

SUPREME COURT OF NIGERIA
10TH JULY, 2012. SC. 106/2009
CORAM:- D. MUSDAPHER CJN, M. MOHAMMED,
F. F. TABAI, J. A. FABIYI, O. O. ADEKEYE,
S. GALADIMA, B. RHODES-VIVOUR, JJSC

A-G OF RIVERS STATE PLAINTIFF
AND
1. A-G OF BAYELSA STATE
2. A-G OF THE FEDERATION DEFENDANTS

STATUTES - Actions - Limitation - Public Officers (Protection) Act - Effect - Where statute prescribes a period for institution of action - Any action instituted after the period - Is totally barred (H1)

STATUTES - Public Officers (Protection) Act - Application - Conditions precedent - For the Act to avail a person - Action must be against public officer - And the act done must be in pursuance of public duty (H2)

SUPREME COURT - Original jurisdiction - Parties - 1999 Constitution s. 232(1) - The court sits on disputes bordering on extent of legal right - Between Federal and State(s) Government - Or between States Government (H3)

STATUTES - Public Officers (Protection) Act - Purpose of - Is to protect officer from detraction - Exception to the plea - Include continuance of damage - And acting outside statutory duty (H4)

LAND LAW - Boundaries - Determination - Boundaries can be fixed by proved acts of prospective owners - By statutes - And by legal presumption (H5)

FACTS

Plaintiff and 1st defendant were involved in boundary dispute over ownership of oil well. Consequently, plaintiff represented by her Attorney-General filed this action against defendants (represented by their respective Attorney-General) at Supreme Court sitting in its

original jurisdiction. 2nd defendant (National Boundary Commission) was represented by Attorney-General of the Federation. Plaintiff claims inter alia, that the purported boundary between plaintiff's State and 1st defendant's State as shown in the 11th Edition of the Administrative Map of Nigeria does not represent the correct boundary between plaintiff's State and 1st defendant's State.

Plaintiff relied on testimonies of 6 witnesses and 29 Exhibits in support of her case. 1st defendant relied on testimonies of 2 witnesses and 16 Exhibits. 2nd defendant relied on testimonies of 4 witnesses and 16 Exhibits. Subsequently, 1st defendant raised preliminary objection to the hearing of the action on the ground that Supreme Court has no jurisdiction to entertain the suit because same is statute-barred, having not been commenced within the period of 3 months prescribed by Section 2(a) of the Public Officers Protection Act.

ISSUES FOR DETERMINATION

“(i) What is the boundary between the Plaintiff's State and the 1st Defendants State?”

(ii) Where are Soku Oil fields/Wells located? and

(iii) Is the Plaintiff entitled to the reliefs sought, having regard to the resolution of issues 1 and 2?”

HELD (Unanimously dismissing the appeal per
GALADIMA JSC)

Actions - Limitation

1. The general purpose of Section 2(a) of the Public Officers (Protection) Act, which is in pari materia with Section 2(a) of the Public Officers Protection Law of Northern Nigeria 1963, is exhaustively explained by this Court in IBRAHIM V. J.S.C. (supra). The Act is a Statute of Limitation. The general principle of law is that where a statute provides for the institution of an action within a prescribed period, the action 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. (p. 2529 B)

STATUTES - Public Officers (Protection) Act - Application

2. For the section of the Act to avail any person two conditions must be cumulatively satisfied: These are:

(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.

(ii) That 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. (p. 2529 D)

SUPREME COURT - Original jurisdiction - Parties

3. Such position as taken by the 1st Defendant (not the 2nd Defendant) can be quite misleading, not mindful of the provision of Section 232(1) of the 1999 Constitution (as amended). The Section clearly provides for those who can be parties to a dispute brought to this Court in its original jurisdiction. These are Federal Government and the State(s) or between States; if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends. The Amendment to Supreme Court Act extending the scope of its original jurisdiction, in Supreme Court (Additional Original Jurisdiction) Act 2002 is to enable the National Assembly or State Assembly to be made a party to proceedings in the original jurisdiction of the Supreme Court through the Speaker of either assembly. I am in agreement with the learned Senior Advocate for the Plaintiff that but for the provision of section 20 of Supreme Court Act, which, is as a matter of procedure requires that a State shall sue or be sued in the name of the Attorney-General, it would have been incompetent to name the Attorney-General as a party to a case in the original jurisdiction of Supreme Court. This is in view of the fact that Statutory or constitutional bodies, cannot within the meaning of Section 232(1) of the 1999 Constitution, be parties to a case in the original jurisdiction of Supreme Court. (p. 2530 E)

STATUTES - Public Officers (Protection) Act - Purpose

4. The Act is intended as much as within the limits of the law to protect a public officer from detraction and unnecessary litigation but never intended to deprive a party of legal capacity to ventilate his grievance on the face of stark injustice. That is why, where officers or heads of the Agencies of the Federation or State are protected, two most important exceptions are prescribed by the Act.

Firstly, in cases of continuance of damage or injury, the Act permits actions to be brought on the cessation thereof outside three months. From the Amended Statement of Claim and as equally deposed to in his Counter-affidavit, the Plaintiff averred that he continues to be deprived of the allocation he is entitled to every month and the same has not ceased. I am of the respected view that in such a situation of continuance of damage or injury which has not ceased the Defence is not available to the 1st Defendant where such allocation of continuing damage or injury has been raised in such a situation, there is need for the trial court to take evidence before determining the point. I hold the view that Plaintiff's action falls squarely within this exception as the damage and injury against it is a continuing one.

The second exception to the application of the Act as a defence is that it does not cover a situation where the person relying on it acted outside the colour of his office or outside his Statutory or Constitutional duty as claimed by the Plaintiff in this suit. (pp. 2533 B/2534 A)

LAND LAW - Boundaries - Determination

5. Boundaries, generally, can be fixed in either of the following three ways:

(a) by proved acts of the prospective owners, as for example, by agreement, assurance, undisturbed possession and estoppel;

(b) by Statutes or Orders of the Authorities having jurisdiction, and

(c) by legal presumption. (p. 2539 D)

NOTABLE POINT OF INTEREST

ADEKEYE JSC

1. Boundary – Meaning

A boundary is that imaginary line which marks the confines or line of division of two contiguous parcels of land. The term is also used to denote the physical objects by reference to which the line of division is described as well as the line of division itself. In that sense, boundaries may be classified as natural and artificial according as to whether or not such physical objects are man-made. (p. 2548 D) C

REPRESENTATION

W. BOMS Esq. (H.A.G., Rivers State) with E.O. Fagbemi, SAN, Olalekan Ojo Esq., Dame N.C. Iroegbu (DCL RS MOJ), Olusola Dare, Esq., Sikiru Adewoye, Esq., A. O. Popoola., Esq. I.S. Dokubo, Esq. D
P. Sam, Esq. Joy Jack (Mrs.), A.F. Yusuf, Esq., Rashidi Isamotu, Esq., Akeem Umoru, Esq. Jennifer Nkwota (Miss), Yejide Olarinde (Miss), A.B. Daibu, Esq. G.A. Ashaolu, Esq., K.C. Bon Nwakanma, Esq., for the Appellant

F.F. EGELE (H. A.G. Bayelsa State) with Tayo Oyetibo SAN; R. Wadu Esq. Wilson Ajuwa Esq. and Olamude Akinla Esq. E

CHIEF AKIN OLUJUNMI SAN with him Taiwo Shodehinde Esq., Oluseyi Adetanmi Esq., Seun Ajogbe Fayemi Esq. and Olukayode Ariwoola Jnr., for the Respondents F

CASES REFERRED TO

Egbe v. Alhaji (1990) 1 NWLR (Pt. 128) 346

Olatunji v. Inspector-General of Police 21 NLR 52

Obiefuna v. Okoye (1961) 1 ALL NLR 357 G

Fadare v. A-G Oyo State (1982) NSCLR 643

Ntuks v. N.P.A. (2007) 13 NWLR (Pt. 1051) 392

A-G Ondo State v. A-G Fed (1983) AII NLR 552

A-G Plateau State v. A-G of Fed (2006) 5 NWLR (Pt. 967) 346

A-G Anambra State v. A-G of Fed (2007) 12 NWLR (Pt. 1047) 4 H

A-G Rivers State v. A-G Akwa Ibom State (2011) 8 NWLR (Pt. 1248)

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A-G Abia State v. A-G Fed (2002) 6 NWLR (Pt 763) 264

Aremo v. Adekanye (2004) All FWLR (Pt. 224) 2113

Nwankwere v. Adewunmi (1967) NWLR 45

Anozie v. A-G Fed (2008) 10 NWLR (Pt. 1095)

A-G Cross-River State v. A-G Fed (2005) 12 NWLR (Pt. 71)

B STATUTES REFERRED TO

Constitution of Federal Republic of Nigeria 1999, ss. 162(2), 232(1)

Public Officers' Protection Act, s. 2(a)

Supreme Court Act, s. 20(a)

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LEAD JUDGMENT BY GALADIMA JSC

The Plaintiff, the Honourable Attorney-General of Rivers State (hereinafter, where necessary, abbreviated as the "R.S") commenced an action on behalf of the Government of his State, pursuant to the original jurisdiction conferred on this Court by Section 232 (1) of the 1999 Constitution, against the Attorney-General of Bayelsa State (hereinafter abbreviated as "B.S") and the Attorney-General of the Federation, as defendants respectively.

Pleadings were settled, duly filed, exchanged and subsequently amended. In Plaintiff's amended Statement of Claim in paragraph 77 thereof the reliefs sought against the defendants are as follows:

"1. DECLARATION that the purported boundary between the Plaintiff State and the 1st Defendant State as shown in the 11th Edition of the Administrative Map of Nigeria does not represent the correct boundary between the Plaintiff State and the 1st Defendant State.

2. DECLARATION that the correct boundary between the Plaintiff state and the 1st Defendant is River Santa Barbara.

3. DECLARATION that the 1st Defendant's claim to Soku Oil fields in the Plaintiff's territorial jurisdiction is false, wrongful, illegal, unconstitutional, vexatious, null and void and of no effect whatsoever.

4. DECLARATION that the Soku Oil Fields/Oil Wells are situated within the territorial boundaries of Rivers State of Nigeria.

5. DECLARATION that the Plaintiff State is entitled to all the revenue that has accrued and is accruing to the Federation Account from the said Soku Oil Fields/Oil Wells from July, 2005, by reason of the derivation principle stipulated in Section 162(2) of the Constitution of the Federal Republic of Nigeria, 1999.

6. *DECLARATION* that all accrued revenues from the Soku Oil Fields/Oil Wells however arisen and either being kept in the account known as “Rivers State/Bayelsa States escrow account” or in any other account be released forthwith to the Plaintiff, with all accrued interest thereon.

7. *AN ORDER* against the 2nd Defendant for account of revenue that has accrued to the federation account from “Soku” Oil field/wells on the basis of the derivative principle, from July, 2005 which Rivers State should have received but for the wrongful payment of same by the 2nd Defendant to the 1st Defendant.

8. *AN ORDER* for payment by the 2nd Defendant to the Plaintiff of any sums due from the Federation Account to Rivers State upon the taking of such account.

9. *OR IN THE EVENT THAT* all sums found due upon the taking of such account have been paid to the 1st Defendant, then *AN ORDER* directing the 1st Defendant to pay and/or refund to the Plaintiff all the revenue wrongly paid to the 1st Defendant from the Federation Account in respect of the Soku Oil Fields/Wells from July, 2005.

10. *FURTHER* to relief (i) *AN ORDER* directing the 2nd defendant to cause to be deducted from the statutory allocation of the 1st defendant and paid over to the plaintiff any sums due from the Federation Account to the plaintiff state upon the taking of such account.

11. *AN ORDER OF PERPETUAL INJUNCTION* restraining the Federal Government of Nigeria by itself, its servants agents or privies and all its agencies or departments and functionaries howsoever called or described from allotting or continuing to allot the Soku Oil Fields/Oil Wells or all revenues derived from the Oil Fields/Oil Wells to the 1st Defendant.

12. *AN ORDER* directing the Federal Government of Nigeria by itself its servants, agent’s or privies and all its agencies or departments and functionaries howsoever called or described to continue to pay to Plaintiff State all revenues and/or proceeds accrued and/or derived from Soku Oil Fields/Oil Wells.”

The Plaintiff is relying on the testimony of SIX witnesses and TWENTY-NINE Exhibits and documents in support of his case. The 1st Defendant on his part filed amended Statement of Defence on

29/08/2011 and is relying on the testimony of Two Witnesses and SIXTEEN Exhibits. The 2nd Defendant filed his Statement of Defence on 16/05/2011 and is relying on the testimony of FOUR Witnesses and SIXTEEN Exhibits. The plaintiff in further joining issues with the 1st Defendant filed a Reply on 04/05/2012. He further filed additional statement on oath of the 2nd, 4th, 5th and 6th Plaintiffs' witnesses. These processes particularly the witness statements together with the Exhibits and annextures were duly adopted by the parties. Therefore, from the Plaintiff's end, the copious affidavit evidence and documents they predicated their claim and relied upon on 30/05/2012 when the case was heard are as follows:

- (a) Amended Writ of Summons and Amended Statement of claim dated and filed on 11/01/2011
- (b) Plaintiff's reply to the 1st Defendant's Amended Statement of Defence dated and filed on 17/05/2012.
- (c) Plaintiff's 1st Witness Statement on Oath of Ngozi Iroegbu containing 83 paragraphs with Exhibits 'A-S'.
- (d) Plaintiff's 2nd Witness Statement on Oath of Gaius Assor filed on 17/01/2011 of 85 paragraphs.
- (e) Plaintiff's 2nd Witness Additional Statement on Oath of Gaius Assor of 49 paragraphs filed on 04/05/2012 with Exhibits "GA1 - 13".
- (f) Plaintiff's 3rd Witness Statement on Oath of Christopher Briggs filed on 17/01/2011 of 83 Paragraphs.
- (g) Plaintiff's 4th Witness Statement on Oath of His Royal Highness, King Temple Jamala II, the Olema Odua filed on 17/05/2012 containing 20 paragraphs.
- (h) Plaintiff's 5th Witness Statement on Oath of Chief Professor Dagogo M.J. Fubara of 211 paragraphs and filed on 17/05/2012.
- (i) Plaintiff's 6th Witness Statement on Oath of Chief Simeon Young Dokubo Tombo Itemea (JP) containing 33 paragraphs and filed on 17/05/2012.

The bundle or aggregate of facts or factual situation on which the Plaintiff relies to support his claim can be summarised as follows: Before the creation of the entity known as Rivers State, plaintiff and 1st Defendant were under Rivers Province comprising Brass, Degema, Port Harcourt, Ahoada and Ogoni Divisions. As between Brass Division and Degema Division, their boundary was supported by legal

instruments and archival materials like Maps and Survey Plans. In 1996, Bayelsa State was created out of the Old Rivers State. The entity then known as River State inhabited SOKU Oil fields/Wells from which derivative funds was given to the plaintiff/State. It is further claimed that at the creation of Bayelsa State, the structure hitherto known as Brass Division “metamorphosed” into the 1st Defendant State, whilst Degama and the remaining Divisions “metamorphosed” into the Plaintiff State with both states having their boundaries as River Santa Barbara. That this was the position from time immemorial and pursuant to this, several Administrative Maps of Nigeria from the 1st - 10th Editions were published by the National Boundary Commission (NBC). The 10th Edition of the Map is attached and marked as Exhibit ‘5’ to the Witness Statement on Oath of plaintiff’s 1st Witness of Ngozi Iroegbu. When the Plaintiff noticed that the 11th Editions the Administrative Map Exhibits “A and A1st (attached to Ngozi Iroegbu’s Witness Statement On Oath) changed the National Boundary from River Santa Barbara to River St. Bartholomew, Plaintiff protested the change vide its letters Exhibits “C’ and ‘CT’.” In response to these protest letters the National Boundary Commission in its letter of 3/7/2002, admitted its mistake in the 11th Edition of its Map and undertook to correct it in the 12th Edition (Ref Exhibits ‘B’). Till date no such amendment has been made; in spite of the Plaintiff’s protest and repeated demands for reversal of the trend, hence the instant action. On account of the above facts of this case the Plaintiff has submitted the following THREE issues for determination.

“(i) What is the boundary between the Plaintiff’s State and the 1st Defendants State?”

“(ii) Where are Soku Oil fields/Wells located? and

“(iii) Is the Plaintiff entitled to the reliefs sought, having regard to the resolution of issues 1 and 2?”

On their part the 1st Defendant raised a Preliminary Objection to this suit on the ground that this Court has no jurisdiction to entertain the suit because, it is statute-barred, having not been commenced within the period of 3 months prescribed by Section 2(a) of the Public Officers’ Protection Act. On this account the Court is urged to strike out or dismiss the action. However, acting out of abundance of caution, in the event that the objection is not upheld, the 1st Defen-

dant has canvassed arguments in opposition to the substantive suit by raising the following lone issue thus:

“Whether the Plaintiff has adduced cogent compelling and convincing evidence to establish on the balance of probabilities that Oil Wells/fields in dispute in this case are located in Rivers and not Bayelsa State?”

I shall first consider the 1st Defendant’s preliminary objection. The facts relevant to this objection have been set out in the Affidavit of 10 paragraphs of the 1st Defendant. Both parties filed written addresses. It is submitted by the 1st Defendant’s learned counsel that the definition of “a person” when used in a statute includes both natural and artificial person. Reliance was placed on the case of *IBRAHIM V. J.S.C.* (1998) 14 NWLR (pt. 584). It is submitted that the Plaintiff is suing both Attorney-General of Bayelsa State and the Attorney - General of the Federation. That these officers fall within the definition of Public Officers as decided by this Court in *IBRAHIM V. JSC* (supra), and therefore the Defendants are entitled to the protection afforded Public Officers under the public Officers (Protection) Act. It is contended that the Plaintiff did not commence his action until three years after the Revenue Mobilization Allocation and Fiscal Commission first paid revenue accruing from the Oil fields in dispute to the 1st Defendant in 2006. In other words, whilst the cause of action arose in 2006 the plaintiff slept on his right and did not commence this action until 2009, three years well after the period prescribed by Section 2(a) of the Public Officers Protection Act, and therefore the Act which is a statute of limitation renders the Plaintiff’s action statute-barred. Reliance was further placed on the following authorities: *EGBE V. ALHAJI* (1990) 1 NWLR (Pt. 128) 346, *OLATUNJI V. INSPECTOR-GENERAL OF POLICE* 21 NLR 52, *MICHAEL OBIEFUNA V. ALEXANDAR OKOYE* (1961) 1 ALL NLR 357, *FADARE V. ATTORNEY-GENERAL OF OYO STATE* (1982) NSCLR 643, *NTUKS V. N.P.A.* (2007) 13 NWLR (Pt. 1051) 392 @ 428. The 2nd Defendant has not raised any objection based on the Act. In opposition to the 1st Defendant’s application, Plaintiff filed a Counter-affidavit of 11 paragraphs. Learned Senior counsel for the Plaintiff has contended that bearing in mind the nature of his claim which is determining factor in deciding whether or not the Public Officers Protection Act is applicable, the claim is not statute-barred, in

as much as the action is related to recovery of land, and particularly about oil wells/fields as well as the revenue herefrom. It is submitted that another exception of the application of the Act, as a defence is that it does not cover a situation where a person relying on it acted outside the colour of his office or outside his statutory or constitutional duty as the Defendants in this instant suit.

The general purpose of Section 2(a) of the Public Officers (Protection) Act, which is in pari materia with Section 2(a) of the Public Officers Protection Law of Northern Nigeria 1963, is exhaustively explained by this Court in IBRAHIM V. J.S.C. (supra). The Act is a Statute of Limitation. The general principle of law is that where a statute provides for the institution of an action within a prescribed period, the action 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.

For the section of the Act to avail any person two conditions must be cumulatively satisfied: These are:

(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.

(ii) That 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.

In the instant case the 1st Defendant is contending that these two conditions are not satisfied, whilst the Plaintiff has argued that the conditions are satisfied. However I need to emphasize a point here. Prior to the decision in Ibrahim V. J.S.C. (supra) several decisions of our Courts were in conflict on the exact category of persons contemplated by the law, for whom protection is afforded or accorded. It was in that case this Court exhaustively reviewed the authorities on the point and concluded at page 37 of the Report thus:

"It is my view therefore that the words "any person" as pro-

vided 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
 B *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 alone in pursuance or execution of any law or any Public duty or authority.”*
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This Court held in that case that persons holding Government positions such as Attorney-General, Permanent Secretary or Inspector General of Police etc are Public Officers and are covered by the law. Several cases decided after the case of Ibrahim V. JSC (supra)
 D have followed the same reasoning. However, a point has been made by the learned senior counsel for the Plaintiff herein that none of the cases decided on this point has held that a “State” is a public officer or a person within the meaning of section 2(a) of the Public Officers Protection Act. Significantly in this case Attorneys-General have been
 E named as parties. Hence, the 1st defendant readily relies on the opinion of this Court in Ibrahim V. J.S.C. (supra) in his address, and contended that an Attorney-General of the 1st and 2nd Defendants are public officers. ***Such position as taken by the 1st Defendant (not the 2nd Defendant) can be quite misleading, not mindful of the provision of Section 232(1) of the 1999 Constitution (as amended). The Section clearly provides for those who can be parties to a dispute brought to this Court in its original jurisdiction. These are Federal Government and the State(s) or between States; if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends. The Amendment to the Supreme Court Act extending the scope of its original jurisdiction, in the Supreme Court (Additional Original Jurisdiction) Act 2002 is to enable the National Assembly or State Assembly to be made a party to proceedings in the original jurisdiction of the Supreme Court through the Speaker of either assembly. I am in agreement with the learned Senior Advocate for the Plaintiff that but for the provision of section 20 of the***
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Supreme Court Act, which, is as a matter of procedure requires that a State shall sue or be sued in the name of the Attorney-General, it would have been incompetent to name the Attorney-General as a party to a case in the original jurisdiction of the Supreme Court. This is in view of the fact that Statutory or constitutional bodies, cannot within the meaning of Section 232(1) of the 1999 Constitution, be parties to a case in the original jurisdiction of the Supreme Court. See the following cases: ATTORNEY GENERAL OF ONDO STATE V. ATTORNEY - GENERAL OF THE FEDERATION (1983) AII NLR 552; PLATEAU STATE V. ATTORNEY-GENERAL OF THE FEDERATION (2006) 5 NWLR (PT. 967) 346 at 393; ATTORNEY - GENERAL OF ANAMBRA STATE V. ATTORNEY-GENERAL OF THE FEDERATION (2007) 12 NWLR (PT. 1047) 4; and ATTORNEY-GENERAL OF RIVERS STATE V. ATTORNEY-GENERAL OF AKWA IBOM STATE (2011) 8 NWLR (PT. 1248) 11. I think a point has been made here. That is when the Attorney-General represents his State in a case before this Court in its original jurisdiction he is not suing or being sued in respect of any act done or omitted to be done by him in the execution of any law or of public duty. Rather, he is merely representing his State which is the real party to the case. This point was made clear in the case of PLATEAU STATE V. ATTORNEY-GENERAL OF THE FEDERATION (supra) at page 394, where it was held that the real and substantive parties to a case before the Supreme Court in its original jurisdiction are the States and the Federal Government as the case may be. The Attorney-General is only a nominal representative of the State. The law presumes the existence of Plaintiff State (Rivers State) as the party and not Attorney-General cited herein as party. Recourse can be further had for further guidance in the case of Attorney-General of ABIA STATE V. ATTORNEY-GENERAL OF THE FEDERATION (2002) 6 NWLR (Pt 763) 264 at 377, wherein Section 20(a) of the Supreme Court Act was relied upon. By paragraphs 1, 2, 3 of the Plaintiff's Amended Statement of Claim, the following averments were made:

“(1) The Plaintiff is the Chief legal officer of Rivers State, and he is suing as the representative of Rivers State one of the thirty six States which make up the Federal Republic of Nigeria together with the Federal Capital Territory, Abuja.

(2) *The 1st Defendant is the Chief legal officer of Bayelsa State, and he is being sued as the representative of Bayelsa State which is also one of the thirty six states that constitute the Federal Republic of Nigeria together with the Federal Capital Territory, Abuja.*

B (3) *The 2nd Defendant, who is the Attorney - General of the Federation, is sued as the representative of the Federal Government of Nigeria, including the Legislative and Executive arms of the said Government."*

C Also by paragraph 2 of the 1st Defendant's Amended Statement of Defence it is averred thus:

"The 1st Defendant admits paragraphs 1 - 6 of the Amended Statement of Claim."

D By implication, the combined effect of paragraphs 1, 2, and 3 of the plaintiff's Statement of Claim and paragraph 2 of the Defence quoted above, is that the 1st Defendant has admitted the plaintiff's averment that the parties are suing and defending the suit respectively in that capacity. Now, the question is whether the Federation or State is a "Public Officer" within the contemplation of Section 2(a) of the Public Officer's Act. It is the submission of the learned senior E counsel embellished in his Reply that the Attorney - General of the Federation or a State is not only a representative of the Federation or a State but has the locus standi to defend any of the agencies of the Government. In the case of Attorney-General of Rivers State V. Attorney-General of Akwa Ibom State (2011) 8 NWLR (Pt. 1248) 31 F at 216, this Court held thus:

"Furthermore, the Revenue Mobilization Allocation and Fiscal Commission and the National Boundary Commission are agencies of the Federal Government bearing in mind that an agency can be G created or implied by a statute. The Attorney-General has the locus standi to defend actions against the Federal Government or any of its agencies."

In the instant case the Plaintiff's 1st Relief against the National Boundary Commission, it is stated thus:

H *"DECLARATION that the purported boundary between the Plaintiff State and the 1st Defendant State as shown to the Administrative Map of Nigeria 11th Edition prepared by the National Boundary Commission does not represent the correct boundary between the plaintiff State and the 1st Defendant"*.

I agree with the learned Senior Advocate for the 1st Defendant that the National Boundary Commission is an agency of the Federal Government; but not such a public officer under the definition of the real term “public officer” as defined in the case of IBRAHIM V J.S.C. (supra). I agree also, that the Plaintiff’s complaint is against the 11th Edition of the Administrative Map of Nigeria, purportedly prepared by the National Boundary Commission, but that does not make it a public officer whose action or inaction cannot be called to question at anytime a party feels aggrieved. ***The Act is intended as much as within the limits of the law to protect a public officer from detraction and unnecessary litigation but never intended to deprive a party of legal capacity to ventilate his grievance on the face of stark injustice. That is why, where officers or heads of the Agencies of the Federation or State are protected, two most important exceptions are prescribed by the Act.***

Firstly, in cases of continuance of damage or injury, the Act permits actions to be brought on the cessation thereof outside three months. From the Amended Statement of Claim and as equally deposed to in his Counter-affidavit, the Plaintiff averred that he continues to be deprived of the allocation he is entitled to every month and the same has not ceased. I am of the respected view that in such a situation of continuance of damage or injury which has not ceased the Defence is not available to the 1st Defendant where such allocation of continuing damage or injury has been raised in such a situation, there is need for the trial court to take evidence before determining the point. In AREMO II V. ADEKANYE (2004) All FWLR (Pt. 224) 2113 at 2132, this Court stated the position of the law as to what constitutes “continuing damage or injury”. It is stated thus:

“Admittedly, legal principles are not always inflexible. Sometimes they admit of certain exceptions. The law of limitation of action recognizes some exceptions. Thus, where there has been a continuance of the damage, a fresh cause of action arises from time to time, as often as damage is caused: Battishill V. Reed (1856) 18 CB 696 at 714. For example, if the owner of mines works them and causes damage to the surface more than six years before action, and within six years of action a fresh subsidence causing damage occurs without any fresh working by the owner, an action in respect of the fresh

damage is not barred as the fresh subsidence resulting in injury gives a fresh cause of action."

I hold the view that Plaintiff's action falls squarely within this exception as the damage and injury against it is a continuing one.

The second exception to the application of the Act as a defence is that it does not cover a situation where the person relying on it acted outside the colour of his office or outside his Statutory or Constitutional duty as claimed by the Plaintiff in this suit. See: NWANKWERE V. ADEWUNMI (1967) NWLR 45 at 49; ANOZIE V. ATTORNEY-GENERAL OF THE FEDERATION (2008) 10 NWLR (Pt. 1095) 278 at 290 - 291. The Pleadings of the Plaintiff at paragraphs 15, 38, 46 of the Amended Statement of Claim and paragraphs 6(i) iii, 7-9 of the Counter-Affidavit, it alleged that the 1st Defendants had perpetrated fraud and perpetuated deception on the Authorities to gain access to funds it is not entitled to under the Constitution. The 1st Defendant cannot avail itself of the defence under the Act if it has stepped outside the colour of its office, or its Statutory or Constitutional duties, if any. This Court must look into this issue and would not with a wave of hand deprive the Plaintiff its legal capacity, to ventilate his grievance.

Again, the Plaintiff argues that the protection afforded Public Officers under the Act does not apply in cases of recovery of land. I have noted however, that the Plaintiff's action is related to recovery of land. The claim, particularly, of Oil wells fields are in issue, as well as the revenue therefrom.

In view of the foregoing and for the fact that the Plaintiff is mostly seeking for declaratory reliefs having to do with the claim of entitlement to derivative funds from the disputed Oil fields, which have fallen due and which they complained have not been paid, the Act cannot be invoked to defeat the grant of such reliefs. The claim of the Plaintiff has raised a serious constitutional matter between the two components States and the Federal Government. In the foregoing premises I am of the firm view that the 1st Defendant's preliminary objection founded on the Public Officers protection Act cannot avail him. It is frivolous and it is dismissed in its entirety for lacking in merit. Now to the merit of the Plaintiff's claim in this Suit. The plaintiff, by the institution of this suit, challenges the allocation of revenue

to the 1st Defendant by the 2nd Defendant from oil proceeds to the Federation Account from Soku Oil Wells/Fields. In other words his contention is that Soku Oil Wells/Fields are located in Rivers State. This contention is based on the premise that the boundary between the Plaintiff and the 1st Defendant States is the Santa Barbara River. On the other hand, the 1st Defendant asserts that the same Soku Oil Wells/Fields which he (1st Defendant) refers to as Oluasiri Oil Wells/Fields are located in Bayelsa State because the boundary between the 1st Defendant and the Plaintiff is the San Bartholomew River. In adducing evidence to support their respective positions, the plaintiff and the 1st Defendant have tendered 12 (twelve) different Maps in respect of the same land area. However, much to my chagrin and disappointment, I find that these maps are conflicting and unreliable in the resolution of this matter. While the maps relied upon by the Plaintiff are intended to support his case, those tendered by the 1st Defendant are intended to support his own case, although the maps are reflective of the same land.

Both parties rely on the evidence of the Surveyor General of their respective States which evidence is contradictory and totally at variance with each other. Both parties also pleaded Technical Geographical Indices, Measurement of Isobath and certain distances in support of their respective cases. The technical evidence are also contradictory with each party's evidence supportive of its own case. We do not require copious formulation of issues by the parties to resolve this case. The Sole issue is the actual location of Soku Oil Wells/Fields (as called by the Plaintiff) or Oluasiri Oil Wells/Fields (as called by the 1st Defendant). The determination of the issue is dependent on what the correct boundary of the plaintiff and 1st Defendant States is. Is it Santa Barbara River as claimed by the Plaintiff or San Bartholomew River as claimed by the 1st Defendant? That is the question.

Whither the parties, whither should they go? Whither does this Court lean? We thought this Court could rely and assimilate on the expertise of these important agencies of the 2nd Defendant (the National Boundary Commission NBC, and the Revenue Mobilization Allocation and Fiscal Commission RMAFC). These agencies are constitutionally responsible for the delineation of National and Maritime Boundaries and preparation of the indices for the distribution of 13% derivation fund, respectively. From the averments in paragraphs 14,

15, 16, 19, 20, and 21, the official performances of the agencies were not satisfactory and acceptable to the Plaintiff and are vehemently criticized and reproached thus:

“14. Prior to 2006, derivative funds/proceeds from Soku Oil fields/wells had always been paid to Rivers State and on the basis that
B Soku Oil fields/wells are located in Rivers State.

15. From 2006, the Revenue Mobilization Allocation and Fiscal Commission single-handedly and unilaterally changed the existing order and have since been giving derivative funds/money accruing from Soku oil fields/wells to Bayelsa State to the detriment of
C Rivers State where Soku oil fields/wells are situated.

16. The Revenue Mobilization Allocation and Fiscal Commission based its decision on the 11th Edition of the Administrative Map of Nigeria which put the boundary between Rivers State and Bayelsa
D State as or at St. Bartholomew River.

19. The National Boundary Commission (NBC) admitted its mistake of changing the natural, administrative and political boundary between the Plaintiff State and 1st Defendant State from River Santa Barbara to River St. Bartholomew in the letter dated 3rd July, 2002 and undertook to amend it in the publication of its 12th Edition of Administrative map. The letter is hereby pleaded.
E

20. The National Boundary Commission’s (NBC) admission of error/fault was in reaction to the Plaintiff State’s protest letters dated 28th March 2002 and 20th June 2002.
F

21. In the letter of 15th September, 2008 addressed to the Surveyor General of the Federation and copied the National Boundary Commission, National Boundary Commission was reminded of the need to revise the 11th Edition of the Administrative map as
G promised its letter of 3rd July, 2002.”

The Plaintiff claims that the 11th Edition of the Administrative Map of Nigeria is fraught with irregularities and errors and even that the map changed the natural boundary from River Santa Barbara to St. Bartholomew. The Plaintiff has contended that upon the discovery of the error in the 11th Edition of the Administrative Map that
H “surreptitiously” changed the natural boundary, it promptly protested in writing to the National Boundary Commission on 25/03/2002 and on 20/06/2002, and by its letter of 31/7/2002 the NBC admitted that the change in the boundary from River Santa Barbara, to River

St. Bartholomew was an error and it was to be corrected in the next Edition of the Map. The protest letter attached to the statement on Oath of Ngozi Iroegbu is Exhibit 'C'. The N.B.C. letter Exhibit 'B' reads:

"1. With reference to the letter Ref. No. RSBC/002/37 dated 20th June, 2002 addressed to His Excellency, the Vice President/ Chairman, National Boundary Commission, I wish to inform your Excellency that I have discussed the issue with the Surveyor - General of the Federation and wish to state as follows:

That the National Boundary Commission has taken note of the State's observation on the inadvertent misrepresentation of the Bayelsa/Rivers interstate boundary at the San Bartholomew River as shown on the map. The error was as a result of the delay in inputs from the Rivers State during the production of the Edition and the pressure to quickly publish the long overdue 11th Edition of the Administrative map of Nigeria.

2. I am to assure Your Excellency that your observation has been noted and that necessary corrections shall be reflected on the 12th Edition currently under production. I am to further assure you that the boundary lines reflected on the said Edition of the Administrative map shall in no way have any bearings on the current efforts of the National Boundary Commission to determine the correct boundary between Bayelsa and Rivers States. It is our hope that our current effort at the demarcation of the Bayelsa/Rivers interstate boundary shall be concluded as soon as possible to enable its reflection on the 12th Edition of the Administrative map of Nigeria currently under production."

The Plaintiff has concluded that on account of this error of N.B.C. the matter is conclusively decided in their favour and we should hold that the boundary between the two States is River Santa Barbara. I do think that the N.B.C. has agreed that it has made a mistake and promised to demarcate acceptable boundary between the Plaintiff and the 1st Defendant in its 12th Edition of the Administrative Map of Nigeria. The National Boundary Commission was established by the National Boundary Commission Act Cap N10, Laws of the Federation of Nigeria 2004. The function of the Commission is stated thus:

"(a) to deal with, determine and intervene in any boundary

dispute that may arise between Nigeria and any of her neighbours or between any two States of the Federation with a view to settling such dispute;

(b) to advise the Federal Government on issues affecting Nigeria's borders with any neighbouring countries;

B *(c) to entertain any recommendation from the Technical Committee and to advise the Federal Government on such recommendations;*

C *(d) to do such other things connected with boundary matters as the President may from time to time direct."*

Miss Ngozi Iroegbu the Director of Civil Litigation in the office of the Plaintiff said in her Witness Statement on Oath, that since the N.B.C. undertook to amend its mistake in its 12th edition of the Map, a reminder was sent to N.B.C. It is not stated what further effort the plaintiff has been making to get this matter finally settled. The 2nd Defendant accepted that there was a mistake to be corrected, however, regretted that delay, because some states have not made their inputs in the matter. These are being awaited. He stated other "Challenges" as the natural hostility from the settlers in the areas of disputed boundary and incidents of kidnapping of their field workers; and these have contributed to the delay in preparing the 12th Edition of the Administrative Map of Nigeria intended to settle the dispute between the parties. This stance of the NBC is lamentable. It is lame excuses, showing clearly the shirking of its statutory responsibilities thereby creating this unfortunate quagmire the parties now found themselves. The conduct of the NBC is reproachable. It must give priority this important dispute deserves.

F In ATTORNEY-GENERAL OF CROSS RIVERS STATE V. ATTORNEY-GENERAL OF THE FEDERATION (2005) 12 NWLR Pt 71, one of the declaratory reliefs sought by the Counter- Claimant/ Defendant copied on page 76 of the Report reads:

H *"26(a): A declaration that the defendant is entitled to revenue accruing on-shore from the total production of Addax Oil Wells/Fields of Abanga, Akam, Ebugbu, Bogi, Ebughune, Ukpan, Mimbo, amounting to 4,532,608 barrels between June 1999 and June 2002 and the Monipulo Oil wells/fields of Abana East and Abana West amounting to 25,198,556 barrels for the same period which by the clear and unambiguous admission of the Revenue Mobilization and*

Fiscal Commission had never been accredited to the defendant.”

Similarly, the Plaintiff in paragraph 5 of its Statement of Claim prays for the following reliefs:

5. DECLARATION that the Plaintiff State is entitled to Oil the revenue that has accrued and is accruing to the Federation Account for the said Soku Oil Fields/Oil Wells from July 2005, by reason of the derivation principle stipulated in Section 162(2) of the Constitution of the Federal Republic of Nigeria, 1999. B

I have set out the function of the NBC above and from the provision of the NBC Act it cannot be seriously suggested that before the jurisdiction of this Court is invoked in a boundary dispute between States, the NBC should have determined the dispute or completed its exercise in delineating the disputed boundary. But this Court rightly sounded a note of caution in Attorney-General of Cross River State V. Attorney-General of the Federation (2005) 15 NWLR (Pt. D 947) 71 at page 101. C

“No doubt, the completion of such exercise would be of tremendous assistance to the Court.”

Boundaries, generally, can be fixed in either of the following three ways: E

(a) by proved acts of the prospective owners, as for example, by agreement, assurance, undisturbed possession and estoppel;

(b) by Statutes or Orders of the Authorities having jurisdiction, and F

(c) by legal presumption.

I have explored all the three methods/options. The first and third options are not helpful in resolution of the dispute. I have shown above in the course of considering the dispute. I have observed the 12 different maps tendered for our consideration are conflicting and contradictory, the evidence of the Surveyors-General of the respective States of the Plaintiff and 1st Defendant is contradictory and totally at variance with each other; the technical reports dealing with the geographical indices measurements and projections of Isobath and some distances supporting the parties case are contradictory. It is on account of the foregoing and because of the technical nature of the dispute and the claims of the parties this Court finds that the NBC as an authority vested with authorities and expertise know-how in H

dealing with this matter should have once and for all conducted an exhaustive exercise of delineating the disputed boundary. Hence the long-awaited 12th Edition of the Administrative Map when completed soonest would have been of tremendous assistance in settling this lingering dispute.

B In the light of the observations I have clearly expressed above I do not feel comfortable to grant the declarations sought until the NBC concludes its exercise of delineation of disputed boundary to finality. It will be futile and premature to determine the boundary of
C the two parties States in the present circumstances. However, the appropriate order to be made in the prevailing circumstance is that of striking out the Plaintiff's suit, and I so order accordingly. Each party to bear its costs.

D

MUSDAPHER CJN

I have read before now the judgment of my Lord Galadima, JSC just delivered with which I entirely agree. In the aforesaid judgment, his lordship has adequately set out not only the facts but also
E the issues submitted for the determination of this matter, an Originating Summons invoking the original jurisdiction of this action. I entirely agree with the reasoning's of my lord, which I respectfully adopt as mine and consequently I too, find the suit of the plaintiff premature, this Court cannot arrive at any decision in this matter unless and
F until the Boundary Commission has determined the boundary between the Rivers State and Bayelsa State.

By section 3 of the Boundary Commission Act, it is the duty of the Commission to "determine and intervene" in the boundary dispute between the parties. The proper placement of the Soku Oil wells can only be determined by a Map by the Commission. In the absence of such a Map, the claims of the plaintiff in this matter are also in my view immature, I accordingly strike out the claims of the plaintiff, I also make no order as to costs.

H

MOHAMMED JSC

I have been privileged before today of reading in draft the judgment just delivered by my learned brother Galadima, JSC in this

action brought by the Plaintiff pursuant to the original jurisdiction of this court under Section 232 (1) of the Constitution of the Federal Republic of Nigeria, 1999. I entirely agree with my learned brother in the manner he tackled and resolved the preliminary objection raised by the 1st Defendant to the hearing of the action. I also dismiss the preliminary objection for lacking in merit. B

Coming back to the plaintiff's action against the Defendants, I see the foundation of the action in the first two declaratory reliefs sought, namely -

"1. Declaration that the purported boundary between the Plaintiff State and the 1st Defendant State as shown in the 11th Edition of the Administrative Map of Nigeria does not represent the correct boundary between the Plaintiff State and the 1st Defendant State." C

2. Declaration that the correct boundary between the Plaintiff State and the 1st Defendant is River Santa Barbara." D

It is clear from these two reliefs that the Plaintiff's cause of action arose from the contents of the 11th Edition of the Administrative Map of Nigeria which the Plaintiff allege does not contain or represent the correct boundary between the Plaintiff's State and the 1st Defendant's State which boundary according to the plaintiff should have been the Santa Barbara River. However, in its defence to the action in the statement of defence and evidence, the 1st Defendant had asserted that the correct boundary between the plaintiff and the 1st Defendant is the St. Bartholomew River and not the Santa Barbara River as claimed by the Plaintiff. E F

The 2nd Defendant on the other hand whose witness the Surveyor General of the Federation has the sole responsibility of producing the 11th Edition of the Administrative Map of Nigeria the contents of which is being challenged in this action by the Plaintiff with regard to the disputed boundary between the two States, had maintained in its defence that efforts are being made by the office of the Surveyor General of the Federation to Produce the 12th Edition of Administrative Map of Nigeria. That it is only after the completion of this exercise that the correct boundary between the two disputing states could be correctly determined. The witness explained that one of the contributory factors to the delay in the production of the 12th Edition of the Administrative Map of Nigeria was the hostility being experienced by the men working on the ground from the communi- G H

ties occupying the land along which the exercise was being carried out. The question to be asked and answered having regard to the undisputed facts on the ground at the moment, is whether or not the plaintiff's cause action predicated on the 11th Administrative Map of Nigeria which is on the verge of being replaced with the current 12th Edition of the same map, is well and properly founded. My answer is certainly in the negative. This is because if it turns out on the production of the 12th Edition of the Administrative Map of Nigeria that River Santa Barbara is marked as the correct boundary between the two disputing states and not St. Bartholomew River, then the Plaintiff would have no cause whatsoever of coming to Court to seek for a non-existent redress.

It is for the above reasons and the more elaborate ones in the leading judgment that I also strongly feel that the plaintiff's rather premature action must be terminated by striking out the same with no order on costs.

FABIYI JSC

This suit was initiated by the plaintiff on behalf of his State against the defendants in their official capacities and representing the stated parties pursuant to the original jurisdiction conferred upon this court by section 232 (1) of the 1999 Constitution of the Federal Republic of Nigeria.

The declaratory reliefs and orders sought by the plaintiff against the defendants read as follows:-

"1. DECLARATION that the purported boundary between the Plaintiff State and the 1st Defendant State as shown in the 11th Edition of the Administrative Map of Nigeria does not represent the correct boundary between the Plaintiff State and the 1st Defendant State.

2. DECLARATION that the correct boundary between the Plaintiff state and the 1st Defendant is River Santa Barbara.

3. DECLARATION that the 1st Defendant's claim to Soku Oil fields in the plaintiff's territorial jurisdiction is false, wrongful, illegal, unconstitutional, vexatious, null and void and of no effect whatsoever

4. DECLARATION that the Soku Oil Fields/Oil Wells are situated within the territorial boundaries of Rivers State of Nigeria.

5. *DECLARATION* that the Plaintiff State is entitled to all the revenue that has accrued and is accruing to the Federation Account from the said Soku Oil Fields/Oil Wells from July, 2005, by reason of the derivation principles stipulated in Section 162 (2) of the Constitution of the Federal Republic of Nigeria, 1999.

6. *DECLARATION* that all accrued revenues from the Soku Oil Fields/Oil Wells however arisen and either being kept in the account known as “Rivers State/Bayelsa States Escrow account” or in any other account be released forthwith to the plaintiff, with all accrued interest thereon.

7. *DECLARATION* against the 2nd defendant for account of revenue that has accrued to the Federation Account from “Soku” Oil Field/Wells on the basis of the derivative principle, from July, 2005 which Rivers State should have received but for the wrongful payment of same by the 2nd defendant to the 1st defendant.

8. *AN ORDER* for payment by the 2nd defendant to the plaintiff of any sums due from the Federation Account to Rivers State upon the taking of such account.

9. *OR IN THE EVENT THAT* all sums found due upon the taking of such account have been paid to the 1st defendant, then *AN ORDER* directing the 1st defendant to pay and/or refund to the plaintiff all the revenue wrongly paid to the 1st defendant from the Federation Account in respect of the Soku Oil Fields/Wells from July, 2005.

10. *FURTHER* to relief (i) *AN ORDER* directing the 2nd defendant to cause to be deducted from the statutory allocation of the 1st defendant and paid over to the plaintiff any sums due from the Federation Account to the Plaintiff State upon the taking of such account.

11. *AN ORDER OF PERPETUAL INJUNCTION* restraining the Federal Government of Nigeria by itself, its servant’s agents or privies and all its agencies or departments and functionaries howsoever called or described from allotting or continuing to allot the Soku Oil Fields/Oil Wells to the 1st defendant.

12. *AN ORDER* directing the Federal Government of Nigeria by itself its servants, agents or privies and all its agencies or departments and functionaries howsoever called or described to continue to pay to Plaintiff State all revenues and/or proceeds accrued and/or derived from Soku Oil Fields/Oil Wells.”

It is imperative to note it at this point that parties filed their respective pleadings and accompanied same with witness statements. The plaintiff and 1st defendant filed various maps with each side tilting its own maps to reflect its taste and support its stand. The plaintiff referred to the disputed land as Soku Oil Wells/Fields while the 1st defendant referred to same as Oluasiri Oil Wells/Fields. The plaintiff maintained that the boundary between them is the Santa Barbara River. On the other hand, the defendant maintained that the boundary between them is the St. Bartholomew River.

The 2nd defendant's witness asserted that the Surveyor General of the Federation prepares Administrative Maps of Nigeria. The 11th Edition is a map prepared by the Surveyor General of the Federation. The plaintiff alleged error in same and the Surveyor General said necessary corrections of errors would be reflected in the 12th Edition which is not ready as, not all the States have sent in their inputs consideration. Other challenges in the nature of hostility from settlers in the areas of the disputed boundary and kidnapping of field workers have contributed to the delay in preparing the 12th Edition of the Map. Senior counsel for the 2nd defendant observed in his oral address to us that the situation is not conducive for now to draw the map because of hostilities and that parties should tarry awhile.

I only wish to chip in a few words of my own. The reliefs claimed by the plaintiff are mainly declaratory in form and contents. The orders claimed by the plaintiff are dependent on the success or otherwise of the declaratory reliefs sought. It is basic that in claims relating to declaratory reliefs, as herein, it is for the plaintiff to establish his claim on the strength of its claim and should not rely on the weakness of the defence; if any. See *Nwokidu v. Okanu* (2010) 3 NWLR (Pt. 1181) 362, *Dantata v. Mohammed* (2000) 7 NWLR (Pt. 664) 176; *Ekundayo v. Baruwa* (1965) 2 NLR 211; *Ali Ucha v. Martins Elechi* (2012) MRSCJ Vol. 179 at 104; and *Dumez Nig Ltd. v. Nwokhoba* (2005) 18 NWLR (Pt. 1119) 361 at 373-374 where it is pronounced pungently that the burden of proof on the plaintiff in establishing declaratory reliefs to the satisfaction of the court is quite heavy. Such declaratory reliefs are not granted even on admission by the defendant where the plaintiff fails to establish his entitlements to the declarations by his own evidence. Let me go further and mention the obvious. A party who asserts must prove same. This is extant from

the provision of section 135 of the Evidence Act. See also the cases of Okubule v. Oyagbola (1990) 4 NWLR (pt. 144) 72; Osawaru v. Ezeiruka (1978) 6-7 SC 135 at 145; and Odukwe v. Ogunbiyi (1998) 8 NWLR (pt. 561) 339 at 352. From the facts on ground as depicted by the parties herein, can it be said with certainty that the boundary between the two States in respect of the area in dispute has been established by the plaintiff? As at today, the answer is in the negative. It is capital No! The maps produced by the plaintiff and 1st defendant sing discordant tunes. The 2nd defendant whose official is charged with the responsibility of making Administrative Maps of Nigeria maintained that same is in the making and the 12th Edition would come out in the near future. In short, it occurs to me that the plaintiff's claims appear hasty. Hitherto, the plaintiff failed to establish the real boundary between it and the 1st defendant. So, their claims have no firm stand to support them. I have read the judgment of my learned brother Galadima JSC. I am at one with the treatment of the preliminary objection raised by the 1st defendant. I agree with the conclusion arrived at in respect of same and accordingly adopt it.

For the above reasons and those clearly adumbrated in the lead judgment, I too feel that the plaintiff has not substantiated its claim and the declarations sought cannot be granted. Parties should tarry awhile. I agree that the appropriate order in the prevailing circumstance is one striking out the plaintiff's suit. I order accordingly. Each party should bear its own costs.

ADEKEYE JSC

I was privileged to read in draft the judgment just rendered by my learned brother, S. Galadima JSC. It is apparent from the processes filed by the parties in the suit before this court that the main dispute between the parties is as to "*which State as between the plaintiff; Rivers State and the 1st defendant; Bayelsa State is entitled to or has the right to the revenue accruable from the Federation Account based on the production from Soku oil fields/oil wells, by reason of the derivation principle.*"

From the foregoing, the plaintiff identified three issues for determination as follows: -

(a) What is the boundary between the Rivers State and Bayelsa

State?

(b) What is the location of Soku oil fields?

(c) Whether the plaintiff is entitled to the claim and the payment of all derivative funds from Soku oil fields/wells which have been wrongly assigned to the 1st defendant since 1999 till date.

B In the case *A-G Federation v. A-G Abia State (No.2) (2002) 6 NWLR (pt.764) 542* this court declared that -

C *“A State shall be entitled to natural resources emanating from within its boundaries so as to qualify for the allocation of funds from the Federation Account. The definition of such natural resources includes oil and gas wells.”*

The plaintiffs claim is that the Soku oil wells/fields now placed within the boundary of the 1st defendant; Bayelsa State had always prior to the issuance of the 11th Administrative map of Nigeria by the D National Boundary Commission been within the boundary of the plaintiff. This 11th Edition Administrative Map of Nigeria Exhibits A and A1 attached to the statement of Ngozi Iroegbu according to the evidence of the plaintiff is fraught with irregularities and errors. This Map has now placed the boundary lines at places totally at variance E with existing legal instruments and gazette which have not changed. The Administrative Map of Nigeria shows the location of States of the Federation and their boundaries. Hence the 1st defendant is relying on this erroneous Map to advance its interest. The plaintiff however F in this case is relying on archival documents and the 10th Edition of the Administrative Map of Nigeria to establish that the natural boundary between the two States had always been river Santa Barbara and not River St. Bartholomew. The change from River Santa Barbara to River St. Bartholomew by the National Boundary Commission lacks G any legal justification. The plaintiff elaborated on the historical background of the boundary between the two States. The old Rivers Province comprised Brass, Degema, Port Harcourt, Ahoada and Ogoni Divisions. Bayelsa State was created from the old Rivers State in 1996. It emerged from the old Brass Division of defunct Rivers State. The H Brass Division and Degema Division of the old Rivers Province shared boundary with each other. The other Division Degema, Port Harcourt, Ahoada and Ogoni Divisions are now in the new Rivers State. The plaintiff relied on the under-mentioned documents -

a. Certified true copy of a plan from National Archives be-

tween Brass and Degema Divisions “Exhibit G”.

b. Public Notice No.71 of 1951 issued by H.F. Marshall Acting Secretary to the Government of Nigeria (Protectorate and Cameroon in Lagos) on the 3rd day of April 1951 putting River Santa Barbara as the boundary between Brass and Degema (Now Bayelsa) and Rivers State Exhibit - 4. B

c. Survey Map of Degema Division of old Rivers Province drawn and reproduced by the Nigeria Surveys Lagos in August 1931 which locates “Soku in Degema Division as Exhibits 1 and 1c.

d. Order of 13th May 1954 (Nembe-Kula) Administrative settlement Exhibit G14 attached to the plaintiffs 2nd witness additional statement on oath by Gaius Assa. C

e. The Eastern Region Local Government Law 1955 (E.R. No. 143 of 1957) Exhibit J-J1.

f. Decree No.1 of 1991 (State Creation and Transitional Provision). D

It is further submitted that regardless of the creation of Bayelsa State from the plaintiff State, the boundary between the Divisions that metamorphosed into the two states still retains its identity as the natural boundary between the plaintiff and the 1st defendant. It is legally recognized by the courts that documentary evidence, particularly archival materials confer credibility to historical facts. Documentary evidence is the best form of evidence in the proof of a case. *Ogologo v. Uche* (1998) 11 NWLR (pt.572) pg.34 at pg.46. The error committed by the 2nd defendant in placing the new boundary between Bayelsa State and Rivers State at River St. Bartholomew also erroneously took Soku oil fields from the plaintiff and put it in the 1st defendant State. The sum of N23,424,970.30 have in the interval become due and payable to the plaintiff being 13% derivative funds from Soku oil field from June 1999 April 2010. The 1st defendant; Bayelsa State responded that the plaintiffs case ought to fail because it is well settled that a plaintiff must succeed on the strength of his case and not on the weakness of the defence. In this circumstance, the plaintiff has failed to adduce any evidence to show that River Santa Barbara is the territorial boundary between Rivers and Bayelsa States and that the oil wells in dispute are physically located in the territory of Rivers State. There is nothing on record to compel this court to go against the statutory presumption of correctness and H

regularity which the 11th edition of the administrative map of Nigeria enjoys. Finally the plaintiff has also failed to adduce material evidence in support of the monetary sum it claims from the defendants.

The National Boundary Commission, the Surveyor-General of the Federation and the Revenue Mobilization Allocation and Fiscal Commission are the agencies constitutionally responsible for the delineation of national maritime boundaries and the preparation of the indices for the distribution of 13% derivation fund. The National Boundary Commission Act Cap N10 Laws of the Federation of Nigeria 2004 established the National Boundary Commission with functions including -

a. Dealing with, determining and intervening any boundary dispute that may arise between Nigeria and any of her neighbours or between any two states of the Federation with a view to settling such dispute.

A boundary is that imaginary line which marks the confines or line of division of two contiguous parcels of land. The term is also used to denote the physical objects by reference to which the line of division is described as well as the line of division itself. In that sense, boundaries may be classified as natural and artificial according as to whether or not such physical objects are man-made. Boundaries are fixed either -

a. By proved acts of the respective owners as for example by agreement, assurance, undisturbed possession and estoppels or

b. By statutes or orders of the authorities having jurisdiction or

c. By legal presumption. *A-G Cross River State v. A-G Federation* (2005) 15 NWLR (pt.947).

Section 6(e) of the Revenue Mobilization Allocation and Fiscal Commission Act Cap R7 Laws of the Federation of Nigeria 2004 stipulates that the Commission shall make recommendations and submit its findings by a report thereto to the government of the federation or of a state as the case may be, regarding the formula for distribution of the Federation Account and the Local Government Account. Therefore, there is a close and strong relationship between the Federal Government and the Revenue Mobilization Allocation and Fiscal Commission. The role of adjudication of this court in this dispute has been simplified by the admission of the 2nd defendant in the written address of the 2nd defendant filed on 21/5/2012.

Paragraph 2.1 reads -

"In so far as the 2nd defendant is concerned, the main issue arising in this case is as follows -

(1) Between 2005 and 2009 when this suit was filed, how much is the derivation fund payments made to Bayelsa State on account of production from Soku oilfields. B

The question relating to where Soku oilfields are located between Rivers and Bayelsa States is strictly speaking an issue only between the plaintiff and the 1st defendant. The 2nd defendant is only a stakeholder who will be bound to act in accordance with the determination of this court on the question." C

Paragraph 3.10 reads -

"The evidence of the 2nd witness, Adamu a Deputy Director in the National Boundary Commission (NBC) is to the effect that it is the Surveyor General of the Federation who prepares Administrative Map of Nigeria and he prepared the 11th Edition of the Administrative map. He deposed further that the letter of 3rd July 2002 which was mistakenly typed as 3rd July 2000 in the witness statement, Exhibit B to the witness statement of the plaintiffs first witness was to explain that the error alleged by Rivers State in the 11th Edition of the Administrative Map of Nigeria which placed the boundary between Rivers State and Bayelsa State at River Bartholomew was due to the delay of Rivers State in sending to the Surveyor General of the Federation her inputs for consideration for inclusion in the production of the Map." D E F

Paragraph 3.11 reads -

"As indicated in the letter necessary corrections of the alleged error in the 11th Edition would be reflected on the 12th Edition of the Map but the 12th Edition is not ready yet because not all the States have sent in their inputs for consideration for inclusion in the map.

Other challenges in the nature of hostility from settlers in the areas of the disputed boundary and kidnapping of field workers have also contributed to the delay in preparing the 12th Edition of the Map." This court is making orders as follows - H

1. That the 2nd defendant - the National Boundary Commission produces the 12th Edition of the administrative map of Nigeria expeditiously correcting all the alleged error in the 11th Edition. The

admission of the alleged error in the 11th Edition of the administrative map is reflected in the National Boundary Commission letter Exhibit B which reads -

“With reference to the letter Ref. No. RSBC/002/37 dated 20th June 2002 addressed to His Excellency the Vice President/Chairman, National Boundary Commission, I wish to inform your Excellency that I have discussed with the Surveyor-General of the Federation and wish to state as follows-

“1. *That the National Boundary Commission has taken note of the States derivation on the inadvertent misrepresentation of the Bayelsa/Rivers interstate boundary at the St. Bartholomew River as shown on the map. The error was as a result of the delay in inputs from the Rivers State during the production of the Edition and the pressure to quickly publish the long overdue 11th Edition of the Administrative Map of Nigeria.*

2. *I am to assure your Excellency that your observation has been noted and that necessary corrections shall be reflected on the 12th Edition currently under production. I am to further assure you that the boundary line as reflected on the said Edition of the Administrative Map shall in no way have any bearings on the current efforts of the National Boundary Commission to determine the correct boundary between Bayelsa and Rivers States. It is our hope that our current effort at the demarcation of the Bayelsa/Rivers interstate boundary shall be concluded as soon as possible to enable its reflection on the 12th Edition of the administrative map of Nigeria currently under production.”*

From the tone of this letter, the fixing of St. Bartholomew River as the boundary between the plaintiff and the 1st defendant is an error acknowledged by the National Boundary Commission which it has undertaken to correct. Consequently, it is the order of this court that the 2nd defendant; the National Boundary Commission produces the 12th Edition of the Administrative Map of Nigeria expeditiously correcting all the alleged error in the 11th Edition.

There is a recognized process for the preparation of the indices for the distribution of 13% derivation fund - which includes gleaning through and relying upon the current administrative map of Nigeria, the contribution of the Department of Petroleum Resources etc. Without these necessary machinery put in place by the National Bound-

ary Commission and the Revenue Mobilization, Allocation and Fiscal Commission, it will be anticipatory and premature to grant the claims of the plaintiff in this case particularly the sum of N23,424,970.30 the alleged plaintiffs entitlements in respect of derivative funds from the period 2005 to December 2009. I also agree with the reasoning and conclusion of my learned brother, S. Galadima JSC in the lead judgment that this suit be struck out. I abide with the consequential orders including the order as to costs.

RHODES-VIVOUR JSC

I am in complete agreement with the reasoning and conclusions of my learned brother, Galadima, JSC. The plaintiff's case is that the correct boundary between River State and Bayelsa State is the boundary shown in the 11th edition of the Administrative Map of Nigeria. That is to say the River Santa, Barbara, is the boundary between Rivers State and Bayelsa State. The 1st defendant disputes that view. It is case is that the River Santa Barbara is not the boundary between the two states because the river does not run the full length of the two states. The River Santa Barbara does not run the full length of both states and it branches into numerous tributaries thereby making resolving the issue of boundary between both states difficult and impossible. The 2nd defendant, the Attorney-General of Nigeria was represented by a former Attorney-General of Nigeria Chief Olujimi, SAN. He informed this court that the Regulatory Authorities are still working on the 12th edition of the Administrative Map of Nigeria. The issue is delimitation of boundary between two states. Boundary between both states is a volatile issue and this is due to the fact that Oil wells are located in and around perceived boundaries. The substance of the 2nd defendant's submissions is that the 12th Edition of the Administrative Map of Nigeria, expected soon would lay to rest once and for all time the true boundary between Rivers State and Bayelsa State. Where, as it is obvious in this case that the issue of boundary between Rivers State and Bayelsa State cannot be resolved on the Maps before the court and the court is informed by the Chief Law Officer of this country that an Administrative Map of Nigeria (12th Edition) would soon be published the better course would not be to resolve the issue on an outdated 11th edition of the

Administrative Map of Nigeria or in ignorance of facts which ought to be known, but rather to wait for the 12th edition of the Administrative Map, examine it properly before boundaries between both states are definitively decided. It is only that approach that would amount to substantial justice for the parties. While we await the 12th edition
B of the Administrative Map of Nigeria the plaintiff's suit is hereby struck out with no order on costs.

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