

SUPREME COURT OF NIGERIA

2ND MARCH, 2007. SC. 277\2002

**CORAM:- A. I. KATSINA-ALU, U. A. KALGO, G. A. OGUNTADE,
M. MOHAMMED, W. S. N. ONNOGHEN, JJSC**

OSUN STATE GOVERNMENT APPELLANT
AND
DALAMI NIGERIA LIMITED RESPONDENT

ACTIONS - Limitation - Statute bar - Public Officers (Protection) Act s. 2(a) - Removes right of action not commenced within 3 months - Of accrual of the cause of action (H1)

ACTIONS - Limitation - Contracts - S. 2 Public Officers (Protection) Act - That can make a suit statute barred - Does not apply to action for breach of contract (H2)

JURISDICTION - Determination guide - Is the claim as endorsed in the writ of summons - Breach of contract action - Not being about company management - Federal High Court lacks jurisdiction (H3)

COURTS - Error - Contracts - Findings of trial court - On wrongful termination of contract - And award of damages - Were not based on plaintiff's complaint as pleaded (H4)

CONTRACTS - Wrongful termination of - Damages - Where penalty clause provided the amount of remedy - That alone becomes plaintiff's entitlement - As parties are bound by their agreement (H5)

FACTS

The plaintiff/respondent was one of the four parties that executed a Consortium of Management Operation Lease Agreement for the management of Cocoa Products Industries (Nig.) Ltd (CPI), situate at Ede (formerly in Oyo but now in Osun State). Oyo State Government was

one of the parties. Each party has its own percentage of interest and certain provisions it was to be handling. The Lease Agreement (Exhibit F) has a penalty clause that provided for the amount of entitlement due to the lessees in the event of any termination of the 6 year lease, which was executed in February, 1991. In August of the same year the Osun State Government became Successor of Oyo State Government as principal shareholder of CPI, pursuant to sharing of assets between the 2 States. On 2-11-1992, Osun State Government terminated the said lease. The plaintiff, a 15% leaseholder filed a writ of summons on 5-7-1993 against appellant and the Oyo State Government.

Plaintiff claimed inter alia, a declaration that the termination was wrongful and an order of specific performance. It claimed in the alternative over US\$ 6 million as special damages, N100 million as general damages. The trial court granted the plaintiff's claim but reduced the general damages to N85 million. Appellant's appeal to the Court of Appeal was upheld in part. Still dissatisfied, appellant has further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

i. Whether the High Court of Justice of Oyo State was competent and possessed the jurisdiction to exercise judicial powers over the claims of the Respondent and whether the Court of Appeal properly considered the issue of jurisdiction in determination of the Appeal.

ii. Whether the Court of Appeal properly considered and determined the damages awarded against the Appellant.

HELD (Unanimously allowing the appeal per **KATSINA-ALU JSC**)

ACTIONS - Limitation - Statute bar

1. This is a limitation law. It removes the right of action, the right of enforcement the right to judicial relief in a plaintiff if his cause of action arose more than three months preceding the institution of his action.

The general principle of law is that where a statute provides for the institution an action within a prescribed period, proceedings shall not be brought after the time prescribed by such statute. Any action that is commenced after the prescribed period is said to be statute barred. *See*

Ibrahim v. J.S.C. (1998) 14 WLR (Pt.584) 1. (p. 1209 F)

ACTIONS - Limitation - Contracts

2. I think it is without dispute that this is an action for breach of contract.

It is now settled law that section 2 of the Public Officers (Protection) Act does not apply to cases of contract. See *Nigerian Ports Authority v. Construzioni General Farsura Cogefar Spa & Anor. (1974) 1 ALL N.L.R. 463*. This court at pp 476 to 477 held as follows:

"We shall now deal with the other point, which to our mind, does not seem to be well-settled, namely whether the kind of statutory privilege, which we have been considering, is applicable to an action founded upon a contract. In other words, whether S.97 of the Points Act applies to cases of contract. We think that the answer to this question must be in the negative. We agree that the section applies to everything done or omitted or neglected to be done under the powers granted by the Act. But we are not prepared to give to the section the stress, which it does not possess. We take the view that the section does not apply to cases of contract.

The contention of the Respondent was therefore well taken. Section 2 of the Public Officers Protection Act does not apply to this case. (p. 1210 H/ 1211 G)

JURISDICTION - Determination guide

3. The guide in the determination of jurisdiction of a court is the subject matter of the claim as' endorsed in the writ of summons. It is a fundamental principle of law that it is the claim of the plaintiff that determines the jurisdiction of the court which entertains the claim:

I have already shown that the action is for a breach of contract. This claim has nothing to do with the management of the company. The issue of assessment for damages is merely ancillary. In the result the Federal High Court has no jurisdiction to hear and determine this claim. (p. 1212 C)

COURTS - Error - Contracts

4. The learned trial Judge was right when he held that the Lease Agreement - Exhibit F, was the binding contract. But the complaint of the plaintiff was not that the preconditions in clause 15 of Exhibit F were not
B complied with before the lease agreement was terminated. I have carefully read the Statement of Claim and I find nothing therein that remotely refers to the failure of the respondents to comply with clause 15 of Exhibit F before the termination of the agreement. But it was on this faulty
C foundation that the trial Judge proceeded to hold that the termination was wrongful, null and void and of no effect. He also proceeded on this wrong premise to award special and general damages of US\$6.72 million and =N=85 million respectively. (p. 1213 A)

D CONTRACTS - Wrongful termination of

5. I see from clause 16 quoted above that the parties did contemplate that the issue of termination might happen. So they provided the penalty clause which I think is sufficiently exhaustive. It is settled law that the parties
E are bound by agreement freely entered into. No party would therefore be permitted to go it for remedy. In my judgment, the Respondents are entitled to an amount to two times the fees payable to the CPI in the year of such termination. I so order.

F It will be seen clearly from Clause D (iii) above that the amount due to CPI per annum as given in evidence was =N=90m. Under the penalty provision in Clause 16 of Exhibit 'F' the plaintiff would be entitled to twice the sum of =N=90m as damages. This amounts to =N=180m.
G The result is that the Plaintiff is only entitled to =N=180 million Naira and nothing more. (p. 1213 H/ 1214 E)

REPRESENTATION

Chief A. S. Awomolo, SAN for the Appellant.
H Chief Olayiwola Afolabi, for the Respondent.

CASES REFERRED TO

Nigerian Ports Authority v. Construzioni General Farsura Cogefar Spa &

Anor. (1974)1 ALL N.L.R. 463

Egbe v. Adefarasin (1985) 1 NWLR (Pt.3) 549

Fadare v. A. G. Oyo State (1982) 4 SC

Skem Consult Ltd. V. Seondy Ukey (1981) 1 SC 6

Omisade & Ors v. Harry Akande (1987)2 NWLR (Pt.55) 158 at 171 B

Adeyemi v. Opeyori (1976) 9-10 SC 3

Tukur v. Government of Gonsola State (1989) 4 NWLR (Part 117) 517

Egbuonu v. BRTC (1997) 12 NWLR (Part 531) 29 at 43

Ibrahim v. Judicial Service Committee, Kaduna State (1998)14 NWLR C
(Part 584)1 at page 67

Savannah Bank of Nigeria Ltd. V. Pan Atlantic Shipping & Transport
Agencies Ltd. (1987) 1 NWLR (Pt.49) 212

Adisa v. Oyinwola (2000) 10 NWLR (Pt.674) 116

Attorney-General of the Federation v. Sode (1990) 1 NWLR (Pt.128) D
530 at 534

Kotoye v. Saraki (1994) 7 NWLR (Pt. 357) 414 at 448-449

Salako v. L.E.D.B. and Anor. 20 N.L.R. 169

Uor v. Ioko [1988] 2 NWLR (Pt. 77) 430 E

STATUTES REFERRED TO

Federal High Court Act s. 7

Public Officers Protection Act s. 2(a) F

LEAD JUDGMENT BY KATSINA-ALU JSC

On 28th February 1991, a Consortium of Management Operation Lease Agreement was executed for the management of Cocoa Products Industries (Nig.) Ltd. Situate at Ede, Osun State. The Deed was between G
Cocoa Products Industries Nigeria Limited, on the one hand, as lessor, and World Wide Industrial Venture Ltd (50%); Phoenix Produce Nigeria Limited (25%); Dalami Nigeria Ltd (15%) and Oyo State Government (10%) as Lessees. The lease period was for a term of 6 years. The H
substance of the Leasehold was that World Wide Industrial Venture Ltd was to produce the Managing Director, Plant, Service, and Shift Managers, Phoenix Produce Nigeria Ltd to produce the Accountant and Mar-

keting Manager, Dalami to produce the Purchasing, Administration. Managers and Company Secretary, whereas Oyo State Government was to produce Chairman of the Board of Directors, Financial Controller and Internal Auditor as management lessees.

B The government of Osun State in 1991 August became the successor of Oyo State Government, as the Principal shareholder .of Cocoa Products Industries (Nig.) Ltd, Ede, consequent upon assets sharing.

C The Government of Osun State on 2nd November, 1992 caused the leasehold to be terminated following the resolution of the House of Assembly of Osun State vide a letter from the Commissioner for Finance and Commerce. The 15% leaseholder, Dalami Nigeria Limited, on July 5 1993 took out Writ of Summons against the Appellant and the Government of Oyo State.

D By its paras. 24 and 26 of the Further Amended Statement of Claim the Plaintiff as Respondent claimed against the Appellants as follows:

E *“(i) A Declaration that the purported termination by the defendants of the Management Lease Agreement subsisting between the Plaintiff and the Defendants inter alia in relation to the management of Cocoa Product Industry Limited vide a letter dated the 27th of November 1992 is wrongful irregular in bad faith in breach of the terms of the Management Lease Agreement.*

F *(ii) AN ORDER nullifying and setting aside the purported termination as conveyed by a letter dated the 27th November, 1992.*

G *(iii) AN ORDER of specific performance directing the Defendants to give effect to the terms of the Management Lease Agreement as it relates to the management of Cocoa Product Industry Limited.*

ALTERNATIVELY

H *(iv) AN ORDER directing the Defendants to pay to the Plaintiff the sum of \$11.23 Million or its Naira equivalent as damages for the wrong termination of the Management Lease Agreement as follows: -*

(a) Loss of 15% of the anticipated profit on cocoa butter and cocoa production realized by the company from 1992-1997 - US \$ 3.65 Million.

(b) Loss of 15% of the anticipated profit from processing fee realizable by the company from 1992 - 1997 - \$3.07 Million.

(c) The sum of =N=100 Million as general damages for the wrongful termination of the Management Lease Agreement”.

The learned trial Judge found for the Respondent. He made the following awards:

“(i) Loss of 15% anticipated profit from Sales of cocoa Butter and cake (1992 - 1997) US\$3.65 Million.

(ii) Loss of 15% anticipated profit from 1 processing fees (1992 - 1997) - US \$3.07 Million. Total US \$6.72 Million, as special damages, and =N=85 Million as general damages. All these awards should be calculated up to date on the basis of evidence uncontradicted of the PW 3 showing the CBN exchange rates from 1992- January - December 1998 both periods inclusive i.e. the Naira equivalent of \$6.72 Million US Dollars the calculation of which should be in accordance with CBN Foreign Exchange rate as in Exhibits H - H6”.

On appeal by the Appellant to the Court of Appeal that court dismissed the appeal in respect of the award of special damages, allowed the appeal on the award of general damages of =N=85 Million but remitted it to the trial court for retrial.

This appeal is from the decision of the Court of Appeal. Based upon the grounds of appeal, the appellant has submitted two issues for determination of the appeal. These are:

(I) JURISDICTION

Whether the High Court of Justice of Oyo State was competent and possessed the jurisdiction to exercise judicial powers over the claims of the Respondent and whether the Court of Appeal properly considered the issue of jurisdiction in determination of the Appeal.

(ii) DAMAGES

Whether the Court of Appeal properly considered and determined the damages awarded against the Appellant.

For its part, the Respondent raised three issues for determination, which read as follows: -

JURISDICTION

Whether the High Court of Justice of Oyo State was not competent and possessed the jurisdiction to exercise judicial powers over the claims of the Respondent under Section 2 of the Public Officers (Protection) Act, Cap. 168, Laws of the Federation of Nigeria, 1990.

B (i) Whether or not the High Court of Oyo State possessed Power and jurisdiction to entertain the claims of the Respondent in view of the provisions of Section 7 of the Federal High Court Act, Cap. 134 Laws of the Federation of Nigeria, 1990.

DAMAGES

C (ii) Whether the Court of Appeal properly considered and determined the damages awarded against the Appellant on uncontroversial oral testimony.

The issues of the parties are identical. Respondent's issues 1 and 2
D can be argued together in response to Appellant's issue No. 1.

The Appellant has argued ground No. 1 into two parts. Both parts are on the jurisdiction of the trial High Court. The first part is on section 2 of the Public officers Protection Act, Cap. 168 Laws of the Federation
E of Nigeria 1990. The second part is on section 7 of the Federal High Court Act.

Public Officers Protection Act.

It was submitted for the Appellant that the suit of the Respondent
F instituted n 5th June 1993, seven (7) months after the termination of the leasehold is caught by the provisions of section 2 of the Public Officers Protection Act. It was said that the Act provides for a period of three (3) months within which an action may be instituted after the act, neglect or
G default complained of The Appellant gave three reasons why the limitation law is applicable to the present case. These

1. The termination of the leasehold agreement was carried out by a Commissioner of the Osun State Government in pursuance of his public duty.

H 2. The action was commenced against the Osun State Government on the basis of the Commissioner's act.

3. The action was commenced seven (7) months after the public act complained of.

In the circumstances, it was submitted by learned Counsel for the Appellant that the Respondent's action was statute-barred. Learned Counsel relied on the following cases: *Egbe v. Adefarasin (1985) 1 NWLR (Pt.3) 549*; *Fadare v. A. G. Oyo State (1982) 4 SC*; *Ibrahim v. JSC (1998) 14 NWLR (Pt.584) 1 at 31-32.*

B

FEDERAL HIGH COURT ACT

It was submitted for the Appellant that this action arose from the operation of companies and Allied Matters Act or any other enactment regulating the operation of companies incorporated under the Companies and Allied Matters Act. It was therefore contended that it is only the Federal High Court that has jurisdiction to hear and determine causes and matter arising from the operations activities of incorporated companies. Reliance was placed on the cases of *Skem Consult Ltd. V. Seondy Ukey (1981) 1 SC 6*; *Omisade & Ors v. Harry Akande (1987) 2 NWLR (Pt.55) 158 at 171.*

C

D

It was further submitted that the claim for damages on the facts of the case is merely an ancillary relief section 7 of the Federal High Court Act, Cap. 134 Laws of the Federation 1990 gives the Court with exclusive jurisdiction in civil causes and matters arising from the operation of the Companies and Allied Matters Act regulating the companies incorporated under the Act. It was pointed out that the court, which has the power to determine ancillary issue, must decline jurisdiction for the court, which has the power to determine the principal. Learned counsel placed reliance on the following cases - *Adeyemi v. Opeyori (1976) 9-10 SC 3*; *Tukur v. Government of Gonsola State (1989) 4 NWLR (Part 117) 517*; *Egbuonu v. BRTC (1997) 12 NWLR (Part 531) 29 at 43.*

F

ISSUE 1: The Respondent on issue 1 submitted that section 2 of the Public officers (Protection) Act Cap. 379 Laws of the Federation of Nigeria 1990 is not applicable to this case because the cause of action is based on contract, which was breached. It was pointed out that the claims of the Respondent were based on a tripartite Management Lease Agreement, Exhibit G which terminated the contract cement as it related to the Respondent.

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The Respondent drew attention to its writ of summons whereby it

claimed as follows:

“1. A declaration that the purported termination by the Defendants of the Management Agreement subsisting between the Plaintiff and the Defendants inter alia in relation to the Management of Cocoa Products Industry Limited vide letter dated 27th of November, 1992 is wrongful, irregular in bad faith in breach of the terms of the Management Lease Agreement.

2. An order nullifying and setting aside the purported termination as conveyed by a letter dated the 27th of November, 1992.

3. An order of specific performance directing the Defendants to give effect to the terms of the Management Lease Agreement as it relates to the Management of Cocoa Products Industry Limited.”

In the circumstances, it was submitted that an action for a breach of contract does not fall within the contemplation of section 2(a) of the Public Officers protection) Law. Learned counsel relied for this submission, on the case of *Ibrahim v. Judicial Service Committee, Kaduna State* (1998)14 NWLR (Part 584)1 at page 67.

ISSUE NO 2.

On the second issue it was submitted that the fundamental complaint of the Respondent is not on the operation, good management or bad management or management at all of the Cocoa Products Nigeria Limited by whoever was operating or managing the company. The complaint of the respondent, it was pointed out was in respect of the breach of the contract between the Appellant and the Respondent in 1991. It was further said that the claim of the Respondent in this case was a claim in damages for breach of contract. It was contended that the issue of assessment for damages was ancillary. Learned counsel relied on the case of *Tukw v. Government of Gongola State* (1989) 4 NWLR (Pt.117) 517 at 567.

It was submitted in the alternative that under the 1979 Constitution of the Federal Republic of Nigeria, both the Federal High Court and the State High it had concurrent jurisdiction in respect of the provisions of section 7 of the Federal High Court Act. Reliance was placed on the following cases- *Savannah Bank of Nigeria Ltd. V. Pan Atlantic Ship-*

ping & Transport Agencies Ltd. (1987) 1 NWLR (Pt.49) 212, Omisade v. Akande (1987) 2 NWLR (Pt.55) 158 at 175; Adisa v. Oyinwola (2000) 10 NWLR (Pt.674) 116.

It was pointed out that the present action was instituted at the Oyo State High Lit in 1993 when the 1979 Constitution was applicable. It was therefore submitted that the law applicable to a cause of action is the law in operation when cause of action arose. For this submission, learned counsel relies on the cases of *Attorney-General of the Federation v. Sode (1990) 1 NWLR (Pt. 128) 530 at 534; Kotoye v. Saraki (1994) 7 NWLR (Pt. 357) 414 at 448-449*. It was therefore the mission of the Respondent that both the Oyo State High Court and the Federal High Court had concurrent jurisdiction in the present suit.

Section 2(a) of the Public Officers (Protection) Act Cap. 168, Laws of the Federation of Nigeria 1990 provides as follows:

"2. Where any action, prosecution or other provision is commenced against any person for an act done in pursuance or execution or intended execution of any Act or Law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, 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."

This is a limitation law. It removes the right of action, the right of enforcement the right to judicial relief in a plaintiff if his cause of action arose more than three months preceding the institution of his action.

The general principle of law is that where a statute provides for the institution an action within a prescribed period, proceedings shall not be brought after the time prescribed by such statute. Any action that is commenced after the prescribed period is said to be statute barred. *See Ibrahim v. J.S.C. (1998) 14 WLR (Pt.584) 1.*

While the Appellant maintains that this action is caught by section 2(a) of the public Officers (Protection) Act, the Respondent argues that

the Act is inapplicable. It was contended that the section 2 of the Public Officers Protection Act does not apply in cases of breach of contract. The Respondent pointed out that its action was for breach of contract. In order to

B In order to ascertain the nature of the present action, it is pertinent to read some paragraphs of the statement of claim. In this connection paragraph 26 of the Further Amended Statement of Claim is pertinent. It reads as follows:

C “26. Where of the Plaintiff claim against the Defendant as follows:-

(i) A *DECLARATION* that the *purported* termination by the Defendants of the Management Lease Agreement subsisting between the Plaintiff and the Defendants inter alia in relation to the Management of D Cocoa Products Industry, Limited vide a letter dated the 27th of November, 1992 is wrongful, irregular in bad faith in breach of the Terms of the Management Lease Agreement.

(ii) AN *ORDER* nullifying and setting aside the purported termination as conveyed by a letter dated the 27th November, 1992.

(iii) AN *ORDER* of specific performance directing the defendants to give effect to the terms of the Management Lease Agreement as it relates to the Management of Cocoa Products Industry Limited.

F *ALTERNATIVELY*

(iv) AN *ORDER* directing the Defendants to pay to the Plaintiff the sum of \$11.23 Million or its Naira equivalent as damages for the wrong termination of the Management Lease Agreement as follows

G (a) Loss of 15% of the anticipated profit on cocoa Butter and Cocoa Cake production realizable by the Company from 1992 - 1997 US\$3.65 Million.

(b) Loss of 15% of the anticipated profit from processing fee realizable by the company from 1992-1997.

H (c) The sum of =N= 100 Million as general damages for the wrongful termination of the Management Lease Agreement.

I think it is without dispute that this is an action for breach of contract.

It is now settled law that section 2 of the Public Officers (Protection) Act does not apply to cases of contract. See *Nigerian Ports Authority v. Construzioni General Farsura Cogefar Spa & Anor.* (1974) 1 ALL N.L.R. 463. This court at pp 476 to 477 held as follows:

"We shall now deal with the other point, which to our mind, does not seem to be well-settled, namely whether the kind of statutory privilege, which we have been considering, is applicable to an action founded upon a contract. In other words, whether S.97 of the Points Act applies to cases of contract. We think that the answer to this question must be in the negative. We agree that the section applies to everything done or omitted or neglected to be done under the powers granted by the Act. But we are not prepared to give to the section the stress, which it does not possess. We take the view that the section does not apply to cases of contract. The learned Chief Justice, in deciding this point, made reference to the case of *Salako v. L.E.D.B. and Anor.* 20 N.L.R. 169 where de Commarmond S.P.J. as he then was, construed the provision of S.2 of the Public Officers Protection Ordinance which is almost identical with S.97 of the Ports Act, and thereafter stated the law as follows: -

I am of opinion that section 2 of the Public Officers Protection Ordinance does not apply in cases of recovery of land, breaches of Contract, claims for work and labour done, etc.'

We too are of the opinion that de Commarmond S.P.J. Has quite rightly stated the law in the passage of his Judgment cited above. It seems to us that an enactment of This kind i.e. S.97 of the Ports Act is not intended by the Legislature to apply to specific contracts."

(Underlining for emphasis)

The contention of the Respondent was therefore well taken. Section 2 of the Public Officers Protection Act does not apply to this case.

The second arm of this submission is that under section 7 of the Federal High Court Act, the Federal High Court has exclusive jurisdiction to hear; and determine this claim. The relevant provision under section 7 of the Federal High Court Act Cap.134 Laws of Federation of Nigeria

1990 is as follow:

“7 (i) The court shall have and exercise jurisdiction in civil causes and matters

(a).....

B (b).....

(c) arising from -

(ii) The operation of the Companies and Allied Matters Act or any other enactment regulating the operation of companies incorporated under the Companies and Allied Matters Act.”

C **The guide in the determination of jurisdiction of a court is the subject matter of the claim as’ endorsed in the writ of summons. It is a fundamental principle of law that it is the claim of the plaintiff that determines the jurisdiction of the court which enters the claim:** See *Adeyemi v. Opeyori* (1976) 1 FNLR 149; *Bronik Motors v. Wema Bank Ltd.* (1983) 6 SC 158.

I have already shown that the action is for a breach of contract. This claim has nothing to do with the management of the company. The issue of assessment for damages is merely ancillary: See *Tukur v. Government of Gongola State* 1989) 4 NWLR (Pt.117) 517. **In the result the Federal High Court has no jurisdiction to hear and determine this claim.**

F I turn now to the complaint that relates to the award of special and general damages. In resolving this issue the learned trial Judge held thus:

G “All parties in this suit (and I have equally held that that is the position) the lease agreement Exhibit F is the binding contract between them. In clause 15 (ii) of Exhibit F it has been spelt out the circumstances under which the management agreement Exhibit F can be terminated . The reason given in Exhibit G is ‘recent developments on the company’ have not been spelt out to examine whether or not the so-called developments are within the contemplation of parties

H in clause (15) (ii) of Exhibit F. Some copious attempts were made in the Amended Statement of Defense of the 2nd Defendant but there was no evidence coining in proof of any. I therefore come to the decision that the termination of the management lease agreement as between the Plaintiff

and defendants is wrongful, null and void and of no effect being in breach of Exhibit F.”

The view quoted above is faulty. I will explain. **The learned trial Judge was right when he held that the Lease Agreement - Exhibit F, was the binding contract. But the complaint of the plaintiff was not that the preconditions in clause 15 of Exhibit F were not complied with before the lease agreement was terminated. I have carefully read the Statement of Claim and I find nothing therein that remotely refers to the failure of the respondents to comply with clause 15 of Exhibit F before the termination of the agreement. But it was on this faulty foundation that the trial Judge proceeded to hold that the termination was wrongful, null and void and of no effect. He also proceeded on this wrong premise to award special and general damages of US\$6.72 million and =N=85 million respectively.** I wish to note here that the claim in damages was in the alternative.

On appeal to the Court of Appeal, that court affirmed the award of special damages. On the award of general damages, however, the Court of Appeal held that since the trial Judge, did not give sufficient reasons for the award of =N=85 million, it remitted the said award to the High Court to be properly determined.

The lease agreement Exhibit F is the binding contract between the parties. Clause 16 thereof provides as follows:

“16 (i) PENALTY. In the event of any termination or disruption of this agreement by the CPI or anybody or persons on account of action traceable to any shareholder or the CPI shall pay to the Lessees an amount equal to two times the fees payable to the CPI in the year of such disruption or termination as specified in column 4 of the Schedule V in the Agreement.

(ii) The lessees shall be entitled to remain in possession of and in operation of the CPI until any sum of money that may be due under H paragraph 16(1) is paid to the lessees by the CPI”

I see from clause 16 quoted above that the parties did contemplate that the issue of termination might happen. So they pro-

vided the penalty clause which I think is sufficiently exhaustive. It is settled law that the parties are bound by agreement freely entered into. No party would therefore be permitted to go it for remedy. In my judgment, the Respondents are entitled to an amount to two times the fees payable to the CPI in the year of such termination. I so order.

The plaintiff's first witness was Mr. Afolabi Igbaroola a chartered accountant. He testified as to the damages suffered by the plaintiff. He tendered Exhibit A.

It was the basis of the plaintiff's loss as a result of the premature termination of its contract. Clause D of Exhibit A reads:

"D Revenue Due to CPI from Processing fees:

(i) Cocoa Beans Processed per annum = 18,000 tonnes of cocoa Beans

(ii) Processing fees per tonne of cocoa beans - =N=5,000.00

(iii) Revenue from processing fees per annum = 18,000 x 5,000.00 = =N=90 million = US\$4.091 million.

(iv) 15% in respect of Dalami's share from processing fees = =N=67.5 million = US\$3.07m."

It will be seen clearly from Clause D (iii) above that the amount due to CPI per annum as given in evidence was =N=90m. Under the penalty provision in Clause 16 of Exhibit 'F' the plaintiff would be entitled to twice the sum of =N=90m as damages. This amounts to =N=180m. The result is that the Plaintiff is only entitled to =N=180 million Naira and nothing more.

In the result, I allow this appeal and set aside the judgments of the two lower courts. I make no order as to costs.

KALGO JSC

I have had the opportunity of reading in draft the judgment of my learned brother Katsina-Alu, JSC just delivered. I am in agreement with him that there is merit in the appeal and it ought to be allowed in part. I adopt the reasoning and conclusions reached in said judgment, and allow

the appeal in part. I also endorse the consequential orders made therein including the order as to costs

OGUNTADE JSC

B

The respondent was the plaintiff at the Ibandan High Court of Oyo State and the Appellant the defendant. In its further and further amended Statement of Claim, the plaintiff claimed against the defendant the following reliefs:

“(i) *A DECLARATION that the purported termination by the Defendants of the Management Lease Agreement subsisting between the plaintiff and the Defendants inter alia in relation to the Management of Cocoa Products Industry, Limited vide a letter dated the 27th of November, 1992 is wrongful, irregular in bad faith in breach of the Terms of the Management Lessee Agreement.*”

C

(ii) *AN ORDER nullifying and setting aside the purported termination as conveyed by a letter dated the 27th November, 1992.*

(iii) *AN ORDER of specific performance directing the defendants to give effect to the terms of the Management Lease Agreement as it relates to the Management of Cocoa Products Industry Limited.*

ALTERNATIVELY

(iv) *AN ORDER directing the Defendants to pay to the Plaintiff the sum of \$11.23 Million or its Naira equivalent as damages for the wrong termination of the Management Lease Agreement as follows-*

F

(a) *Loss of 15% of the anticipated profit on Cocoa Butter and Cocoa Cake production realizable by the company from 1992-1997 = US\$3.65 Million.*

G

(b) *Loss of 15% of the anticipated profit from processing fee realizable by the Company from 1992-1997.*

(c) *The sum of N100 Million as general damages for the wrongful termination of the Management Lease Agreement.”*

H

The parties filed and exchanged pleadings. The suit was heard by Adeniran J. On 28/7/99 the trial Judge in his judgment concluded thus:

“I have considered the mode of payment of any award in this judg-

ment. I have considered the pros and cons of same. I think in the prevailing circumstances of the ailing economy of this country -whereby the Naira sinks daily I should make the award in Naira equivalent. Going therefore by the contradicted calculations as evidenced in Exhibit 4 page

B 2 paragraph F I grant the following: -

(i) *Loss of 15% anticipated profit from Sales of cocoa butter and cake (1992-1997) = US\$3.65 million.*

(ii) *Loss of 15% anticipated profit From Processing fees (1992-1997) US\$3.07 million Total US\$6.72 million*

C *as special damages and N85 million as general damages. All these awards should be calculated up to date on the basis of the evidence uncontradicted of the PW3 showing the CBN exchange rates from 1992 January - December 1998 both periods inclusive i.e. - the Naira equivalent of 6.72 million US dollars the calculation of which should be in accordance with CBN foreign exchange fate as in Exhibits H - H6."*

The second defendant before the trial court i.e. Osun State Government was dissatisfied with the judgment of the trial court. It brought an appeal before the Court of Appeal, Ibadan (hereinafter referred to as 'the court below'). On 12/7/2002, the court below set aside the award of N85 million Naira for general damages as made by the trial court. It directed that the award of general damages be remitted to the trial court for re-hearing. Finally, it affirmed the award of US\$6.72 million dollars as special damages. Still dissatisfied, the Osun State Government, which was the 2nd defendant before the trial court has come on a final appeal before this Court. In its appellant's brief, the 2nd defendant has raised two Issues for determination, namely:

G "(i) *JURISDICTION*

Whether the High Court of Justice of Oyo State was competent and possessed the jurisdiction to exercise judicial powers over the claims of the Respondent and whether the Court of Appeal considered the issue of jurisdiction in determination of the appeal.

(ii) *DAMAGES*

Whether the Court of Appeal properly considered and determined the damages awarded against the appellant."

The respondent raised a preliminary objection to the 2nd ground of appeal filed by the appellant out of which the first issue for determination was distilled. Alternatively however, the respondent adopted and argued the two issues formulated by the appellant.

Let me dispose first of the preliminary objection. It was the respondent's contention that the 2nd ground of appeal, out of which a part of the 1st issue for determination in the appeal was distilled, was improperly raised, in that the appellant had neither sought nor obtained the leave of this Court to raise on appeal a new issue on the Limitation Law which had not been previously raised or considered by the court below. The said second ground of appeal reads:

"2. The learned Justices of the Court of Appeal erred in law when they failed to strike out the suit of the plaintiff/respondent, when it was clear on the record that the High Court of Justice of Oyo State had no jurisdiction and competence to entertain the claims in the suit on grounds that there was no live cause of action at the time when the suit was filed.

PARTICULARS OF ABSENCE OF JURISDICTION AND COMPETENCE

I) The act of the defendant complained about was an exercise of public duty, executed in official capacity, which occurred on November 27th 1992.

II) The action was commenced in 5th July 1993 well after the statutory period prescribed by Section 2 of the Public Officer Protection Act.

III) The High Court of Oyo State lacked the competence to exercise judicial power over a non-justiciable cause."

It is apparent from the 2nd ground of appeal reproduced above that the appellant's contention was that, at the time the plaintiff/respondent commenced its action on 5/7/93 the same had become statute-barred by reason of Section 2 of the Public Officers Protection Act since the cause of action accrued on 27-11-92. Now Section 2(a) of the Public Officers (Protection) Act, Cap. 168, Laws of the Federation, 1990 provides:

"2. Where any action, prosecution, or other proceeding is commenced against any person for an act done in pursuance or execution or intended execution of any Act or Law or of any public duty or authority,

or in respect of any alleged neglect or default in the execution of any such Act, 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 or damage or injury, within three months next after the ceasing thereof.”*

Now, before the court below, the appellant, which had raised the issue of jurisdiction, did not raise any argument on Limitation Law. The consequence is that the court below did not consider whether or not the respondent’s suit was statute-barred. The appellant in its appellant’s brief has now raised the issue of Limitation Law; and this it did without seeking or obtaining the leave of this Court to raise such a new matter on appeal. The law is now well settled that an appellant wishing to raise a new or fresh matter on appeal must first seek and obtain the leave of the appellate court concerned. See *Uor v. Ioko* [1988] 2 NWLR (Pt. 77)430; *Abinabina v. Enyimadu* 12 WACA 171 at 173 and *Akpani v. Barclays Bank of Nigeria* 1977 1 SC. 47.

I am therefore unable to consider the first limb of the first issue for determination wherein it was contended that the appellant’s suit was statute-barred.

Under the second limb of the first issue for determination, the appellant has raised before us as it did before the court below, the argument that that by reason of Section 7 of the Federal High Court Act, it is only the Federal High Court that possesses the jurisdiction to adjudicate in this suit since it was premised upon a cause of action arising from a management operation agreement of an incorporated company. I do not see any merit in the argument by the appellant’ counsel that the Oyo State High Court had no jurisdiction to entertain the suit out of which this appeal arose. Section 7(1)(k) of the Federal High Court provides:

7(1) the court shall have an exercise jurisdiction in civil causes and matters

(a) -

(b) -

(c) *Arising from -*

(i) *The operation of the Companies and Allied Matters Act or any other enactment regulating the operation of Companies incorporated under the companies and Allied Matters Act.*

(ii) *Any enactment relating to copyright, patents, designs, trade marks and merchandise marks;*

(d) *Of Admiralty jurisdiction.”*

It seems to me that appellants counsel did not pay due regard to the meaning to be ascribed to Section 7(1)(c) (i) above. The provision only applies where a dispute involves the practical application or operation of the provisions of the Companies and Allied Matters Act or any other Law regulating the operation of incorporated companies. In this case, the dispute was between one incorporated companies i.e. the plaintiff and the two defendants before the High Court (the Oyo State Government and the Osun State Government). The suit raised the issue whether or not there was a breach of the contract between the parties to the suit. The suit did not centre around the meaning or application or operation of the provisions of the Companies and Allied Matters Act or any other enactment. It was simply a case of breach of contract as the claims so clearly conveyed. It is therefore too much far-fetched to argue that it was only the Federal High Court, which could have jurisdiction over the matter.

I now consider the 2nd issue dealing with the quantum of damages awardable. The parties had in their written agreement Exhibit ‘F’ made provision for the damages payable in the event one of them prematurely, terminating the agreement. Under the agreement, the plaintiff along with other companies was to manage the defendants’ Cocoa Processing Factory at Ede in the old Oyo State.

Paragraphs 3 - 5 of Exhibit ‘F’ the agreement between the parties spelt out the nature of the relationship. The paragraphs read thus:

“3. After considering series of applications from and interviewing interested investors/companies the Lessor decided to lease the said Lessor’s factory to the following investors/companies in the ratio of investment indicated against each investor/company.

- (i) *Worldwide Industrial Ventures Ltd.* - 50% (#12 million)
- (ii) *Phoenix Produce Nigeria Limited* - 25% (#6 million)
- (iii) *Dalami Nigeria Limited* - 15% (#3.6 million)
- (iv) *Oyo State Government* 10% -

B 4. *The day-to-day management, administration and operation of the said factory by the Lessor including disbursement of funds shall be vested in the Managing Director who shall be appointed by the World-wide Industrial ventures Limited.*

C 5. *The co-investors/companies shall be at liberty to take part in the management and when the Managing Director prepares his organogram and/or management chart, each co-investor/company will be accommodated so that all of them will be able to see the running of the factory and contribute to the viability of their investment."*

D The agreement was to come into effect on 28th February and run for a term of three years. But on 27/11/1992, the defendants vide exhibit 'G' terminates the agreement. Exhibit 'G' reads:

E "HON. COMMISSIONER FOR FINANCE,
COMMERCE AND INDUSTRY,
P.M.B. 4419,
OSHOGBO, OSUN STATE OF NIGERIA

F Our Ref. No. MFC&I/C/7/52, 27th November, 1992.
Dalami - Nigeria - Limited,
c/o Prince Y. Lawal Obelawo,
Obelawo Estate,
New Ikirun Road,
G P.M.B. 389
Oshogbo.
Dear Sir,

H *TERMINATION OF THE MANAGEMENT LEASE AGREEMENT
OF COCOA PRODUCTS INDUSTRY, EDE*

I wish to recall that a management Lease Agreement on cocoa Products Industry, Ede was contracted between the Owner State Governments (Oyo and Osun States) and World-Wide Ventures; Messrs. Dalami

and Phoenix Nigeria Limited.

In the light of the recent developments on the Company, the Owner States have reviewed the situation and a decision has been taken to terminate the Management Lease Agreement with immediate effect. To that extent, all rights and privileges of the agreement have ceased to be in operation.

Please acknowledge receipt

Yours truly,

(Sgd.)

(H. A .AJANI),

Honourable Commissioner”

The parties had in exhibit ‘F’ made provision for the damages payable in the event one of them prematurely brought the agreement to an end. Clause 16 of Exhibit F provides:

“PENALTY

(i) In the event of any termination or disruption of this agreement by the CPI or anybody or person on account of reasons traceable to any shareholder/s of the CPI, the CPI shall pay to the Lessees an amount equal to two times the fee payable to the CPI in the year of such disruption or termination as specified in column 4 of Schedule to this agreement.

(ii) The Lessees shall be entitled to remain in possession of and in operation of the CPI until any sum of money that may be due under paragraph 16(i) is paid to the Lessees by the CPI.”

It seems to me that in the light of Clause 16 of Exhibit ‘F’, all that the trial court needed to do in the assessment of damages was to determine the amount equal to two times the fee payable to the CPI in the year of such disruption or termination.....”

Parties are bound by the contract to which they subscribed. See *Aouad v. Kessrawani* [1956] 1 F.S.C. 35. Further, it was necessary for the court to determine whether clause 16 of Exhibit ‘F’ on penalty was from the nature of the contract conclusive of the liquidated damages claimable by the Plaintiff. In *Koumoutis v. Leventis* [1973] 11 SC. 157 this Court per Udoma J.S.C. reviewed the law on the point. See *Dunlop*

Pneumatic Company Ltd. v. New Garage Company Ltd. [1915] A.C. 79.

At the trial, the plaintiff called as its first witness Mr. Afolabi Igbaroola a chartered accountant who testified as to the damages suffered by the plaintiff. He tendered as Exhibit 'A' the basis of the computation of plaintiff's loss as a result of the premature termination of its contract. The relevant part of Exhibit A for the purpose of assessing the damages due to the plaintiff as state in Clause 16 of Exhibit 'F' is Clause D at page 1 of Exhibit 'A' which reads:

“D. Revenue Due to CPI From Processing Fees:
 (i) Cocoa Beans Processed per annum = 18,000 tonnes of cocoa
 (ii) Processing fees per tonne of cocoa beans = N5,000.00
 (iii) Revenue from processing fee per annum = 18,000 x 5,000.00
 D = N90 million = US\$4.091 million
 (iv) 15% in respect of Dalami's share from the processing fees = N13.5m
 (v) Amount due to Dalami (Nig.) Ltd for lease period = 5 x N13.5m
 E = N67.5 million = US\$3.07m.”

It is seen from Clause D(iii) above in exhibit 'A' that the amount due to CPI per annum as given in evidence by P.W. 1 was N90m.

Under the penalty provision in clause 16 of Exhibit 'F', the plaintiff would be entitled tp twice the sum of N90m, as damages. This amounts to N 180m. The plaintiff on the evidence is only entitled to N180m Naira and nothing more.

I am with respect unable to agree with the judgment of the court below which affirmed the award of US\$6.72 million dollars as special damages in favour of the plaintiff. The award in my view overlooks the facts that parties had themselves pre-fixed the limit of damages awardable in the event of one of them prematurely terminating the contract which is what ultimately happened.

In the final result, this appeal succeeds. It is allowed. I agree with the lead judgment of my learned brother Katsina-Alu, J.S.C. The judgment of the court below is set aside. In its place I award in favour of the plaintiff respondent the sum of N180 million naira as damages for breach

of its contract with the appellants. I make no order as to costs.

MOHAMMED JSC

This is an appeal from, the decision of the Court of Appeal Ibadan B Division which in its judgment delivered on 15th April, 2002, affirmed the judgment of the trial Oyo State High Court of Justice, awarding special damages of 15% profit which came to \$6.72 million in favour of the Plaintiff now Respondent in this Court. The Court below however, in the same judgment allowed the Defendant's now Appellant's appeal against the award of #85 million as general damages in favour of the Plaintiff \Respondent and ordered a retrial of that claim on the merit by the trial court. C

On further appeal to this Court by the Plaintiff now Respondent, D only two issues were raised in the Appellant's brief of argument' and the Respondent's *brief respectively*. The two issues which were virtually the same in the two briefs are whether or not the trial Court has jurisdiction to entertain the claim of the Plaintiff/Respondent and whether or not the Court below properly considered and determined the damages awarded against the Appellant. E

I have read the judgment of my learned brother Katsina-Alu, JSC which has just been delivered in this appeal. I completely agree with the manner he considered and resolved the two issues arising for determination in allowing this appeal with no order as to costs. I have nothing to add. F

ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal holden at Ibandan in appeal No.CA/I/91/2000 delivered on 12th July, 2002. G

On the 28th day of February 1991, a Consortium of Management Operation Lease Agreement was executed for the management of Cocoa H Products Industries (Nig.) Ltd situate at Ede in Osun State between Cocoa Products Industries Nigeria Ltd on the one hand as lessor, and World Wide Industrial Venture Ltd with 50% interest; Phoenix Produce Nig. Ltd

with 25%; Dalami Nig. with 15% and Oyo State Government with 10% as lessor, for a term of six years. The terms of the lease include the fact that World Wide Industrial Venture Ltd was to produce the Managing Director, Plant, Service, and Shift Managers; Phoenix Produce Nig. Ltd to produce the Accountant and Marketing Manager; Dalami, the present respondent was to produce the Purchasing, Administration Managers and Company Secretary while the Oyo State Government was to produce the Chairman of the Board of Directors, Financial Controller and Internal Auditors as Management lessees. The Government of Osun State in 1991 became the successor of Oyo State Government as the Principal Shareholder of Cocoa Products Industries (Nig) Ltd, Ede following assets sharing and caused the lease to be terminated on 27th November, 1992 as a result of which the respondent who owned 15% of the leasehold, instituted an action on the 5th day of July, 1993 in the Oyo State High Court holden at Ibadan in suit No. 1/593/93 claiming the following reliefs: -

“(a) A declaration that the purported termination by the defendants of the Management Lease agreement subsisting between the plaintiff and the defendants inter alia in relation to the Management of Cocoa Products Industries Ltd vide a letter dated 27th November 1992, is wrongful, irregular, in bad faith and in breach of the terms of the Management Lease Agreement.

(b) An order nullifying and setting aside the purported termination conveyed by a letter dated the 27th of November, 1992

(c) An order of specific performance directing the defendants to give effect to the terms of the Management Lease Agreement as it relates to the management of Cocoa Products Industry Limited.

(d) ALTERNATIVELY

An order directing the defendants to pay to the plaintiff the sum of #236,667,200.00 as damages for the wrongful termination of the Management Lease Agreement as follows: -

(i) Loss of 15% of the anticipated profit on cocoa butter and cocoa cake production realizable by the company from 1992 to 1997 - US \$3.65 million

ii) Loss of 15% of the anticipated profit from processing fee realizable by the company from 1992-1997 - US \$3.07.million

(iii) The sum of £100,000,000.00 as General damages for the wrongful termination of the Management Lease Agreement.”

See the Further Amended Statement of Claim at pages 102 - 108 B of the record.

At the Conclusion of the trial, the trial court entered judgment in favour of the plaintiff/respondent and awarded the following damages: -

(a) Loss of 15% anticipated profit from sale of cocoa butter and cake (1992 - 1997) US \$3.65 million. C

(b) Loss of 15% anticipated profit from processing fees (1992 - 1997) US \$3.07 million as special damages, and

(c) #85 million general damages for breach of contract.

The present appellant was dissatisfied with that judgment and consequently appealed to the Court of Appeal holden at Ibadan which court affirmed the award of special damages of US \$6.72 million but allowed the appeal on general damages on condition that the award of \$485 million be remitted to the High Court for retrial. It is against that judgment that appellant has further appealed to this Court where the issues for determination as formulated by learned Senior Counsel for the appellant, CHIEF A. S. AWOMOLO, SAN, in the appellant's brief of argument filed on 8/11/02 are as follows: - D E F

“(i) JURISDICTION -Whether the High Court of Justice, of Oyo State was competent and possessed the jurisdiction to exercise judicial powers over the claims of the respondent and whether the Court of Appeal properly considered the issue of jurisdiction in determination of the Appeal.” G

(ii) DAMAGES

Whether the Court of Appeal properly considered and determined the damages awarded against the Appellant.”

In arguing the appeal, learned Senior Advocate of Nigeria submitted that the Court of Appeal erred in failing to hold that the trial court had no jurisdiction over the plaintiff's claims by reason of the provisions of the Public Officers Protection Act. Learned, counsel further submitted H

that the court below was in error when it failed to treat, consider and pronounce on the objection to jurisdiction of the Oyo State High Court consequent upon the exclusive jurisdiction conferred on the Federal High Court.

B It is also the argument of Learned Senior Advocate that the Court below was in error when it failed to set aside the special damages awarded in favour of the respondent on the grounds that the said award was based on fiction rather than the leasehold agreement which binds the parties in
C the management of cocoa Products Industries Nig. Ltd in case of termination or disruption; that the evidence on which, the special damages was awarded and affirmed by the court below were inadmissible in law and consequently void; that the award of general damages was not in
D accordance with laid down principles of law and consequently wrongful and that the decision of the Court of Appeal throwing the issue of general damages to the trial court for retrial was unsustainable in law and the peculiar facts of the case and consequently wrongful. Learned Counsel urged the court to resolve the issues in favour of the appellant and allow
E the appeal.

On the other hand learned counsel for the respondent, CHIEF OLAYOWOLAAFOLABI in the respondent's brief of argument filed on 28/5/03 submitted that the Oyo State High Court has the jurisdiction to
F entertain the action in that section 2(a) of the Public Officers (Protection) Act does not apply to this case because the cause of action is on contract and not tort; that the said Oyo State High Court has concurrent jurisdiction with the Federal High Court to entertain the action under
G section 236 of the Constitution of the Federal Republic of Nigeria 1979 (hereinafter referred to as the 1979 Constitution) and that there was a breach of the Management Lease Agreement by the appellant for which appellant is liable in damages. Learned counsel therefore urged the court to resolve the issues against the appellant and dismiss the appeal.

H There is no dispute that the cause of action in the instant case is the letter of the Osun State Commissioner for Finance and Economic Planning dated 27th November, 1992 which terminated the Management Leasehold Agreement between the parties to this action. The cause of

action is therefore the termination of the agreement in breach of the said management Leasehold Agreement. The above position is strengthened by the reliefs claimed by the respondent in the trial court and earlier reproduced in this judgment. The first sub-issue to be determined under the general issue of jurisdiction of the trial court is therefore whether B having regards to the undisputed facts of this case particularly as it elates to the cause of action it can be said that section 2(a) of the Public Officers (Protection) Act is applicable-so as to render the action by the respondent statute barred.

Section 2(a) of the Public Officers (Protection) Act, Cap. 168 C
Laws of the Federation of Nigeria,' 1990 provides as follows

2. *"Where any action, prosecution, or other proceeding is commenced against any person for an act done in pursuance or execution or intended execution of any Act or Law or of any public duty or authority, D or in respect of any alleged neglect or default in the execution of any such Act, 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 or damage or injury, within three-months next after the ceasing thereof." E

It is the argument of learned Senior Advocate that since the termination of the leasehold agreement was carried out by a Commissioner in F Osun State Government in pursuance of this official duty and authority as public officer, and the action was commenced against the Osun State Government as a result of the said act of the Commissioner and the said G action was so commenced seven months after the cause of action arose, the action is statute -barred and ought to have been struck out.

It is settled law that Public Officers (Protection) Act is a statute of limitation which removes the right of action, the right of enforcement and the right to judicial relief in a plaintiff and leaves him with a bare and H lifeless cause of action, which cannot be enforced having been instituted after the three' months prescribed by the said Law.

It is the argument of learned counsel for the respondent that the

provisions of section 2(a) of the Public Officers (Protection) Act do not apply to the facts of this case which action is grounded on breach of contract. Learned Counsel cited and relied on Ibrahim vs Judicial Service Committee, Kaduna State (1998) 14 NWLR (pt. 584) 1 at 57. I agree with the submission of learned counsel for the respondent that the provisions of section 2(a) of the Public Officers (Protection) Act relied upon by learned Senior Advocate do not apply to the facts of this case. It is settled law that section 2(a) does not apply to cases of contract. In the case of Salako vs L.E.D.B (1953) 20 NLR 169, COMMARMOND S.P.J. held thus:

"I am of opinion that section 2 of the Public Officers Protection ordinance does not apply in cases of recovery of land, breaches of contract, claims for the work and labour done etc."

See also the decision of this Court in N.P.A. vs Construction General F.C.S. (1974) 9 NSSC 622; Bankole vs NBL (1969) NCLR 385 at 390.

The other arm or sub-issue of jurisdiction has to do with, the argument of learned Senior Advocate to the effect that by virtue of the provisions of section 7 of the Federal High Court Act it is the Federal High Court that has exclusive jurisdiction to entertain matters connected with, arising from and pertaining to management of a company incorporated under the Companies and Allied Matters Act, and that since the action was commenced in the Oyo State High Court, that court lacks the jurisdiction to entertain same. Learned Senior Advocate also complained that the lower court failed to determine this aspect of the submission of learned Senior Advocate in its judgment and that the said failure resulted in a miscarriage of justice.

It is important to note that though the leasehold agreement, the breach of which gave rise to this action was on the management of a company formed under the Companies and Allied Matters Act, the cause of action in the instant case is simply damages recoverable for the breach of that contract. It has nothing to do with the management and control of the company concerned. I therefore do not agree with the submission of learned Senior Advocate that the claim for damages for breach of con-

tract is an ancillary relief; in my considered view, it is the main relief since the action is founded on breach of contract and the damages recoverable in the circumstances flow naturally from the said breach. I therefore hold that the failure of the court below to pronounce on the objection on jurisdiction in the instant case has not resulted in any miscarriage of justice, the objection having been demonstrated to be without substance. B

On the second and final issue for consideration, clause 16 of Exhibit F, which is the agreement binding the parties to this action, provides as follows: - C

‘ “16(1) *PENALTY*

In the event of any termination or disruption of this agreement by the CPI or anybody or person on account of action peaceable to any shareholder or the CPI, the CPI shall pay to the lessees an amount equal to two times the fees payable to the CPI in the year of such disruption or termination as specified in column 4 of the schedule u in the agreement.” D
Emphasis supplied.

It is not in doubt that the letter of termination of the agreement, Exhibit G was written by the Commissioner for Finance, Commerce and Industry of Osun State on behalf of Osun State, which is a shareholder, and consequently the letter is an “*action traceable to shareholder of the CPI.*” It is very clear that the parties foresaw the possibility of termination of the agreement by either party and duly provided for it. F

Since it is trite law that parties are bound by the terms and conditions of the agreement they freely entered into, it means that the rights of the aggrieved lessee and the quantum of damages recoverable for termination of the agreement is strictly limited to what is provided for in the agreement between the parties and nothing more. G

For these and the more detailed reasons assigned in the lead judgment of my learned brother KATSINA-ALU, JSC, I agree that the appeal be allowed in part and therefore order accordingly. I abide by the consequential orders contained in the said lead judgment including the order as to costs.

Appeal allowed in part.