

SUPREME COURT OF NIGERIA
FRIDAY 10TH MAY, 2013. SC. 254/2005
**CORAM:- C. M. CHUKWUMA-ENEH, M. S. MUNTAKA-
COOMASSIE, S. GALADIMA, C. B. OGUNBIYI,
S. S. ALAGOA, JJSC**

CHRISTIANA I. YARE APPELLANT
AND	
NATIONAL SALARIES, WAGES	
& INCOME COMMISSION RESPONDENT

ACTIONS - Cause of action - Meaning - It means cause of complaint - Civil right or obligation fit to be determined by court - And dispute in which court can invoke its powers (H1)

COURTS - Actions - Cause of action - Determination - Court is guided to restrict itself to the statement of claim - By considering those averments that form the gravamen of the claim (H2)

PLEADINGS - Relief - Facts - Party must plead facts needed to establish his right to relief claimed - As evidence of facts not pleaded goes to no issue (H3)

ACTIONS - Limitation - Public Officers' Protection Act - Appellant's action is statute barred - As he delayed to enforce his right within 3 months - Upon being relieved of his employment (H4)

FACTS

Plaintiff/appellant commenced this action at the Federal High Court Abuja, claiming for a declaration that his compulsory retirement was unlawful, an order reinstating him to his office and an order compelling defendant/respondent to pay his salaries and allowances till date and until judgment is liquidated. Respondent entered a conditional appearance and filed a Statement of Defence and Notice of Preliminary Objection on the ground that the action is statute-barred by virtue of section 2(a) of Public Officers Protection Act and therefore the court lacked jurisdiction to hear it.

The trial court in its considered ruling ordered a full trial as it

was unable to see the date of retirement complained of in the Statement of Claim. The matter therefore went to full trial. After hearing, the court in its judgment, dismissed appellant's claims and held that appellant came to court over one year after the cause of action arose, and therefore the action was statute-barred by virtue of the aforesaid Act. Dissatisfied, appellant appealed to the Court of Appeal. The court dismissed the appeal and affirmed judgment of the trial court. Aggrieved further, appellant filed appeal to Supreme Court.

ISSUE FOR DETERMINATION

"Whether the Court of Appeal was right to have upheld the decision of the Federal High Court in deciding that the cause of action arose from exhibit 7, without considering Exhibit 8', which was tendered before the trial court?"

HELD

(Unanimously dismissing the appeal per

GALADIMA JSC)

Cause of action - Meaning

1. In my humble view and my understanding of the foregoing judicial authorities, the simplest and ordinary meaning of cause of action means:

(a) a cause of complaint;

(b) a civil right or obligation fit for determination by a court of law; and

(c) a dispute in respect of which a court of law is entitled to invoke its judicial powers. See sections 6(1), (2), (3) and 4 (a) and (b) of the 1999 constitution of the Federal Republic of Nigeria (as amended). (p. 2274 A)

Cause of action - Determination

2. The question is whether the Appellant in his claim, has disclosed a cause of action or a dispute in respect of which the trial court was entitled to invoke its judicial powers to determine. In determining whether there is a reasonable cause of action, the court is guided and directed to restrict itself to the statement of claim of the plaintiff and nothing else.

In doing this the court is not obliged to consider seriatim all

the averments in the statement of claim, as a whole, it is sufficient to look into those averments that form the gravamen of the claim. (p. 2274 D)

PLEADINGS - Relief - Facts

3. It is well settled law that the parties and, indeed the court, are bound by the pleadings filed and exchanged. If facts needed to establish a right to relief are to be relevant, they have to be pleaded by the party seeking to rely on same to establish his claim or right to relief. It is after the relevant fact is pleaded that evidence would be admissible to establish the existence of the fact. That is why it is trite law that evidence of facts not pleaded goes to no issue, because parties normally join issues on the facts pleaded and only need evidence - either oral or documentary to establish the facts so pleaded. (p. 2275 C)

ACTIONS - Limitation - Public Officers' Protection Act

4. The Public Officers Protection Act (supra) is a statute of Limitation. It is exact as to the time frame. It provides for three months not a day longer than three months. It is quite clear and in no doubt that the Appellant/complainant was terminated on the 9th December, 1999. Upon being relieved of his employment, the Appellant had a choice to quickly enforce his right by going to the court to ventilate his grievances. He elected to sleep away, he woke up late to allege that he was waiting the outcome of his appeal before the Senior Staff Committee of the Respondent. This excuse is not only untenable, but an afterthought. The provisions of the Act are clear and unambiguous. The effect of the limitation law is that any action that is statute barred removes the right of action, the right of enforcement and the right to judicial relief, as from the 9th of December, 1999, when the Appellant's employment was determined. (p. 2279 D)

REPRESENTATION

Ibrahim Idris Esq. with Femi Motojesi Esq, Izuchukwu Ohajinwa Esq.,
for the Appellant

A. U. Mustapha, Esq. with Olupitan Adesola Esq., for Respondent

CASES REFERRED TO

- Egbe v. Adefarasin (1987) 1 NWLR (pt. 47) 20
- Bello v. A-G Oyo State (1986) 5 NWLR (pt. 45)
- Afolayan v. Ogunride (1990) 1 NWLR (pt. 127) 369
- B Savage v. Uwaechia (1972) All NLR 255
- Adesokan v. Adegorolu (1997) 3 NWLR (pt. 493)
- Emiator v. Nigeria Army (1999) 12 NWLR (pt. 631) 362
- Oduntan v. Akibu (2000) 13 NWLR (pt. 685) 446
- C Sulgrave Holdings Inc. v. FGN (2012) 17 NWLR (pt. 1329) 309
- C Peace Gate Oil & Gas Ltd. v. Hydrive Nig. Ltd (2000) 17 NWLR (pt. 1329) 391
- Shell BP Ltd. v. Onasanya (1976) NSCC 333
- Aladegbemi v. Fasanmi (1988) 3 NWLR (pt. 81) 129
- D 7Up v. Abiola (2001) 5 MJSC 93
- Adekeye v. Adesina (2010) 125 SC (pt. 11) 1
- Ojiogu v. Ojiogu (2010) 3 - 5 SC (pt. II) 1

STATUTES REFERRED TO

- E Public Officers Protection Act, s. 2(a)
- Constitution of the Federal Republic of Nigeria (as amended) 1999, s. 6(1)(2)(3)(a)(b)

BOOK REFERRED TO

- F Halsbury's Laws of England 3rd Ed. Vol. 1 p. 6

LEAD JUDGMENT BY GALADIMA JSC

- G This is an Appeal against the Judgment of the Court of Appeal, Abuja Division (hereinafter referred to as the “Court below”) delivered on 19/5/2005 in favour of the Respondent. The Appellant was not satisfied with the decision, hence he appealed further to this Court.

- H The background facts leading to this appeal are summarized herein. The Appellant as plaintiff at the Federal High Court Abuja took out a writ of summons against the Respondent, as Defendant, claiming for the following declaration and orders by the said trial Federal High Court in his Amended Statement of Claim.

“1. A declaration that the compulsory retirement of the plaintiff was unlawful as it did not meet the requirements of the Civil Ser-

vice Rules. An order setting aside retirement of the plaintiff on the grounds that the antecedents leading to the retirement were unauthorized and unofficial thus cannot result in an official sanction.

2. An order of court reinstating the plaintiff to his office without prejudice to any promotion or benefit he may have been entitled to.

3. An order compelling the Defendants to pay the plaintiff all salaries, allowances and claims from date of the purported retirement till date and from the date of judgment until judgment is finally liquidated”.

The Respondent entered a conditional Appearance and filed a Statement of Defence and Notice of Preliminary Objection on the ground that the action is statute-barred and therefore the Court lacked jurisdiction to hear it. On 26/3/2002, the trial court in its considered ruling ordered a full trial as the court was unable to see the date of retirement complained of in the Statement of Claim. The court held:

“I have gone through the entire paragraphs of the Statement of Claim of the Plaintiff including the above mentioned reliefs of the plaintiff; there is no where the date of retirement complained of here is mentioned. It is only the defendant that brought out in the statement of Defence that the retirement was with effect from 9/12/99. In the light of the foregoing therefore, it is my view that since the date of retirement which is material and vital to the determination of time raised in this preliminary objection is not pleaded by the plaintiff there is no legitimate way of determining the issue without proceeding to full trial. I therefore defer deciding that issue until evidence is fully led in this matter.”

Thereafter the matter proceeded to trial and witnesses testified for the parties. The Appellant testified in person; he gave evidence that he was compulsorily retired and was served the letter of retirement dated 9th December 1999. The letter was admitted in evidence and marked “Exhibit 7”. He testified that upon receipt of Exhibit ‘7’ he wrote an appeal to the Senior Management Committee and the Committee relied on its letter of 4th January 2001. This letter was admitted in evidence and marked Exhibit ‘8’. On 23/6/2003, the trial court delivered its Judgment dismissing the Appellant’s claims and held that the Appellant came to court over one year after the cause of action arose, and therefore the action was statute-barred.

Dissatisfied with the decision of the trial court, the Appellant appealed to the lower court, which in its considered judgment on 19/5/2005 dismissed the appeal and affirmed the judgment of the learned trial judge. Aggrieved, the appellant has decided to further appeal against the decision of the court below to this Court; filing three
 B Grounds of Appeal. However, a close study at paragraph 3.0 of the Appellant's Brief of Argument, has revealed that there is obvious error in the Ground of Appeal, the Appellant wants to abandon. It is stated that the Appellant has "abandoned Ground one of the Notice
 C of Appeal thereby left with only Grounds One and Three." The Appellant intends to abandon Ground 2. Therefore it is from Grounds 1 & 3 the Appellant has distilled a single issue for determination as follows:

*"Whether the Court of Appeal was right to have upheld the
 D decision of the Federal High Court in deciding that the cause of action arose from exhibit 7, without considering Exhibit '8', which was tendered before the trial court?"*

On his part, Learned counsel for the Respondent has decided to adopt a lone issue formulated by the Appellant arising from
 E Grounds 1 and 3 of the Appellants' Notice of Appeal. The learned counsel for the Appellant has contended in the brief that at the core of the appeal is the question, when did the cause of action arise in the suit. Relying on the Stroud's Judicial Dictionary on definition of
 F "cause of action" he stated that the phrase comprises of every fact which if traversed, the plaintiff must prove in order to obtain judgment.

Relying further on the cases of EGBE V. ADEFARASIN (1987) 1 NWLR (Pt. 47) at 20 and BELLO V. ATTORNEY-GENERAL OF
 G OYO STATE (1986) 5 NWLR (pt. 45). Learned counsel submitted that from the state of pleadings in this suit the cause of action can best be described as a claim or combinations of events commencing from the issuance of Exhibit '7' by the Respondent on the 10th day of December 1999 and the cause of action terminating on the 4th
 H day of January, 2001. In other words that the computation of the three months period should have started 4/1/2001 when the appellant received Exhibit '8'.

The crux of the Appellant's case at the Federal High Court, Abuja was that his compulsory retirement by the Respondent was

wrongful and unlawful. That the cause of action being combination of facts that traverse Exhibits 7 and 8, became fully mature for court intervention, and ripe with the receipt of Exhibit 8, by the Appellant on the 4th January 2001. That is to say that the 3 months prescribed by Section 2(a) of Public Officer Protection Act should have started counting from 4th January 2001 and that filing of the 3rd March 2001 would be within time permitted by law. On this submission the Appellant's learned counsel draws support from the Supreme Court case of AFOLAYAN V. OGUNRIDE (1990) 1 NWLR (pt. 127) 369 at 373 where the court referred to Halsbury's Laws of England 3rd Ed. Vol. 1 page 6 Article 9, for the meaning of "cause of action" as follows"

"The popular meaning of the expression "cause of action" is that particular act of the defendant which gives the plaintiff his cause of action of complaint:

"(a) There may however, be more than one good and effective cause of action arising out of the same transaction.

(b) Strictly speaking every fact which is material to be proved to entitle the plaintiff to succeed every fact which the defendant would have right to traverse .

(c) Forms an essential part of the "cause of action" which accrues upon the happening of the latest of such facts..."

It is submitted that the cause of action accrues and arose from Exhibit 8. Appellant sought to invoke the jurisdiction of the trial court. In doing that he must not only present a cause of action but indeed a reasonable cause of action, which on the face of his claim, is clearly manifest.

The Supreme Court in the case of SAVAGE V. UWAECHIA (1972) All NLR 255 at 211 espoused the law on the issue of the term "cause of action" as follows:

"A cause of action is defined in Stroud's Judicial Dictionary as the entire set of circumstances giving rise to an enforceable claim to our mind, it is, in effect, the fact or combination of facts which give rise to a right to sue and it consists of two elements - the wrongful act of the defendant which gives to plaintiff his cause of action of complaint and the consequent damage." See also the cases of ADESOKAN V. ADEGOROLU (1997) 3 NWLR (PT. 493); EMIATOR V. NIGERIA ARMY (1999) 12 NWLR (Pt. 631) 362. ODUNTAN V. AKIBU (2000)

13 NWLR (Pt.685) 446: SULGRAVE HOLDINGS INC. V. FGN (2012) 17 NWLR (Pt. 1329) 309 at 338 and PEACE GATE OIL & GAS LTD. V. HYDRIVE (NIG) LTD. (2000) 17 NWLR (Pt. 1329) 391 at 403.

In my humble view and my understanding of the foregoing judicial authorities, the simplest and ordinary meaning of cause of action means:

(a) a cause of complaint;

(b) a civil right or obligation fit for determination by a court of law; and

(c) a dispute in respect of which a court of law is entitled to invoke its judicial powers. See sections 6(1), (2), (3) and 4 (a) and (b) of the 1999 constitution of the Federal Republic of Nigeria (as amended).

The question is whether the Appellant in his claim, has disclosed a cause of action or a dispute in respect of which the trial court was entitled to invoke its judicial powers to determine. In determining whether there is a reasonable cause of action, the court is guided and directed to restrict itself to the statement of claim of the plaintiff and nothing else. See SHELL BP LTD. V. ONASANYA (1976) NSCC 333 at 336 ALADEGBEMI V. FASANMIDE (1988) 3 NWLR (Pt. 81) 129. In doing this the court is not obliged to consider seriatim all the averments in the statement of claim, as a whole, it is sufficient to look into those averments that form the gravamen of the claim. See SEVEN-UP V. ABIOLA (2001) 5 MJSC 93.

In the case at hand the Appellant submitted with force that the cause of action commenced on the 4th January 2001, when the fate of the Appellant was finally decided by the Senior Management Committee of the Respondent which resulted in the issuance of Exhibit 8. It is trite law that for the Appellant to rely on this piece of evidence it must be pleaded in his statement of claim. I have carefully gone through the appellant's statement of claim; nowhere has he shown that the piece of evidence was pleaded, contrary to his assertion on page 4 paragraph 2.4 line 9 of the brief of argument, but rather from the letter dated 4th January 2001, pleaded in paragraph 14 of the statement of claim (page 6 of the Records)." which Paragraph 14 of the Appellant's statement of claim reads:

“14. The plaintiff avers that the trips being unauthorized and unofficial that he was not liable to an official punishment arising there from.”

The above averment cannot by any stretch of imagination be interpreted to mean that the Appellant pleaded the facts leading to Exhibit 8. B

The lower court no doubt correctly observed at page 132 of the Records as follows:

“In his pleadings and the reliefs sought by the appellant in his statement of claim reliance was placed on the compulsory retirement, no reference was made in the statement of claim to Exhibit 8 at all.” C

It is well settled law that the parties and, indeed the court, are bound by the pleadings filed and exchanged. If facts needed to establish a right to relief are to be relevant, they have to be pleaded by the party seeking to rely on same to establish his claim or right to relief. It is after the relevant fact is pleaded that evidence would be admissible to establish the existence of the fact. That is why it is trite law that evidence of facts not pleaded goes to no issue, because parties normally join issues on the facts pleaded and only need evidence - either oral or documentary to establish the facts so pleaded. D
See ADEKEYE & 6 ORS. V. ADESINA & 4 ORS. (2010) 125 SC (Pt. 11) 1 at 28. OJIOGU V. OJIOGU & ANOR. (2010) 3 - 5 SC (Pt.II) 1 at 22. E

One needs to take a close examination of the Appellant's issue for determination to know that it is predicated on the allegation that the cause of action arose only after the Senior Management Committee of the Respondent issued Exhibit 8. However the point is that this very important fact was not pleaded and therefore the evidence given not in accordance with pleading goes to no issue and it remains inadmissible in law and the appellate court has power and indeed duty to reject the evidence. See ADEKEYE & 6 ORS. V. ADESINA (supra). F

It needs to be emphasized that it is not in dispute between the parties that the Appellant was a staff of the Respondent. It is also not in dispute that the Respondent is an establishment known to law, to that extent it is also not in doubt that Section 2(a) of the Public Officers Protection Act, P. 41 Laws of the Federation of Nigeria, 2004 H

is applicable. The only grouse of the Appellant is that the cause of action did not commence when the Appellant was relieved of his job due to insubordination vide Exhibit 7; but when the Senior Management Committee of the Respondent issued its letter dated 4th January, 2001 converting the Appellants' dismissal to retirement vide Exhibit 8. The pertinent question here is what is the status of Exhibit 7; In his Brief of Argument page 6 paragraph 3, the Appellant admitted that the cause of action commenced with the issuance of Exhibit 7, but that not the sole source of cause of action. The argument of the Appellant is clearly full of fundamental flaws, in that the moment Exhibit 7 was issued and served on the Appellant time had started to run and ticking away; and any action the Appellant had wished to take must necessarily be within the statutory three months period, otherwise the action will be statute-barred. This is clearly the tenor of the provisions of section 2(a) of the Public officer protection Act (supra). It provides as follows:

"2. Where any action prosecution, or other proceedings is commenced against any person for any act done in pursuance or execution or intended execution of any Act or Law or any public duty or 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 act, neglect, or default complained of, or in case of a continuance of damage or injury, within three months next after the ceasing thereof:

Provided that if the action prosecution or proceeding be at the instance of any person for cause arising while such person was a convict prisoner it may be commenced within three months after the discharge of such person from prison."

By the above clear provisions, the cause of action arose on 9th December, 1999 when the Appellant was retired from the service of the Respondent as the Senior Driver Mechanic. The letter of retirement Exhibit '7' reads:

"The Presidency"

National Salaries, Incomes and Wages Commission,

Ref: SWC/PP/PF.165/140

Telephone.

*Wing B. Third Floor
Federal Secretariat Complex
Shehu Shagari Way,
PMB 346, Garki,
Abuja, Nigeria.*

Dated: 9th December 1999

B

*Mr. C. I. Yare,
Senior Driver/Mechanic:
UFS: Director (F & S)
National Salaries & Wages Commission
Federal Secretariat
Abuja”*

C

RETIREMENT FROM SERVICE

“I am directed to inform you that the Management of the Commission has approved that you be retired from the service with D effect from 9th December, 1999. This action is based on the decision on the case of misconduct, negligence in your duty and gross insubordination leveled against you, in contravention of the Civil Service rules (CSR) 04201.

2. You are to hand over all Government property including E the Commission’s identity card issued to you to the Head of your Department and obtain a clearance certificate. This certificate will be used to process your benefits.

*Signed
Ibe Ochu Okoba
For: Chairman”*

F

However, the Appellant waited until 30th March 2001, over one year after the cause of action arose before filing his action in court. Exhibit ‘7’ was a retirement letter from the Respondent, as G employer, to its employee the appellant. That letter terminates in all intent and purposes the contracts of employment between the parties herein. On page 12 of the Record, the lower court, correctly stated thus:

“One of the reliefs, the Appellant was seeking before the lower H court was re-instatement to his former post or position as a driver/mechanic under the employment of the respondent and thus an admission that there was no longer a contractual obligation between them.”

Exhibit 8 is the letter (a reply) to appellant's appeal to the Respondent to consider his compulsory retirement which was turned down and rejected. In effect before the letter of appeal, there was no longer a contract of employment between parties.

The Exhibit 8 reads:

B *"THE PRESIDENCY*

NATIONAL SALARIES INCOMES AND WAGES COMMISSION

File No. SWC 07/S.6A/Vol. 1/85

Tel.....

C *Wing B Third Floor*

Federal Secretariat Complex

Shehu Shagari Way

PMB 346 Garki,

Abuja, Nigeria.

D *Dated 4th January, 2001.*

Mr. C. I. Yare

N. S. I. WC

Staff Quarters

Mandala

E *RE: APPEAL AGAINST COMPULSORY RETIREMENT
FROM SERVICE OF THE COMMISSION*

I am directed to refer to your appeal letter on the above subject, dated 3rd August 2000 and convey to you the decision of the Senior Staff Committee on the issue.

F *Consequent upon your appeal letter, the Senior Staff Committee of the Commission met on 31st October 2000 and decided as follows:*

G *(i) You, Mr. C. I. Yare, Senior Driver/Mechanic (GL 06) who was retired on grounds of misconduct, negligence of duty and gross insubordination should not be reinstated into the service in accordance with the existing rules and regulations.*

H *(ii) Your request for payment of eleven (11) days duty tour allowance should not be granted because the former Director (PPID) actually housed, fed and even gave you money during the trips, only you contended that the money given to you was not adequate.*

In addition, the trips were not official and that was the reason the then Director (PPID) did not recommend you for payment.

(iii) The period of your suspension should be converted to

interdiction since your actions were not criminal. Consequently, you would be paid 100% of your salary withheld during the period, in line with the provision of part v paragraph 10(ii) of the 'Guidelines on appointments. Promotions and Discipline.' Published by the Federal Civil Service Commission.

You are required to hand over all government properties in your possession, including the Commission's identity card issued to you, to the Head of your Department and obtain a clearance certificate.

This certificate will be used to process your benefits.

Signed.

G. D. Adeda

Director (PM)

For: Chairman"

The Public Officers Protection Act (supra) is a statute of Limitation. It is exact as to the time frame. It provides for three months not a day longer than three months. It is quite clear and in no doubt that the Appellant/complainant was terminated on the 9th December, 1999. Upon being relieved of his employment, the Appellant had a choice to quickly enforce his right by going to the court to ventilate his grievances. He elected to sleep away, he woke up late to allege that he was waiting the outcome of his appeal before the Senior Staff Committee of the Respondent. This excuse is not only untenable, but an afterthought. The provisions of the Act are clear and unambiguous. The effect of the limitation law is that any action that is statute barred removes the right of action, the right of enforcement and the right to judicial relief, as from the 9th of December, 1999, when the Appellant's employment was determined. See NWANKWO V. YARA'ADUA (2010) 3 - 5 SC (Pt.III) 1 at 38: IBRAHIM V. JSC KADUNA STATE (1998) 14 NWLR (Pt. 584).

It is clear from what I have said above, the Court of appeal has therefore correctly restated the law and adopted the correct attitude by refraining from interfering with the findings made by the trial Federal High Court as dictated by applicable law and overwhelming evidence in support of those findings. The Appellant, has in my view, failed woefully to discharge the burden of proving that those findings

were perverse or arrived at in violation of some principles of law or procedure as required by law so as to persuade this Court to interfere with those concurrent findings and as such this Court has said repeatedly, it will not interfere with or set aside and reverse concurrent findings of facts which have not been proved to be perverse.

^B See ENANG V. ADI (1981) 11-12 SC 25 at 42: OKAGBUE V. ROMAIN (1982) 5 SC 133 at 170. AFOLAYAN V. OGUNRINDE (supra) ARE V. IPAYE (1990) 3 SC (Pt.1) 109: ASIMO V. ABRAHAM (2001) 6 SC 154 at 160.

^C For the above reasons, I dismiss this appeal. I affirm the decision of the court below. I make no order on costs.

MUNTAKA-COOMASSIE JSC

^D I was privileged to have read in draft the lead judgment of my learned brother Galadima JSC. I entirely agree. I have nothing more useful to add. I too agree that the appeal is devoid of any merit same is therefore dismissed.

^E

OGUNBIYI JSC

^F I read in draft the lead judgment just delivered by my learned brother S. Galadima, JSC. I agree that the appeal is devoid of any merit and should be dismissed. For purpose of emphasis and to put in a few words of mine, I wish to state that the public officers' protection Act operates to prohibit or limit institution of on action outside the statutory specified period of three months. Once an action is caught up by the limitation period, it automatically robs the court of its jurisdiction. The action in otherwords is statute barred.

^G I have carefully perused the two documents Exhibits 7 and 8 which are both reproduced in the lead judgment. I hasten to state that the contents of the former are unambiguous and very clear in narration. The appellant's retirement is pursuant to the said document and he cannot therefore claim absence of information. The attempt by the appellant in seeking reliance on exhibit 8 is very much belated and an afterthought.

^H From the contents of exhibit 8, the making thereof is in response to the appellant's letter dated 3rd August, 2000. Exhibit 7

was however dated 9th December, 1999. It follows therefore that the appellant in making the letter on the 3rd August, 2000 was very well informed that he had been retired from the service of the respondent. This is obvious from the tone of his letter which was an appeal. Exhibit 8 is titled thus:

*“RE: APPEAL AGAINST COMPULSORY RETIREMENT
FROM SERVICE OF THE COMMISSION.”* ^B

The Collins Cobuild Learner’s Dictionary Concise Edition defines the word “appeal” as: “a formal request for a decision to be changed.” An appeal therefore presupposes an existing decision on ground and which could be a subject of consideration. The reason for Exhibit 8, for all intent and purpose, is merely to put a final ceiling and re-establish Exhibit 7. ^C

By the operation of the Public Officers Protection Act, the plaintiff/appellant ought to have commenced the suit against the defendant/respondent three months after the cause of action arose on the 9th December, 1999; with the respondent being a public officer, he is duly protected by the law applicable. The appellant has himself to blame and cannot be allowed to act in violation of the Act in failing to institute his claim within three months, after the cause of action arose. The respondent can no longer be prosecuted with the action having become statute barred. This court for instance in the case of Ibrahim V. JSC (Kaduna) State (1998) 14 NWLR 1 at 31 - 32 held thus:- ^E

“...a statute of limitation such as the Public Officers (Protection) Law, Cap 111, Vol.3, Laws of Northern Nigeria 1963 removes the right of action, the right of enforcement, and the right to judicial relief in a plaintiff and this leaves him with a bare and empty cause of action which he cannot enforce if the alleged cause of action is statute barred, that is to say, if such a cause of action is instituted outside the three months statutory period allowed by such law.” ^F

The general principle is well established therefore that where a statute provides for the institution of an action within a prescribed period, proceedings shall not be brought after the time prescribed by such statute. See Michael Obiefuna v. Alexander Okoye (1961) 1 All NLR 357; Fred Egbe v. Adefarasin (No.2) (1985) 1 NWLR (Pt. 3) 549; Fadare V. Attorney-General, Oyo State (1982) NSCC. ^H

With the few words of mine and more particularly on the

comprehensive reasoning's and conclusions arrived thereat in the lead judgment, I also dismiss this appeal in the same terms as my learned brother inclusive of costs.

B

ALAGOA JSC

This is an appeal against the judgment of the Court of Appeal, Abuja Division delivered on the 19th May, 2005, which upheld the judgment of the Federal High Court Abuja. The present Appellant as Plaintiff had brought this action against the Respondent as Defendant claiming that:

C

1. His compulsory retirement from the employment of the Respondent was wrongful.

2. An order setting aside the order of retirement.

D

3. An order for reinstatement of the Plaintiff/Appellant.

4. An order compelling the Respondent to pay him (Appellant) all salaries, allowances and claims from the date of the purported retirement.

E

In his considered judgment the learned trial judge held that the action instituted by the Plaintiff (now Appellant) was statute barred having been brought after one year instead of three (3) months from the accrual of the cause of action. In contention are two dates - 9th December, 1999 (exhibit 7) which relates to date of the letter of retirement from the service of the Respondent and 4th January, 2001

F

(exhibit 8) which is the date on the reply from Appellant's employers i.e. the Respondents relating to an appeal by the Appellant against his compulsory retirement. When could the cause of action have arisen? Both the High Court and the Court below held that the cause of action arose on the 9th December, 1999 being the date of the compulsory retirement from the Respondent's employment.

G

In **SAMSON OWIE V. SOLOMON IGHIMI (2005) 5 NWLR (PART 917) 184** this Court held per Onu, JSC, that

H

"the accrual of a cause of action is the event whereby a cause of action becomes complete so that the aggrieved party can begin to maintain his cause of action."

The Appellant knew his fate with the Respondent when he got the letter of compulsory retirement dated the 9th December, 1999. Any argument to the contrary is untenable and does not represent

the true position of the law. In that case OWIE V. IGHIMI (supra) Onu, JSC went further to say that:

“Time therefore begins to run where there is in existence a person who can sue and another who can be sued and when all the facts have happened which are material to be proved to entitle the plaintiff to succeed...” See also FADARE & ORS v. A.G. OYO STATE (1982) 13 NSCC 52 at 60; ADIMORA V. AJUFO (1988) 3 NWLR (PART 80) 1; 1988 1 NSCC 1005 at 1008; BOARD OF TRADE V. CAYNER IRVINE AND CO. LTD. (1927) A. C. 610.

Why if I may ask would an employee who has been relieved of his services and who is appealing for reinstatement wait until he gets a reply from his employers before determining what next step to take? What if no reply came from his employer? When would the cause of action be said to have accrued?

It is for these reasons and the fuller reasons contained in the lead judgment of my learned brother, Suleiman Galadima, JSC which I had the privilege to read in draft before now and which I entirely agree with, that I too dismiss the appeal as lacking in merit while making no order as to costs.

E

F

G

H