

SUPREME COURT OF NIGERIA
FRIDAY 6TH JULY, 2012. SC. 56/2006
**CORAM:- W. S. N. ONNOGHEN, C. M. CHUKWUMA-
ENEH, J. A. AFOLABI, S. G. GALADIMA,
N. S. NGWUTA, JJSC**

1. SULGRAVE HOLDINGS INC.
& 19 ORS APPELLANTS
AND
1. FEDERAL GOVERNMENT
OF NIGERIA
2. ATTORNEY GENERAL OF
THE FEDERATION & MINISTER
OF JUSTICE
3. THE INSPECTOR GENERAL RESPONDENTS
OF POLICE
4. THE NATIONAL SECURITY
ADVISER

ACTIONS - Cause of action - Meaning - These are facts giving rise to enforceable claim - Including things necessary to give right of action - And material facts that entitle plaintiff to succeed (H1)

STATUTES - Limitation - Public Officers Protection Act s. 2(a) - Action against public officer must be brought - Within 3 months of act or default - Otherwise the cause of action is statute-barred (H2)

STATUTES - Public Officers Protection Act s. 2(a) - Defence - The defence is available where a person is public officer - And the act was done in execution of his duty (H3)

FACTS

Plaintiffs/appellants were found to have connived with the Abacha family in gross money laundering of Nigeria money in foreign countries. Consequently, members of Abacha's family and their associates were charged to court for sundry financial offences in some jurisdictions. Appellants sought to challenge the actions of the Federal government of Nigeria, particularly the letters of requests for

foreign assistance in criminal investigation. Hence, they filed this action at the Federal High Court Abuja seeking inter alia, declaration that 1st and 2nd defendants/respondents had no right to issue letters of request which purport to determine the rights of appellants.

Respondents filed preliminary objection seeking to strike out the action for being statute-barred. The objection was on the ground that respondents' last series of letter was in July 2000, while appellants' writ of summons was issued on 27th September 2001. Respondents thus argued that the scenario is contrary to section 2(a) of the Public Officers Protection Act Cap. 41 LFN 2004. In its ruling, the court dismissed the action for being statute-barred. Appellants being dissatisfied appealed to the Court of Appeal Abuja. The appeal was dismissed; hence they filed further appeal to Supreme Court.

ISSUE FOR DETERMINATION

"Whether the Court of Appeal was right to have affirmed the decision of the trial court which upheld the respondents' preliminary objection and dismissed the appellants' suit on the grounds that the suit was statute-barred, that it did not disclose any reasonable cause of action and that the court lacked jurisdiction to entertain the suit."

HELD (Unanimously dismissing the appeal per **GALADIMA JSC**)

Cause of action - Meaning

1. A cause of action is the entire set of facts or circumstances giving rise to an enforceable claim. It includes all those things necessary to give right of action and every fact which is material to be proved to entitle the plaintiff to succeed. (p. 4576 F)

STATUTES - Limitation - Public Officers Protection Act s. 2(a)

2. The Public Officers Protection Act is a statute of limitation and the import of section 2(a) thereof, is that where any action, prosecution, or proceeding is commenced against any person for any act done in pursuance or execution of any law or of any default in the execution of any law, duty or authority, the action, prosecution or proceeding shall not lie or be instituted unless it is commenced within three months of the act,

neglect, or default complained or in the case of continuing damage or injury within three months next after the ceasing thereof. What this means is that Public Officers Protection Act removes the right of action, the right of enforcement act and the right to judicial relief in a plaintiff. This leaves respondents with a bare and empty or hollow cause of action which he cannot enforce because the alleged cause of action is statute-barred, and cannot be maintained.

Since it is common ground that the respondents are "Public Officers," they naturally come within the provision of section 2(a) of the Act. (p. 4576 H)

Public Officers Protection Act s. 2(a) - Defence

3. However, although I cannot go into the merit of the case of the appellants, the position of the law on this point has to be further explained. The defence created under the Act or Law, as the case may be, is for police officers who had acted pursuant to his duties as a public officer. However, two conditions must exist to avail the officer the protection of section 2(a) of the Act: first it must be established that the person against whom the action is commenced is public officer. Secondly, the act done by the officer in respect of which the action was commenced must be an act done in pursuance or execution or intended execution of any law or of any public duty or authority. The Act gives full protection or cover to all public officers or persons engaged in the execution of public duties who at all material times acted within the confines of their public duty. They must not step out of their statutory authority and act outside the statutory or constitutional duty. If they do, they automatically lose protection of the laws. (p. 4577 G)

NOTABLE POINTS OF INTEREST

CHUKWUMA-ENEH JSC

1. There must be no feature in a case that prevents jurisdiction

It is also settled law as decided in *Madukolu v. Nkemdilim* 106 NSSC Vol. 2, 374 at 379; (1962) 2 SCNLR 341 that for the court to exer-

cise its jurisdictional competence over a matter where *inter alia* the subject matter of the case is within its jurisdiction there must be *no feature in the case which prevents the court from exercising its jurisdiction* that is to say where the said court process has been initiated by due process of law. Needless emphasizing that any defect in competence is fatal. This is so where an action as here is instituted outside the period of time as prescribed by the law of limitation of action in this case 3 months as per the instant Public Officers Protection Act. And so deducible from my reasoning is the clear affinity between jurisdiction and limitation of action. (p. 4582 B)

2. Limitation laws must be pleaded in some jurisdictions

It must be noted that in some jurisdictions of this country the limitation laws are required as per the High Court (Civil Procedure) Rules to be pleaded by the defence in order not to take the opposite side by surprise although it may also arise from the facts as pleaded without specifically alleging the relevant limitation law. In that case pleadings have to be filed and exchanged by the parties before an objection to the action being stale and statute-barred can properly be taken. This invariably is the case where demurer has been abolished. And the rules in that case require the defendant to set down for hearing of the matter by an application raising specifically the question of limitation of action and the lack of the court's power to entertain the matter. (p. 4582 E)

REPRESENTATION

Abdullahi Haruna, Esq with R. O. Atabo, Esq; L. M Aneka-Amuda [Mrs.] and U. Anyebe, Esq., for the Appellants
T. O. Busari, Esq. with Funke Yusuf [Miss], for the Respondents

CASES REFERRED TO

Akindipe v. C.O.P. (2000) FWLR (Pt. 5) 709
Dantata v. Mohammed (2000) FWLR (Pt. 21) 889
Ogbimi v. Ololo (1993) 7 NWLR (Pt. 304) 128
Nwankwere v. Adewunmi (1966) All NLR 129
Amayo v. State (2002) FWLR (Pt. 91) 15
Olalekan v. State (2002) FWLR (Pt. 91) 1605
State v. Ajie (2000) 11 NWLR (Pt.678) 434

Emiator v. Nigerian Army (1999) 12 NWLR (Pt. 631) 362

Ibrahim v. Osim (1987) 4 NWLR (Pt. 67) 965

Sanda v. Kukawa Local Govt (1991) 2 NWLR (Pt. 174) 379

A-G Federation v. Abacha (2010) 17 NWLR (Pt. 1221) 1

Sani v. President FRN (2010) 9 NWLR (Pt. 1198) 153

Fadare v. A-G Oyo State (1982) 4 SC 1

Obiefuna v. Okoye (1964) 1 All NLR 96

Egbe v. Adefarasin (No. 1) (1985) 1 NWLR (Pt. 3) 549

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STATUTES REFERRED TO

Public Officers Protection Act Cap. 41 LFN 2004, s. 2(a)

Forfeiture of Assets (Certain persons) Decree No. 53 1999

Banking (Freezing of Accounts) Act Cap. 29 LFN 1990

Constitution of Federal Republic of Nigeria 1999 (as amended), s. 318

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LEAD JUDGMENT BY GALADIMA JSC

This is an appeal against the judgment of the Court of Appeal Abuja Division delivered on the 6th July, 2005, dismissing the appellants appeal against the decision of the Federal High Court, Abuja, given on the 8th October, 2003. The trial Federal High Court had upheld the respondents' preliminary objection and dismissed the appellants' suit on three grounds, namely:

(a) That the appellants' suit was statute-barred by virtue of Section 2(a) of the Public Officers Protection Act, Cap. 41 I, Laws of the Federation of Nigeria, 2004;

(b) That the suit disclosed no reasonable cause of action and

(c) That the trial court lacked jurisdiction to entertain the suit.

In the appellants' appeal to the court below they still subjected the three grounds of the respondents' objection to further consideration. At the end of the day, the court affirmed the decision of the trial court and dismissed the appellants' appeal as lacking in merit. At page 655 of the record the court below concluded and pronounced as follows:

"Bearing all the authorities cited and considered in mind some of which I have referred to and stated above

I see with clarity that the lower court looking at the statement of claim and finding that there was no cause of action was right to terminate

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the suit thereto and then since there was no cause of action as he so found, therefore no jurisdiction upon which he could proceed, but the proper order should have been a striking out and not a dismissal. See Tuku v. Government of Gongola State (1989) 4 NWLR (Pt. 117) 517 at 549.”

B At pages 668 - 669 lines 7 - 18 and 24 - 25, it was stated:

“The situation is all the more tied up in view of the fact that by their own admission from their copious joint statement of claim which the appellants quoted in extenso with details in their brief they were aware of the letters written by the respondents and the letters terminated 13 months to the appellants bringing their action. The appellants are clearly barred, as their action was statute barred without a redeeming feature or features as some of the authorities we have cited showed. It is in the light of that, that I answer the issue No. 3 positively.

The learned trial Judge was right in holding that the action of the appellants was statute-barred and dismissed the action on account of that.

E *Therefore this appeal lacks merit and is hereby dismissed. I affirm the decision of the court below dismissing the suit.*

The facts of the case that led to the claim of the appellants that further led to the above concurrent decisions of (he two lower courts are exposed as follows.

F The Military Government of General Abdulsalami Abubakar which succeeded that of the late General Sani Abacha, recovered well over million, from the family of the latter, and his close associates. The recoveries are detailed in Decree No. 53 of 1999.

G In May 1999 when the country returned to Civil Rule the Government discovered that the amount looted from the National treasury by the General Sani Abacha and members of his family was considerably more than what had been recovered by the previous Government. The criminal investigation instituted by the Government traced the looted funds to a number of foreign countries which H included United Kingdom, Luxembourg, Liechtenstein, Jersey and Switzerland.

Between 1999 and 2000 the Government requested in writing the assistance of the above countries in the criminal investigation against the financial activities of the Abacha and his family and ac-

complices. This yielded results and through judicial processes it was discovered that more than 90 front-companies, including the appellants and foreign banks were found to be involved in an intricate web of financial fraud and money laundering. Consequently members of the Abacha Family and their associates were charged to court for sundry financial offences in some of the aforementioned jurisdiction. B
 Convictions were recorded against some offenders and their accounts were frozen and well over \$2 billion traceable to the accounts; some of which belonged to the appellants, were frozen.

Way back home here in Nigeria, the 19th appellant with some C
 of his close associates were charged to court on 33 -counts for fraud and sundry offences.

The appellants sought to challenge the actions of the Federal Government, particularly the letters of requests for foreign assistance in the criminal investigations, instituted an action at the Federal High D
 Court Abuja on 27/09/2001 seeking the following reliefs:

"1. A Declaration that the 1st and 2nd defendants had no right or power to issue letters of request for assistance or to make request for assistance which have the effect or purport to have the effect of determining the rights of the plaintiffs. E

2. A Declaration that the 1st and 2nd defendants had no right or power to issue the Swiss Letter, the Luxembourg letter, the Liechtenstein Letter nor to make any requests for assistance to the 7th and 8th defendants.

3. A Declaration that the Swiss Letter, the Luxembourg Letter, the Liechtenstein Letter, such other letters of request for assistance not disclosed to the plaintiffs, and any requests for assistance to the 7th and 8th defendants are unconstitutional, null and void and of no effect. F

4. An Order setting aside the Swiss Letter, the Luxembourg Letter, the Liechtenstein Letter, such other letters of request for assistance not disclosed to the plaintiffs, and any requests for assistance to the 7th and 8th defendants.

5. An Order of mandatory injunction restraining the defendants, particularly the 1st and 2nd defendants acting through their servants and agents from relying on any advantage derived from the said letters of request afore described and any steps taken thereon to the benefit of the said defendants in so far as it is from the said letters H

of request are void.

6. A Mandatory order directing the defendants to withdraw therefore described letters or requests are void

7. An order of perpetual injunction restraining the 1st to 3rd defendants jointly and severally whether acting by themselves, servants or their agents, from proceeding, continuing, causing to be continued, or assisting in anyway whatsoever with the Swiss Letters, the Luxembourg Letter, the Liechtenstein Letter any requests for assistance to the Secretary of State of Home Affairs, United Kingdom and the Attorney General of Jersey except in accordance with the due process and procedure permitted by law.”

It is in the course of proceedings the respondents filed the said preliminary objection challenging the jurisdiction of the trial court on the grounds set out above essentially that the suit filed by the appellants at the trial court was statute-barred and for that reason the trial court lacked jurisdiction to entertain same. The lower court on the basis of the foregoing dismissed the appeal.

The appellants have appealed to this court on 3 grounds and distilled the following 3 issues for determination:

“1. Whether after a finding by the lower court that the suit did not disclose a reasonable cause of action there existed a factual or legal basis to apply the provisions of the Public Officers Protection Act in dismissing the appellants’ appeal. (Formulated from ground 1)

2. Whether the application of the provisions of the Public Officers Protection Act by the lower court to dismiss the appellants’ appeal was right when, having regards to the facts of this case, the respondents had acted in pursuance of a repealed or non-existing law. (Formulated from ground 2).

3. Whether the jurisdiction of the lower court to consider the defence of the Public Officers Protection Act was not vitiated after holding that the appellants’ case did not disclose a reasonable cause of action. (Formulated from ground 3).”

The respondents on their part set out a single issue for determination thus:

“Whether the Court of Appeal was right to have affirmed the decision of the trial court which upheld the respondents’ preliminary objection and dismissed the appellants’ suit on the grounds that the suit was statute-barred, that it did not disclose any reasonable cause

of action and that the court lacked jurisdiction to entertain the suit.”

On the 30th day of April 2012 the appeal was heard. Learned counsel for the appellants identified the appellants’ brief of argument filed on 16/11/2007, but deemed filed on 13/02/2008. The respondents’ brief of argument filed on 13/04/2010, was deemed filed on 13/02/2008. Both briefs were duly adopted and relied on. While the learned counsel for the appellants urged the court to allow the appeal, set aside the concurrent findings of the two courts below, the learned counsel for the respondents has urged the court to dismiss the appeal as totally lacking in merit. B

Learned counsel for the appellants has argued issues 1 and 3 together while issue 2 was argued separately. C

On issues 1 and 3 distilled from grounds 1 and 3 respectively, learned counsel referring to the two passages on Pp. 19-20 of the judgment, submitted that the court below had found *ab initio*, there was no reasonable cause of action in the suit filed by the appellants as plaintiffs. It was after finding that there was no reasonable cause of action that the lower court proceeded to consider the defence of the Public Officers Protection Act. For the definition of the term “reasonable cause of action” reference was made to the case of *Akindipe v. C.O.P.* (2000) FWLR (Pt. 5) 709 at 719. Further relying on the case of *Dantata v. Mohammed* (2000) FWLR (Pt. 21) 889 at 917; (2000) 7 NWLR (Pt. 664) 176, it was submitted that in determining whether a suit discloses a reasonable cause of action, what the court is enjoined to consider is the originating process of the plaintiff, that is, the statement of claim, originating motion or summons, as the case may be. It is contended that the facts contained in the statement of claim dated 27th September 2001 and borne on pages 6 to 44 of the record of appeal disclose reasonable cause of action. That these letters of requests for assistance to recover huge sums of money of the respondents traced to Switzerland, Luxembourg, Liechtenstein and Jersey, signed by the 2nd respondent; purport to determine the appellants’ constitutional rights contrary to section 6(6)(b) of the Constitution of the Federal Republic of Nigeria 1999. In paragraph 11 to 12 of the statement of claim, the appellants pleaded that the Swiss letter of request was unconstitutional, null and void in that same contained false and misleading representations against 19th appellant who, in spite of the fact that he had never been convicted of any crime by D
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any court of law had his properties seized by the respondents and their agents. It is therefore contended that the seizure and forfeiture of the 1st appellant's assets was unlawful same not being in compliance with the Forfeiture of Assets (Certain Persons) Decree, N.53, 1999. It is further submitted that the 2nd respondent had no constitutional or statutory powers to issue letters of request for mutual assistance or judicial assistance in criminal matters.

It is also the appellants' grouse that in spite of the clarity of the facts averred in the statement of claim and reliefs sought, the lower court still held that the appellants' action did not disclose a reasonable cause of action and consequently affirmed the decision of the trial court. It is submitted that the court erred in law in affirming the decision of the trial court.

The learned counsel for the appellants has argued in the alternative (not conceding to the fact that the court below was right in holding that the appellants' suit disclosed cause of action) that the suit ought not to have been dismissed *in limine* at that point without delving into the issue of defence of the Public Officers Protection Act. Reference was made to the case of *Ogbimi v. Ololo* (1993) 7 NWLR (Pt. 304) 128 at 135. It is submitted that the proper order to make where the court has found that no cause of action has been disclosed in a suit, is striking out and not dismissal of the suit.

It is finally submitted that though the decision of the lower court and the trial court on the issue of the appellants' suit not disclosing a reasonable cause of action is concurrent, this court can set it aside where it is perverse.

On issue 2, the learned counsel for the appellants has submitted that it is most glaring from the provisions of section 2(a) of the Public Officers Protection Act that where the act or public officer was not 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 or any such Act, Law, duty or authority, such a public officer will not enjoy protection under the said Act. It is further submitted that where the action of a public officer, which forms the basis of the cause of action, was purportedly posited or founded on any law which does not exist, such a public officer cannot take cover under the Act. Reliance was placed on the case of *Nwankwere v. Adewunmi* (1966) All NLR 129 at 124; (1966)

I SCNLR 336, the facts of which the appellants' counsel has contended, are in tandem with the facts in this appeal. It is submitted that the letters for mutual assistance from foreign countries and other letters were predicated on the Banking (Freezing of Account) Act. Cap. 29, Laws of the Federation of Nigeria, 1990; which was repealed and therefore non-existent as at 29th May 1999 and at the material time the said letters were written. It is contended that the letters were written after December 1999 the period of about 7 months after the repeal of the said Freezing of Accounts Act. Reliance was placed on the cases of *Amayo v. State* (2002) FWLR (Pt. 91) 15 71; (2001)18 NWLR (Pt. 745) 251; *Olalekan v. State* (2002) FWLR (Pt. 91) 1605; (2001) 18 NWLR (Pt. 746) 793 and *State v. Ajie* (2000) II NWLR (Pt.678) 434 at 449. It is urged that this appeal be allowed and to set aside the concurrent finding of the two lower courts and make order remitting the suit to the trial court for retrial.

Learned counsel for the respondents, on his part arguing the sole issue he formulated, submitted that the court below was right to have dismissed the appellants' appeal. It is submitted that this court is faced in this appeal with concurrent decision of the two lower courts and as settled in a plethora of decisions, this court will not interfere with such decisions unless there are cogent and compelling reasons to do so. In other words their finding that the appellants' suit was statute-barred and incompetent, cannot be disturbed.

As can be clearly seen the three issues formulated by the appellants can be aptly condensed in one issue as done by the respondents in their brief of argument. I shall therefore determine this appeal based on the respondents' sole issue. It is not only cogent but straight to the point. The facts of this case clearly show that the series of letters which gave rise to this action at the court below happened between 1999 and 2000; specifically on the following dates:

(a) The Swiss letter – 20th December 1999 paragraph 6 of the statement of claim at page 7 of the record;

(b) The Luxembourg letter – 29th February 2000 paragraph 31 of the statement of claim at page 17 of the record;

(c) The Liechtenstein letter – 28th July 2000 paragraph 58 of the statement of claim at page 30 of the record; and

(d) Other Letters of Request - on or about July 2000 paragraphs 89 - 93 of the statement of claim at pages 41-42 of the record.

In their pleadings the appellants affirmed that they were aware of the issuance of these letters. They described with exactitude the contents and the annexure to the letters and quote *in extenso*; the wording of most of the said letters. It is not the appellants' case in this court and indeed, not in their pleading in their 42 - page statement of claim that they became aware of the letters on dates different from those on which they were written. If 1 may refer to the appellants' pleading in paragraph 5 of the statement of claim, where it is averred thus:

"The plaintiffs hereby plead all facts and documents referred to in this statement of claim and in the schedule: 1 hereto for their full value and effect and the defendants are hereby put on notice to produce the originals of all the documents to be relied on at the trial of this suit."

It is clear therefore that the appellants' cause of action arose between the 20th December, 1999, when the Swiss letter was written and the 28th July 2000, when the last letters of request were written. This date of accrual of the cause of action has not been contested by the appellants. It is deemed settled and accepted by them.

The endorsements on the appellants' writ of summons at page 3 of the Record show that the suit was filed at the trial court on the 27th September 2001. That makes it a period of more than 13 months between the issuance of the last letter of request and the Constitution of the action.

A cause of action is the entire set of facts or circumstances giving rise to an enforceable claim. It includes all those things necessary to give right of action and every fact which is material to be proved to entitle the plaintiff to succeed. See

Emiator v. Nigerian Army (1999) 12 NWLR (Pt. 631) 362; Ibrahim v. Osim (1987) 4 NWLR (Pt. 67) 965, Sanda v. Kukawa local Government (1991) 2 NWLR (Pt. 174) 379; Attorney General of the federation v. Abacha (2010) 17 NWLR (Pt.1221) I at 24; Abba Mohammed Sani v. President federal Republic of Nigeria and Attorney-General of the Federation (2010) 9 NWLR (Pt. 1198) 153; and Ogbimi v. Ololo (supra).

The Public Officers Protection Act is a statute of limitation and the import of section 2(a) thereof, is that where any action, prosecution, or proceeding is commenced against any

person for any act done in pursuance or execution of any law or of any default in the execution of any law, duty or authority, the action, prosecution or proceeding shall not lie or be instituted unless it is commenced within three months of the act, neglect, or default complained or in the case of continuing damage or injury within three months next after the ceasing thereof. What this means is that Public Officers Protection Act removes the right of action, the right of enforcement act and the right to judicial relief in a plaintiff. This leaves respondents with a bare and empty or hollow cause of action which he cannot enforce because the alleged cause of action is statute-barred, and cannot be maintained. See *Fadare v. Attorney-General of Oyo State* (1982) 4 SC 1; *Obiefuna v. Okoye* (1964) 1 All NLR 96; *Egbe v. Adefarasin (No.1)* (1985) 1 NWLR (Pt. 3) 549.

Since it is common ground that the respondents are “Public Officers,” they naturally come within the provision of section 2(a) of the Act.

As already noted, the appellants’ grouse against the respondents at the court below anchors on the Letters of Request for foreign assistance to Switzerland, Luxembourg, Liechtenstein and Jersey to freeze the accounts of the appellants. The letters were written G between 20th December 1999 and the year 2000. The appellants did not institute this action until 27th September 2001, more than 13 months after the cause of action rose. The submission of the learned F counsel for the appellants on this point is mere polemics rather than substance. Clearly the action was filed outside the three months allowed by the Limitation Act. One would ordinarily conclude as was done by the court below that the action is statute-barred.

However, although I cannot go into the merit of the case of the appellants, the position of the law on this point has to be further explained. The defence created under the Act or Law, as the case may be, is for public officer who had acted pursuant to his duties as a public officer. However, two conditions must exist to avail the officer the protection of section 2(a) of the Act: first it must be established that the person against whom the action is commenced is public officer. Secondly, the act done by the officer in respect of which the action was commenced must be an act done in pursuance or

execution or intended execution of any law or of any public duty or authority. The Act gives full protection or cover to all public officers or persons engaged in the execution of public duties who at all material times acted within the confines of their public duty. They must not step out of their statutory authority and act outside the statutory or constitutional duty. If they do, they automatically lose protection of the laws. See Ekeogu v. Aliri (1990) 1 NWLR (Pt. 126) 345; Garba v. Shuaibu (2001) FWLR (Ft. 56) 715; (2001) 8 NWLR (Pt. 716) 730; Hassan v. Aliyu (supra); Sani v. President Federal Republic of Nigeria (supra).

My understanding of this provision is that the Act gives the parameter within which a public officer can take protection under the Act. As long as the public officer acts in the usual function of his office, whether he does it correctly or wrongfully; he is protected by the section. It is not open to the court to pry into his conduct in carrying out his official assignment in order to determine whether the Act applies or not. However, as I have said, where a public officer on a frolic of his own does an act which is not part of his normal duties or has nothing to do with his official functions, that is, he acts outside the colour of his office, he cannot claim protection under the Act: See Ibrahim v. J.S.C., Kaduna State (supra) and Bamaïyi v. Bamaïyi (2005) 15 NWLR (Pt.948) 334.

Heavy weather was made on whether the respondents acted outside the colour of their office or not and reference was made to the Constitution of the Federal Republic of Nigeria (Certain Consequential Repeals) Decree, 1999, that is the repealing of the Banking (Freezing Accounts) Decree of 31st December 1993 under which the 1st respondent acted to issue letters of request to the aforementioned foreign government. I need not go into this at this stage. The question to be resolved is whether the action of the appellants having been commenced more than three months after the accrual of cause of action is statute-barred and cannot be maintained. I have so decided that the action cannot be maintained having been commenced more than three months after the accrual of cause of action.

Having held that the respondents' suit was incompetent, being statute-barred, that appears to have knocked (lie bottom off the appeal leaving nothing further to lie done about it. The court below perhaps being an intermediate court felt constrained and considered

other issues in the alternative. This, with due respect it can. However in the circumstance of this case that was unnecessary for me to do, as I will only embark on some academic exercises. The appeal in the circumstance, should be dismissed and it is accordingly dismissed. The action of the appellants having been found to be incompetent being statute-barred is struck out. Parties are to bear their respective costs. B

ONNOGHEN JSC

I have had the benefit of reading in draft the lead judgment of my learned brother, Galadima, JSC just delivered. I agree with his reasoning and conclusion that the appeal is without merit and should be dismissed. C

I order accordingly and strike out suit No. FHC/ABJ/ CS/ 347/2001 for being incompetent, the same haven been statute barred in addition to abiding by the order as to costs, made in the lead judgment. Appeal dismissed. D

CHUKWUMA-ENEH JSC

I have read in advance the judgment prepared by my learned brother, Galadima JSC and just delivered with which I agree entirely. All the same, I make this short contribution. E

It is clear from the statement of claim and the summons that the alleged wrongful acts of the defendants/respondents in this matter are as founded on the letters of request for assistance written by the respondents to Foreign Governments as subjoined hereunder. It is common ground that the dates on these letters of request upon which the instant cause of action is founded are as follows: F

- (i) The Swiss letter is written on 20/12/1999.
- (ii) The Luxembourg letter is written on 29/2/2006.
- (iii) The Leichtenstein letter is written on 28/7/2000.

(iv) Other letters of request are written on or about July 2000. (Italics for emphasis), H
The foregoing letters explicitly have been written between 20/12/1999 and 28/7/2000.

The dates of accrual of cause of action in respect of each of

the aforesaid letters of request are as specifically stated against each of the said letters. From the averments in the statement of claim the 2nd, 3rd and 4th defendants/respondents have claimed to be public officers and so are entitled to invoke the protection under the Public Officers Protection Act in this matter and in *brevi manu* the said Act
 B prescribes the period of three months after the cause of action has accrued for commencing of action as the instant one against the defendants as public officers. See section 2 Public Officers Protection Act otherwise known as the Act).

C The crucial part of the provision of the Act as to the effect of limitation of action thereof is as follows:

*“2. Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Act or Law or of any public duty or
 D authority, or in respect of any alleged neglect or default in 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
 E act, neglect or default complained of, or in case of a continuance of damage or injury, within three months next after the ceasing thereof; Provided that if the action, prosecution or proceeding be at the instance of any person for cause arising while such person was a convict prisoner, it may be commenced within three months after the
 F discharge of such person from prison.”*

Without going into a strict interpretation of the above provisions of section 2 of the said Act which in my view is uncalled for as the provisions have been previously construed and applied to several decisions of this court binding on this court. See: Unilorin v. Adenira (2007) 6 NWLR (Pt.1031) 498; Nwaogwugwu v. President Federal Republic of Nigeria (2007) 6 NWLR (Pt. 1030) 237; Mbonu v. Nigerian Mining Corporation (2006) 13 NWLR (Pt. 998) 659; Alao v. Vice Chancellor Unilorin (2008) 1 NWLR (Pt.1069) 421 to mention but a few. All the same, the provisions are plain and unambiguous and have to be literally interpreted. Even then I do not therefore see the need here to belabour the decisions of this court in Momoh v. Okewale (1977) 11 NSCC 365 per Udoma JSC on the one hand vis-a-vis the case of Ibrahim v. Judicial Service Committee,

Kaduna State (1998) 14 NWLR (Pt.584) I SC, on the other that is to say, as whether or not in this instance the Act covers both natural and artificial persons. That point happily has not been taken here. Suffice it to say, that the defence contemplated under the said provisions is simply to afford protection to public officers as the 2nd, 3rd and 4th defendants/respondents here who have acted pursuant to their duties as public officers as in the instant transaction and their motive for so acting is neither here nor there. It is of no moment in considering their protection under the Act. Although it is cogent to make the point here that the intendment of this Act in my view has not provided a level playing ground for all persons before the law and the court and ought to be revisited by our lawmakers to reconsider in the light of the stage of our development festering with poverty and illiteracy and disease vis-a-vis the individual's constitutional rights of equality before the law and the court and as against the background of section 6(b) of the 1999 Constitution (as amended).

From the above surmises it is only if the action is commenced within the said period as prescribed by the Act shall the courts be clothed with the power to entertain the action otherwise the action is statute barred. One crucial finding in this respect not challenged by the appellants in this matter is that at all material time the plaintiffs/appellants have been aware of these letters particularly the dates of writing each of them. It is noted that the question is not being contested here and so also the appellants' rights of action arising thereupon. As this is the position, the instant parties between whom issues are joined on this matter have been aware of their respective rights of action within the 3 months period of accrual of cause of action thereof in this matter. There can be no doubt therefore that they have slept on their rights and have only themselves to blame for being so caught by the provisions of this Act.

Strictly under the interpretation of the provisions of the said Act, the only persons protected under the Act are Public officers. See: *Momoh v. Okewale* (supra); *Griffiths & Anor. v. Smith & Ors.* (1941) 1 All ER 66 at 89 and *Ibrahim v. Judicial Service Commission* (1998) 14 NWLR (Pt. 584) 1; and under the statutory interpretation the word "person" also covers the term covers an artificial entity/authority. And so the 2nd, 3rd and 4th defendants/respondents fall within the ambit of persons as defined under the instant provision of the

Act.

However whenever the court discusses limitation laws and other similar laws what comes uppermost to mind is that they are those laws which circumscribe or prevent, indeed preclude the court from exercising its powers over a matter in given circumstances that is to say as exemplified where the plaintiff has to commence his action within the period stipulated/allowed under the applicable law of limitation of action and has failed to do so as in this case as per the instant Public Officers Protection Act. It is also settled law as decided in *Madukolu v. Nkemdilim* 106 NSSC Vol. 2, 374 at 379; (1962) 2 SCNLR 341 that for the court to exercise its jurisdictional competence over a matter where *inter alia* the subject matter of the case is within its jurisdiction there must be *no feature in the case which prevents the court from exercising its jurisdiction* that is to say where the said court process has been initiated by due process of law. Needless emphasising that any defect in competence is fatal. This is so where an action as here is instituted outside the period of time as prescribed by the law of limitation of action in this case 3 months as per the instant Public Officers Protection Act. And so deducible from my reasoning is the clear affinity between jurisdiction and limitation of action. See *Lasisi Fadare v. Attorney-General of Oyo State* (1982) 4 SC 1 per Aniagolu, JSC.

It must be noted that in some jurisdictions of this country the limitation laws are required as per the High Court (Civil Procedure) Rules to be pleaded by the defence in order not to take the opposite side by surprise although it may also arise from the facts as pleaded without specifically alleging the relevant limitation law. In that case pleadings have to be filed and exchanged by the parties before an objection to the action being stale and statute-barred can properly be taken. This invariably is the case where demurer has been abolished. And the rules in that case require the defendant to set down for hearing of the matter by an application raising specifically the question of limitation of action and the lack of the court's power to entertain the matter. The court is required to determine the point *in limine*. Such proceedings are contemplated where the objection is capable of terminating the matter finally. In line with an old adage that a stitch in time saves nine, the objection has to be taken soonest it becomes clear that the action is stale and statute-barred as no mat-

ter how well a matter is conducted and determined all the efforts put in it comes to naught where the cause of action is stale and statute-barred as the court has no jurisdiction to deal with it.

This matter, if I may recap, the dates of accrual of cause of action in respect of each of these letters of request are as I have found above between 20/12/1999 and 28/7/2000. It is beyond argument based on a plethora of decided cases of this court that I have construed similar questions that as the defendants/respondents are Public Officers they are entitled to be protected under the provisions of the said Act. The said Act clearly applies to them. This is so even as the term “public officer” has not been defined under the Public Officers protection Act. However the 1999 Constitution (as amended) has at section 318 defined “Public Service of the Federation” and “Public Service of the State”. However in the Fifth Schedule (Part I) paragraph 19 of the 1999 Constitution (as amended) has been defined “public officer” as a person holding any office as specified in Part II of that Schedule. The Attorneys-General of the Federation and State and the Inspector General of police have been specifically so mentioned as such in the said Part II of the Fifth Schedule so also other persons in the public service. The National Security Adviser is also a public officer in the Public Service of the Federation as it is covered under the said Part II of the Fifth Schedule. And so in the context of this case the term “public officer” includes the 2nd, 3rd and 4th defendants/respondents without more and therefore each and everyone of them comes within the ambit of the term of Public Officers as contemplated under the Public Officers Protection Act to be protected.

Having so found, it means that for the instant action to be properly constituted there must be no feature in the action precluding the court’s jurisdiction. The action must be commenced against them within 3 months of the accrual of cause of action otherwise the cause of action becomes stale and statute-barred that is to say where the action has not been commenced within 3 months. It is not contested by the appellants that the instant action under the Public Officers protection Act is not maintainable after 3 months as the right to so maintain the same has been extinguished. They have rather alleged other features of this action taking it outside the Public Officers protection Act. I shall come to them anon.

Without any doubt therefore this action as per the processes filed in this matter has been commenced against the defendants outside the 3 months period allowed under the Public Officers Protection Act and the appellants have to take the consequences as provided under the Act. In other words the 3 months period in this case
 B is arrived at by examining and comparing the dates of the instant accrued cause of action i.e. between 20/12/1999 and 28/7/2000 against the date this suit is filed in the trial court (i.e. in court on 27/9/2001) and it is clearly outside the 3 months period as allowed under
 C the Act. See *Egbe v. Adefarasin (No.1)* (1985) 1 NWLR (Ft. 3) 549, *Michael Obiefuna v. Alexander Okoye* (1964) 1 All NLR 96 and being outside 3 months; it is not maintainable.

Coming back to the main stream of the argument on the question here and this is as to whether or not the action has been
 D commenced outside 3 months period. By my calculation the intervening period of time is clearly outside 3 months i.e. between the date of accrual of cause of action and the date of filing of the action as shown above. This action is therefore caught by the Public Officers Protection Act meaning that the instant action having been rightly
 E found by the lower court to be stale and is therefore statute-bared, it has extinguished the right to the instant cause of action since it is commenced outside the limitation period of 3 months under the Public Officers Protection Act. The effect is as in *Ogunsan v. Iwuagwu* (1968) 2 All NLR 124 at 129 where the court stated this:
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“The effect of the protection afforded public officers by the Public Officers Protection Act is to “extinguish” the cause of action unless proceedings are taken within three months of the cause of action.”

G The question that remains to be attended to here is that much ado has been made by appellants to the effect that the respondents have acted outside the colour of their office in these transactions and the repealed law of the Banking (Freezing Accounts) Decree of 13/12/1993 i.e. under which it is alleged the respondents also have acted.
 H These submissions are of no mention as the effect of the plea of limitation of action under this Act is that there is no competent action before the court to determine as the provisions of section 2 of the Act has said that an action as the instant one “shall not lie or be instituted” outside the period of 3 months. Aniagolu, JSC in *fadare v.*

Attorney-General of Oyo State (1982) 4 SC 1 - has supplied an answer very apposite in the circumstances with which I agree entirely when he said *“what is there to try when the statute has provided that the period allowed for bringing an action in which those facts which have been in issue have expired. Absolutely nothing.”* Also in *Egbe v. Adefarasin & Anor.* (No.1) (1985) 1 NWLR (Pt. 3) 549 at 569, paras. E-F, Karibi-Whyte, JSC in unison with the view expressed by Aniagolu, JSC in the case-above said that:

“where the defendant has raised an unanswerable plea of protection under the Public Officers Protection Law on the untested facts there is absolutely no basis for prying into the conduct of such a defendant which gave rise to the action”. The challenge in this action as to the propriety of raising the defence of limitation of action in this matter and as rightly upheld by the lower courts has no basis.

Finally it is clear from the decided cases by this court that where on the facts alleged in the pleadings that only the remedy is barred or conjointly with extinguishing the right as well, as in *Ogunsan’s* case above the court has no jurisdiction to entertain the action.

Consequent upon the holdings as above, this action not having been commenced within the three months of the accrual of cause of action is not maintainable as the right to institute the action has been extinguished. And I so hold. As the court lacks the jurisdiction to entertain the action and not having been decided on the merit of the action the lower court erred in dismissing the same instead of striking out the same. The suit is hereby struck out finally and I abide by the orders contained in the lead judgment of my learned brother, Galadima, JSC. Suit struck out.

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FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother, Galadima, JSC. I agree with the reasons advanced therein to arrive at the conclusion that the appeal should be dismissed.

The appellants initiated their action at the trial court to stop the respondents from writing ‘letters of request’ for assistance from certain foreign countries to expose their illicit affairs relating to money

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laundering and alleged frauds against the State. The respondents filed preliminary objection to the competence of the action; relying *inter alia* on the provision of section 2(a) of the Public Officers Protection Act, Cap. P41, Laws of the Federation of Nigeria, 2004.

B It is extant in the record of appeal that the letters complained about were written between 20th December 1999 and July 2000. The appellant's suit was filed at the trial court on 27th September 2001. There is clearly a period of 13 months between the issuance of the last letter and the initiation of the action.

C The trial court found that the action was statute barred since it was initiated clearly outside the period of three (3) months provided by the applicable law. The court below affirmed same. The appellants have decided to appeal to this court.

D It should be reiterated that a statute of limitation is a law that bars claims after a specified period. It is a statute which establishes a time limit for suing in a civil case based on the date the claim accrued. The purpose of such a statute is to require diligent prosecution of known claims thereby providing finality and predictability in legal affairs. It is also termed non claim statute. The purpose of limitations, E like equitable doctrine of laches, in their conclusive effects are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber. Order of R. R. Telegrapher v. Railway Express Agency 321 US. 342, 348-49, 64 S. Ct 586 (1944) (Black's Law Dictionary, Ninth Edition page 1546). F

A claim which is statute barred, as herein, becomes a mere shell which is of no utility value to the appellants. Its worth fades into oblivion. See: Egbe v. Adefarasin (No.1) (1985) 1 NWLR (Pt. 3) 540. The respondents acted within the confines of their office. The action G taken by the appellants outside the prescribed period was ill-tuned as same was clearly statute-barred.

The two courts below in their concurrent findings in this matter have not been shown to be perverse. They were right in their appreciation of the applicable law. I cannot see my way clear in faulting H them.

For the above reasons and the fuller ones adumbrated in the lead judgment, I too feel that the appeal deserves to be dismissed. I order accordingly and endorse all consequential orders therein; inclusive of that relating to costs.

NGWUTA JSC

I read in draft the well-articulated lead judgment of my lord, Galadima, JSC and I adopt the reasoning and conclusion therein.

The appellants founded their cause of action on a series of letters written by the 1st and 2nd respondents. Appellants' claim No. 3 ^B in the trial court reads:

"3. A declaration that the Swiss letter, the Luxembourg letter, the Liechtenstein letter, such other letter of request for assistance not disclosed to the plaintiffs, and any request for assistance to the Secretary of State for Home Affairs, United Kingdom and the Attorney General of Jersey and are unconstitutional and null and void and of no effect." ^C

The first and last letters were written on 20th December 1999 and July 2000 respectively. The writ of summons was issued on 27th ^D September 2001, more than one year after the last of the series of letters was written on 28th July, 2000. Section 2 of the Public Officers Protection Act invoked by the respondents provides:

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

(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..." ^F

As stated earlier, the last of the series of letters upon which the action is founded, was written in July 2000, whereas the writ was issued on 27th September, 2001, more than one year after the last letter was written. The Act reproduced above prescribes a period within which an action can be taken and outside the period so prescribed the action is statute-barred. Any action taken after or outside the specified limit or period is of no avail and has no valid effect. See ^H Hon. Emmanuel O. Araka v. Ambrose N. Ejeagwu (2000) 82 LRCN 3406 at 3449; (2000) 15 NWLR (Pt. 692) 684; Texaco Panama Inc.

v. Shell Pet. Development Co. (Nig.) Ltd. (2000) 94 LRCN 52 at 175 & 176; (2000) 4 NWLR (Pt.653) 480.

For the above and the fuller reasons in the lead judgment, I agree that the action from which this appeal arose is statute-barred. I also dismiss the appeal and strike out the action from which it arose as incompetent. I also order that parties bear their respective costs. Appeal dismissed.

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