officer can be sued outside the limitation period of three months if at all times material to the commission of the act complained of, he was acting outside the colour of his office or outside his statutory or constitutional duty. Where, however, he acted within the colour of his office, he can only lose protection of the Limitation Law if he is sued within three months of the act, neglect or default complained of. See Nwankwere v. Adewunmi (1967) N.M.L.R. 45 at 49, Atiyaye v. Permanent Secretary, Ministry of Local Government, Borno State (1990) 1 N.W.L.R. (part 129) 728, John Ekeogu v. Elizabeth Aliri, (supra) etc.

H I think I ought to state at this stage that no issue has arisen in this case as to whether or not the action against the respondents was against them as a result of an act done in pursuance or execution of any Act or Law or of any public duty or authority. The action which the appellant is challenging is his purported retirement from the judicial service of Kaduna

State by the 1st respondent through its letter No. S. CAC/549/72 of the 8th February, 1985. The 1st respondent which was established by Section 178 (1) (d) of the Constitution of the Federal Republic of Nigeria, 1979 (as amended) was inter alia conferred with powers under Section 9(d), Part 11 of the third Schedule to the said Constitution -

"to appoint, dismiss and exercise disciplinary control over magistrates, judges and members of Area Courts and Customary Courts."

Thus when the 1st respondent communicated its decision to retire the appellant from service by virtue of the provisions of the Public Officers (Special Provisions) Decree No. 17 of 1984, it was essentially performing a Statutory duty. The 2nd respondent was joined in the action as a necessary party as the Chief Law Officer of the Kaduna State Government. There can be no doubt, therefore, that the respondents were sued in this action for an act done in pursuance or execution of an Act or Law or of any public duty or authority. The crucial issue for resolution in this appeal is whether or not the said respondents are covered or come within the provisions of Section 2(a) of the Public Officers (Protection) Law, 1963.

The contention of the appellant is that only named individuals, natural persons or public officers who are sued in their personal names are covered by the provisions of the Law in question. It was strenuously argued that the Public Officers (Protection) Law does not cover or protect public bodies, artificial persons whether corporate or incorporate, institutions or a person sued in his official name or by his official title, such as an Attorney-General, Permanent Secretary, Judicial Service Commission (now Committee) or the like. I think it will be best to start with a brief consideration of the Status of the respondents individually.

As already mentioned; the 1st respondent is a creation of Section 178 (1) (d) of the Constitution of the Federal Republic of Nigeria, 1979 (as amended). Section 8 of Part 11 to the third Schedule to the 1979 Constitution stipulates that the Judicial Service Commission (now Committee) shall comprise of the following members, namely:-

"(a) The Chief Judge of the High Court of the State, who shall

be the Chairman;

(b) the Attorney-General of the State;

(c) the Grand Kadi of the Sharia Court of Appeal of the State, if any;

B *(d) the President of the Customary Court of Appeal of the State, if any;*

(e) one member, who is a legal practitioner, and who has been qualified to practise as a legal practitioner in Nigeria for not less than ten years; and

C *(f) one other person, not being a legal practitioner, who in the opinion of the Governor is of unquestionable integrity."*

The Judicial Service Committee is one of the four statutory bodies established at State level under Section 178 (1) of the 1979 Constitution. Its membership and official duties are clearly spelt out under the Constitution. It is a statutory body, a corporation aggregate and/or a legal personality capable of suing and/or being sued.

There is also Section 176 (1) of the 1979 Constitution under which the State Attorney-General as Chief Law Officer was created. The second respondent as the Kaduna State Attorney-General is also a creation of the 1979 Constitution. It is therefore a legal personality, capable also of suing and/or being sued. The Attorney-General in Part 11 of the Fifth Schedule to the 1979 Constitution, item 6 is therein also specified as a Public Officer. I will now consider whether, as submitted by learned counsel for the appellant, the respondents are not covered under the Public Officers (Protection) Law, for the sole reason that the 1st respondent was sued as an artificial person, a public body or a corporate entity whilst the 2nd respondent, for his own part, was sued by his official title and not in his personal names. Put differently, do the words "any person" as provided in Section 2 of the Public Officers (Protection) Law of Northern Nigeria, 1963, refer only to natural persons, that is to say, to human beings sued in their personal names to the exclusion of artificial persons, public bodies, corporate entities, and public officers sued by their various individual official titles, such as Attorney-General or Permanent Secretary.

The answer to the above question will depend entirely on the interpretation of the words "any person" in Section 2 of the relevant Law. At the risk of repetition but for purposes of easy reference, I will once again reproduce hereunder the provisions of Section 2 (a) of the Public Officers (Protection) Law, 1963. It stipulates thus:-

"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." (Underlining supplied for emphasis)

Before I proceed any further, I think it ought to be stressed that it is the cardinal principle of law in the interpretation of a statute that where the words of such a statute are clear and unambiguous, they must be given their plain and ordinary meaning unless this would lead to absurdity and effect must be given to the provision in question without any recourse to any other consideration. See Nafiu Rabi v. The State (1980) 8-11 S.C. 130. The words of a statute are to be interpreted as bearing their natural and ordinary meaning. See Attorney-General v. Milne (1914) A.C. 765. And where such words of an Act of Parliament are plain and clear, there will not arise any room for applying any of the principles of interpretation which, incidentally, are merely presumptions that are applied in cases of ambiguity in a statute. See Croxford v. Universal Insurance Co. (1936) 2 K.B. 253 at 281. Although, therefore, there are quite a few rules of construction that courts of law have resorted to in their interpretation of statutes, the paramount and golden rule remains that every statute is to be expounded according to its manifest and expressed intention. See Attorney-General for Canada v. Hallett and Carey Ltd. (1952) A.C. 427 at 449.

Accordingly, where a statutory provision is clear, it cannot

be constructed and stretched beyond its context. If its language and legislative content are apparent, a court of law is not clothed with jurisdiction to distort its plain meaning in order to make it conform with its own views of sound social justice, See Osadebay v. Attorney-General of Bendel State (1991) 1 N.W.L.R. (part 169) 525 at 574. So, a mere conjecture that Parliament entertained a purpose which, however natural, has not been embodied in the words it has used, if they be literally interpreted, is no sufficient reason for departing from the literal construction. See Lumsden v. Inland Revenue Commissioners (1914) A.C. 877 at 892. The duty of the court is to interpret the words that the legislature has used; and even where those words infact present some ambiguity, the powers and duty of the court to travel outside them on a voyage of discovery are strictly limited. See Assam Railways and Trading Co. v. Internal Revenue Commissioners (1935) A.C. 445 at 458. See too Magor and St. Mellons Rural District Council v. Newport Corporation (1952) A.C. 189 at 191. So, in the latter case, Lord Simonds, commenting on this proposition of law at Page 191 of the report expounded his views on the matter as follows:-

"It appears to me to be a naked usurpation of the legislative function under the thin disguise of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it. If a gap is disclosed, the remedy lies in an amending Act."

See too London Transport Executive v. Betts (1959) A.C. 213 at 247. It is against the above principles of law that I must now proceed to examine the meaning of the words "any person" in Section 2 of the Public Officers (Protection) Law, 1963.

I have closely read and reread the provisions of Section 2 of the Public Officers (Protection) Law, 1963 and can find no ambiguity whatsoever therein. That Section of the Law lays down certain conditions a plaintiff must comply with where he commences any action against "any person" in respect of an act done in the execution of a public duty. Without doubt, those words "any person" are crystal clear. They also seem to

me plain and admit of no ambiguity. In the circumstance, I ask myself the natural and ordinary meaning of those words. I ask myself the plain, manifest and expressed meaning of those words. In my view, they connote nothing else other than what they mean, that is to say, "any person" by their plain clear and ordinary meaning under the law.

It is beyond dispute that the word "person" when used in a legal parlance, such as in a legislation or statute connotes both a "natural person", that is to say, a "human being" and an "artificial person" such as a corporation sole or public bodies corporate or incorporate. See Royal Mail Steam Packet Co. v. Braham (1877) 2 A.C. 381 at 386 (P.C.). So, too, in the Australian case of Leske v. S.A. Real Estate Investment Co. Ltd. (1930) 45 C.L.R. 22, the position was stated per Rich and Dixon, JJ. at page 25 as follows:-

"The time has passed for supposing that the Legislature would use the word 'person' only to signify a natural person in dealing with a class of business in which the utility of the proprietary has long been made manifest. Indeed, it may be said that in modern business, as elsewhere, few 'persons' remain natural". (Underlining supplied for emphasis)

Now to come nearer home, there is the Interpretation Law, Cap. 52, Laws of Northern Nigeria, 1963 which is of particular relevance and significance to the Public Officers (Protection) Law, Cap. 111, Laws of Northern Nigeria, 1963. That Law makes provision for the "Construction" of Laws and of the "terms" and "provisions" adopted in the Laws of Northern Nigeria. Section 2 thereof provides as follows:-

"2. This Law shall apply to this Law and to all Laws in force at the date of this Law and to all Laws hereinafter enacted, and to regulations, orders, rules of Court, appointments, notices and directions made, issued or given in Northern Nigeria consequent upon authority vested in any person or body by Act of Parliament or Order of the Queen in Council".

In this regard, it must be pointed out that the interpretation and construction of the terms in and the provisions of the Public Officers (Protection) Law, 1963 are fully covered by the definitions contained in the said Inter-

pretation Law.

Section 3 of the Interpretation Law Cap. 52, Laws of Northern Nigeria, 1963 defines the word "person" by way of inclusion as follows:-

"Person includes any company or association or body of persons corporate or incorporate."

There is also the definition of the same word "person" in Section 18 (1) of the Interpretation Act, Cap. 192, Laws of the Federation of Nigeria 1990 as follows:-

"person" includes any body of persons corporate or unincorporate".

Without, therefore, seeking guidance from any where else, it seems to me plain that the definition of the word "person" in the legal sense under the Nigerian law is not limited to natural persons or human beings only as the appellant now vigorously appears to contend. It clearly admits and includes artificial persons such as a corporation sole, company or any body of persons corporate or incorporate. In this regard, and again without making reference to decisions of any foreign jurisdiction, it is clear to me that it cannot be right that the definition of "any person" in the Public Officers (Protection) Law of Northern Nigeria, 1963 must be read as meaning any person in any limited sense, that is to say, as referring only to natural persons or human beings. I am not with respect, prepared to accept this interpretation as well founded. This is because, to ascribe to those words any limited meaning would tantamount to importing into the words of a statute, such qualifying or additional words that were not provided there in the first instance by the legislature. This exercise, the courts are not permitted in law to indulge in. See Obafemi Awolowo v. Shehu Shagari (1979) 6 - 9 S.C. 51 at 68, Okumagba v. Egbe (1965) 1 ALL N.L.R. 62 etc.

The simple reason for the above legal principle is that in the construction of a statute, as I have earlier indicated, the duty of the courts of law is limited to interpreting the words used by the legislature and it is neither the function of the courts nor do they have any power to fill in what it conceives to be any gaps in an Act

of Parliament. To do so would naturally mean to usurp the function of the legislature under the guise of judicial interpretation. See Magor Corporation (1952) A.C. 189 (H.L.). As has been pointed out repeatedly, the office of a Judge is jus dicere, that is to say, to state that law, not jus dare, that is, to enact law. Any amendment B of an enactment is the function of the Legislature and the courts cannot fill a gap which it conceives has come to light by altering the words of a statute to make it read the way, they think, it should have been enacted. See too Okumagba v. Egbe (supra). The Law C makers, if they had intended the words "any person" in the Public Officers (Protection) Law to mean "any person" in a limited sense should have clearly so stated in the legislation. This, it did not do, and I do not conceive that it is the duty of this court, or indeed, of D any court of law to go in for judicial legislation by limiting the clear and plain meaning of the words employed in the Law in issue.

In this connection, attention must also be drawn to Section 42 (b) of the Interpretation Law of Northern Nigeria which is Section 14 (b) of the Interpretation Act, Cap. 192, Laws of the Federation of Nigeria E 1990 wherein it is provided thus:-

"14 (b). Words in the singular include the plural and words in the plural include the singular".

I have also referred to the definition of the word "person" under F Section 3 of the Interpretation Law and Section 18 of the Interpretation Act respectively. This is defined to include any body of persons corporate or unincorporate. It is my view therefore that the words "any person" as provided in Section 2 of the Public Officers G (Protection) Law of Northern Nigeria, 1963 are not limited only to natural persons or human beings or to persons sued in their personal names. Unless the contrary intention is indicated, and no such intention is therein manifested, those words in the Public Officers (Protection) Law include persons known to law, inclusive of H artificial persons, public bodies or body of persons corporate or unincorporate as well as statutory bodies or persons, whether sued by their official titles or not, so long as they are sued in respect of an

act or acts done in pursuance or execution of any Law or of any public duty or authority.

Learned counsel for the appellant did further argue that the Law in question, as its title implies, is a Law to protect "public officers" and not "public offices". He therefore submitted, relying on the decision of the Court of Appeal in Felix Onyejekwe v. The Nigeria Police Council and the Inspector-General of Police (1996) 7 N.W.L.R. (part 463) 704 at 712 - 713 that "any person" in the relevant Law must be restricted to "public officers" as human beings or natural persons only as the dictum of Udoma, J.S.C. Seems to suggest and cannot include persons in the wider sense of those words, such as an Attorney-General, Permanent Secretary, Inspector-General of Police or artificial persons and/or bodies.

With the greatest respect, I cannot pretend that I fully appreciate learned counsel's contention in this area of his argument. In the first place, **although the title of the relevant Law implies a Law to protect "public officers" and not "public offices", it is beyond argument that Government positions such as Attorney-General, Permanent Secretary, Inspector-General of Police etc. although "public offices", they are none-the-less "public officers" in Law. I cannot, with respect, accept that an Attorney-General, Permanent Secretary or the Inspector-General of Police is not a "public Officer" as known to law.**

In the second place, the short title of the Law in issue reads:-

"This Law may be cited as the Public Officers (Protection) Law".

There is also the long title of the Law which goes thus:-

"A Law to provide for the protection against actions of persons acting in the execution of Public Duties".

The term "public officer", is used synonymously with the term "public department" and is defined as follows:-

"'Public officer' or 'public department' extends to and includes 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 Northern Nigeria or not".

There is yet Section 55 of the Interpretation Law of Northern

Nigeria which explains thus:-

"55. A reference in any Law to any public officer by the usual or common title of his office shall, if there be such an official customarily in Nigeria and unless the contrary intention appears, be read and construed as referring to the person for the time being holding or carrying out the duties of that office in Nigeria".

There is finally Section 18 (1) of the Interpretation Act in which the term "public officer" is defined as meaning:-

"A member of the public service of the Federation within the meaning of the Constitution of the Federal Republic of Nigeria or of the Public Service of a State".

I have found it desirable to set out the Various definitions of the term "public officer" as the definition in Section 3 of the Interpretation Act or Northern Nigeria, 1963, in particular, equates the term "public officer" with "public department" and includes every Officer or Department invested with the performance of public duties. Section 55 of the same Law then provides that a reference in any law to a public officer by his official title or public office shall, unless the contrary intention appears, be read and construed a referring to the individual person for the time being holding or carrying out the duties of that office. Additionally there is Section 18 (1) of the Interpretation Act which defines public officer as meaning a member of the public service of the Federation within the meaning of the 1979 Constitution or of the public service of a State. And it is beyond argument that the positions of Attorney-General, Permanent Secretary, Inspector-General of Police etc. are all offices duly created under the 1979 Constitution.

It is thus clear to me that the term "public officer" has by law been extended to include a "public department" and, therefore, an artificial person, a public office or a public body. I do not think that it can be suggested with any degree of seriousness that the Public Officers (Protection) Law, Cap. 52 of Northern Nigeria, 1963 while it protects public officers, cannot in the same wise protect a public department, an artificial person or a public body, so long as they are sued for an act done in the execution of their

public duties. Nor am I able to accept that Cap. 52 does not protect persons, offices, bodies or institutions created by statute or the Constitution or persons sued by their official titles, such as Attorney-General, Inspector-General of Police or Permanent Secretary.

B As I have repeatedly stated, the words of the section of the Law under interpretation are clearly not in themselves ambiguous. There is also nothing in either the long or short title, as against the full context of the legislation, which suggests that any special meaning is to be given the words "any person" in that Law other than their ordinary and plain meaning. I therefore find myself unable to introduce any limitation words to qualify the words "any person" in the Legislation in issue. See Fielding v. Morley Corporation (1899) 1 Ch. 1. I will now turn to the decided cases cited by learned counsel for the parties on the issue of whether or not the respondents are covered by Section 2 (a) of the Public Officers (Protection) Law, 1963.

Two decided cases of this court were relied on by learned counsel. The appellant's contention was that the decision of this court in E Rufus Momoh v. Afolabi Okewale and Another (1977) N.S.C.C. 365 settled the main issue for determination in this appeal. In his submission, this court in that case decided that the Nigerian Public Officers Protection Law was aimed at protecting public officers as individuals in the discharge of public duties. He maintained that in-as-much as the two respondents in the present case were sued as a statutory body and by official title respectively, and not as natural persons, they could not be covered by the Law in issue. In support of his contention, learned counsel cited a number of decisions which I drew attention to earlier on in this judgment.

The respondents, for their part, relied on the earlier decision of this court in Permanent Secretary, Ministry of Works etc. and Another v. S. Balogun (1975) N.S.C.C. 292. Their submission is that the ratio decidendi in that case settled the issue under consideration in this appeal and that the observation of Udoma, J.S.C. in the Rufus Momoh case is a, mere obiter dictum and cannot be regarded as the ratio decidendi in the case. I will now examine these cases.

In Rufus Momoh v. Afolabi Okewale and Another, (supra), the Plaintiff's claim was in damages for negligence following a road traffic accident involving the plaintiff and a bus driven at all material times by the 1st defendant who was in the employment of the 2nd defendant, the Lagos City Council. At the trial, the defendants, in addition to denying negligence urged that the action should be dismissed on the ground that it was statute-barred as the 1st defendant was a public officer and therefore protected under section 2 (a) of the Public Officers Protection Act, Cap. 168, Laws of the Federation of Nigeria, 1958. The trial court found negligence established but upheld the submission that the 1st defendant was a public officer and that the action was statute-barred since it had not been commenced within 3 months of the accident.

On appeal before this court, the only issue in contention was as to Whether or not the 1st defendant was a public officer and therefore protected under section 2 (a) of the Public Officers Protection Act, 1958. This issue was carefully considered by the this court and resolved thus.

"..... We are satisfied and hold that the learned trial Judge was clearly wrong in law in holding that the 1st defendant was a public officer; and, therefore, protected by the provisions of Section 2 of the Public Officers Protection Act, Cap. 168. We accordingly reverse that decision."

The above finding completely resolved the only issue between the parties in the appeal, before this court.

The court, per Udoma, J.S.C., however, subsequently observed:-

"It seemed to have been overlooked that there is a vast difference between the titles of the two Acts. The Nigerian Act is entitled. "Public Officers Protection Act", whilst the English Statute bears the title of "Public Authorities Protection Act". The aims and objects and the purposes of the two Acts are also different. The intention of the British Parliament in enacting the English Act was to protect Public Authorities engaged in the discharge of responsibilities imposed upon them by Parliament. The Nigerian Law was aimed at protecting Public Officers as individuals in the discharge of public duties". (Underlining supplied for emphasis.)

It is the above underlined observation of Udoma, J.S.C. that learned counsel for the appellant relied on in his submission that the decision in the Okewale case is to the effect that the Public Officers Protection Act which, by the way, is in pari materia with the provisions of the Public Officers (Protection) Law, 1963 was aimed at protecting only public officers who are human beings, that is to say, natural persons and not otherwise.

As I have already stated, I cannot accept that proposition of law by learned counsel as well founded. This is for the simple reason that the observation in issue is not a ratio decidendi in the case which will be regarded as binding until departed from. The 1st respondent in that case was admittedly sued as a human being or a natural person and in his personal names. The question whether he was sued as an individual or a natural person did not therefore arise for decision or constitute an issue for consideration in that case. Nor was the issue in fact canvassed by the parties.

I think I ought to mention that it does appear clear that the chain of the decided cases of the Court of Appeal in support of the appellant's contention invariably relied on the said observation of Udoma, J.S.C. in the Okewale case as a binding precedent, as a result of which it arrived at its decisions. I think, with respect, that the Court of Appeal was wrong in this exercise.

In Alhaji Abbas Tafida v. Abubakar and others (1992) 3 N.W.L.R. (part 230) 511, the Court of Appeal per Katsina-Alu J.C.A. as he then was, applied the said observation of Udoma, J.S.C in the Okewale case as the law and declared thus:-

"It is now settled law that the Public Officers Protection Act, Cap. 168, Laws of the Federation of Nigeria protects public officers and will not protect an institution, office or public authority. See Nwankwere v. Adewumi (1967) N.W.L.R. 45 at 49, Momoh v. Okewale and Another (1977) 6 S.C. 81. In Momoh's case, the Supreme Court held that unlike the English Public Authorities Protection Act, 1893 which protects public authorities, the Public Officers Protection Act was aimed at protecting public officers in the performance of their public duties: See Agboola v. Saibu (supra) where this court held that "Public Officers Protection

Act protects public officers as individuals and will not protect the 2nd defendant, an institution".

Having so held the Court of Appeal went on:-

"The 7th respondent is the Government of Gongola State. It is not a person. It is an institution. The 6th respondent is the Attorney-General of Gongola State The office of the Attorney-General, in my view, is an institution or a public office; the holder of the office is a public officer. In the present proceedings no action has been brought against a named individual as the holder of the office of Attorney-General. I am of the opinion, therefore, that the 6th respondent is not a public officer".

There is next the Court of Appeal decision in Utih v. Egorr (1990) 5 N.W.L.R. (part 153) 77 in which it held, again relying on the Okewale case, that Section 2 of the Public Officers Protection Law applied only to natural persons and not to public bodies or institutions. In that case, Ogundare, J.C.A., as he then was, delivering the judgment of the court stated:-

".....I must hold that the 21st respondent was at all times relevant to the action leading to this appeal a public officer entitled to the Protection afforded by Section 2 (a) of the Public Officers Protection Law. As that section seeks to protect individual public officers in the discharge of public duties however, I am not prepared to extend its protection to the 22nd respondent - See Momoh v. Okewale and Another (1977) 6 S.C. 81 at 89."

There is then the decision in Hassan Amao v. Civil Service Commission and others (1992) 7 N.W.L.R. (Part 252) 214 where the Court of Appeal, again applying the observation in the Okewale case stated per Achike, J.C.A., as he then was, as follows:-

"It is now tolerably clear that the uncertainty in the operation of Section 2 of the Law has been finally laid to rest by the decision in Momoh v. Okewale, where in construing Section 2 of the Public Officers Protection Act which is in pari materia with Section 2 of the Law, the Supreme Court observed as follows at Page 367:-

"..... The intention of the British Parliament in enacting

the English Act was to protect Public Authorities engaged in the discharge of responsibilities imposed upon them by Parliament. The Nigerian Law was aimed at protecting public officers as individuals in the discharge of public duties."

B The court not unexpectedly concluded thus:-

"Section 178 (1) (a) of the Constitution of the Federal Republic of Nigeria makes provision for the establishment of a State Civil Service Commission The Commission is therefore a constitutionally created authority It follows that the Commission being a public authority is outside the contemplation of the provisions of Section 2 (a) of the Law. The time bar to the institution of action within the period of three months of the commission or omission of the act under the Law cannot avail the 1st respondent not being a public officer or person within D the provisions of that law".

In the case of Felix Onyejekwe v. The Nigeria Police Council and the Inspector-General of Police (1996) 7 N.W.L.R. (part 463) 704, the Court of Appeal relying on the case of Alhaji Abbas Tafida, (supra) E which in turn was based on the same observation in the Okewale case held that the Inspector-General of Police, not having been sued in the action in his personal name was not protected under the Public Officers Protection Act. Said Musdapher, J.C.A.:-

F *"It is now settled law that the Act protects only public officers acting in the execution of public duty and does not protect an institution, office or public authority In Tafida v. Abubakar (1992) 3 N.W.L.R. (part 230) 511, it was held that the office of Attorney-General is an institution or a public office therefore is not protected by the Act.*
G *..... It is beyond any doubt that the appellant sued the office of the Inspector-General of Police, not the person of the Inspector-General of Police It is an institution and the action was not filed against the incumbent Inspector-General of Police in his individual personal capacity H acting in the execution of a public duty. From the authorities cited above, I am satisfied that the office of the Inspector-General of Police is not protected under the Public Officers protection Act".*

Reference must finally be made to the Court of Appeal decision

in Alapiki v. The Governor Rivers State and Another (1991) 8 N.W.L.R. (part 211) 575. In that case, as in the Okewale case and in the rest of the cases which were based on the Okewale case, the Court of Appeal on comparative basis restated that there was a vast difference between the titles of the English Public Authorities Protection Act, 1893 and the Nigerian Public Officers Protection Act. Again, relying on the observation in the Okewale case, it affirmed that whereas the English Act was enacted to protect Public Authorities, the Nigerian Law was aimed at protecting public officers as individuals in the discharge of public duties. It therefore held that by virtue of the Public Officers (Protection) Law, only public officers, who are natural persons are protected and that the provisions do not apply to public bodies or institutions. It accordingly ruled that the 1st respondent, the Governor of Rivers State was not sued in the action as a natural person but as a corporation sole created by the Constitution and that it was not therefore protected by the Public Officers Protection Law.

I think I ought to stress that one common feature that runs through the above Court of Appeal decisions is the reliance by each and every one of them on the observation of this court in the Okewale case. But as I have pointed out, the observation relied on in that case, if I may say with profound respect, is neither the ratio decidendi nor did it infact pertain to any issue between the parties in that case. I will now briefly consider the other set of authorities which supports the respondents' contention in this appeal.

I will start with the decision of this court in Permanent Secretary, Ministry of Works etc. and Another v. S. Balogun, (supra).

In the Balogun case, the respondent, as plaintiff, had sued the 1st appellant, Permanent, Secretary, Ministry of Works, Kwara State and the 2nd appellant challenging the validity of a Certificate of Title issued by the 1st to the 2nd appellant. Both appellants, as defendants, raised two distinct defences in limine to the plaintiffs action, namely:-

(1) That the plaintiff's action was statute-barred by virtue of the provisions of Section 2 of the Public Officers Protection Law, Cap. 111, Laws of Northern Nigeria; and

(2) Res judicata in that the subject matter of the action had been adjudicated upon in a previous case between the plaintiff and the 2nd defendant and that the plaintiff lost in the suit.

The trial court upheld the plea of estoppel by re judicata and struck out the action as against the 2nd defendant, leaving only the 1st defendant, to wit, the Permanent Secretary. The trial court overruled the plea of time-bar by the Permanent Secretary. It held that the injury to the plaintiff vis-a-vis the Permanent Secretary being a continuing one, the limitation law under the provisions of the Public Officers (Protection) Law did not avail the Permanent Secretary.

On appeal, this court held that the plea of time-bar succeeded since the complaint of the plaintiff was that the Permanent Secretary acted irregularly at the time of granting the Certificate and not that the case was that of a continuing injury as the trial court had found. Disposing of the issue of time-bar canvassed in the appeal, this court per Coker, J.S.C. stated:-

"Both defendants have now appealed to this court against the judgment and had argued that the plea of time-bar against the 2nd (sic) defendant should have been upheld and that in any case, the plaintiff could not, at least in the present proceedings, defeat the plea of res judicata by adding a nominal party to the proceedings. The argument was sternly resisted by learned counsel for the plaintiff but we are convinced that the contention of the defendants is well founded. We do not agree with the learned trial Judge that the plea of time-bar did not succeed and we point out that he was in error in basing his ruling on its inapplicability on an issue which was not pleaded by the parties".

One thing that is indisputable in the decision of this court in the Balogun case is that a definite issue was joined by the parties as to whether the Permanent Secretary, a position created by the Constitution, was protected under Section 2 (a) of the Public Officers (Protection) Law of Northern Nigeria. The issue, to quote the judgment of this court, was "sternly" argued and a clear decision was taken to the effect that the plea of time-bar raised by the Permanent Secretary, Ministry of Works, Kwara State, an artificial person or institution sued by an official title and not as

an individual natural person was wrongly overruled by the trial court. This court held that this plea of the Permanent Secretary under the Public Officers (Protection) Law succeeded. In my view, the decision of this court in the Balogun case is binding on the Court of Appeal. This is as against the mere obiter dictum in the Okewale case which, regrettably, B would appear to have been erroneously applied in some decisions of the Court of Appeal.

There is then the illuminating decision of this court in Adigun v. Ayinde and 2 others (1993) 8 N.W.L.R. (Part 313) 516 at 533 where Karibi-Whyte, J.S.C. in his interpretation of Section 2(a) of the Public Officers (Protection) Law of Niger State, which is in pari materia with the Law in issue in the present appeal, was of the view that, that law covered public officers or authority, that is to say, both natural and artificial persons alike. Said he:- C

"The words of this section appear to me unambiguous and clear, it relates 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 natural and ordinary meaning 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 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." (Underlining supplied for emphasis) D

It is instructive to observe that the 2nd and 3rd respondents in that suit were the Permanent Secretary, Federal Ministry of Agriculture and the E F G H

Federal Civil Service Commission, who were sued by their official title and as corporate body respectively.

I think I ought to say a word or two with regard to the decision of this court in Gamu Yare v. Alhaji Adamu Nunku (1995) 5 N.W.L.R. (part 394) 129. In my contribution to the leading judgment in that case, I did observe in very general terms that the purpose of the Public Officers (Protection) Law is to protect public officers as individuals in the discharge of their public duties. That observation, in the first place, was entirely obiter as it related to No issue argued before the court in that appeal. I should however make it clear that it was not my intention by the use of the words "as individuals" in that observation to limit the public officers covered under that Law to natural persons only. The words "as individuals" do not necessarily refer at all times to natural persons, to the exclusion of artificial persons, public bodies or persons who go by their official titles, such as an Attorney-General or a Permanent Secretary. **In my view, the word "individual" may, in appropriate cases, be construed in law as extending not only to natural persons but to artificial persons as well.** So, by Section 9 of the English Railway and Canal Traffic Act, 1888, the Railway and Canal Commissioners are conferred with jurisdiction to hear complaints where an enactment in a special Act imposes on a Railway company an obligation in favour of the public or any individual. It was held that the words "any individual" in the Act includes not only what is commonly called an individual person, but also a company or corporation, that is to say, "any legal person who is not the general public". See Great Northern Railway Co. v. Great Central Railway Co. (1899) 10 Ry. and Canal Traffic Cas. 266 at 275 - 276. Said Wright, J.:-

"It seems to me that the word individual must be construed as extending, not merely to what is commonly called an individual person, but to a company or corporation 'Individual' seems to me to be any legal person who is not the general public."

I accept the above proposition of law as well founded. Similarly in Commissioner of Taxation (6th) v. Cappid Property (1971) 45 A.L.J.R. 329 the words 'individual members' in Section 103 A (2)

(c) of the English Income Tax Assessment Act 1936 were construed as including corporate members. It cannot be therefore, right to suggest that the word "individual" necessarily means 'natural persons' at all times to the exclusion of "artificial persons".

In the case on hand, I did hold that the words "public officer" or "any person" in public office as stipulated in Section 2 of the Public Officers (Protection) Law, 1963 not only refer to natural persons or persons sued in their personal names but that they extend to public bodies, artificial persons, institutions or persons sued by their official names or titles. It seems to me plain that my observation in the Alhaji Nunku case with regard to the protection of public officers as individuals was not meant to refer to natural persons only but also covered artificial persons alike.

The question may finally be asked whether an Attorney-General or a Permanent Secretary who is duly appointed and sworn into office may not also be referred to as an "individual" in the context of the obiter dicta in the Okewale and Nunku cases. My straight answer be in the affirmative. Speaking for myself, therefore, the issue in this appeal is far more extensive than the observations in issue. This is whether apart from public officers sued as individuals in their personal names, the provisions of the Public Officers (Protection) Law, 1963 do not also cover other persons that come within the context of Section 2(a) thereof but who are sued otherwise than as natural persons. That is the issue that has now come directly into question in this appeal.

There is next the decision of the Court of Appeal, Jos Division, in the case of Atiyaye v. Permanent Secretary, Ministry of Local Government and Attorney-General, Borno State (1990) 1 N.W.L.R. (part 129) 728 where Maidama, J.C.A., relying on the Balogun case held that both respondents, The Permanent Secretary, Ministry of Local Government, Borno State and The Attorney-General, Borno State being creations of the Constitution were covered by Section 2(a) of the Public Officers (Protection) Law. Said he:-

"Now the first question to be answered is whether either the Permanent Secretary, Ministry of Local Government or the Attorney-Gen-

eral of Borno State is a public officer within the meaning of Section 2(a) of the Public Officers (Protection) Law From the foregoing, it is quite obvious that both the Permanent Secretary and the Attorney-General are public Officers within the meaning of Section 2(a) of the Public Officers (Protection) Law The next question is whether they are both entitled to the protection offered by Section 2 (a) of the Public Officers (Protection) Law The injury complained of in the present case was done by the 1st respondent in the performance of his public duty and in the absence of any malice or bad faith, he is entitled to the protection offered by Section 2 (a) of the Public Officers (Protection) Law. The same applies to the 2nd respondent"

There is finally the decision of the Court of Appeal, Benin Division, in Patrick Iyamah v. N.E.P.A. (1982) C.A. 2 Page 68 at 70 - 71 which, in my view, gives clear support for the contention of the respondents that the Public Officers (Protection) Law applies to natural persons and statutory bodies alike.

I have repeatedly stressed that all the Court of Appeal cases which establish that the Public Officers (Protection) Law only applies to protect public officers as individuals or natural persons and not otherwise erroneously arrived at those decisions from the obiter dictum in the Okewale case. That obiter dictum, by no mean, forms any part of ratio decidendi in the case. In my view, the set of cases of the Court of Appeal which purports to have applied the decision in the Okewale case were decided per incuriam and ought not be allowed to stand. Speaking for myself, and for all the reasons I have advanced earlier on in this judgment, I entertain no doubt that the decision of this court in the Balogun case remains good law. It seems to me that to hold that the Public Officers (Protection) Law only covers public officers as individuals or as natural persons only will tantamount to an amendment of the relevant Law by the addition of the words "as individuals" after the words against "any person" in line 2 of Section 2 of the Public Officers (Protection) Law, 1963. This exercise, as I have pointed out, is not the duty of any court of law. It is the legitimate duty of the Legislature to carry out any amendments they consider necessary in any legislation.

There is one final point I wish to make in connection with the set of cases that favours an amendment of the relevant Law. This is the fact that in virtually all those cases, beginning with the Okewale case, the courts for one reason or the other proceeded with considering the "vast difference" between the English and the Nigerian Legislations on the subject. Without doubt, there is a vast difference between both Legislations. But where the provisions of a statute, such as the provisions of our Public Officers (Protection) Law, are clear and unambiguous, it is the duty of the court to give such provisions their plain meaning. There will be no need under such circumstance to make a voyage of discovery to other countries to ascertain the construction they have placed on their own statute that deals with a particular group of persons before deciding on the interpretation that must be given to our own Legislation that covers a different class of persons. It seems to me that the safer and more correct course of dealing with a question of construction is to take the words themselves and arrive, if possible, at their meaning, without in the first instance making reference to decided cases from other jurisdictions. See Barrell v. Fordree (1932) A.C. 676 at 682. I agree entirely that the provisions of our Public Officers (Protection) Law, 1963 are clearly broader in operation and patently cover a wider class of persons than the English Public Authorities Protection Act, 1893. This is simply because whereas the words "any person" would, in law, include an artificial person, such as an Authority, an artificial person would not and cannot include a natural person. This seems to me to explain the admittedly "vast difference" between the meaning of the words "any person" in the Public Officers (Protection) Law, 1963 as against their meaning in the English Public Authorities Protection Act, 1893. Whereas the words "any person" in the former Law is referable to both natural and artificial persons, they only cover Public Authorities in the United Kingdom Act.

Having held that the act complained of by the appellant was an act done by the respondents in the direct execution or in the discharge of a public duty, the conclusion I therefore reach is that the said respondents fall within the contemplation of the protection afforded by the public officers (Protection) Law, Cap. 111, Laws of

Northern Nigeria, 1963. The cause of action in the suit arose on the 8th February, 1984 on which date the appellant was retired from the Judicial Service of Kaduna State. The present action, however, was not commenced until the 28th April, 1986, a period of over two years since the cause of action in the suit arose. It is clear that the appellant's suit is caught by the provisions of the Public Officers (Protection) Law, 1963 and is therefore statute-barred. Issue 1 is accordingly resolved against the appellant.

In view of my finding on issue 1, it becomes idle for me to consider issue 2 in any detail. It suffices to state that the respondents, quite rightly in my view, conceded that the complaint of the appellant under issue 2 was well founded as the court below dealt with the question of the competence of the appellant's action, a matter that was neither an issue nor was it canvassed before it by the parties. The court cannot be over-emphasized that decisions of a court of law ought not to be founded on any ground in respect of which it has neither received argument from or on behalf of the parties before it nor even raised by or for such parties or either of them. See Shitta-Bey v. Federal Public Service Commission (1981) 1 S.C. 40, Saude v. Abdullahi (1989) 7 S.C.N.J. 216 at 229, Chief Ebba v. Chief Ogo and Another (1984) 4 S.C. 84 AT 112. The court has no business whatsoever to deal with any issue not placed before it. See Florence Olusanya v. Olufemi Olusanya (1983) 3 S.C. 41 at 56-57 and Ochonma v. Unosi (1965) N.W.L.R. 321 at 323. Besides, on no account should a court raise a point suo motu, as it did in the present case, no matter how clear it may appear to be and proceed to resolve it one way or the other without hearing the parties. See Okafor v. Nnaife (1972) 3 E.C.S.L.R. (part 99) 566 at p. 581. If it does so, it will be in breach of the fundamental right of the parties to fair hearing. See Oje v. Babalola (1991) 4 N.W.L.R. (part 185) 267 at 280.

In the present case, the court below not only raised suo motu the question of the competence of the appellant's action but proceeded to hold, without hearing the parties or any of them, that it was caught by Decree No. 17 of 1984 which ousted the jurisdiction of the court. The matter was neither raised nor constituted an

issue before it. This, without doubt, is clearly an error in law.

It is, however, not every mistake or error in a judgment that will result in an appeal being allowed. It is only when the error is substantial in that it has occasioned a miscarriage of justice that the appellate court is bound to interfere. See Onajobi v. Olanipekun B (1985) 4 S.C. (part 2) 156 at 163, Ukejianya v. Uchendu 13 W.A.C.A 45 at 46, Azuetonma Ike v. Ugboaja (1993) 6 N.W.L.R. (part 301) 539 at 556, Anyanwu v. Mbara (1997) 5 N.W.L.R. (part 242) 386 at 400.

In the present case, it seems to me clear that no miscarriage of justice was thereby occasioned as a result of the said error of the court below. This is because, the appellant's action, at all events, was caught by the provisions of the Public Officers (Protection) Law, 1963 and was therefore liable to fail. The resolution of issue 2 in favour of the appellant cannot therefore be any matter of great comfort to him as his action, at all events and in all the circumstances of the case, is bound to fail.

In the final result and for all the reasons that I have given above, this appeal fails and the same is hereby dismissed with costs to the respondents against the appellant which I assess and fix at N10,000.00.

WALI JSC

I have had a preview of the lead judgment of my learned brother Iguh, JSC and I am in entire agreement with it. I however wish to make the following contribution by way of emphasis.

By an originating Summons filed by the plaintiff against the defendant, he asked for the following reliefs:-

"1. A declaration that the purported retirement of the Plaintiff as an Upper Area Court Judge in Kaduna State by the first defendant is invalid, null and void and of no effect.

2. A declaration that the retirement of the Plaintiff as conveyed by the first Defendant's letter reference No. S CAC/549/72 of 8th February, 1985 in so far as it purports to be in accordance with the provisions of the Public Officers (Special Provisions) Decree No. 17 of 1984 is

illegal, null and void and of no effect.

3. An order restoring the Plaintiff to his office and duty as an Upper Area Judge and to continue to so function until he reaches the retirement age or he elects to retire.

B *4. An order on the defendants to pay the Plaintiff general damages in the sum of N50,000.00 only."*

Upon a preliminary objection raised and argued that "by virtue of sections 1(2) (6) (i) and 3(3) of Decree No. 13, No. 16 and No. 17 of 1984" respectively, the jurisdiction of the court of law to enquire into the validity of acts done under Decrees and Edicts is generally and specifically ousted, the plaintiff has, contrary to the provisions of the Decrees stated herein filed the above stated suit before this court seeking a declaration that the retirement [done under Decree No. 17 of 1984] is "invalid" null and void and of no effect "and to that extent that suit is incompetent and should be struck out;" the trial court upheld the preliminary objection and struck out the suit.

The plaintiff appealed to the Court of Appeal against the ruling.
E His appeal was allowed with an order that the case be remitted to the trial court for trial by another judge of the same jurisdiction.

On the 10th of November, 1987, the defendants filed another preliminary objection to the hearing of the case on ground that by virtue of section 2(a) of the Public Officers (Protection) Law, Cap 111 Vol. 3 Laws of Northern Nigeria applicable to Kaduna State, the action is statute barred as it was not commenced within three months next after the act complained of.

G The preliminary objection was argued by learned counsel representing the respective parties to the litigation at the end of which the learned trial judge delivered a considered ruling in which he upheld the preliminary objection and declared the suit statute barred. He dismissed it.

H The plaintiff again appealed to the Court of Appeal Kaduna which dismissed the appeal in its unanimous decision the lead judgment which was delivered by Aikawa JCA.

The plaintiff has now further appealed to this court. Henceforth

in this judgment both the plaintiff and the defendants shall be referred to as the appellant and respondents respectively.

Parties filed and exchanged briefs of argument. The appellant raised two issues in his brief to wit:

"1. *Whether the respondents in this matter i.e. the Judicial Service Committee of Kaduna State and the Attorney-General of Kaduna State, howsoever defined, fall within the contemplation of the protection afforded public officers by the Public Officers (Protection) Law, Cap. 111, Laws of Northern Nigeria 1963 as applicable to Kaduna State?*

2. *Whether it is proper for the Court of Appeal to decide on an important issue raised by it suo motu without inviting the parties or their Counsel to address the Court on same particularly when that issue had in an earlier decision between the parties been finally determined by the Court of Appeal?"*

The respondents adopted the issues formulated by the appellant in preparing their joint brief.

I think the main issue that arises for determination in this appeal is whether the Public Officers' Protection Law, Cap III Laws of Northern Nigeria, 1963, { Vol. 3] applicable to Kaduna State is applicable to the facts of this case to make it statute barred and therefore incompetent.

The substance of learned counsel for the appellant's arguments both in his brief and orally is that the law is enacted to protect and give cover to public officers as human persons in the discharge of their public duties and not amorphous bodies like the respondents in this case; in other words only named individual, natural persons are protected by the Law. He strenuously argued that the title of the Law in question is indicative of that. He cited and relied on Momoh v. Okewale and Anor. [1977] 11 NSCC 365; Osawaru v. Ezeiruka (1978) 11 NSCC 390; Parker v. London City Council (1904) 2 KB 501; Swain v. Southern Railway Co. (1939) 2 All ER 794 and Bradford Corporation v. Myers AC 242.

Section 2(a) of the Public Officers Protection Law Cap III Vol. 3, Laws of Northern Nigeria, 1963, applicable to Kaduna State, provides as follows:-

"2. *Where an action, prosecution or other proceedings is com-*

menced against any person for any act done in pursuance or execution of any law or of any public duty or authority, or in respect of any such law, duty or authority, the following provision 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 continuance of damage or injury, within three months next after ceasing thereof."*

The key word that called for interpretation in the section (supra) is "person". The Law itself did not provide definition for the word "person". So we have to fall back on the Interpretation Law [Cap 52], Laws of Northern Nigeria, 1963 applicable also to Kaduna State, and section 3 thereof defines the word "person" thus-

"Person" includes any company or association or body of persons corporate or unincorporate."

In addition to this wide definition of "person", in the Interpretation Law (supra) the head notes of the Law also provides additional information why the Law was enacted, to wit. "A Law to provide for the Protection against actions or persons acting in the execution of public duties."

The provision did not use the word "officer", but instead the word "person". In my view, the purpose of using the word "person" is obviously to widen the scope of the law to cover both human being and legal or artificial person such as corporate and unincorporate. Without referring to any foreign decision, the intention of the legislature is to provide protection for public officers, corporate and unincorporate bodies in the discharge of their public assignments. It is certainly not to narrow its meaning as argued and urged on this court by learned Counsel for the appellant. Used in the wide sense, the term "any person" will cover both natural human being and other bodies, corporate and unincorporate, thus covering the Judicial Service Committee of Kaduna State and the Attorney-General of that State who are the Respondents in this case.

Where there is doubt or obscurity in a statute, its title or heading may be consulted as a guide; the preamble may also be consulted to

determine its rationale, thus the true construction of terms while section heads may be looked at as forming part of the statute. A title of a statute, both long and short are to provide a guide for its construction but not to control its clear provision as in the present case.

It is not in doubt that learned counsel for the appellant heavily B relied on Rufus Momoh v. Afolabi Okewale Anor. (1977) NSCC 365 as his leading authority. In that case the issue that fell for determination by the Supreme Court was whether or not section 2(a) of the Public Officers Protection Act, 1958 availed the 1st defendant who claimed to be a C public officer and this court held-

"We are satisfied and hold that the learned trial judge was clearly wrong in law in holding that the 1st defendant was a Public Officer, and, therefore protected by the provisions of section 2 of the Public Officer Protection Act, Cap 168. We accordingly reverse the decision." D

Udoma JSC [as he then was] however proceeded to make the following observations-

"It seemed to have been over-looked that there is a vest difference between the titles of the two Acts. The Nigerian Act is titled "Public Officers Protection Act," while the English statute bears the title "Public Authorities Protection Act." The aims and objects and the purposes of the two Acts are also different. The intention of the British parliament in enacting the English Act was to protect Public Authorities engaged in the discharge of responsibilities imposed upon them by Parliament. The Nigerian Law was aimed at protecting Public Officers as individuals in the discharge of public duties." F

Having regard to the issue raised and resolved in that case to wit - that 1st G defendant was not a public officers, the opinion expressed by Udoma JSC as regards the non-applicability of section 2(a) of the Public Officer protection Act to public authorities whether corporate or incorporate is an obiter dictum. The learned Justice based his opinion on foreign decision like pharmaceutical Society v. The London & Provincial Supply Association Ltd. (1880) 5 App. Case 857 particularly at 868 - 869; Griffiths & Anor. v. Smith & Ors . (1941) 1 All ER 66; Parker v. LCC (1904) 2 KB 501 and Swain v. Southern Railway Co. (1939) 2 All ER 794. H

It is not in doubt that section 2(a) of the Public Officer Protection Act considered in Momoh v. Okewale (supra) is in pari materia with section 2 (a) of the Public Officers (protection) law and the dictum of Udoma JSC therein is of persuasive authority in construing the latter Law. Also decisions of foreign courts in construing statutes with similar provisions to our statutes will be consulted and will carry some weight in their persuasive influence in construing our own statutes, but one must bear in mind that even in such cases, situations and circumstances may differ. See Olaleke Obadare & Ors. v. President, Ibadan West District Council Grade B Customary Court, Iddo (1965) NNLR 39. It is very necessary in considering reported cases that the actual decisions should carry authority with proper weight being given to dictum therein where necessary.

Where the provision of a law is clear, words contained therein shall be ascribed their natural meaning. This is the golden rule of interpretation. Section 2 (a) of the Public Officers (Protection) Law read with section 3 of the Interpretation Law, leaves no one in doubt that it covers both corporate and unincorporate persons. There is no ambiguity and so consideration of dictum and foreign decisions do not arise. The decisions based on the dictum in Momoh v. Okewale (supra) have no binding authority on this court. I am bound to follow the decision of this court in Permanent Secretary, Ministry of Works, Kwara State & Anor. v. Balogun (1975) NSCC 292 which settled the issue raised and canvassed in this case.

On the 2nd issue, I only need to say in brief that the Court of Appeal was very wrong in raising the question of the competence of the appellant's case suo motu and resolving the same without hearing counsel. Learned counsel for the respondents rightly conceded the point. See Saude v. Abdullahi (1989) 7 SCNJ 216 and Ochonma v. Unosi (1965) NMLR 321.

It is for these and the more elaborate reasons contained in the lead judgment of my learned brother Iguh, JSC that I also hereby dismiss the appeal, affirm the decisions of courts below with N10,000.00 costs to the respondents.

KUTIGI JSC

The single most important issue in this appeal is whether or not the 1st Respondent in this case, that is the Judicial Service Committee of Kaduna State falls within the contemplation of the protection afforded public officers by the Public Officers (Protection) Law Cap. 111 Vol. 3 B Laws of Northern Nigeria 1963, applicable to Kaduna State.

The relevant section of the law in this case is section 2 (a) which reads thus -

"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 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."

Clearly the key words used in section 2 (a) above and which are our concern in this case are the words "any person." Section 3 of the Interpretation Law Cap. 52 Laws of Kaduna State defines person thus -

"Person" includes any company or association or body of persons corporate or unincorporate."

(See also section 18 of the Interpretation Act of the Federation).

The Judicial Service Committee of Kaduna State though an artificial or unnatural person is therefore a 'person' within the above definition and would therefore be entitled to benefit under section 2 (a) of the law above. It was not disputed that the Committee was performing one of its statutory functions when it terminated the appointment of the Appellant.

It is also not disputed that the Appellant's appointment was terminated by the judicial Service Committee on 8th February 1985, while this action was commenced on 28th April 1986 which is far outside the period of three (3) months prescribed under section 2 (a) above. This court in the case of PERMANENT SECRETARY, MINISTRY OF

2542 Ibrahim v. J.S.C. Kaduna State (1998) 12 KLR Kutigi JSC
WORKS, KWARA STATE & ANOR VS. BALOGUN (1975) NNLR 91
held, per Coker JSC -

"Both defendants had argued that the plea of time - bar
against the 2nd defendant should have been upheld the argument
B was sternly resisted by learned counsel for the plaintiff but we are con-
vinced that the contention of the defendants is well founded. We do not
agree with the learned trial Judge that the plead of time - bar did not
succeed and we point out that he was in error in basing his ruling on its
C inapplicability on an issue which was not pleaded by the parties."

I am clearly of the view that on the authorities of PERMANENT
SECRETARY, MINISTRY OF WORKS, KWARA STATE & ANOR VS.
BALOGUN (supra) EGBE VS. ADEFARASIN & ANOR (1985) 1 NWLR
(pt. 3) 549, OBIEFUNA VS. OKOYE (1961) 1 ALL NLR 357, and
D FADARE & ORS VS. ATTORNEY-GENERAL OF OYO STATE (1982)
4 SC 1 that the Appellant could not have instituted this action after the
expiration of the period of three (3) months allowed by section 2 (a)
(supra).

E The trial High Court was therefore right when it held that the
Appellant's action was statute barred. The Court of Appeal was equally
right to have confirmed that decision and thereby dismissing the Appellant's
appeal.

F It is for the above reasons and others exhaustively discussed in
the lead judgment of my learned brother Iguh, JSC, that I also agree to
dismiss the appeal. It is accordingly dismissed with costs as assessed.

G **OGUNDARE JSC**

What is the scope of the Public Officers (protection) Law, Cap
III Laws of Northern Nigeria, 1963 (hereinafter is referred to as the
Law)? This is the question that calls for resolution in this appeal.

H The Plaintiff (who is now appellant before us) had, by originat-
ing summons taken out on 28/4/86, claimed from the Defendants (now
respondents) in the High Court of Kaduna State as hereunder.

"1. A declaration that the purported retirement of the Plaintiff

as an Upper Area Court Judge in Kaduna State by the first Defendant is invalid null and void and of no effect.

2. *A declaration that the retirement of the Plaintiff as conveyed by the first defendant's letter reference No. S.CAC/549/72 of 8th February, 1985 in so far as it purports to be in accordance with the provisions of Decree No. 17 Public Officers (Special Provisions) Decree 1984 is illegal, null and void and of no effect.*

3. *An order restoring the Plaintiff to his office and duty as an Upper Area Judge and to continue to so function until he reaches the retirement age or he elects to retire.*

4. *An order on the Defendants to pay the Plaintiff general damages in the sum of N50,000.00 only."*

In his supporting affidavit, he depose thus:

"2. *That I know as a fact that until the 8th day of February, 1985 I was an Upper Area Court Judge stationed at Kankia in Kaduna State of Nigeria.*

3. *That I know as a fact that I was first appointed a mufti in 1950 , became an Alkali in June 1964 under the service of the then Kastina Native Authority Kaduna State.*

4. *That I know as a fact and as informed me by Gbenga Atoki, my counsel whom I verily believe that in 1968, I became an Area Court Judge by virtue of the Area Courts Edict No. 2 of 1967.*

5. *That I know as a fact that in 1970 I was promoted to the Rank of Senior Area Court Judge.*

6. *That I know as a fact that I was further promoted to the Rank of Upper Area Court Judge in 1976.*

7. *That I know as a fact that I performed the functions and duties assigned to me to the best of my ability , creditably and without any blemish.*

8. *That I know as a fact that I am still physically fit and also desirous of carrying out my duties and (sic) Upper Area Court Judge or in whatever capacity the State requires my services till my retirement age.*

9. *That by a letter reference No. S. CAC/549/72 of 8th February, 1985 written by the first defendant and addressed to me, I was com-*

pulsorily retired. A certified true copy of the letter is herewith annexed and marked 'A'.

10. *That I did not commit any offence or guilty of any misconduct, neither was I given any hearing before annexure 'A' was delivered to me.*

11. *That I know as a fact and as I have been informed by my counsel, Gbenga Atoki Esquire, whom I verily believe that there is nothing in the said letter to show that the Military Governor of Kaduna State authorized my retirement.*

12. *That this is the second time I am being humiliated, ridiculed and put to great expense by the actions of first Defendant.*

13. *That prior to my purported retirement as averred to in paragraph 9 above, the first Defendant had carried out a similar exercise on my (sic) on 12th July, 1982 through its letter reference No. C.3/46.*

14. *The allegation against me then was that I refused to subscribe to the Oath of allegiance and Judicial Oath.*

15. *That I know as a fact that on the 20th day of June 1982 and before my purported retirement the first Defendant served me with a letter of interdiction Ref. NO. S. CAC/P/273/113 dated 18th June 1982 interdicting me from performing any judicial function as from 18th June, 1982 because of my alleged refusal to be sworn in since my promotion to the rank of Upper Area Court Judge.*

16. *That I know as a fact that further to a letter dated 21st June 1982 written to the first Defendant I presented myself for the Oath taking but was ignored by the agents of the first Defendant.*

17. *That I know as a fact that I thereafter received a letter Ref. No. C.3/41 dated 28th June, 1982 from the first Defendant giving me forty-eight hours from the said date to explain why I should not be retired compulsorily in view of the alleged refusal to take an Oath of allegiance.*

18. *That I know as a fact that I thereafter submitted a representation as demanded by the first Defendant by a letter dated 30th June, 1982.*

19. *That I know as a fact that by a letter Ref. No. C.3/46 of 12th July, 1982 from the first Defendant I was advised to go on compul-*

sory retirement as from the 9th day of July, 1982.

20. *That I went to the High Court of Justice Kaduna State to challenge my purported compulsory retirement in Suit No. KDH/193/82, with the same Defendants as in this suit.*

21. *That I lost the suit in the High Court of Justice but won a reversal at the Court of Appeal, Kaduna in appeal No. CA/K/34/84.*

22. *Annexed to this affidavit of mine and marked 'B' is a Certified true copy of the drawn-up Order of the Court of Appeal Kaduna shown to me by my counsel whom I verily believe.*

23. *That my counsel has informed me and I verily believe him that the second Defendant is being made a party to this action as the Chief Law officer to the Kaduna State Government.*

It would appear from the records that the defendants raised a preliminary objection to the hearing of the suit by virtue of sections 1 (2) (b) (c) of Decree No. 13 of 1984, 3(3) of Decree No. 16 of 1984 and 3(3) of Decree No. 17 of 1984. A decision was given by Chigbue J (as he then was) in favour of the defendants. This decision was, however, on 5/3/87 reversed on appeal by the Court of Appeal which sent the case back to the High Court for hearing and determination by another Judge of that Court with a direction that it be given accelerated hearing.

When the case came back to the High Court it suffered a number of adjournments until plaintiff's counsel moved the Court for accelerated hearing. The application was granted and hearing was fixed for 10/11/87. On 12/3/87 the defendants had filed a counter-affidavit as ordered by the Court of Appeal.

In the counter-affidavit one Sarki Bala, a litigation clerk in the Attorney-General's chambers, Kaduna depose thus:

"1. *That I am the Litigation Clerk in the Attorney-General's Chambers, Ministry of Justice, Kaduna State and by virtue of my employment I am conversant with the facts of this case.*

2. *That I have the authority of my employers to swear to this affidavit.*

3. *That I have been informed and shown the documents relating to this case by the Attorney General and I verily believe them as fol-*

lows:-

(a) *That the first defendant was the body Saddled with the responsibility of employing Judicial Officers ad Staff of Kaduna State including the plaintiff.*

B (b) *That the plaintiff/Applicant did not perform the functions and duties assigned to him creditably and without any blemish from 1978 to 1985 when he was compulsorily retired by the first defendant as shown in the documents attached and marked exhibits A1; A2; A3; A4; and A5.*

C (c) *That the plaintiff/Applicant was not desirous of carrying out his functions as Upper Area Court Judge as drawn by the first defendant as shown in the documents attached to this Affidavit and marked as exhibits A1-A5.*

D (c) *That the plaintiff/Applicant was not desirous of carrying out his functions as Upper Area court Judge as drawn by the first defendant as shown in the documents attached to this Affidavit and marked as exhibits A1 - A5.*

E (d) *That the defendants compulsorily retired the plaintiff/Applicant as it is vested with the power to do so.*

(e) *That the first defendant has the power to appoint, remove and exercise disciplinary control over Judicial Officers and did retire the plaintiff in this case.*

F (f) *That the powers referred to in paragraph (e) of this Affidavit are those powers as stipulated in section 178(2) and part 11 of the third schedule of the 1979 Constitution and further aver that the first defendant has the powers to dismiss the plaintiff/Applicant for misconduct; leave without permission; dereliction of duty etc., and did retire him as per the plaintiffs Annex A based on such misconduct etc. The same documents as shown in paragraph (b) will be relied upon.*

G (g) *That even though on the fact of the letter it does not show H the Military Governor authorized the retirement, it is a fact that he did authorize the retirement as can be inferred from the documents attached and marked exhibits B1; B2; B3;*

(h) *That this is not the second time the applicant/Plaintiff would*

be tried on the same issue and in fact the first trial (Suit No. KDH/193/82) has no bearing or link with the present case,

(i) That the exercise carried out by the first defendant which resulted to the retirement of the plaintiff/Applicant in 1982 with reference No. C.3/46 has no bearing with the present case as the first case was in respect of refusal to (sic) judicial Oath while the present case is in respect of a different subject matter.

(j) That the order marked E in the Plaintiff/Applicant had been carried out and the present matter is not connected with the order exhibit B."

A further affidavit was on 9/11/87 filed on behalf of the defendants in which Tanko Tete averred:

"1 That I am the Chairman, Kachia Local Government Council, Kaduna and that prior to this appointment, I was the Principal Private Secretary to the Military Governor of Kaduna State.

2. That as part of my schedule of duties in the office of the Governor of Kaduna State, it was my responsibility to communicate information or directives from the Governor to the Commissioners, the Secretary to the Military Government and other organs of Government and also communicate information from these persons to the Governor.

3. That in the performance of my duties in 1984/1985, I became aware of the directives of the Governor of Kaduna State at the time, some in writing and some verbally, to all Ministries, Parastatals, and other arms of Government, asking them to compile lists of persons to be purged from their bodies or employment and submit to him, and to the Kaduna State Judicial Service Committee delegating his powers to them to purge Officers, who fall under any of the following categories:

- (a) Persons of ill health or old age;*
- (b) Persons engaged in corrupt practices or who have in any way corruptly enriched themselves;*
- (c) Persons who have in any way hindered the improvement of the organization or department; or*
- (d) Persons whose continuance in office due to their conduct is not in interest of the public.*

4. That I know as a fact that the then Governor of Kaduna State gave verbal directives authorizing the Kaduna State Judicial Service Committee to carry out a purge exercise of its staff on his behalf, which directives I verbally Communicated to the Kaduna State Judicial Service Committee.

5. That in pursuance of the Governor's directives, the Kaduna State Judicial Service Committee carried out the exercise and sent a list of the purged officers as shown in Exhibit 'A' attached to this affidavit and which list includes amongst others, the name of Alhaji Aliyu Abba Ibrahim (the Plaintiff in this Suit) to my office for the information of the Governor.

6. That sometimes in September, 1987, the present Principal Private Secretary to the Military Governor of Kaduna State showed me a letter (attached to this Affidavit and marked Exhibit 'B') written by the Military Governor of kaduna State to the former Military Governor of Kaduna State Air Vice Marshal Usman Muazu (Rtd) enquiring whether he had given any directives to the Kaduna State Judicial Service Committee, to carry out the purge exercise on his authority.

7. That later, the present Principal Private Secretary to the Military Governor of Kaduna State showed me a reply to the letter (attached to this Affidavit and marked as Exhibit 'C') from Air-Vice Marshal Usman Muazu (Rtd), the then Military Governor of Kaduna State stating clearly that he had in 1985, directed the Kaduna State Judicial Service Committee to conduct a purge exercise, in accordance with Decree No. 17 of 1984 and that the purge of the judiciary was properly and duly authorized."

On 10/11/87, the date fixed for hearing, a notice of preliminary objection was filed on behalf of the defendants. The Objection stated:

"That by virtue of Section 2 (a) of the Public Officers Protection Law, Cap III Vol. 3, Laws of Northern Nigeria, 1963, the action instituted by the Plaintiff/Respondent as per the originating Summons is statutes barred, as it was not commenced within three months next after the act complained of, and to that extent, the suit as filed is incompetent and should be dismissed."

The trial High Court (Akaahs, J) heard arguments on the same date on the objection. In a ruling delivered on 4/12/87, the learned trial Judge held -

"There is no doubting the fact that the cause of action accrued as from 8th February, 1984 but the Plaintiff did not do anything until 28th April, 1986 which was clearly 2 years 2 months and 19 days after the event had taken place. The defendants are thus entitled to raise the defence. They accordingly succeeded and this suit shall be discontinued against the Defendants. I hereby dismiss the Plaintiff's action as being statute barred."

Being dissatisfied with that judgment, the plaintiff appealed once again to the Court of Appeal and the only issue placed before that Court was:

"Whether the respondent however so defined fall within the contemplation of the protection afforded by the Public Officers' Protection Law (CAP 111) Laws of Northern Nigeria as applicable to Kaduna State."

The Court of Appeal, in dismissing the appeal and affirming the judgment of the trial High Court held, per Aikawa JCA, after setting out section 2 of the Law, that:

"It is clear that the word person has been used in this section not a Public Officer. The Judicial Service Committee consists of persons holding a public office and as such should not be denied the protection under the said section."

Therefore on the issue for determination in the appellant's brief, I am of the opinion that on the authority of the case of Permanent Secretary Ministry of Works Kwara State & Anor V. Balogu (supra) that the appellant cannot institute this action after expiration of period of 3 months allowed by the section 2(a) supra. See Freedom (sic) v. Leeming (1926) 1 KB. 160 at page 164 per Slate J.

Further more in the case of Fred Egbe v. Justice Adefarasin & Anor (1985) 1 NWLR (pt.3) page 549 at page 568. The provision of the said section was considered by the Supreme Court and was held that the general principle of law is that where the law provided for the bringing of action within a prescribed period, in respect of a cause of action accruing to the plaintiff proceeding shall not be brought after the time

prescribed by the statute, see *Obiefuna v. Okoye* (1961) 1 ALL NLR 357. That an action brought outside the prescribed period offends against the provision of the section and does not give rise to a cause of action. It is clear in the facts, as earlier said, that the appellant brought this action
B after the expiration of the 3 months prescribed by the said section. The action is therefore, statute barred and in my opinion the learned trial Judge is perfectly right in dismissing the same."

Ogundere, JCA in his own judgment said:

" Section 3 of Interpretations Law Cap 52, Laws of Kaduna
C State, define *inter alia*, 'person' which includes any company or association or body of persons corporate or unincorporated. For full measure, in section 18(1) of the Interpretation Act 1964, which applies throughout the Federation, the word 'person' includes anybody of persons corporate
D or unincorporate. The Public Service Committee of Kaduna State is therefore a 'person' entitled to the benefit of 3 months limitation of action under section 2(a) of the Public Officer (Protection) Law of Kaduna State. The appellant whose appointment was terminated on 8th February,
E 1985, commenced this action on 28th April, 1986, well outside the limitation period. The learned trial Judge Kumai Akaahs J. was therefore right to strike out the action.

The plaintiff has further appealed to this Court. And in his brief
F of argument he set out the following two questions as calling for determination, to wit.

"1. Whether the respondents in this matter i.e. the Judicial Service Committee of Kaduna State and the Attorney-General of Kaduna State, howsoever defined fall within the contemplation of the protection
G afforded public officers by the Public Officers Protection Law (Cap. III) Laws of Northern Nigeria 1963 as applicable to Kaduna State?

2. Whether it is proper for the Court of Appeal to decide on an important issue raised by it *suo motu* without inviting the parties or their
H counsel to address the Court on same particularly when that issue had in all earlier decision between the parties, been finally determined by the Court of Appeal?"

Question 2 is not the main issue here. Perhaps, it may be disposed of at

this stage. After disposing of the only issue the parties placed before it, the Court below, in the lead judgment of Aikawa JCA, proceeded to consider the jurisdiction of the High Court in the light of Decree No. 17 of 1984. That issue was never before the trial High Court. Indeed it was exposed of by the Court below in favour of the plaintiff when he first B appealed against the decision of the High Court on the issue. In CA/K/125/86 between the parties that Court had on 5th March 1987 ruled that the High Court was vested with jurisdiction to try the case notwithstanding Section 3(1) of Decree No. 17 of 1984. There was no appeal against C that decision to this Court. That decision is, rightly or wrongly, final between the parties and the Court below became functus officio in respect of that issue. I agree entirely with the plaintiff that the Court below was in error to suo motu open the issue in its judgment and to decide it without hearing the parties on it. This Court has, in a number of cases, D deprecated the practice whereby a court takes up a matter suo motu and decides on it without hearing the parties on it. The situation is made worse that the Court below appeared to be sitting on appeal against its earlier decision of 5/3/87 and, without hearing the parties, overruled it- E self. With profound respect to their Lordship of that Court, their conduct here is highly irregular.

It is noteworthy to mention that the defendants have not sought to justify what the court below did. It is observed in their brief thus: F

"On the issue of Decree no. 17 of 1984, the Holden of the Court of Appeal in this regard was merely Obiter and did not form the ratio decidendi of the case. We therefore submit that the objections on this ground was misconceived.

The learned Justices of the Court of Appeal in line 3 at page 61 G clearly stated that what followed was 'for the sake of argument.'

They are, in effect, saying that the Court below went on a voyage of its own not connected with the issue before it and which in any event, it had decided in a previous appeal to it. In his oral submission before us Mr. H Wakili, for the defendants, concedes it that the issue of issue of Decree 17 of 1984 was not properly taken up by the court below as it was never argued before them.

I therefore answer Question 2 in the negative.

I now proceed to determine Question 1. It is submitted on behalf of the plaintiff, both in his brief and in oral arguments of his learned counsel, Mr. Awodein that the Law by virtue of its long title, is a law to provide for the protection against action of public officers, as individuals, acting in the execution of public duties. It is argued that the Law is not for the protection of public authorities, departments or offices. He refers to the short title of the Law and the definitions of "persons" and "public officers" in section 3 of the interpretation Law, cap 52 Laws of Northern Nigeria 19763 and urges the court to hold that "any person" in section 2(a) of the Law means "any public officer." Learned counsel argues that the defendants are not public officers as defined in the interpretation Law. He relies on Momoh v. Okewale & Anor. (1977) 11 NSCC 365 at p. 369. Learned counsel urges us to interpreted the words "any person" in section 2 (a) of the law in the light of the shot title of the Law and relies on Osawaru v. Ezeiruka (1978) 11 NSCC 390 at pp 398 - 399 for this approach. He refers to Parker v. London City Council (1904) 2 KB 501, Swain v. Southern Railway Co. (1939) 2 A; E.R. 794 and Bradford Corporation v. Myers (1916) AC 242 at p. 247 per Lord Buckmaster L.C. to show that the English Courts interpreted the words "any person" appearing in the Public Authorities Protection Act, 1893 in their limited, and not wide, sense. Learned counsel urges us to limit the words "any person" appearing in section 2(a) to individual public officer and not to public authorities, departments or offices. He argues that the learned trial judge was in error to refer to section 8 of part 11 to the Third Schedule to the Constitution of the Federal Republic of Nigeria 1979 which, according to counsel, only provides for the composition of the Judicial Service Committee; It is not relevant to the interpretation of section 2(a), argues learned counsel. He submits that the defendants are not public officers within the contemplation of section 2 of the Law.

Mr. Awodein argues that the case of Permanent Secretary, Ministry of Works, Kwara State & Anor. v. Balogun (1975) NNLR 91 relied on by the two Courts below in arriving at their decision that the defendants were covered by the Law, is no authority for the proposition in that

the issue was not decided in the case by the Supreme Court. He argues in the alternative, that if the case is held to decide the issue, it is in conflict with the later decision of the Supreme Court in Momoh v. Okewale (Supra) and urges us to follow the latter decision. He relies on Chief Nwako & Ors. v. The Governor of the Rivers State & Ors. (1989) 2 NWLR B (Pt.104) page 470 at p. 481 paragraphs F, G & H and page 482 paragraphs A, B 7 C. Learned counsel also argues that the case of Freeborn v. Leeming (1926) 1 KB 160 at p. 164 relied on by the Court below is irrelevant to the case on hand.

He urges us to approve the decision in Alapiki v. Governor of Rivers State & Anor. (1991) 6 NWLR 575 at 588 D - F, 598 A - H and 599 A - C; Judicial Service Commission v. Alaka (1982) CA 42; Tafida v. Abubakar & Ors. (1992) 3 NWLR 511 at 522H, 523 A - G and Utih v. Egorr (1990) 5 NWLR 771. He urges us not to follow the decisions of the Court of Appeal in Amao v. Civil Service Committee, (1992) 7 NWLR 214 at pp 224 -225 and Atiyaye v. Permanent Secretary, Ministry of Local Government, Borno State (1990) 1 NWLR (Pt. 129) page 728. Counsel argues that even if it is held that the 2nd defendant - the Attorney-General, could take advantage of the Law, he being a nominal party, this would not have effect on the case as it was the 1st defendant that terminated plaintiff's appointment.

Mr. Awodein urges us to allow the appeal and set aside the decisions of the two Courts below.

Mr. Wakili, learned Director Legal Drafting (Kaduna State) submits, on behalf of the defendants that the words "*any person*" in section 2(a) cover both public officers and public offices and that by the definition of the expression in the interpretation Law both defendants are covered. He argues that the expression covers all legal personae and not limited to individuals alone. It is argued skillfully in the Respondents' brief that it is erroneous to limit the meaning of the word "*any person*" by the short title. It is further argued that if the narrow interpretation was intended the law makers would have used the words "*public officers*" instead of "*person*" as in the text. It is submitted that the word "*person*" as used in the Law is clear and unambiguous and effect should be given

to it. Mr. Wakili argues further that the narrow meaning as suggested by the plaintiff is to import into the Law what was not there. He refers to Awolowo v. Shagari (1979) 6-9 SC.15 At P. 68 per Fatai Williams CJN. He argues that the Law is broader than the English Public Authorities Protection Act, 1893 in that while the word "person" could include authority, the reverse would usually not be the same. He submits further:

While conceding to the submission that it is fundamental principle in construction of a statute to give it its ordinary and grammatical meaning so long as it does not do violence to the language and intentment of the statute, we submit that the learned trial judge's interpretation does not offend this principle."

He submits that the Judicial Service Committee is not a public office but a body of persons holding a public office. The Committee is a body of public officers who should not be denied the protection of the Law, so argues counsel. He adds that the Attorney-General is a public officer and so is covered by the Law. He submits:

I submit that the law was intended to protect not only public officers and public authorities but also non public officers performing strictly speaking public duties or social services. I refer to the case of Parker v. London County Council (1904) 2 KB pages 501.

Even if the definition of person is narrowed down to public officers both Respondent are public officers by virtue of part II of the 5th schedule of the 1979 Constitution of the Federal Republic of Nigeria. I, therefore, refer to the said part II of the 5th schedule of the 1979 Constitution as well as section 176 and 178(1) of the 1979 Constitution of the Federal Republic of Nigeria.

Therefore, we submit that the Judicial Service Committee can claim protection under Public Officers (protection) Law just like the Attorney-General."

He relies on Freeborn v. Leeming (1926) 1 KB 160.

Learned counsel urges us to follow Permanent Secretary, Ministry of Works & Anor. v. Balogun (supra). He refers to SWAIN'S Case (supra) and submits that the Law only excludes person performing public duty for commercial or for profit purposes. He distinguishes MOMOH'S

case (supra) from BALOGUN'S Case. On the use to be made of the short title of a statute in its interpretation; learned counsel argues:

"While conceding that a short title can throw more light on the meaning or the applicability of a law. We submit that in this case such recourse is not necessary because section 2 clearly defines what s meant by the word 'person' to mean 'any one who does an act in pursuance or execution or intended execution of any law or of any public duty or authority' We submit that the case of MOMOH V. OKEWALE & ANOR. (1977) NSCC 365 is no longer relevant in view of the fact that it was decided before the promulgation of the 1979 Constitution we refer *PART III OF THE 5TH SCHEDULE* of the said constitution. Supreme Court in Balogun's Case was not obiter only, it was definitely part of the ratio decedents of the judgment."

Counsel urges us to dismiss the appeal.

Now, section 2(a) of the Law 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 -

(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 proceeding be at the instance of any person for cause arising while such person was a convict prisoner, it may be commenced within three months after the discharge of such person from prison;" (underlining is mine)

The answer to the question placed before us lies in the interpretation of the words "any person" in the above context. The Law, being a State Law, it is to be interpreted by applying the Interpretation Law, Cap 52 of the Laws of Northern Nigeria 1963, and not the Interpretation Act, Cap 192 Laws of the Federation of Nigeria 1990 which deals only with the construction and interpretation of Acts of the National Assembly. With

this short remark I turn to section 3 of the Interpretation Law. The word "person" is defined therein as including

"any company or association or body of persons corporate or incorporate."

B Section 3 also contains the definition of "public officer" and "public department". It reads:

"'Public officer' or 'public department' extends to and includes 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 Northern Nigeria or not".

From this definition, "public officer" would mean -

D "every officer invested with or performing duties of a public nature whether under the control of the President or of the Governor of Northern Nigeria (Kaduna State) or not." (Underlining is mine)

"Public department" would also mean -

E *"Every department invested with or performing duties of a public nature whether under the immediate control of the President or of the Governor of Northern Nigeria (Kaduna State) or not."*

Three expression "public department" is not used in the Law and so i will not concern myself with its definition any longer.

F It is not in dispute that the expression used in section 2(a) is "any person". The dispute is in the interpretation to be put on that expression within the context it is used in the Law. The plaintiff says that the proper interpretation is to read "any person" to mean "any public officer". He bases his submission on the short title of the Law which reads: "Public Officers (Protection) Law" The defendants, on the other hand, G say that the expression "any person" be accorded its statutory meaning. This submission has found favour with the two Courts below. Each side relies on decided cases in support of its contention. I shall consider these authorities as I go along.

H That the short title of a statute can be called in aid in the construction and interpretation of the statute is settled law. This Court, per Aniagolu JSC, made the point in Osawaru v. Ezeiruka (supra) wherein the learned Justice of the Supreme Court observed:

"In an earlier period, in interpretation of Statutes, titles to statutes were not considered part of the Statutes and were on that ground held to be excluded from consideration in construing the Statutes. (See Salked v. Johnson (1848) 2 Ex. 256 per Pollock C.B.; R.v. Wilock (1845) 7 Q.B. 317 per Lord Denman C.J.). But the modern view, which appears now to be settled law, is that the title of a statute is an important part of the enactment and may be referred to for the purpose of ascertaining its general scope (see Jones v. Sherrington (1908) 2 KB 539, per Sutton, J. at 547; Jeremiah Ambler & Sons Ltd. v. Bradford Corporation (1902) 2 Ch. 585, per Romer, L.J. at 594. Indeed, in Haines v. Herbert (1963) 1 NWLR 1401 at 1404, Harman, L.J., began a discussion of Part I of the Landlord and Tenant Act, 1954 by saying:

It is to be observed that the long title states in these words: 'An Act to provide Security of tenure for occupying tenants under certain leases of residential property at low rents.' In other words, it was intended to help people who had residences at low rent of lease hold property and, as is well known, was intended to give some security of tenure to those who held under long leases.

Thus he employed the long title in aid to find the scope and intendment of the enactment. While of course the long title may be called in aid, it may not be looked at to modify the interpretation of plain language. R. v. Wykes. decd. (1961) Ch. 229 at 242, per Buckley, J.)" There is dictum to the same effect in Momoh v. Okewale (supra) I shall say more on this case in the course of this judgment.

Before I go further I want to comment on the case of Permanent Secretary, Ministry of Works, Kwara State v. Balogun (supra) a decision of this Court on which the two Courts below based their decision that the defendants are covered by section 2(a) of the Law. In that case, Balogun as plaintiff had sued the Permanent Secretary, Ministry of Works, Kwara State and the 2nd appellant challenging the validity of a certificate of occupancy issued by the Permanent Secretary to the 2nd appellant in respect of land covered by the Land Tenure Law, Cap 59 Laws of Northern Nigeria 1963 on the grounds that the Permanent Secretary had irregularly approved the allocation of land which had been properly sold to

him by his vendor. Pleadings were ordered, filed and exchanged, The Permanent Secretary raised a defence under section 2(a) of the Public Officers (Protection) Law to the effect that even if he was wrong in approving the allocation to the 2nd appellant, the plaintiff's action was time-barred by virtue of the provisions of section 2 of the Law. 2nd appellant also raised the defence of estoppel per rem judicatam in that the matters sought to be litigated had been duly so litigated between the plaintiff and him (2nd appellant) and judgment went against the plaintiff to the effect that as against him (the 2nd appellant) plaintiff had no right to the land. The facts on which the Permanent Secretary based the plea of time-bar were that the certificate of occupancy was granted to the 2nd appellant on 16th Oct., 1967 and the plaintiff's proceedings were not commenced until the 6th June 1969. The Permanent Secretary invoked section 2(a) of the Law.

The learned trial Judge accepted the 2nd appellant's plea and struck out the action against him. The learned Judge, however, overruled the defence of the Permanent Secretary on the ground that the injury of the plaintiff vis-a-vis the Permanent Secretary was a continuing one and held, therefore, that the defence under the Law did not avail the Permanent Secretary. The learned Judge then heard the case against the Permanent Secretary and adjudged that the action of the Permanent Secretary was irregular and declared the certificate of occupancy invalid. Both the Permanent Secretary and the 2nd appellant appealed to this Court. This Court held per Coker JSC.

"Both defendants have now appealed to this court against the judgment and had argued that the plea of time-bar against the 2nd defendant should have been upheld and that in any case the plaintiff could not, at least in the present proceedings, defeat the plea of res judicata by adding a nominal party to the proceedings. The argument was sternly resisted by learned counsel for the plaintiff but we are convinced that the contention of the defendants is well founded. We do not agree with the learned trial Judge that the plea of time-bar did not succeed and we point out that he was in error in basing his ruling on its inapplicability on an issue which was not pleaded by the parties. But apart from this even if

the plea is not sustained, after the 1st defendant was dismissed from the action, the action as against the 2nd defendant only became improperly constituted and should at that stage have been struck out. The learned trial judge did not do this and he had proceeded erroneously to give judgment against the 1st defendant who then had no opportunity of defending his title to and possession of the Certificate of Occupancy. For these reasons at least we are satisfied that the judgment must not be allowed to stand." (Underlining is mine)

The judgment of this Court was based on three premises, that is to say:

1. That the trial Judge erroneously based his Judgment on its inapplicability of an issue which was not pleaded by the parties.

2. That the cause of action was not a continuing one but arose on 16th October 1967.

3. That after the 2nd appellant was dismissed from the action, the action against the Permanent Secretary became improperly constituted and should at that stage have been struck out.

Surely, the question whether the Permanent Secretary was a public officer within the context of the Public Officers (Protection) Law was never raised nor considered nor decided in the case. The Court will not ordinarily consider, and pronounce, on an issue not raised by the parties. That was the position in the case. In my respectful view, therefore, the case is not authority for determining the question as to who is a public officer under section 2 of the Law; it cannot be an authority for what was not decided in it.

I may here make mention of Adigun v. Ayinde & Ors. (1993) 8 NWLR 516, a decision of this Court that touches on the application of section 2(a) of the Public Officers (Protection) Law.

The facts run thus;

"The appellant was a Federal Government Civil servant in the Federal Ministry of Agriculture. On February 10, 1978 whilst on an official duty in a Federal Government Range Rover vehicle driven by another federal civil servant, he sustained serious injuries when the said vehicle had a serious accident along Mokwa/New Bussa Road. The appellant aged 33 years at the time of the accident was hospitalized at the

University College Hospital Ibadan for 18 months and was referred to the spinal paralysis service in Edinburgh for further treatment. He is now paralyzed from the waist down to his toes. His permanent disability is assessed at 100%.

B *On 21st January, 1981, the appellant, as plaintiff, instituted a civil action in Minna High Court, Niger State against the respondents, as defendants, claiming damages for the injuries he sustained as a result of the negligence of the 1st respondent.*

C In paragraph 4 of his statement of claim the appellant pleaded -

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 (that is, Federal Civil Service Commission) and were serving in the second defendant's (i.e. Permanent Secretary Ministry of
D *Agriculture) Ministry."* (words in brackets are mine)

The respondents filed a joint statement of defence and later raised a preliminary objection to the action on three grounds of law, viz:-

E (a) That the Federal Government had an immunity against actions founded on tort;

(b) That by section 2(a) (iii) of the Public Officers (Protection) Law of Niger State, the action was statute barred;

F (c) That the Permanent Secretary, Ministry of Agriculture was not a juristic person.

G The trial Judge ruled that the Federal Government was immune from liability in action in tort; that by virtue of section 2(a) of the Public Officers (Protection) Law, the action was statute-barred because it was instituted after three months from the accrual of the cause of action and that the Permanent Secretary Ministry of Agriculture was a juristic person capable of suing and of being sued. He, therefore, struck out the action of the appellant.

H The appellant appealed to the Court of Appeal Kaduna which heard the appeal and dismissed it. On a further appeal to the Supreme Court, the Court dealt with the appeal on the two issues raised

The two issues raised and pronounced on in the appeal to this Court, are:

1. Whether of not the doctrine of state immunity applied after the promulgation of the 1963 Constitution

2. Whether section 2(a) of the Public Officers (Protection) Law of Niger State applied.

On Issue (1) which affected the 2nd and 3rd respondents who were sued as being vicariously responsible for the act or neglect of the 1st respondent, this court held that the plea of state immunity availed them.

On the second issue raised, it was the contention of learned counsel for the appellant, Mr. Ijaodola that under section 2(a) of the Law time did not begin to run till the cessation of damage or injury and that the section did not apply where the plaintiff was himself a public officer. By the pleadings of the appellant, both he and the 1st respondent, an individual, were public officers within the meaning of section 2 of the Law. By his latter contention, Mr. Ijaodola was presumably arguing that where both plaintiff and defendant were public officers, the defence in section 2(a) would not avail the defendant. This Court, without hesitation, rejected both contentions.

Olatawura JSC who read the lead judgment, with which the other Justices agreed, observed at p. 527 of the report:

"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) 2 NWLR (Pt. 80) I; (1988) 6 SCNJ. 18/30/31 or (1988) 1 NSCC 1005 for this submission. In other words the plaintiff on this issue is not denying that the Public Officers (Protection) Law applies....."

After examining Adimora v. Ajufo (supra) relied on by the appellant, the learned Justice concluded at p.528:

"The accident took place on 10th February 1978 and the plain-

tiff 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 action is therefore statute barred: Obiefuna v. Okoye B (1964) 1 ANLR 96; (1964) NSCC 52; Egbe v. Adefarasin (1985) 1 NWLR (Pt.3) 549; Ogunsan v. Iwuagwu (1968) 2 All NLR 124; John Ekogu v. Elizabeth Aliri (1991) 3 NWLR (Pt. 179) 258."

On the issue of state immunity, Olatawura JSC had observed at p.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 not wrong.' In the case of Ransome-Kuti v. Attorney-General & Commissioner for 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 cause of action arose in 1977 the State cannot be liable for the tortious acts of its servants and agents."

He applied Ransome-Kuti v. A-G. & Ors. and held that on the principle of State Immunity the Other defendants could not be sued.

It is my respectful view that on the facts and judgments delivered in the case, Adigun v. Ayinde & Ors is not relevant to the question under consideration in this appeal. I am not unaware, though, that in his own judgment in the case, Karibi-Whyte JSC at p.533 after quoting paragraph (a) of section 2 of the Law, observed:

"The words of this section appear to me unambiguous and clear, it relates 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 natural and ordinary meaning. See Toriola v. Williams (1982) 7 SC.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 ex-

clude actions by public officers in the same situation. In the instant case, it is common ground that 1st respondent is a 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." (Underlining are mine)

With profound respect to his Lordship, the Law in its full purport protects only public officers and does not extend to public authorities. The reference to the word "authority" in section 2 can only mean power and not in the sense that it is used in the judgment of his Lordship. It is this misconception of the scope of the Law that this Court, explained in Momoh v. Okewale (supra) when Sir Udo Udoma delivering the judgment of the Court observed at page 368 of the report:

"There can be no doubt that there had been in the past a tendency to confuse the ambit of operation of the provisions of Section 2 of the Public Officers Protection Act, Cap. 168, with the relevant provisions of Section 1 of the English Public Authorities Protection Act, 1893, (56 and 57 Vict. C. 61), because the provisions of Section 2 of the former Act were lifted almost wholesale from the provisions of Section 1 of the English Public Authorities Protection Act, 1893.

It seemed to have been over-looked that there is a vast difference between the titles of the two Acts. The English Act is entitled: 'Public Authorities Protection Act,' Whilst the Nigerian Statute bears the title of 'Public Officers Protection Act.' The aims and objects and the purposes of the two Acts are also different. The intention of the British Parliament in enacting the English Act was to protect Public Authorities engaged in the discharge of responsibilities imposed upon them by Parliament. The Nigerian Law was aim at protecting Public Officers as individuals in the discharge of public duties." (Underlining is mine)

It was the English Public Authorities Protection Act, 1893 (since repealed by the Law Reform Act 1954) that protected public authorities.

Our local Act and State Laws protect public officers only. That is the only difference, and a major one for that matter, between the English Act and our own local statutes on the subject. In any event, as the dictum does not relate to any issue argued before the Court, it is, at best, Obiter dictum and having been made, oblivious of the earlier decision of this Court in Momoh v. Okewale (supra) it is per incuriam.

I now come back to the proper construction of the words "any person" appearing in section 2.

My learned brother Iguh JSC has in his judgment just delivered set out clearly the principles governing the interpretation of a statute. He said, and I agree with him, that where the words of the statute are clear and unambiguous they must be given their plain and ordinary meaning unless this would lead to absurdity. What then is the meaning of the word "person" in section 2 of the Law? In its plain ordinary meaning the word "person" means *"a human being as an individual."* That is the ordinary dictionary meaning of the word. There is also a wider meaning. For section 3 of the Interpretation Law, Cap 52 Laws of Northern Nigeria 1963 defines the word "person" as including *"any company or association or body of persons corporate or incorporate."* I say the wider meaning because section 3 uses the word *"includes"* and not *"means"*. With the use of the word *"includes"* in the statutory definition of the word "person", the ordinary meaning of the latter word is expanded or enlarged. What meaning the word "person" has in a statute, that is, whether the word is used in its ordinary dictionary meaning or in its wider statutory meaning, depends on the context in which it is used in the statute. For instance, the expressions "master," "native foreigner" "native of Nigeria", "non-native", "qualified medical practitioner", and "seaman" are defined in section 3 of the Interpretation Law as meaning *"any person....."* Surely, it will be preposterous to suggest that the word "person" in those definitions has any meaning other than its ordinary, plain dictionary meaning of a human being, an individual; it can certainly not have the wider meaning given to it in the Interpretation Law. So whether the word "person" has its ordinary dictionary meaning or its wider statutory implication depends on the context in which the word is used in the

statute. I have support for this approach in the definition given to the word "definitions" in section 3 of the Interpretation Law. There the word "definitions" is defined thus:

"'definitions' when followed by terms defined means those terms shall have the meanings assigned to them, unless there is anything in the subject or context repugnant to such meaning." (Underlining is mine for emphasis) B

By this definition, the Law is saying that the definitions in section 3 are not immutable but depend on the subject or context in which the defined word or term is used in the statute. It may be that when dealing with a statute relating to a criminal offence, the word "person" will bear its ordinary meaning - see Pharmaceutical Society v. The London and Provincial Supply Association Ltd. (1880) 5 App Cas 857; Thomas v. Local Government Service Board, (1965) ANLR 174 where at p. 176 Brett, D JSC said;

"The first ground on which the claim is resisted is that the Board is not a person capable of suing or being sued, and if this submission succeeds the action must fail in limine. In rejecting it the trial judge relied largely on section 2 of the interpretation Law, which provides that "person" includes any company or association or body of persons corporate or unincorporate" but we do not consider that 'a Law to make provision for the construction of Laws and of the terms and provisions usually adopted therein' is designed of itself to confer the power to sue and be sued on every unincorporated association of persons. It has been pointed out that this definition reproduces that in section 19 of the English interpretation Act, 1889, which has never been held to have the effect suggested and was expressly said in Davey v. Shawcroft (1948) 1 All E.R. 827, not to make an unincorporated body of persons liable to criminal proceedings. In our view it is necessary in every case to look at the instrument by or under which the association is established." E F G

It may also be that when dealing with a statute relating to business. The word "person" bears the wider meaning as including a corporation - see Leske v. S.A Real Estate Investment Co. Ltd. (1930) 45 CLR 22. It all depends on the subject of the Statute and the context in which the word H

is sued. That is what section 3 of the interpretation Law, Cap 52 says. In Leske v. S.A. Real Estate Investment Co. Ltd. (supra) the appellant by contracts in writing agreed to purchase undivided land from the respondent company, a body corporate. The contracts provided that all payments falling due thereunder should be paid "at the office of S.A. Real Estate Investment Co. Ltd., agents, King William Street, Adelaide." See. 25 B (1) (d) of the Land Agents Acts 1925 and 1927 (S.A.) provides that any contract for sale of subdivided land shall be voidable at the option of the purchaser at any time six months from the making thereof unless the contract is in writing and contains the name, address, and description of Some person to whom all moneys falling due under the contract may be paid.

Held, that the contracts complied with this requirement and were not voidable under the section." In their judgments Rich and Dixon JJ observed at p.25 of the report:

"This gave the name, address, and description of a company, but it is said that it does not satisfy the requirements of the statute because (a) company is not a person within its meaning and (2) it does not explicitly state that the money may be paid to the company but merely that it may be paid at its office. The first point appears to us almost to answer itself. The time has passed for supposing that the Legislature would use the word 'person only to signify a natural person in dealing with a class of business in which the utility of the proprietary company has long been made manifest. Indeed, it may be said that in modern business, as elsewhere, few persons remain natural. The presumption established by the provision standing in sec. 4 of the Acts Interpretation Act 1915 that in a statute 'person' includes a body corporate conforms with general usage."

Strike, J in his own concurring judgment at page 26 stated the law more clearly. The learned Judge said:

"The Acts Interpretation Act 1915 of South Australia, sec. 4, gives statutory effect to the general rule of construction that in a public statute the word 'person' or 'party' includes a body corporate unless the contrary intention appears. The contrary intention does not appear in

see. 10 of the Land Agents Acts 1925 and 1927, and, indeed, in many sections of the Act it is clear that the word person does include a body corporate (see secs. 2, 3(1), 3(3), 5, 11(3), 25B(1) (b), 30, 30 A." (Underlining is mine for emphasis)

This decision reinforces my view that what meaning is to be attached to the word "person", that is, whether its ordinary, plain dictionary meaning or the wider meaning in the Interpretation Law, will depend on the subject or context in which the word is used in the statute. It cannot be in all cases that the statutory meaning is to be applied. For example the word is used in many sections of the Criminal Code dealing, for instance, with offences of treason and violence such as murder, but I have never heard it said that the word is used in those sections other than in its natural, ordinary dictionary meaning, that is, natural person.

Bearing in mind the purpose of Public Officers (protection) Law as particularly shown by its title, it is meant to protect public officers in the discharge of their public duties. The expression "any person" in section 2 cannot refer to that expression in its wider sense but rather in a limited sense as referring to "any public officer". This, in my respectful view, is the only reasonable construction that can be placed on the expression as used in section 2. To place on the word "person" as used in section 2 its definition in section 3 of the Interpretation Law is to say that where proceedings are taken against any sort of person be he a natural person, company or association or body of persons corporate or incorporate, for an 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 ordinary right of the citizen to his remedy is to be cut down by stringent provisions as to time and costs. In such a restriction of ordinary rights it is my respectful view that the words used must not have read into them more than they express or of necessity imply.

In this respect the dictum of Lord Blackburn in Pharmaceutical Society v. The London and Provincial Supply Association Ltd. (1880) 5 App Cas 857 at pp. 868-869, readily comes to mind. The Law Lord had said, and I agree with him:

"I own I have no great doubt myself, for instance that the word 'person' may very well include both a natural person, a human being, and an artificial person, a corporation. I think that in an Act of Parliament, unless there be something to the contrary, probably (but that I should not like to pledge myself to) it ought to be held to include both. I have equally no doubt that in common talk, the language of men not speaking technically, a 'person' does not include an artificial person, that is to say, a corporation. Nobody in common talk if he were asked, who is the richest person in London, would answer, The London and North-Western Railway Company. The thing is absurd. It is plain that in common conversation and ordinary speech, 'a person' would mean a natural person: in technical language it may mean the artificial person: In which way it is used in any particular Act, must depend upon the context and the subject-matter. I do not think that the presumption that it does include an artificial person, a corporation, if that is the presumption, is at all a strong one. Circumstances, and indeed circumstances of a slight nature in the context, might shew in which way the word is to be construed in an Act of Parliament, whether it is to have the one meaning or the other. I am quite clear about this, that, whenever you can see that the object of the Act requires that the word 'person' shall have more extended or the less extended sense, then, whichever sense it requires, you should apply the word in that sense, and construe the Act accordingly." (Underlining is mine)

The House of Lords had in that case held that whether the word 'person' in a statute can be treated as including a corporation must depend on a consideration of the object of the statute and of the enactments passed with a view to carry that object into effect. Sections 1 and 15 of the Pharmacy Act had provided:

Section 1: "it shall be unlawful for any person to sell, or keep open shop for retailing or dispensing or compounding poisons, or to assume or use the title chemist and druggist, or chemist or druggist, or pharmacist or dispensing chemist or druggist, in any part of Great Britain, unless such person shall be a pharmaceutical chemist, or a chemist and druggist within the meaning of this Act, or be registered under this

Act."

Section 15: "A person who shall sell, or keep an open shop for the retailing, dispensing, or compounding poisons, or who shall take, use, or exhibit the name or title of chemist and druggist or chemist or druggist, not being a duly registered pharmaceutical chemist, or chemist and druggist, or who shall take, use, or exhibit the name or title pharmaceutical chemist, pharmacist, or pharmacist, not being a pharmaceutical chemist etc. shall for every such offence be liable to pay a penalty or sum of #5 (five pounds)."

The word 'person' as used in section 1 and 15 of the Pharmacy Act was held not to include a corporation but only a natural person.

In Griffiths & Anor. v. Smith & Ors. (1941) 1 ALL E.R. 66, the House of Lords was faced with the interpretation of the word "person" in section 1 of the Public Authorities Protection Act, 1893. Lord Porter, at page 89 had this to say:

"The wording of the section is in very general terms, but certain limitations have been placed upon the width of its interpretation by decisions, one at least of which is binding upon your Lordships' House. In the first place, though the word 'person' is used, not every person is protected. It is a 'Public Authorities Protection Act' and not a 'Persons Protection Act.' and, therefore; the body to be protected must be a public authority; Myers v. Bradford Corpn. [1916] 1 A.C. 242; 38 Digest 110, 784; 85 L.J.K.B. 146; 114 L.T. 83; affg., [1915] 1 K.B. 417; and The Johannesburg [1907] p.65; 38 Digest 103, 738; 76 L.J. 67; L.T. 464, at p.72."

See also: The Johannesburg (1907) p 66 at p.73 where Sir Gorrell Barnes declared:

"Although the word 'person' is there used, I think it is clear that the Act relates to public authorities"

Section I of the Public Authorities Protection Act is in pari materia with section 2 of our local legislations though their purpose is different to that of the English Act.

I am not unaware of the decision of this Court in Okumagba v. Egbe (1965) ANLR 64 at p.67 where Bairamian JSC delivering the judg-

ment of this Court observed:

"Feeling that the appellant deserved to be punished, the Chief Magistrate replaced the words 'another candidate' by the words 'any candidate' and thus enabled himself to punish the appellant. In effect he amended the regulation: but amendment is the function of the legislature, and the courts cannot fill a gap which comes to light by altering the words of a regulation to make it read in the way they think it should have been enacted. As Lord Bacon said in his essay on Judicature, the office of a judge is jus dicere, not jus dare - to state the law, not to give law - and the courts below should not have gone in for 'judicial legislation'."

The learned Chief Magistrate invoked the argument from absurdity for the course he took. That should be used with great caution, for what may seem absurd to one may not seem absurd to another; and with respect we cannot look on the plain sense of the regulation as absurd merely because it does not cover the facts of the present case. It may be deficient, but it cannot on that account be branded as absurd, and the argument from absurdity was misapplied to bend the regulation to a sense it could not bear, and the decisions of the courts below had to be set aside."

This was a clear case where the trial Chief Magistrate rewrote, so to say, the regulation to bring it in line with the facts before him upon which he wanted to convict and did convict.

I think the proper approach to the interpretation of the words "any person" in section 2 of the Law has been laid down by the Court of Appeal (sitting as Full Court - Coram: Nasir P, Ete JCA, Agbaje JCA, as he then was, Okagbue JCA and Nnaemeka-Agu JCA, as he then was) in Judicial Service Commission, Bendel State & Attorney-General, Bendel State v. Moses B.U. Alaka (1982) 8-10 CA 42. There, Agbaje JCA delivering the lead judgment of the Court with which the other members agreed, said at pp 55-57, and I agree entirely with him.

In S.3 of the Interpretation Law 'person' is defined as follows; 'person includes any company or association of body of persons' Corporate or unincorporate;'

And 'public officer' or 'public department' is defined as follows:-

'Public office or public department extends to and includes every officer or department invested with or performing duties of a public nature, whether under the immediate control of the Governor General or the Governor of a State or not;'

The essence of the submission of counsel as far as I can see it, B was that when the word 'person' is used in the enactment that word should not be taken, having regard to its definition in the Interpretation Law as being limited to a natural person alone but as including a corporation or unincorporated association, that is, an artificial person. C It is to be noted that in the interpretation Law the inclusive interpretation provision of the sort we are now considering has the effect of enlarging the ordinary meaning of the word in the body of the statute to the extent only provided by the further words used and without altering the ordinary meaning. See R. v. Herman per Lord Coleridge C.J. (1879) 4 QBD D 284 at 288; Delevosth v. Commissioner of Stamps (1899) A.C. 99 105, 106 per Lord Watson. The Interpretation Law where the definition of the word 'person' occurs applies to all laws in force in the State. I have just said that an inclusive interpretation provision does not alter the ordinary E meaning of the word in question. No doubt under the inclusive interpretation provision in the interpretation Law the ordinary meaning of the word 'person' is extended to include an artificial person that is to say, a corporation or an unincorporated association. It is however my view F that when dealing with a particular statute where the word 'person' occurs, it is a matter of construction having regard to the context in which the word is used whether that word should be taken only in its natural meaning or both in its natural meaning and in its meaning as enlarged by G the provision in the interpretation Law. It is therefore my view that in the case in hand, it is a matter of construction having regard to the context of the Public Officers Protection Law and the decided cases whether the word 'person' in s.2 of the Law is used only in its natural meaning, as referring to both a natural person and an artificial person. I hold therefore, H that the definition clause of the word 'person' in the interpretation Law will not by itself alone lead us to the conclusion that S. 2 of the Public Officers Protection Law protects persons and statutory bodies i.e.

artificial persons, such as the first defendant, alike."

In my respectful view, the law does not apply to persons generally but to a particular class of persons, that is, public officers and it is in that context, I believe, that the word 'person' should be construed. I have support for this view not only in the authorities just referred to but also in the House of Lords' decision in Bradford corporation v. Myers (1916) AC 242, 247. Section 1 of the Public Authorities Protection Act, 1893 (which was on all fours with section 2 of our Public Officers Protection Law under consideration in this appeal) provided:

"Whereafter the commencement of this Act any action, prosecution, or other proceeding is commenced in the United Kingdom against any person for any act done in pursuance, or execution or intended execution of any Act of parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority, the following provisions shall have effect:" (underlining is mine)

In construing the words 'any person' in the section, Lord Buckmaster, LC observed:

"Now it must be conceded that the Act applies only to a definite class of persons and to a definite class of action. If the section stood alone, and were construed without reference to the introductory words of the statute, It would be wide enough to grant protection to any person who was acting in pursuance of a private Act of parliament, but on more than one occasion the Courts have pointed out that this cannot be its true interpretation, and that 'any person' must be limited so as to apply only to public authorities (in our case, public officers). The Case of Attorney-General v. Company of Proprietors of Margate Pier and Harbour (1900) 1 ch. 749 is an excellent illustration of such a case, and this was expressly approved by Channell J. in Parker v. London County Council (1904) 2K.B. 501"

(words in brackets are mine)

I also have support in the case of Momoh v. Okewale & Anor. (supra), a case decided by this court 2 years after Permanent Secretary, Ministry of Works & Anor. v. Balogun (supra) was decided. In Momoh

v. Okewale, this Court was faced directly with the construction of section 2 of the Public Officers Protection Act which is in pari materia with section 2 of the Law now under consideration. Sir Udoma, JSC that erudite Judge delivering the judgment of the court which consisted of one of the Justices that sat on the BALOGUN'S CASE, distinguished our own Law from the English Public Authorities Protection Act 1893 and went on to construe the words "any person" appearing in the two statutes. At pages 368-369 of the report, the learned Justice observed:

"There can be no doubt that there had been in the past a tendency to confuse the ambit of operation of the provisions of Section 2 of the Public Officers Protection Act, Cap. 168, with the relevant provisions of Section 1 of the English Public Authorities Protection Act, 1893, (56 and 57 Vict. c.61). because the provisions of Section 2 of the former Act were lifted almost wholesale from the provisions of section 1 of the English Public Authorities Protection Act, 1893.

It seemed to have been over-looked that there is a vast difference between the titles of the two Acts. The Nigerian Act is entitled: 'Public Officers Protection Act', whilst the English Statute bears the title of 'Public Authorities Protection Act,' The aims and objects and the purposes of the two Acts are also different. The intention of the British Parliament in enacting the English Act was to protect Public Authorities engaged in the discharge of responsibilities imposed upon them by parliament. The Nigerian law was aimed at protecting Public Officers as individuals in the discharge of public duties.

Public Authorities are usually bodies corporate and therefore legal persons. In both the Nigerian and the English Acts, the title form part of the Acts as aids to interpretation and enforcement of their provisions.

In England, the tendency and indeed, the attitude of the courts has been to restrict and not to widen the filed and scope of the application of the Public Authorities Protection Act 1893.

In T. Tilling Limited v. Dick Kerr and Co. Ltd (1905) 1 K.B. 562, it was held that the protection given by the Public Authorities Protection Act, 1893 does not extend to an independent contractor doing

under contract and for his own profit work which a Public Authority has been authorized to do. Where, for example, tram ways were carried on for the purpose of earning profits, it was held in Attorney-General v. Company of Proprietors of Margate Pier & Harbour (1900) 1 Ch. 749 that even the London City council was not entitled to the benefit of the Act. And in Parker . v. London County council (1904) 2KB 501, it was held that the words 'Any person' in section 1 of the Public Authorities Protection Act, 1893, must be read with some limitation, and not in their widest sense."

C In ascertaining who is a public Officer, the learned Justice at page 370 said:

"In terms of the provisions of the Constitution of the Federation set out above, to hold or act in an office in the Public Service of the Federation and so be qualified to be described as a Public Officer, a person must have been appointed thereto, with certain exceptions, by the Public Service Commission of the Federation. Similarly, in the case of a State, which now includes Lagos, to be entitled to be described as a public officer, a person must have been appointed to the office which he holds and in which he is serving by the Public Service Commission of the State concerned"

F These are the rationes decidendi that led to the court's conclusion or decision at p.370 that -

"On a careful consideration of the evidence and the law involved in the appeal under consideration, we are satisfied and hold that the learned trial judge was clearly wrong in law in holding that the first defendant was a public officer, and therefore, protected by the provisions of Section 2 of the Public Officers Protection Act, Cap.168."

G Surely these Rationes are binding on this court. And we have not, in the instant case, been invited to overrule them. Speaking for myself, the decision is sound moreso when regard is had to the definition of "public officer" in section 3 of the Interpretation Law. The reasonings of Sir Udoma have rightly been described as -

"a clear and an unequivocal pronouncement by the Supreme Court that the Public Officers (Protection Act (Public Officers Protection Law)

was aimed at protecting public officers as individuals in the discharge of public duties."

See: Judicial Service Commission & Anor. v. Alaka (supra) at p. 61 per Agbaje JCA (as he then was). I cannot agree more.

What is the ratio decidendi of a case? In my respectful view, it is the principle of law upon which a particular case is decided, that is, the legal reasoning leading to the court's decision. The effect of it, of course is to serve as basis of the doctrine of judicial precedent in subsequent cases with similar facts. The Ratio decidendi must necessarily, therefore, be the general legal principle enumerated in the case and upon which the case, after its facts have been applied to the principle, is eventually decided. The decision itself cannot be the ratio decidendi in the case - See: Ofunne & Ors. v. Okoye and Ors. (1966) ANLR 91, 93.

An obiter dictum, on the other hand, is a statement made in passing by a Judge which is not necessary to the determination of the case in hand; it has no binding effect for the purpose of the doctrine of stare decicis - see; Ofunne & Ors. v. Okoye & Ors. (supra), where Brett JSC delivering the judgment of this court said;

"..... if a judge either at first instance or on appeal sets out the principle of law which he is applying to the facts of the case in hand it cannot be described as unnecessary for the determination of the case merely because, as a principle, it is capable of being applied to other cases; that is the essential quality of a principle."

See also - Flower v. Ebb Vale Steel, Iron and Coal Co. Ltd. (1934) 2 KB 132, 154 where Talbot J. observed, and quite rightly in my view, that:

"I should like to say a word regarding a point which was taken by the learned counsel for the appellant when he was discussing the case of Dew v. United British Steamship Co. 139 L.T. 628. There is no question that the three learned judges who decided that case stated in emphatic and unambiguous language that contributory negligence is a good defence to an action of this class; but it is said that that expression of opinion can be disregarded in this court because it was not necessary for the purpose of deciding that case that that opinion should be expressed. I do not agree, any more than the other members of this Court, that that

expression of opinion was in fact unnecessary and it appears to me that it is not legitimate to say that it should be disregarded. It is of course perfectly familiar doctrine that obiter dicta, though they may have great weight as such, are not conclusive authority. Obiter dicta in this context means what the words literally signify - namely, statements by the way. If a judge thinks it desirable to give his opinion on some point which is not necessary for the decision of the case, that of course has not the binding weight of the decision of the case and the reasons for the decision. It seems to me, however, to be an abuse of language to describe as obiter dicta the deliberate pronouncements in Dew's (supra), which were all made expressly as reasons for the decision to which the Court there came, and even if I did not assent to them, I should certainly regard these pronouncements as authoritative."

D In Momoh v. Okewale & Anor. (supra) the plaintiff, Momoh had sued Okewale, a driver and his employer, the Lagos City council for damages for negligence arising in an accident. The action had been taken more than 3 months after the accident. Okewale pleaded that he was E public officer and as the cause of action arose more than 3 months before action, he claimed the protection under section 2 of the Public Officers Protection Act. The trial Judge upheld his plea. On appeal by the Plaintiff to this Court the question that was to be determined was whether F Okewale came within the ambit of section 2 of the Act. In resolving this question this Court, per Sir Udoma first examined what was the meaning of the word "person" as used in section 2. By the reasoning in the case, the sub-question was answered that "person" meant "public officer as an individual". The next sub-question was: Who is a public officer. And this G also was answered as a person appointed by the Federal Civil Service Commission. Applying these answers (which are the legal principles in the case) to the facts, this Court resolved that Okewale not being so appointed, could not take advantage of section 2 of the Act. What then is H (or are) the ratio decidendi in the case. Surely, it cannot be the final conclusion that Okewale did not come within the ambit of section 2 of the Act but the legal reasonings leading to that final conclusion.

Having regard to the facts and the issues in controversy in Momoh

v. Okewale (supra) I can only, with profound respect, say that, in the words of Talbot J. it seems to me, to be an abuse of language to describe as obiter dicta the deliberate pronouncements of this Court in that case which were all made expressly as reasons for the decision to which this Court there came. Momoh v. Okewale is a well-reasoned judgment of B this Court and we are bound by it although we have power to depart from it in the interest of justice, if and when circumstances so dictate - per Idigbe JSC in Bucknor-Maclean v. Inlaks Ltd. (1980) 8-11 SC 1. We have not been invited in this case to overrule Momoh v. Okewale and I C can see no justification for so doing under any guise or pretence. This Court and the Court below that have followed it have acted properly and their decisions based on it are undoubtedly sound.

Even if the sound pronouncements of this Court in Momoh v. Okewale were obiter dicta, they are not thereby useless; they would still D be of highest persuasive authority to be carefully considered and applied. I would still prefer them to a decision of this Court that does not touch on the issue under consideration in this appeal.

We have been told to ignore decisions of foreign jurisdictions E that are relevant to the question under consideration. The irony of it all is that reliance is still placed in the judgment on a number of decisions of other jurisdictions where convenient. My understanding has been that decisions of other jurisdictions that relate to the subject matter under F discussion, particularly where the statutes being considered are pari materia or verbissima verbis, are of persuasive authority, though not binding on us. In my respectful view, it does not make for learning to ignore such decisions. Rather it promotes cross pollination of views and ideas.

Momoh v. Okewale was cited with approval by this Court in a G recent case Gamu Yare v. Alhaji Adamu Nunku (1995) 5 NWLR 129. Iguh JSC at page 148 said:

"It cannot be disputed that in the area of construction of statutes, the cardinal principle governing the courts is the ascertainment of H 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."

On section 2 of the Public Officers Protection Law, the learned Justice at page 151 held:

B *"The Public Officers Protection Law, Cap. III, 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 & Anor. (1977) 6 SC.81 at 88." (Underlining is mine)*

C In Aiyetan v. The Nig. Institute For Oil Palm Research (1987) 2 NSCC Vo. 18 p.777, there are found dicta relevant to the issue here and which indicate that the law is designed to protect public officers. Uwais, D JSC (as he then was) at p.794 observed:

"It is true that in most cases the protection under the Law had been sought where the action had been brought by a third party rather than an employer or master. But there is no provision in the Public Officers Protection Law which suggests that a public officer may not rely on its provisions to defeat a claim made against him by his employer or master."

Karibi-Whyte JSC was more emphatic. At page 804 he said:

F *"A reading of the section and short title clearly demonstrates that it was designed for the protection of the officer from prosecution in respect of act done in pursuance or execution of any law or public duty or alleged neglect or default in the execution of duty."*

G In Nwankwere v. Adewunmi (1967) NMLR 45 at p. 49 this Court made an oblique reference to the Public Officers Protection Law as a law "designed to protect the Officer" (Underlining is mine).

H Momoh v. Okewale has been followed by the Court of Appeal in a number of cases since the decision was given by this court. I refer to Utih v. Egorr & Ors. (supra) where at p. 782 in my lead judgment in the case with which the other Justices agreed, I said:

"With the decision in Aiyetan v. NIFOR (supra) I must hold that the 21st Respondent was at all time relevant to the action leading to this

appeal a public officer entitled to the protection afforded by section 2 (a) of the Public Officers Protection Law. As that section seeks to protect individual public officers in the discharge of public duties however, I am not prepared to extend its protection to the 22nd Respondent - see: Momoh v. Okewale & Anor. (1977) 6 S.C. 81 at 89."

B

In Fakolade v. Public Service Commission (1993) 1 NWLR 639 at 644, Adio JCA (As he then was) observed:

"Section 2(a) of the Public Officers Protection Act Protects only individual public officers in the discharge of public duties. See Momoh v. Okawale (1977) 6 S.C. 81. It was on that found that it was held in Utih v. Egorr (1990) 5 NWLR (Pt.153) 771 that the provision of section 2(a) of the Public Officers Protection Law, which was substantially similar to the provision of section 2 (a) of the Act, did not protect the Bendel Newspaper Corporation, Publishers of the Nigerian observer, That was a judgment of this court and in Agboola v. Saibu (1991) 2 NWLR (Pt.175) 566, this court again, for the same reason, held that the provision of the section did not protect a statutory body of an institution like the Nigerian Stored products Research Institute. If the appellant sued the Chairman or any member of the Police Service Commission as an individual it may well be that different considerations would have applied. He chose to sue the Police Service Commission itself and it is on the basis of that that the present legal issue should be considered and determined."

D

F

Akpabio JCA in his judgment in the case, said:

"There is a plethora of authorities already, including those of this court, to the effect that the Public Officers (Protection) Act, Cap.168, Laws of the Federation, 1958, as its name implies, protects only individual public officers and not organizations or institutions such as Government Ministries or Parastatals. Since the respondent in this case (the Police Service Commission) is an organization, and not an individual, I hold that it was not correct for the learned trial Judge to have applied that Act to this case."

G

H

"In Ekeogu v. Aliri (1990) 1 NWLR 345, 355 Kolawole JCA opined:

"In my view, two conditions must exist to avail the appellant the

protection of section 2(a) of the Public Officers Protection Law: First, it must be established that the person against whom the action is commenced is a public Officer. Second, the act done by the appellant in respect of which the action was commenced must be an act done in pursuance or execution or intended execution of any law or of any public duty or authority."

In Onyejekwe v. The Nigeria Police Council (1996) 7 NWLR 704, the Court of Appeal held that section 2 of the Public Officers Protection Law does not cover the Nigeria Police Council. Musdapher, JCA delivering the judgment of the Court observed at pages 712 - 713:

"Now the question to be decided is whether the Inspector-General of Police is a Public Officer within the intendment of the Public Officers (Protection) Act Cap 379, Laws of the Federation of Nigeria, 1990. It is now settled law that the Act protects only public officers acting in the execution of public duty and does not protect an institution, office, or public authority. See Nwakwere v. Adewunmi (1967) NWLR 45. In Tafida v. Abukakar (1992) 3 NWLR (pt. 230) 511, it was held that the office of Attorney-General is an institution or a public office and therefore is not protected by the Act. It is my considered view that the learned trial Judge merely glossed over the Agboola's case (*supra*). It is beyond any doubt that the appellant sued the office of the Inspector-General of Police and not the person of the Inspector-General of police. It is the office that is established by section 5 of the police Act Cap 359 of the Laws of Federation of Nigeria. It is an institution and the action was not filed against the incumbent Inspector-General of Police in his individual personal capacity acting in the execution of public duty. From the authorities cited above, I am satisfied that the office of the Inspector-General of Police is not protected under the Public Officers (Protection) Act.

In Tafida v. Abubakar & Ors. (1992) 3 NWLR 511, the Court of Appeal held that the Government of Gongola State and the Attorney-General are not covered by the Public Officers Protection Law. Katsina-Alu, JCA delivering the judgment of the Court said at page 523:

"The 7th Respondent is the Government of Gongola State. It is

not a person. It is an institution. The 6th Respondent is the Attorney-General of Gongola State. In each State of the Federation there is an Attorney-General who is the Chief Law Officer of the State. It states: 'There shall be an Attorney-General for each State who shall be a commissioner of the Government of that State.' The office of the Attorney-General in my view is an institution or a public office; the holder of the office is a public officer. In the present proceedings no action has been brought against a named individual as the holder of the office of the Attorney-General. As I have already stated the Public Officers Protection Law is intended for the protection of public officers who are defendants. The law assumes misconduct on the part of the public officers, and it is designed to protect them even where they have been guilty of misconduct: See Freeborn v. Leeming (1926) 1 KB. 160 at 164. I am of opinion, therefore, that the 6th Respondent is not a public officer.

Having regard to what I have said, the 6th and 7th Respondents, not being individuals, cannot claim protection under S.2(a) of the Public Officers Protection Law Cap 111 Laws of the Northern Nigeria applicable to Gongola State."

He had at page 522-523 of the report observed:

"The matter appears to me to be settled beyond any possible doubt. It is now settled law that the Public Officers Protection Act Cap 168 Laws of the Federation of Nigeria protects public officers and will not protect an institution, office or public authority: See Nwankwere v. Adewunmi (1967) NMLR 45 at 49: Momoh v. Okewale & Anor. (1977) 6 SC. 81. In Momoh's case the Supreme Court held that unlike the English Public Authorities Protection Act, 1893 which protects public authorities, the Public Officers Protection Act was aimed at protecting public officers in the performance of their public duties: See Agboola v. Saibu (supra) where this Court (Jos Division) per Adio, JCA held that 'Public Officers Protection Act protects public officers as individuals and will not protect the 2nd defendant, an institution.' The House of Lords in Griffiths & Anor. v. Smith & Ors. (1941) 1 all E.R. 66 said at p. 89 with reference to who was protected under Public Authorities Protection Act, 1893 thus:

'The wording of the section is in very general terms, but certain limitations have been placed upon the width of its interpretation by decisions, one at least of which is binding upon your Lordships' House. In the first place, though the word 'person' is used, not every person is protected. It is a 'public Authorities Protection Act' and not a 'Persons Protection Act' and, therefore, the body to be protected must be a public authority.'

In like manner, the person to be protected under the Public Officers Protection Law is a public officer."

In Alapiki v. Gov. of Rivers State & Anor. (1991) 8 NWLR 575 AT P. 598 I said:

"Person' in general usage, means a human being, that is, a natural person. By statute, however, the word may mean a natural person, and an artificial person, a corporation. The meaning attributable to it will depend on the context in which the word is used in the Statute or the object of the statute as a whole."

I went on at p. 599 to say:

"Considering the context in which the word 'person' is used in the Public Officers (Protection) Law, I am in no doubt that natural persons only are protected. It must be borne in mind that there is a world or difference between an office and the holder of that office. In my respectful view, section 2(a) of the Public Officers (Protection) Law protects the holder of the Office and not the office itself. An action against an office is an action against the holder for the time being of that office who may not necessarily be the alleged wrongdoer. Section 2(a) seeks to protect the alleged wrongdoer and that is why it is only that individual alleged wrongdoer that can take advantage of the Law.

The conclusion I reach is that the 1st Respondent in the appeal on hand is not a public officer within the meaning of the expression in the Public Officers (Protection) Law.

The defendants were held not covered by the Public Officers Protection Law.

In Agboola & Ors. v. Saibu & Anor (1991) 2 NWLR 566 the plaintiffs had sued the 1st defendant in his personal name and described

him as "Director, Nigerian Stored Products Research Institute". The other defendants were Nigerian Stored Products Research Institute (1st defendant's employer) and Federal Ministry of Science and Technology. The issue arose whether they were protected under the Public Officers (Protection) Act. The learned Judge ruled that they were not. On appeal to the Court of Appeal, Adio JCA (as he then was) delivering the lead judgment of the Court held, and quite rightly in my view, that the 1st defendant was protected by section 2(a) of the Act. On the 2nd defendant, the learned Justice of Appeal observed:

"The question raised under the second issue is whether the 2nd appellant was protected by Section 2(a) of the Public Officers Protection Act. The learned trial Judge, after citing Momoha v. Okewale & Anor. (1977) 6 SC. 81 came to the conclusion that the Act protected only individual public officers and not bodies like the 2nd appellant. The submission in the appellant's brief was that if the provision of section 2(a) of the Act would protect a Permanent Secretary it would also protect a body like the 2nd appellant. After citing Appeal No. CA/K/55/88 - Ibrahim v. Civil Service Commission of Kaduna State & Anor. In which this court, (Kaduna Division) held that the Civil Service Commission of Kaduna State was protected by the Act, it was submitted that as the learned trial Judge was bound by the decision of this court, he erred in holding, as he did, that only individual public officers were protected by the Act. In Momoh's case (supra), section 2 of the Public Officers (Protection) Law which was in pari materia with section 2 of the Public Officers (Protection) Act was considered in an action brought against the Lagos City Council and one of its employees. Udo Udoma, JSC (as he then was) held that unlike the English Public Authorities Protection Act, 1893, which protected public authorities, the Public Officers (Protection) Act, Cap 168 of the Laws of the Federation of Nigeria was aimed at protecting public officers as individuals in the discharge of public duties. As the judgment in Momoh's case (supra) was the judgment of the Supreme Court, it can be argued that it was permissible for the learned trial Judge to follow it. The answer to the question raised in the second issue is in the negative. The Public Officers (Protection) Act protects public offic-

ers as individuals and will not protect the 2nd appellant, an institution."

The objection in respect of the 3rd defendant was to the effect that he was not a juristic person. The Court held he was.

Before I am done with decisions of the Court of Appeal given by
B eminent Justices of that Court I need mention two others.

In Judicial Service Commission Bendel State & A-G. Bendel v. Moses B. U. Alaka (1982) (supra) Agbaje J.C.A. (as he then was) after a forceful reasoning; concluded at p. 61 of the report:

C *" I am satisfied that the Public Officers (Protection) Law protects public officers as individuals in the discharge of public duties. So, the word 'person' used in the Public Officers (Protection) Law is used, in my judgment, in its ordinary meaning to connote a natural person, that is to say a public officer. I cannot do better than to adopt the reasoning of*
D *the Supreme Court in Momoh v. Okewale & Anor (supra) in coming to this conclusion."*

The defendants therein were held, not to be covered by the Public Officers Protection Law.

E Another illuminating case is Nwakenma v. Mil. Administrator, Abia State & Ors. (1995) 4 NWLR 185 where the 3 defendants not being natural persons but corporation soles, were held not to be covered by the Law.

F In all the cases I have reviewed above the Court of Appeal had held, following Momoh v. Okewale (supra) that the Public Officers Protection Law or Act applies only to public officers as individuals and not to the public offices they hold. It remains for me to mention that in Chief Onyia v. Governor-in-Council (1962) ANLR 893, Quashie-Idun, CJ (West)
G held that the "Governor" and Governor-in-Council are not within the ambit of the Public Officers Protection Law. Perhaps it is also appropriate to refer to two decisions where the Court of Appeal had held to the contrary.

H In Atiyaye v. Perm. Sec. Ministry of Local Govt. Borno State and the Hon. Attorney-General, Borno State (1990) I NWLR 728, the Court of Appeal held that the defendants were public officers within the meaning of section 2(a) of the Public Officers Protection Law. Maidama

JCA after a review of section 55 of the Interpretation Law of Northern Nigeria, section 18 of the Interpretation Act and sections 176 and 188 of the 1979 Constitution declared at p. 737 of the report:

"From the foregoing, it is quite obvious that both the Permanent Secretary and the Attorney-General are public officers within the meaning of Section 2(a) of the Public Officers (Protection) Law."

Momoh v. Okewale (supra) was not brought to the notice of the Court. Yet Maidama, JCA proceeded to say that -

"The main purpose of this Law is to protect public officers, high or low, as individuals against any person for any act done in pursuance or execution, any intended execution of any ordinance or law or of any public duty or authority or in respect of any alleged neglect or default in execution of any such ordinance, law, duty or authority" (underlining is mine)

Strangely enough, the conclusion reached by the Court is inconsistent with the above reasoning. In the course of his judgment, Maidama, JCA relied on Fred Egbe v. Adefarasin (1985) 11 NWLR 549 and Alhaji Abubakar Alhaji v. Fred Egbe (1986) 1 NWLR 361. What his Lordship, with respect, failed to realize, however, is that both justice Adefarasin and Alhaji Abubakar Alhaji were sued, as individuals, in their personal names. That is as it should be to enable them take advantage of the Law. His Lordship also referred to BALOGUN (supra) which he considered as "relevant and directly on four" with the case he was dealing with. Had he adverted his mind to what was decided in BALOGUN he would not have said that that case was "relevant and directly on four" with the case he was dealing with. No doubt, on the authority of Momoh v. Okewale (supra) ATYAYE was wrongly decided.

The second case is Amao v. Civil Service Commission & Others (supra) which I have earlier referred to. The other defendants were the Attorney-General and the Permanent Secretary, Ministry of Finance & Economic Planning. Notwithstanding that Achike, JCA (who read the lead judgment with which the other Justices who sat on the case agreed) opined that:

"Now if section 2 of the Law seeks to protect individuals in the

performance of their public duties it seems logical that the action must be brought against the individual holder of such office for his wrongdoings and not to a subsequent incumbent holder of the office."

he still held that the defendants were covered by the Law. He said at p. 225 of the report:

"The term 'public officer' means a person holding any of the offices specified in Part II of the 5th Schedule: See 5th Schedule Item 10, Permanent Secretaries of the States are identified as public officers. Similarly, the Attorney-General of a State under the same schedule, Item 6, is a public officer. In the result, I am of the view that 2nd and 3rd respondents herein are public officers."

It is difficult to reconcile this conclusion with the reasoning that preceded it.

It will be seen from the analysis of the cases above that the weight of judicial opinion overwhelmingly favours the construction of section 2 of the Public Officers (Protection) Law as protecting public Officers as individuals. It does not cover corporate or incorporate bodies and public offices as distinct from the individuals, for the time being, holding such offices.

Turning to the case on hand, the Judicial Service Committee is a creation of the Constitution (as amended). It is a corporation aggregate with perpetual succession and it is distinct from the individual persons constituting them. While such individuals if sued for acts of theirs coming under the purview of section 2(a) of the Law, may take advantage of the protection offered by the Law, they cannot if sued in their corporate name. The same applies equally to the office of the Attorney-General. Indeed the office of the Attorney-General is usually sued as a nominal party, as in the case on hand - see paragraph 23 of the Plaintiff's affidavit, as representing the Government and rarely for what the individual holder, for the time being, of the office has done. Bearing in mind the aim, object and purpose of the Law, it sounds to me absurd to say that the defendants in this case come within the purview of the Public Officers (Protection) Law or Act.

The case for the defendants is made worse by the fact that the

alleged wrong for which they were sued by the plaintiff relates to a contract of employment which does not come within the purview of section 2(a) of the Law. It is settled law that action for a breach of contract does not fall within the contemplation of section 2(a) - see: Salako v. LEDB, 20 NLR 169.

It is for the reasons I give above that I have come to the conclusion that I cannot subscribe to the conclusion reached by my learned brother Iguh JSC, which conclusion finds favour with my other brethren. If this appeal rests with me I would allow it, set aside the judgments of the two Courts below and send the case back to the trial High Court for it to be heard on its merit. I would award N10,000.00 costs of this appeal to the plaintiff and N1,000.00 and N500.00 as costs in the Court of Appeal and High Court respectively.

ONU JSC

I had the advantage of a preview of the judgment just delivered by my learned brother, Iguh, JSC. I am in entire agreement with him that the appeal lacks merit and ought therefore to fail.

A word or two I think, would do, to expatiate on the case as follows:-

The sole issue which in my opinion arises for determination in this appeal turns on whether in the interpretation of the purport of section 2(a) of the Public Officers (Protection) Law, Cap. 111 Laws of Northern Nigeria as applicable to Kaduna State, the Judicial Service Committee (1st respondent) and the Attorney-General (2nd respondent), can claim protection under the said law namely, that appellant's action is statute-barred.

It may be well to advert to what the law stipulates. Section 2(a) of the Public Officers (Protection) Law provides:

"2 Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution of 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 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."

In my opinion, one's vision will be blurred should the interpretation of what constitutes "a person" under English Law be strictly adhered to in interpreting what that word connotes in our law as set out above. Now, the Public Officers (Protection) Law as stated in the headnotes of this Law provides that it is: "a law to provide for the protection against actions of person acting in the execution of public duties." See Egbe v. Alhaji (1990) 1 NWLR (Part 128) 546 at 584.

It is the submission of the appellant that to properly arrive at the meaning of "any person" in Section 2 (ibid) it is necessary to make reference to the short title of the law which confines the definition "person" to "Public Officers" vide Rufus Alli Momoh v. Afolabi Okewale & Lagos City Council (1977) NSCC Vol. 11 365 at 369 wherein it was held that "the titles form part of the acts as aids to the interpretation and enforcement of their provisions." Reference is also made to the case of Osawaru v. Ezeiruka (1978) NSCC Vol. 11 390 at pages 398 and 399 - wherein Aniagolu, JSC (delivering the judgment of the court) stated thus:

"In an earlier period in interpretation of statutes, titles to statutes were not considered part of the statutes and were on that ground held to be excluded from consideration in construing the statutes (See Salked v. Johnson (1848) 2 Ex. 256). But the modern view, which appears now to be settled law, is that the title of a statute is an important part of the enactment and may be referred to for the purpose of ascertaining its general scope (See Jones v. Sherrington (1908) 2 KB, per Sutton, J. at 547; Jeremiah Amble & Sons Ltd. v. Bradford Corporation (1902) 2 Ch. 583, per Romer L.J. at 594."

While therefore I am disposed to accept that the Public Officers (Protection) Law particularly section 2 thereof, was lifted almost wholesale from the provisions of section 1 of the English Public authorities Protection Act, 1893 JSC and the definition of "any person" under the latter Act has been

read with some limitation and not in its widest sense vide Parker v. London City Council (1904) 2 KB 501; Swain v. Southern Railway Corporation (1939) 2 AER 794, I am convinced and do hold that the Nigerian Law has not for its part limited the definition of "any person" to individuals but also covers public authorities, departments or offices e.t.c. A fortiori, I am not prepared to agree with the appellant that the respondents in the instant case are not public officers within the contemplation of Section 2 (a) of the Law (ibid). I reject out of hand the appellant's contention that the case of Permanent Secretary Ministry of Works, Kwara State & Anor. v. Balogun (1975) NNLR 91; (1975) NSCC Vol. 9 page 292 applied by the trial Judge and the Court of Appeal as authority for finding that the respondents are entitled to claim protection afforded by the Law has no application in the face of the case of Momoh v. Okewale (1977) NSCC Vol. 11, 365. This firstly, because section 18 of the Interpretation Law, Laws of Northern Nigeria 1963, Cap. 52 (now Cap. 77) stipulates that:

"Person includes "any body of person corporate or unincorporate." See also stroud's Judicial Dictionary of words and phrases, Fourth Edition, Vol. 4 pages 1997-2003 for varying definitions of the word "person".

Secondly, in momoh v. Okewale (supra) the issue was whether a Lagos City Council bus driver is a public officer under the constitution and therefore protected by the public officer Protection Act. The conclusion arrived at by that court (per Udoma, JSC) On its peculiar facts in thus allowing the appeal, was that the 1st defendant/respondent was not a Public Officer and therefore not protected under section 2(a) of the Public Officers Protection Act, 1963 Cap. 168 Laws of the Federation. I am not prepared to so hold since as I shall seek to demonstrate hereafter, such an interpretation of section 2 of the public Officers Protection Act, Cap. 168 (ibid), which is in pari materia with section 2(a) of the Public Officers (Protection) Law, Cap. 111 (ibid) in the light of which the Okewale case (supra) was decided, is bound to lead to absurdity or injustice. In such a situation the courts take a position that such a result could not have been intended. See Bronik Motors Ltd. & Anor. v. WEMA BANK Ltd. (1983) 6 SC. 158 at 333. Thus, rather than saying that Okewale's

case is distinguishable from the case in hand vide Ekemode v. Alausa (1961) 1 All NLR 135 and Obiefuna v. Okoye (1961) 1 SCNLR 144, I make bold to hold that the observation by Udoma, JSC in the Okewale's case was at best obiter dictum. See Umunna v. Okwuraiwe (1978) 6-7 SC. 1 at 7 and Ifediorah v. Ume (1988) 2 NWLR (part 74) 5.

Which then leads me to ask the question in order to determine the extent to which the word "person" is construed, to wit:

"Was the act complained of done or purported to be done in pursuance of or execution or intended execution of any law or public duty or authority or in respect of any alleged neglect or default in the execution of any such law or duty or authority?"

I concede that in construing section 2(a) of the Public Officers (Protection) Law, 1963 that it is a fundamental principle of construction of statutes to give words their ordinary and grammatical meanings (see Chief Dennis Osadebay v. Attorney-General of Bendel State (1991) 1 NWLR (part 169) 525 at 574) so long as it does not do violence to the language and intendment of the statute, more particularly when the learned trial Judge's interpretation does not offend this principle. Thus, when a document speaks patently of one thing no gloss should be put on it. See Ogbuanyiya v. Okudo (1979) 6-9 SC. 32; Chief Awolowo v. Shagari (1979) 6-9 SC. 52; Magor & St. Mellons R.D.C. v. New Port Corp (1952) AC. 189 and Animashaun v. Osuma (1972) All NLR 363.

It is my first view therefore that the word "person" used in the Public Officers (Protection) Law (ibid) in relation to the 1st respondent points to one irresistible and inescapable conclusion, to wit: that the Judicial Service Committee is not a public office but a body of persons holding public office. A fortiori, the 2nd respondent (Attorney-General) being a public officer should not, along with 1st respondent (a body of public officers), be denied the protection of the law made for the protection of public office holders. See Ekemode v. Alausa (supra). This is founded on the proposition that whereas the office of the Attorney-General can exist and be vacant (unoccupied), the Judicial Committee cannot exist without the officers who constitute it. It is in the light of this, that I hold that while conceding that a short title can throw more light on the

meaning or the application of a law, in the instant case, such a course is not necessary moreso, that section 2 (ibid) clearly define what is meant by the word "person" meaning - "anyone who does an act in pursuance or execution or intended execution of any law or any public duty or authority" I am therefore of the firm view that the case of Momoh v. Okewale (supra), is at best Obiter dictum and all the cases the Court of Appeal decided following the said observation cannot, with respect, be right. Be it also noted that it and the Balogun case (supra) were decided before the promulgation of the Constitution of the Federal Republic of Nigeria, 1979 which in its part 1 of the 5th Schedule under the Interpretation Section defines "Public Officer" and "Public Office" in item 21, as follows:-

"21. In this Code, unless the context otherwise requires - "public Officer means a person holding any of the offices specified in Part II of this Schedule; and "public office" shall not include the chairmanship or membership of ad hoc tribunals, commissions and committees." Part II of the 5th Schedule (ibid) provides for the purposes of the Code Conduct as follows:-

"Attorney-General of the Federation and Attorney - General of each State."

"16. Chairmen, members and staff of permanent commissions or councils appointed on full time basis."

See also sections 176 and 178(1) of the 1979 Constitution (ibid) which provide as follows:-

"176(1) There shall be an Attorney-General for each State who shall be a Commissioner of the Government of that State.

(2) A person shall not be qualified to hold or perform the functions of the office of the Attorney-General of a State unless he is qualified to practise as a legal practitioner in Nigeria and has been so qualified for not less than 10 years."

"178(1) There shall be established for each State of the Federation the following bodies, namely -

(a)

(b)

(c)

(d) *State Judicial Service Commission.*

(2) *The composition and powers of each body established by sub-section (1) of this section are as set out in Part 1 of the Third Schedule to this Constitution"*

It is not therefore correct as alleged by the appellant that the court below failed to make pronouncement on his submission relating to the definitions "Public Officer" or "Public Department" and of "person" in Section 3 of the Interpretation Law, Cap. 52 (now Cap. 77), Laws of Northern Nigeria as applicable in Kaduna State vis a vis the learned trial Judge's interpretation of Section 42(3) of the same Law. I am therefore inclined to the respondents' submission that the above definitions are more supportive of the respondents' case than that of the appellant. The relevant portion of section 3 of the Interpretation Law Cap.77 (formerly Cap. 52) states that a "Person" includes any company or association or body of persons corporate while "Public Officer" or Public department" extends to and includes 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 a State or not. See the definition of "person" in section 3 of the Interpretation Law Cap. 77 (ibid).

The learned justices of the court below took full cognizance of these varying definitions inclusive of those proffered by the appellant and correctly, in my view, arrived at the conclusion that they include both respondents as public officers. Being concurrent findings of the two courts below, I see no reason to interfere therewith. See Kodilinye v. Anatogu (1953) 1 WLR 231; Dawodu v. Danmole (1962) 1 All NLR 702 and Ogunsola Ajadi v. Ladunni Okenihun (1985) 1 NWLR (Part 3) 484

On the argument proffered on the Long Title of Public Officers Protection Law which is A law to provide for protection against action of persons acting in the execution of public duties", this clearly shows that the law seeks to protect the Government itself, and if the public duty is performed by an authority, the authority and indeed the Government, is protected. Thus, as in the English Public Authorities Protection Act (ibid), when the act is performed by an individual, such an individual whether

sued in his personal or official capacity, is protected with the effect that Government is protecting itself vicariously or otherwise. Moreover, the word used in the said Law as observed by the court, was "person" and not "public officer" or "public authority." I am of the firm view therefore that the Public Officers Protection Ordinance, the precursor of the Public Officers (Protection) Law was an improvement or expansion of the English Act to include "persons" that are not "authority" vide Freeborn v. Leeming (supra).

Consequently, this court did not decide Balogun's case (supra) obiter but definitely as part of the ratio decidendi of the judgment. Similarly and as already shown in that case, the defendants, therein respondents, resisted the claim of the plaintiff (appellant on two grounds:

"(1) res judicata

(ii) Limitation, as the action of 2nd defendant complained about took place on the 16th October, 1967 and the present proceedings were not commenced until the 16th June, 1969. So, section 2(a) of the Public Officers Protection Law Cap. 111 was invoked."

That decision to my mind is unimpeachable and the issue is resolved against the appellant. See also Obiefuna v. Okoye (supra).

On the issue of Decree No. 17 of 19984, it is in my view enough to state that the respondents having conceded that the appellant's complaint is well founded and that the decision thereon is merely obiter and did not form part of the ratio decidendi, the issue without much ado is resolved in appellants favour. In the first place, the question raised therein being one of competence which was neither dealt with by way of arguments nor raised by the parties on any ground before the court, the matter indeed went to no issue. See Overseas Construction Company (Nig.) Ltd. v. Creek Enterprises (Nig.) Ltd. & anor. (1985) 3 NWLR 407. It is trite law that the court has no business whatsoever to deal with any issue not placed before it. See Chief Dokubo A Aseimo & Ors. v. Chief Anthony Amos & Ors. (1975) 2 SC. 57 at 68; Adeniji v. Adeniji (1972) 4 H SC. 10 at 17 and Shitta-Bey v. Federal Public Service Commission (1981) 1 SC. 40 at 59.

Indeed, a court ought not to raise a point suo motu as it did in

respect of Decree No. 17 of 1984. See Odiase & Anor. v. Agho & ors. (1972) 1 ALL NLR (Part 1) 17 and Ebba v. Ogodo (1984) 4 SC. 84. As in the instant case there has been no miscarriage of justice occasioned, however, the appellant's appeal fails.

B For the above reasons and the fuller reasons contained in the leading judgment of my learned brother Iguh, JSC I too will dismiss the appeal with the same consequential orders inclusive of those as to costs.

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