

**SUPREME COURT OF NIGERIA**  
FRIDAY 5TH JUNE, 2015. SC. 99/2009  
**CORAM:- I. T. MUHAMMAD,**  
**M. S. MUNTAKA-COOMASSIE, O. RHODES-VIVOUR,**  
**N. S. NGWUTA, J. I. OKORO, JJSC**

|                                 |                   |
|---------------------------------|-------------------|
| ALHAJI (DR.) ADO IBRAHIM        | ..... APPELLANT   |
| AND                             |                   |
| 1. ALHAJI MAIGIDA U. LAWAL      |                   |
| 2. ALHAJI ISA SANNNI OMOLORI    |                   |
| 3. ENGINEER IDRIS SERIKI        | ..... RESPONDENTS |
| 4. COMRADE NWAHA MOMOH SANNNI   |                   |
| 5. MILITARY ADMINISTRATOR,      |                   |
| KOGI STATE                      |                   |
| 6. ATTORNEY-GENERAL, KOGI STATE |                   |

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ACTIONS - Limitation - Public Officers' Protection Act - Where a law prescribes a period for instituting action - Proceedings cannot be instituted after that period (H1)

ACTIONS - Limitation - Determination - Basis - Writ of summons and statement of claim are to be considered - To see when the wrong was committed (H2)

ACTIONS - Limitation - Public Officers Protection Act - Application - For s. 2 of the Act to avail a party - It must be shown that defendant is a public officer - Who acted in pursuance of public duty (H3)

JURISDICTION - Issue of - Being a threshold matter - Jurisdiction can be raised at any stage of the proceedings - By any party to a dispute or even by court suo motu (H4)

JURISDICTION - Sources of - No court can assume jurisdiction except it is statutorily endowed - As jurisdiction cannot be implied nor can it be conferred by agreement of parties (H5)

APPEALS - Fresh issue - Leave - Substantial issue not raised in lower court - Is not allowed to be raised for the first time in Supreme Court

**1950 Ibrahim v. Lawal (2015) 6 KLR (pt. 366) 1949; (2015) 17**

- Except with leave of the court (H6)

**CHIEFTAINCY MATTERS** - Actions - Limitation - Okere v. Amadi - By virtue of this decision of SC - No constitutional provision voids limitation period in chieftaincy matters (H7)

**ACTIONS** - Statute bar - Suit of 1<sup>st</sup> to 4<sup>th</sup> respondents at trial court was statute barred - And had robbed the court of jurisdiction to entertain the matter (H8)

### ***FACTS***

Plaintiffs/1st-4th respondents commenced this action against defendants/appellant and 5<sup>th</sup> to 6<sup>th</sup> respondents at the High Court of Kogi State, challenging the appointment of appellant as the Ohinoyi of Ebira land for being illegal, null and void and of no effect whatsoever. The contention between the parties is for the stool of the paramount ruler of Ebira land in Kogi State, which became vacant following the demise of the former occupant. At the material point of time, the Kogi State Chiefs (Appointment, Deposition and Establishment of Traditional Councils) Law of 1992 was the relevant statute governing the chieftaincy matter. Subsequently, in 1997, the Military Administrator of the State enacted an Edict known as Procedure for Ascension to the throne of Ohinoyi of Ebira land Edict No. 3 of 1997 which came into force on the 6th of May 1997.

The chieftaincy process was therefore governed by the latter law. After the process of selecting a successor to the deceased ruler was completed by the Ebira Area Traditional Council, appellant's name was among others short listed to the Military Administrator for the appointment. Appellant was eventually appointed the Ohinoyi of Ebira land. The appointment did not go down well with 1<sup>st</sup> to 4<sup>th</sup> respondents. Hence, they instituted the action, but outside the limitation period. The parties joined issues and trial commenced in the matter. Appellant raised the issue of jurisdiction of the court to entertain the matter, since the matter as constituted is statute barred. In his judgment, the learned trial Judge granted the reliefs sought by 1<sup>st</sup> to 4<sup>th</sup> respondents. Aggrieved, appellant appealed to the Court of Appeal. The appeal was dismissed, causing appellant to appeal further to the Supreme Court.

**ISSUES FOR DETERMINATION**

1. WHETHER or not the court below was right in affirming the decision of the trial court to enter judgment in favour of the 1st-4th respondents when the trial court lacked jurisdiction to entertain the suit having regard to the failure of the 1st-4th respondents to comply with the mandatory pre-condition laid down in Section 4(4) of the KSCL 1992.

2. WHETHER or not the court below ought to have affirmed the decision of the trial court entering judgment in favour of the 1st-4th respondents when their suit was statute barred by virtue of the Public Officers Protection Act.

**HELD** (Unanimously allowing the appeal per **OKORO JSC**)

*ACTIONS - Limitation - Public Officers' Protection Act*

**1. The above provision is quite clear and simple. Its general effect is that where a law provides for the institution of an action in a court of law within a prescribed period in respect of a cause of action accruing to the plaintiff, proceedings shall not be brought after the expiration of the period circumscribed by law.**

**More often than not, the laws of this country and elsewhere prescribe certain periods of limitation for instituting certain actions in court. The statutes that prescribe such periods and regulate the subsistence of causes of action are known as statutes of limitation. It follows that where a statute of limitation prescribes the period within which an action must be commenced, legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period. Where any action is statute barred, a plaintiff who might otherwise have had a cause of action loses the right to enforce it by judicial process because the period of time laid down by the limitation for instituting such an action has elapsed. The effect of the Public Officers Protection Act like any other statutes of limitation is to deprive the court of jurisdiction to entertain an action filed outside the time limit prescribed in**

**the statute. The 1st-4th respondents did not file their suit until 6th of March, 1998, clearly about nine months after their cause of action arose. That action, in my estimation, ought to have been filed not later than 2nd September, 1997. Let me state again for the umpteenth time that where a law prescribes a period for instituting an action, proceedings cannot be instituted after that period. Also, where an action is statute-barred, a plaintiff who might have had a cause of action loses the right to enforce the cause of action by judicial process because the period of time laid down by the limitation law for instituting such an action had elapsed and the right to commence the action would have been extinguished by law. Unfortunately, this is the fate of the 1st-4th respondents' case in the circumstance.** (pp. 1966 F/1968 D)

**ACTIONS - Limitation - Determination - Basis**  
**2. Let me add that in order to determine the period of limitation, one has to look at the writ of summons and the statement of claim to see when the wrong was committed which gave the plaintiff a cause of action and comparing that date with the date on which the writ of summons was filed. This in my view can be done without taking oral evidence from witnesses. If the time on the writ is beyond the period allowed by the limitation law, then the action is statute barred.** (p. 1967 D)

**ACTIONS - Limitation - Public Officers Protection Act - Application**  
**3. Again, for Section 2(a) of the Protection Act to avail a party, it must be shown that the person against whom the action is commenced is a public officer and the act done by the person in respect of which the action was commenced must be an act done in pursuance or execution of any law or of any public duty or authority.** (p. 1967 F)

**JURISDICTION - Issue of**  
**4. First, it was argued by the learned counsel for the 1<sup>st</sup> - 4<sup>th</sup> respondents that only the 5th and 6th respondents could raise the issue as the Public Officers Protection Act was made for**

***their benefit only. My simple answer to this argument is that the issue raised here is jurisdictional in nature and as was pointed out by the learned counsel for the appellant in his reply brief, issue of jurisdiction is so fundamental that any party to a dispute can raise same. It is often said that jurisdiction is a threshold issue which can be raised at any stage or time of the proceedings by any party or even by the court suo motu. As rightly observed by the learned counsel for the appellant, if the court, as an impartial umpire, can raise the issue of jurisdiction suo motu and even decide on it provided it affords the parties their right of fair hearing, how much more a defendant whose duty it is to defend the suit? I agree that the appellant was entitled to raise that issue. It was not only for the 5th and 6th respondents alone to raise the issue as even the court can lawfully do so.*** (p. 1969 A/H)

*JURISDICTION - Sources of*

***5. The second legal mine set to ambush, explode and stop the application of the Public Officers Protection Act to this proceeding is that the 5th and 6th respondents had waived their right to do so, for, though they pleaded same in their statement of defence, have not fought it to this court. Without much ado, I find it difficult to accept this proposition. The reason is not farfetched. Courts are creatures of statutes predicated on the constitution with their jurisdiction clearly stated or prescribed therein. In view of this state of affairs, it is quite obvious that no court can assume jurisdiction except it is statutorily endowed as jurisdiction cannot be implied nor can it be conferred by agreement of parties.*** (p. 1970 B)

*APPEALS - Fresh issue - Leave*

***6. The position of the law on raising of fresh issue on appeal is quite clear. It is that no substantial point of law which has not been taken in the court below will be allowed to be raised for the first time before the Supreme Court except under special circumstances. However, for such a point of law to be entertained, it must be shown to be substantive or adjectival and that no further evidence which could have been called in***

*the court below if it was raised there could have affected the decision one way or the other. Where leave is sought and obtained to raise fresh issue on appeal, this cures the failure to have pleaded the issue at the trial court.*

*The above position of this court tallies with what has happened in the instant appeal and I have no reason to depart from it. The appellant, having sought and obtained leave to raise the issue of statute of limitation, has properly brought the matter to the front burner and cannot be faulted in any material particular.* (pp. 1971 E/1972 C)

*Actions - Limitation*

*7. Finally, the learned counsel for the 1<sup>st</sup> - 4<sup>th</sup> respondents submitted that the statute of limitation does not apply to chieftaincy matters. This is not correct as there is no law which supports that position.*

*As can be seen from the extant decision of this court, not even the provisions of the constitution void the limitation period in Chieftaincy matters. The argument of the 1st-4th respondents in this issue is, as can be seen, of no moment.* (pp. 1972 D/1973 E)

*ACTIONS - Statute bar*

*8. Having debunked all the road blocks set up by the 1<sup>st</sup> - 4<sup>th</sup> respondents against the applicability of the Public Officers Protection Act to this proceeding, it remains for me to state clearly that the limitation law was lawfully and properly raised before this court by the appellant. The sum total of all I have endeavoured to say above is that the suit of the 1st-4th respondents before the trial High Court was statute-barred and had robbed the trial court of the jurisdiction to entertain the matter. In the same vein, the lower court had no jurisdiction to hear and determine an appeal arising from a judgment generated from the High Court which had no jurisdiction to entertain same. Accordingly, both the judgment of the High Court of Kogi State delivered on 3rd April, 2006 and that of the Court below delivered on 12th January, 2009 are hereby set aside. The appeal is hereby allowed.* (p. 1973 G)

## NOTABLE POINTS OF INTEREST

### **OKORO JSC**

#### ***1. Limitation law – Purpose of***

One may wonder why a person's right of access to court should be extinguished by law. The rationale for the existence of statute of limitation is that long dormant claims have more of cruelty than justice in them and that a defendant may have lost the evidence to disprove a stale claim and that a person with a good cause of action should pursue it with reasonable diligence. (p. 1967 C) B  
C

#### ***2. Mandatory statutory provision cannot be waived***

Let me emphasize the fact that a mandatory statutory provision cannot be waived. The word "shall" used in Section 2(a) of the Public Officers Protection Act denotes mandatoriness and leaves no room for discretion. (p. 1970 F) D

### **REPRESENTATION**

Kehinde Ogunwumiji, Esq. with Bamikola Aduloju, Esq., for the Appellant E

J.D. Olorunbogun, Esq. (Director, Legal Services Ministry of Justice, Kogi State) with D.Y. Ochene, Esq. (Assistant Director, Civil Litigation), for the 5<sup>th</sup> and 6<sup>th</sup> Respondents

Oluwaseun Ayodele, Esq., for the 1<sup>st</sup> – 4<sup>th</sup> respondents F

### **CASES REFERRED TO**

Ladoja v. INEC (2007) 12 NWLR (pt. 1047) 119

Araka v. Egbue (2003) 17 NWLR (pt. 848) 1

IGP v. ANPP (2007) 18 NWLR (pt. 1066) 457 G

Abubakar v. Nasamu (No. 1) (2012) 17 NWLR (pt. 1330) 407

Fidelity Bank Plc v. Monye (2012) 10 NWLR (pt. 1307) 1

Madukolu v. Nkemdilim (1962) 2 SCNLR 341

SLB Consortium Ltd v. NNPC (2011) 9 NWLR (pt. 1252) 317 H

Opobiyi v. Muniru (2011) 18 NWLR (pt. 387) 403

Obaba v. Military Governor of Kwara State (1994) NWLR (pt. 336)

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Egbe v. Adefarasin (1987) 1 NWLR (pt. 47) 1

Hassan v. Aliyu (2010) 17 NWLR (pt. 1223) 547

Ogundare v. Ogunlowo (1997) 6 NWLR (pt. 509) 306

Oduka v. Kasumu (1967) NSCC 290

Adeyemi v. Opeyori (1976) 6-10 SC 31

Katsina L.A. v. Makudawa (1971) 7 NSCC 119

<sup>B</sup> Ekeogu v. Aliri (1990) 1 NWLR (pt. 126) 1345

**STATUTES REFERRED TO**

Kogi State Chiefs Law 1992, s. 4(4)

<sup>C</sup> Public Officers Protection Act, s. 2(a)

**LEAD JUDGMENT BY OKORO JSC**

This appeal is against the judgment of the Court of Appeal, Abuja delivered on 12th January, 2009 wherein the lower court affirmed the decision of the trial court entering judgment in favour of the 1st-4th respondents (as plaintiffs). A synopsis of the facts leading to this appeal will suffice.

The stool of the paramount ruler of Ebiraland in Kogi State became vacant on the 10th of July, 1996 following the demise of Ohinoyi Mohammed Sani Omolori. At the time of this vacancy, the relevant statute regulating ascension to the stool of Ohinoyi of Ebiraland was the Kogi State Chiefs (Appointment, Deposition and Establishment of Traditional Councils) Law, 1992.

<sup>F</sup> After the performance of the burial rites, interested Ebira sons started submitting applications for the vacant stool. The applications received by the Ebira Area Traditional Council which was the body of Kingmakers included the applications of some of the respondents.

<sup>G</sup> On the 6th of May, 1997, the Military Administrator of Kogi State enacted an Edict known as “Procedure for Ascension to the throne of Ohinoyi of Ebiraland Edict No. 3 of 1997” which came into force on the 6th of May, 1997.

<sup>H</sup> On 9th of May, 1997, the Ebira Area Traditional Council met to deliberate upon the applications already submitted by interested candidates to the vacant stool. The council thereafter short listed three names including the appellant to the Military Administrator for appointment to the vacant stool. The Administrator thereafter appointed the appellant as the Ohinoyi of Ebiraland on the 2nd of June, 1997.

The Respondents, who are sons of Ebiraland interested on the

stool of the Paramount Ruler felt aggrieved by the failure of the appointment to follow due process culminating in depriving them of the opportunity of vying for the status/post and alleged breach of several provisions of the laws applicable to the Chieftaincy Stool.

On 6th March, 1998, the 1st-4th respondents as plaintiffs along with two others now deceased instituted this action against the appellant and the 5th & 6th respondents challenging the appointment of the appellant as the Ohinoyi of Ebiraland. In the statement of claim found on pages 6-11 of Volume 1 of the record of appeal, the following reliefs are claimed:

i. A DECLARATION that the 13th Defendant having not vied or applied for the stool of Ohinoyi of Ebiraland and 3rd-11th Defendants having not recommended the 13th Defendant to the 1st Defendant for the post or office of Ohinoyi of Ebiraland, the purported appointment of the 13th Defendant by the 1st Defendant as the Ohinoyi of Ebiraland in his letter dated 2nd June, 1997 is illegal, null and void and of no effect whatsoever.

ii. A DECLARATION that the purported recommendation of the 13th Defendant by the 3th-11th Defendants to the 1st Defendant as the Attah of Ebiraland at their meeting held on 9th May, 1997 is contrary to the clear provisions of Edict No. 3 of 1997 and therefore null, void and of no effect whatsoever.

iii. A DECLARATION that it is impossible for the 3rd-11th Defendants to have called for nominations of interested candidates for the post of Ohinoyi of Ebiraland, screened candidates for the said office or stool, interviewed the candidates and short-listed them for deliberations, asked for or combed their antecedents within a period of three days, to wit, between 6th of May, 1997 to 9th day of May, 1997 is immoral, dishonest, unfair, un-traditional, illegal, null, void and of no effect whatsoever.

iv. A DECLARATION that the shutting-out or prevention of the Plaintiffs who are bona-fide indigenes of Ebiraland and primarily and eminently qualified to contest and ascend the stool of Ohinoyi of Ebiraland by the 3rd-11th Defendants is unfair, un-democratic, un-customary and constitute(s) a breach of the clear provisions of Edict No. 3 of 1997.

v. A DECLARATION that the title of the Paramount Ruler of Ebiraland is Ohinoyi of Ebiraland and therefore, the 13th Defendant

who styles, labels and presents himself as Attah of Ebiraland is not a Paramount Ruler, Traditional Chief of Ebiraland and has no power or right to the functions of a Paramount Chief or Ruler of Ebiraland.

vi. AN ORDER setting aside the purported appointment of the 13th Defendant by the 1st Defendant as the Ohinoyi of Ebiraland.

B vii. AN ORDER directing the 3rd-11th Defendants to set or put the necessary machinery in motion at appointing a new Ohinoyi of Ebiraland in line with the provisions of Edict No. 3 of 1997.

viii. AN ORDER OF INJUNCTION:-

C a. Restraining the 1st Defendant either by himself, agents, privies, servants or through any persons howsoever from installing the 13th Defendant as the Ohinoyi or Attah or Paramount Ruler/Chief of Ebiraland.

b. Restraining the 1st and 2nd Defendants either by themselves, agents, privies, servants or through any person or persons howsoever from recognizing or further recognizing, treating or further treating, presenting or further presenting and dealing or further dealing with the 13th Defendant as the Ohinoyi or Attah of Ebiraland or as a Paramount Ruler or Chief of Ebiraland.

E c. Restraining the 12th Defendant from recognizing or further recognizing, dealing or further dealing with and treating or further treating the 13th Defendant as the Ohinoyi or Attah or Paramount Ruler of Ebiraland.

F d. Restraining the 3rd-11th Defendants either by themselves, agents, privies, servants or through any person or Persons howsoever from holding or further holding, treating or further treating, recognizing or further recognizing the 13th Defendant as Ohinoyi or Attah or Paramount Ruler of Ebiraland.

G e. Restraining the 13th Defendant from presenting, parading or holding himself out as the Ohinoyi or Attah or Paramount Ruler of Ebiraland and from performing any function or duty or enjoying or receiving any salary, allowances or appurtenances, relating or pertaining to any of the office of Ohinoyi or Paramount Ruler of H Ebiraland.

Issues were duly joined on every material averment in the statement of claim by the appellant and 5th and 6th respondents vide their further amended statement of defence and statement of defence respectively on pp 43-47 and 19-25 of Vol. 1 of the record. At

the close of trial, the learned trial judge delivered judgment on 3rd April, 2006 granting all the reliefs sought by the 1st-4th respondents. The appellant was dissatisfied with the judgment of the learned trial judge and appealed to the Court of Appeal which dismissed his appeal and allowed the cross-appeal filed by the 1st-4th respondents.

Again, the appellant was not satisfied with the stance of the lower court. He has further appealed to this court vide notice of appeal filed on 2/11/2009 which was amended and filed on 24/2/2014. In the said amended notice of appeal, there are fifteen grounds of appeal out of which the appellant has distilled ten issues for the determination of this appeal. The issues are:

1. WHETHER or not the court below was right in affirming the decision of the trial court to enter judgment in favour of the 1st-4th respondents when the trial court lacked jurisdiction to entertain the suit having regard to the failure of the 1st-4th respondents to comply with the mandatory pre-condition laid down in Section 4(4) of the KSCL 1992. (Ground 14)

2. WHETHER or not the court below ought to have affirmed the decision of the trial court entering judgment in favour of the 1st-4th respondents when their suit was statute barred by virtue of the Public Officers Protection Act. (Ground 15)

3. NOTWITHSTANDING the fact that a vacancy had occurred in the stool of Ohinoyi of Ebiraland and machineries set in motion for the occupation of same in 1996, whether the Court of Appeal was not in error to have held that the stool of Ohinoyi of Ebiraland was established by Edict No. 3 of 1997 and could only be regulated by the said Edict having regard to the pleadings and evidence on record? (Grounds 1 & 2)

4. WHEN did the cause of action arise in order to determine the applicable law in this case having regard to the pleadings and evidence on record? (Grounds 4 & 6)

5. WAS the Court of Appeal not in error to have agreed with the learned trial judge that notwithstanding the fact that a vacancy had occurred in the stool of Ohinoyi of Ebiraland before 1997, the provisions of Edict No. 3 of 1997 to the exclusion of every other law should be complied with in the appointment of a new Ohinoyi of Ebiraland? (Grounds 5, 7 & 11)

6. HAVING regard to the clear and unambiguous provisions

of Edict No. 3 of 1997, was the Court of Appeal not in error to have affirmed the pronouncement of the learned trial judge that the Ebira Area Traditional Council (E.A.T.C.) was constituted into kingmakers by virtue of Edict No. 3 of 1997 and as such under an obligation to commence performance of the functions of kingmakers in line with

B Section 5 of Edict No. 3 of 1997? (Grounds 3 & 13)

7. HAVING regard to the earlier pronouncement of the Court of Appeal on the applicable law and the pleadings of the parties on record, was the Court of Appeal not wrong to have upheld the conclusion of the learned trial judge declaring the meeting of the Ebira Area Traditional Council held on the 9th of May, 1997 invalid on the ground that the Secretaries of the Local Government Councils in Ebiraland did not take part in the decisions arrived thereat? (Ground 8)

D 8. WHETHER the Court of Appeal was not in error to have upheld the finding of the trial court concerning the abdication of responsibility by the kingmakers on the recommendation of candidates to the Governor of Kogi State having regard to the pleadings and evidence on record? (Ground 9)

E 9. WAS the Court of Appeal not in error to have categorized a subsisting pronouncement of the trial court setting aside the installation of the 3rd appellant (a relief not sought for) as an obiter dictum to warrant its refusal not to uphold an appeal against such pronouncement? (Ground 10)

F 10. WHETHER the 1st-6th respondents, cross-appeal favourably determined by the Court of Appeal was competent in view of the fact that the learned trial judge granted all the reliefs sought by them? (Ground 12)

G In a further amended brief of the 1st-4th respondents settled by Oluwaseun Ayodele, Esq., six issues are formulated for determination. They are as follows:

H 1. Whether or not the lower court shorn of all embellishments properly held that Edict No. 3 of 1997 takes the lead in the procedure for filling the vacancy in the stool of Ohinoyi of Ebiraland over and above other laws on the Chieftaincy.

2. Whether assuming that the pleadings of parties were to be considered (which is not conceded), the Appellant can contend that Edict No. 3 of 1997 was wrongly considered *pari-passu* with Law No.

7 of 1992 in all the circumstances of this case. OR whether or not judging from the issues settled by the parties and adopted from the pleadings filed by them, both Edict No. 3 of 1997 and Law No. 7 of 1992 were not properly applied by the lower court to the facts of this case/appeal.

3. Whether considering the pleadings by the parties and the issues settled by them, the lower court did not properly declare void the selection of the appellant herein at the flawed meeting of 9th May, 1997. B

4. Whether or not the Supreme Court will set aside a pronouncement that the annulment of the installation of the appellant was an “obiter dictum” when same had not led to any miscarriage of justice in that the appointment on which it was based was wrong ab initio. C

5. Whether the lower court was right in determining the cross-appeal of the respondents herein on its merit and holding partly in favour of the respondents. D

6. Whether or not the issue of payment of deposit before filing this case or the operation of the Public Officers, Protection Act or Law is ultra vires the appellant herein, applicable to a case under native law and custom which is the pith and substratum of the respondents’ case or will avail the weak and faulted case of the appellant. E

It is pertinent to note that the 1st-4th respondents had given notice of preliminary objection to the appellant’s brief, some grounds of appeal and some issues distilled. The said notice is contained on page 7 of their brief and arguments thereof on pages 7-8 of the same brief. However, at the hearing of this appeal, the learned counsel for the 1st-4th respondents applied to abandon the said preliminary objection. Same was abandoned and struck out. In this appeal, I intend to first resolve issues one and two in the appellant’s brief which are in tandem with issue 6 in the 1st-4th respondents, brief and thereafter, consider the other issues if it becomes necessary to do so. The 1st issue is probing whether the trial court had jurisdiction to entertain this matter when, according to the appellant, the mandatory pre-condition laid down in Section 4(4) of the Kogi State Chiefs Law, 1992 was not complied with. Issue two challenges the competency of the suit in view of Section 2(a) of the Public Officers Protection Act. F G H

The 1<sup>st</sup> - 4<sup>th</sup> respondents fused these two issues into one in their issue No. 6.

On the first issue, the learned counsel for the appellant, Kehinde Ogunwumiju, Esq., leading other counsel, submitted that by virtue of the Kogi State Chiefs (Appointment, Deposition and Establish-  
 B ments of Traditional Councils) Law 1992 (hereinafter referred to as KSCL 1992), each of the 1st-4th respondents as plaintiffs ought to have deposited a mandatory fee of N20,000.00 before instituting this action but that they failed to comply with the said provision.  
 C According to learned counsel, due to the failure of the 1<sup>st</sup> - 4<sup>th</sup> respondents to comply with the said law, the two lower courts lacked the jurisdiction to entertain the suit or enter judgment in favour or against any of the parties. Referring to Section 4(4) of the KSCL 1992 and the 7th Schedule thereof, learned counsel submitted that  
 D the words in the section are clear and unambiguous and ought to be given their ordinary grammatical meaning. He cited the following cases. *Ladoja v. INEC* (2007) 12 NWLR (Pt. 1047) 119 at 187-188 paras a-c, *Araka v. Egbue* (2003) 17 NWLR (Pt. 848) 1 at 21. paras B-D and *IGP v. ANPP* (2007) 18 NWLR (Pt. 1066) 457 at 496.

E It is his further contention that the use of the word “shall” in the section makes it mandatory, relying on the case of *Abubakar v. Nasamu* (No. 1) (2012) 17 NWLR (Pt. 1330) 407 and *Fidelity Bank Plc v. Monye* (2012) 10 NWLR (Pt. 1307) 1. Learned counsel further opines that while Section 4(4) of the KSCL 1992 employs the  
 F phrase “an aggrieved party”, Schedule VII uses the phrase “Deposit to be paid by a party challenging the appointment” as its title. Learned counsel submitted that the averment by the 1st-4th respondents in paragraph 50 of their statement of claim that they paid N20,000.00  
 G falls short of the requirement of the law. That the use of the phrase “an aggrieved party” and “a party challenging” imply that compliance with this provision must be by each singular individual who intends to challenge the appointment/approval of a Chief in Kogi State.

H Learned Counsel concluded on this issue that failure to comply with the said precondition renders the court bereft of jurisdiction to entertain the action, referring to these cases: *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341, *SLB Consortium Ltd v. NNPC* (2011) 9 NWLR (Pt. 1252) 317, *Opobiya v. Muniru* (2011) 18 NWLR

(Pt. 387) at 403 and *Obaba v. Military Governor of Kwara State* (1994) NWLR (Pt. 336) 26 at 40 amongst others. Learned counsel concluded that having failed to fulfill the mandatory condition precedent to the filing of the action, the two lower courts lacked the requisite jurisdiction to entertain this suit and grant the reliefs sought by the 1st-4th respondents. B

On the second issue, learned counsel submitted that this action was filed properly to challenge the appointment/approval of the appellant as the Ohinoyi of Ebiraland by the Military Governor of Kogi State. That considering the wordings of Section 2(a) of the Public Officers Protection Act, it is obvious that in appointing the appellant as the Ohinoyi of Ebiraland, the Kingmakers as well as the Military Administrator of Kogi State acted pursuant to the relevant provisions of the KSCL 1992 and so acted as public officers. C

Referring to the cases of *Egbe v. Adefarasin & Anor.* (1987) 1 NWLR (Pt. 47) 1 at 21 and *Hassan v. Aliyu* (2010) 17 NWLR (Pt. 1223) 547 at 619-620 paras. G-B, learned counsel submitted that the implication of these cases is that the 1<sup>st</sup> - 4<sup>th</sup> respondents/plaintiffs ought to have filed this action within three months of the appointment of the Appellant as the Ohinoyi of Ebiraland on 2nd June, 1997 when the cause of action arose. Learned counsel noted that the 1<sup>st</sup> - 4<sup>th</sup> respondents did not contest the appointment until 6th March, 1998 (about nine months) after the cause of action arose. He submitted that the action was statute barred as at the time it was filed on 6/3/98 and the two lower courts ought not to have assumed jurisdiction to entertain same. He urged the court to resolve the two issues in favour of the appellant. D E F

In response to the first issue, the learned counsel for the 1st-4th respondents, Oluwaseun Ayodele, Esq. submitted that this is Chieftaincy matter and like any other is dependent, predicated and has as its pedestal on the native law and custom of Ebiraland. That though the chieftaincy is guided, circumscribed and directed by Law No. 7 of 1992 and Edict No. 3 of 1997, yet it is trite that a chieftaincy declaration like these laws represent, epitomize, proclaim and picture the native law and custom of the people involved, referring to *Ogundare v. Ogunlowo* (1997) 6 NWLR (Pt. 509) 306. It is his contention that both the Chieftaincy Law and the Public Officers Protection Act sought to be relied upon by the appellant to raise the issue of G H

jurisdiction, were not made for his benefit but for the benefit of the 5th and 6th respondents. He opines that only the 5th and 6th respondents can properly raise this issue arising from the compliance or otherwise of any of the statutes. It is his submission that where such a party that can take benefit of a statute has not done so, same  
 B has waived the right and cannot be assisted by another, relying on the case of Mobil Producing Nig. Unlimited v. LASEPA (2002) 18 NWLR (Pt. 798) 1 at 84-35, 37 and 47.

Again, learned counsel contended that the appellant failed to  
 C plead these special defences and as such cannot rely on them, citing the cases of Oduka v. Kasumu (1967) NSCC 290, Adeyemi v. Opeyori (1976) 6-10 SC 31 at 51, Katsina L.A. v. Makudawa (1971) 7 NSCC 119.

It was further argued for the 1st-4th respondents that from the  
 D salient and pivotal words of section 4(4) of Law No. 7 of 1992, since there is only one suit filed although by six (6) plaintiffs (now remaining four), they have fulfilled the provision of this law by paying the sum of N20,000.00 stated in Schedule VII of the law. He opined that it is only when an aggrieved party files two or more suits that he can  
 E be expected to pay more than N20,000.00 deposit. He further submitted that the payment of a single N20,000.00 deposit is an access to court which can accommodate as many people as possible. Referring to Section 14(b) of the Interpretation Act, learned counsel submitted that “words in the singular include the plural and words in the  
 F plural include the singular.” He urged the court to resolve issue I in favour of the 1st-4th respondents.

In respect of issue 2, he submitted that even though the 5th and 6th respondents have raised the issue of statute of limitation by  
 G pleading same in their statement of defence, same cannot avail them because both the trial and lower courts have held that the action of the 5th and 6th respondents contravenes the laws pertaining to the Chieftaincy. He refers to the case of Ekeogu v. Aliri (1990) 1 NWLR (Pt. 126) 1345. Learned counsel contended that such a case which  
 H the pedestal is the native law and custom is not amendable to statute of limitation like the Public Officers (Protection) Law. He cited these cases: Ketu v. Obanikoro (1984) 10 SC 265 at 266, Dadi v. Garba (1995) 8 NWLR (Pt. 411) 12.

Learned counsel concluded by stating that the entire case has

its fulcrum as the native laws and customs of Ebiraland and there is no evidence that same is encumbered by a statute of limitation. He also urged the court to resolve this issue in favour of the 1st-4th respondents.

In his amended reply brief, the appellant replied on the submission that the appellant lacks the locus to raise the issue on Section 4(4) of the KSCL 1992 and the Limitation Act. That any party to a litigation can raise the issue of jurisdiction and that the court can raise it suo motu, relying on the case of Labour Party v. INEC (2009) 6 NWLR (Pt. 1137) 315, Ehigbe v. Omokhafa (2004) 18 NWLR (Pt. 905) 319. Learned counsel urged this court to distinguish the case of Mobil Producing Nig. Unlimited v. LASEPA (supra) cited by the 1st-4th respondents from this case as the provision of the law governing the said case is different from the KSCL 1992.

He further responded that a party cannot waive a defect in the jurisdiction of the court referring to the case of Gafar v. Governor of Kwara State (2007) 4 NWLR (Pt. 1024) 375 at 403 paras G-H. Menakaya v. Menakaya (2001) 16 NWLR (Pt. 738) 203 at 263 paras B-D.

On the submission that the appellant failed to plead statute of limitation, learned counsel submitted that having sought and obtained the leave of this court to raise the issue, this becomes his pleading in the matter. Also, that being issue of jurisdiction, it can be raised at any time even on appeal in this court, citing the case of Corporate Industrial Insurance Ltd v. Ajaokuta Steel Co. Ltd (2014) 7 NWLR (Pt. 1405) 165 at 187-188 paras H-H; Elabanjo v. Dawodu (2006) 15 NWLR (Pt. 1001) 76.

Learned counsel contended that even if the Interpretation Act is used to interpret Section 4(4) of KSCL 1992, it will be unfair of the appellant.

Finally, he submitted that the cases of Ketu v. Obanikoro (supra) and Dadi v. Garba (supra) cited by the 1st-4th respondents to say that Limitation Law does not apply to chieftaincy matters do not apply because those two cases relate to land matters and that the Public Officers Protection Act was never considered in those cases. Also, that the lower court never found that the 5th and 6th respondents acted in bad faith. He urged this court to so hold.

I shall first resolve the issue relating to the statute of limitation

as it affects this case. Both parties to this appeal agree that the event which triggered off this suit at the High Court of Kogi State was the issuance of a letter of appointment as the Ohinoyi of Ebiraland to the appellant by the 5th respondent - the Military Administrator of Kogi State on 2nd June, 1997. The 1<sup>st</sup> - 4<sup>th</sup> respondents were aggrieved but did not file the suit giving birth to this appeal until the 6th of March, 1998, about nine months after the cause of action arose. Again, there is no dispute as to when the cause of action arose and when the suit was filed as there are facts engraved in the record of appeal to that effect.

Before I consider the specific complaints of the 1<sup>st</sup> - 4<sup>th</sup> respondents against the applicability of the Public Officers Protection Act to this suit, let me take the liberty of restating the meaning, purport and applicability of the Act. Section 2(a) of the Public Officers Protection Act provides:

*“Section 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 of any public duty or authority or in respect of any alleged neglect or default in the execution of any Act, Law, duty or authority, the following provisions shall have effect -*

*(a) Limitation of time*

*The action, prosecution of 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.”*

***The above provision is quite clear and simple. Its general effect is that where a law provides for the institution of an action in a court of law within a prescribed period in respect of a cause of action accruing to the plaintiff, proceedings shall not be brought after the expiration of the period circumscribed by law.***

***More often than not, the laws of this country and elsewhere prescribe certain periods of limitation for instituting certain actions in court. The statutes that prescribe such periods and regulate the subsistence of causes of action are known as statutes of limitation. It follows that where a statute of limitation prescribes the period within which an action must***

***be commenced, legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period. Where any action is statute barred, a plaintiff who might otherwise have had a cause of action loses the right to enforce it by judicial process because the period of time laid down by the limitation for instituting such an action has elapsed.*** See B  
 Egbe v. Adefarasin & Anor. (1987) 1 NWLR (Pt. 47) 1 at 21, Oba J. A. Aremo II v. Adekanye & 2 Ors. (2004) 13 NWLR (Pt. 891) 572, Egbaigbe v. NNPC (1994) 5 NWLR (Pt. 347) 649, Odubeko v. Fowler (1993) 7 NWLR (Pt. 308) 637, Sanda v. Kukawa Local Government C  
 (1991) 2 NWLR (Pt. 174) 379.

One may wonder why a person's right of access to court should be extinguished by law. The rationale for the existence of statute of limitation is that long dormant claims have more of cruelty than justice in them and that a defendant may have lost the evidence to D  
 disprove a stale claim and that a person with a good cause of action should pursue it with reasonable diligence. See John Ekeogu v. Aliri (1990) 1 NWLR (pt. 126) 345.

***Let me add that in order to determine the period of limitation, one has to look at the writ of summons and the statement of claim to see when the wrong was committed which gave the plaintiff a cause of action and comparing that date with the date on which the writ of summons was filed. This in my view can be done without taking oral evidence from witnesses. If the time on the writ is beyond the period allowed by the limitation law, then the action is statute barred.*** See Egbe v. Adefarasin & Anor (supra). F

***Again, for Section 2(a) of the Protection Act to avail a party, it must be shown that the person against whom the action is commenced is a public officer and the act done by the person in respect of which the action was commenced must be an act done in pursuance or execution of any law or of any public duty or authority.*** G

Now, applying the above principles to the case at hand, there H  
 is no doubt that the 1st-4th respondent's complaint in the main is against the appointment of the appellant as the Ohinoyi of Ebiraland by the Military Administrator of Kogi State vide his letter of 2nd June, 1997 to that effect. Was the Administrator a Public Officer? The simple

answer is yes. Was he performing a public function?

The answer is yes. Was he acting under any law made in the State? Of course he acted pursuant to both the Chiefs Law of Kogi State and the *“Procedure for Ascension to the throne of Ohinoyi of Ebiraland - No. 3 of 1997.”* It must be noted that only the Administrator wrote the letter of appointment as the kingmakers recommended three persons for the governor to appoint one. Having appointed the appellant on 2nd June, 1997 and the 1st-4th respondents becoming aggrieved of the said appointment, their cause of action arose with effect from 2nd June, 1997. Section 2(a) of the Public Officers Protection Act states that such an 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. ...”*

***The effect of the Public Officers Protection Act like any other statutes of limitation is to deprive the court of jurisdiction to entertain an action filed outside the time limit prescribed in the statute. The 1st-4th respondents did not file their suit until 6th of March, 1998, clearly about nine months after their cause of action arose. That action, in my estimation, ought to have been filed not later than 2nd September, 1997. Let me state again for the umpteenth time that where a law prescribes a period for instituting an action, proceedings cannot be instituted after that period. Also, where an action is statute-barred, a plaintiff who might have had a cause of action loses the right to enforce the cause of action by judicial process because the period of time laid down by the limitation law for instituting such an action had elapsed and the right to commence the action would have been extinguished by law. Unfortunately, this is the fate of the 1st-4th respondents’ case in the circumstance.*** See *Ekeogu v. Aliri* (supra), *Ajayi v. Adebisi* (2012) 11 NWLR (pt. 1310) 137 at 172, *Emiator v. Nigerian Army* (1999) 12 NWLR (pt. 631) 362, *Ibrahim v. J.S.C.* (1998) 14 NWLR (pt. 584) 1, *Egbe v. Adefarasin* (supra).

The above trite position of the law notwithstanding, the 1st-4th respondents have raised and argued certain points in their brief to demonstrate that Section 2(a) of the Public Officers Protection Act does not apply in this case. I shall consider them anon.

**First, it was argued by the learned counsel for the 1<sup>st</sup> - 4<sup>th</sup> respondents that only the 5<sup>th</sup> and 6<sup>th</sup> respondents could raise the issue as the Public Officers Protection Act was made for their benefit only. My simple answer to this argument is that the issue raised here is jurisdictional in nature and as was pointed out by the learned counsel for the appellant in his reply brief, issue of jurisdiction is so fundamental that any party to a dispute can raise same. It is often said that jurisdiction is a threshold issue which can be raised at any stage or time of the proceedings by any party or even by the court suo motu.** I shall find umbrage for this position in the case of *Elugbe v. Omokhale* (2004) 18 NWLR (Pt. 905) 319 at 332 paras C-G where this court held as follows:-

*"I must stress here that the duty to raise absence of jurisdiction in a court to hear a case is not placed upon a particular party, or defendant in a proceeding. It is of course from experience that it is always the defendant who raises it. The court itself can and often raises the question. See Adesanya v. President (1981) 2 NCLR 358. Indeed, it is settled law that the issue of jurisdiction could be raised at any stage of the proceedings up to the Supreme Court. See FR.N. v. Ifegwu (2003) 15 NWLR (Pt. 842) 113; Pan-Asian Co. Ltd. v. NICON (1982) 9 S.C. 1; Tukur v. Govt. of Gongola State (1989) 4 NWLR (Pt. 117) 592. When it is successfully raised the suit is terminated by a striking out order. An order striking out a case effectively brings the proceedings to an end unless and until an appellate court rules otherwise. Therefore it is erroneous to think or argue as the respondent has done by his preliminary objection that the 4<sup>th</sup> defendant could not contest before this court's correctness of the decision of the court below on jurisdiction just because it was the 1<sup>st</sup> to 3<sup>rd</sup> defendant alone that had raised the issue before the court below. If the court below had struck out the suit on the ground that the court has no jurisdiction to hear it by virtue of Decrees 1 and 13 of 1984, the order would have ensured to the benefit or advantage of the 4<sup>th</sup> defendant notwithstanding that the issue was raised by the 1<sup>st</sup> to 3<sup>rd</sup> defendants. It seems to me that the 4<sup>th</sup> defendant by the same parity of reason is clearly entitled to contest on appeal before this court the correctness of the decision of the court below on the point."*

**As rightly observed by the learned counsel for the ap-**

**pellant, if the court, as an impartial umpire, can raise the issue of jurisdiction suo motu and even decide on it provided it affords the parties their right of fair hearing, how much more a defendant whose duty it is to defend the suit? I agree that the appellant was entitled to raise that issue. It was not only for the 5th and 6th respondents alone to raise the issue as even the court can lawfully do so.** See *Petrojesica Enterprises Ltd v. Leventis Trading Company* (1992) 5 NWLR (pt. 244) 675.

**The second legal mine set to ambush, explode and stop the application of the Public Officers Protection Act to this proceeding is that the 5th and 6th respondents had waived their right to do so, for, though they pleaded same in their statement of defence, have not fought it to this court. Without much ado, I find it difficult to accept this proposition. The reason is not farfetched. Courts are creatures of statutes predicated on the constitution with their jurisdiction clearly stated or prescribed therein. In view of this state of affairs, it is quite obvious that no court can assume jurisdiction except it is statutorily endowed as jurisdiction cannot be implied nor can it be conferred by agreement of parties.** See *Anyo v. Ogele* (1968) 1 ALL NLR I, *Osadebay v. Attorney-General, Bendel State* (1991) 22 NCSS (Pt. 1) 137 at 160, (1991) 1 NWLR (Pt. 169) 525 at 572, *Gafar v. Governor of Kwara State* (2007) 4 NWLR (Pt. 1024) 375 at 463 paras G-H.

Let me emphasize the fact that a mandatory statutory provision cannot be waived. The word “shall” used in Section 2(a) of the Public Officers Protection Act denotes mandatoriness and leaves no room for discreet In *Menakaya v. Menakaya* (2001) 16 NWLR (pt. 738) 203 at 263 paras. B-D, a case cited by the appellant herein, this court held as follows:

*“When therefore it is argued that a statutory provision has been waived, it has to be considered whether the statute confers purely private or individual rights which may be waived or whether the statutory provision confers rights of a public nature as a matter of public policy. If it is the later, the provision of such statute cannot be waived as no one is permitted to contract out of or waive a rule of public or constitutional policy. See A-G Bendel State v. A-G of the Federation (1981) 10 SC 1 at 54; Ogbonna v. A-G of Imo State (1992) 1 NWLR*

(Pt. 220) 647 at 696.”

I cannot agree more.

Again, the 1st-4th respondents argued that failure of the appellant to plead the statute of limitation in his statement of defence precludes him from ventilating same before this court. On this, the learned counsel for the appellant invited this court’s attention to the motion on notice filed by the appellant on 24th February, 2014 wherein the appellant, vide prayer 1 grounds 1-10 sought for and obtained the leave of this court to raise this issue for the first time vide two additional grounds of appeal. He pointed out that the 1st-4th respondents did not oppose the said application and same was granted by this court on 4th March, 2014. He submitted that having granted leave to raise this issue for the first time at the Supreme Court, it would be most incongruous for the 1st-4th respondents to expect appellant to have pleaded the issue in the statement of defence which was filed in 1998 before the trial court. He opined that even where statement of defence is not yet filed, issue of jurisdiction can be raised, citing the cases of Elabanjo v. Dawodu (2006) 15 NWLR (Pt. 1001) 76 and, Petrojesica Ent. Ltd. v. Leventis (supra).

The appellant is right here. ***The position of the law on raising of fresh issue on appeal is quite clear. It is that no substantial point of law which has not been taken in the court below will be allowed to be raised for the first time before the Supreme Court except under special circumstances.*** See Mekanjuola v. Balogun (1989) 3 NWLR (Pt. 108) 192, Sapo v. Sunmonu (2010) 11 NWLR (Pt. 1205) 374. ***However, for such a point of law to be entertained, it must be shown to be substantive or adjectival and that no further evidence which could have been called in the court below if it was raised there could have affected the decision one way or the other. Where leave is sought and obtained to raise fresh issue on appeal, this cures the failure to have pleaded the issue at the trial court.*** In a recent case of Forestry Research Institute of Nigeria v. Gold (2007) 11 NWLR (Pt. 1044) 1 at page 16 paras. E-H, Mukhtar, JSC (as she then was) stated the position of this court in the following words:

*“Learned counsel referred to the provision of Order 25 rule 6(1) of the Oyo State High Court (Civil procedure) Rules of 1988, which stipulates thus:*

*‘6(1) A party shall plead specifically any matter for example performance, release, any relevant statute of limitation, fraud or any fact showing illegality which, if not specifically pleaded, might take the opposite party by surprise.’*

*There is no doubt that this rule connotes mandatory procedure, but it does not preclude a party from raising the defence of statute of limitation in an appellate court, vide leave to do so even if he did not do so at the court of first instance, because such issue borders on the fundamental issue of jurisdiction. The appellant in this case realized the mistake in not thrashing out the issue and so raised it in the Court of Appeal after leave was obtained.”*

**The above position of this court tallies with what has happened in the instant appeal and I have no reason to depart from it. The appellant, having sought and obtained leave to raise the issue of statute of limitation, has properly brought the matter to the front burner and cannot be faulted in any material particular.**

**Finally, the learned counsel for the 1<sup>st</sup> - 4<sup>th</sup> respondents submitted that the statute of limitation does not apply to chieftaincy matters. This is not correct as there is no law which supports that position.** The cases of Ketu v. Obanikoro (supra) and Dadi v. Garba (supra) cited by the respondents in support of their position were land matters. More so, the Public Officers Protection Law or Act was never considered in either of the two cases. In fact, in Okere v. Amadi (2005) 14 NWLR (pt. 945) 545 at 561 this court per Akintan, JSC in his contributory judgment captures the issue in the following words:

*“The main question raised in this appeal is whether a law fixing time limit within which any person aggrieved by the recognition given to a newly appointed Traditional Ruler in Imo State could commence an action challenging the appointment is proper and not in conflict with any of the provisions of the constitution. The appellant was appointed as the traditional ruler of Avu Autonomous Community in Imo State. The appointment was recognized by the Imo State Government and a letter to that effect dated 17th April, 1996 written by the Secretary to the State Government, was sent to the appellant.*

*Section 25 of the Traditional Rulers and Autonomous Communities Law of Imo State (No. 1 of 1981) provides inter alia, “where*

*the Governor of the State has accorded recognition to any person as an Eze, such recognition shall be final provided that where any interested party from within the Autonomous community feels that in the exercise of recognition of an Eze, the rules of natural justice have been contravened, then that party may have within 21 days of the recognition the right of appeal to the High Court for review of the recognition...*"

In Okere's case (supra) the respondent filed application in the High Court outside the 21 days prescribed by law.

His Lordship went on to say at p. 562 as follows:-

*"I have no doubt in holding that the sections of the 1979 Constitution referred to do not proscribe any legislation prescribing the time within which an action could be commenced. It is a notorious fact that chieftaincy tussles in many parts of the country constitute a major cause of unnecessary tensions within the communities. It is therefore quite appropriate for a state government to enact laws prescribing time limit within which disputes relating to appointment of chiefs within the state could be challenged, as in the instant case. The court below was therefore totally wrong in its decision that the Imo State Law in question in this case was in conflict with any of the provisions of the 1979 Constitution."*

I have quoted the judgment of His Lordship, Akintan, JSC in the above case in extenso because it completely addresses the concerns of the 1<sup>st</sup> - 4<sup>th</sup> respondents in the instant appeal. **As can be seen from the extant decision of this court, not even the provisions of the constitution void the limitation period in Chieftaincy matters. The argument of the 1st-4th respondents in this issue is, as can be seen, of no moment.**

**Having debunked all the road blocks set up by the 1<sup>st</sup> - 4<sup>th</sup> respondents against the applicability of the Public Officers Protection Act to this proceeding, it remains for me to state clearly that the limitation law was lawfully and properly raised before this court by the appellant. The sum total of all I have endeavoured to say above is that the suit of the 1st-4th respondents before the trial High Court was statute-barred and had robbed the trial court of the jurisdiction to entertain the matter. In the same vein, the lower court had no jurisdiction to hear and determine an appeal arising from a judgment gen-**

***erated from the High Court which had no jurisdiction to entertain same. Accordingly, both the judgment of the High Court of Kogi State delivered on 3rd April, 2006 and that of the Court below delivered on 12th January, 2009 are hereby set aside. The appeal is hereby allowed.***

B Consequently, the suit of the 1st-4th respondents at the trial High Court of Kogi State is hereby struck out for want of jurisdiction.

Having struck out the suit, there remains nothing to be said in respect of the other issues in this appeal including the cross appeal which is also struck out for the same reason. I make no order as to costs.

C Appeal allowed.

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D **MUHAMMAD JSC**

I had the privilege of reading in advance the judgment just delivered by my learned brother, Okoro, JSC. I adopt his reasoning and conclusion.

The appeal is hereby allowed. Accordingly, judgment of the court below delivered on the 12th of January, 2009 is hereby set aside. Consequently, the suit of the 1st-4th respondents (as plaintiffs) before the trial court is hereby struck out for want of jurisdiction. The cross-appeal is also struck out for same reason. I make no order as to costs.

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**MUNTAKA-COOMASSIE JSC**

This is an appeal against the decision of the Court of Appeal Abuja Division hereinafter called court below.

The judgment of the court below was delivered on 12th day of January 2009, wherein the court below dismissed the appeal of the Appellant before it and affirmed the decision of the trial court. In a way the appeal before us is against the concurrent decisions of the two lower courts.

H The facts leading to this appeal before us were well stated by my learned brother who rendered the lead judgment. I cannot see any necessity of reproducing same in this judgment unless and until when it becomes absolutely necessary.

The stool of the paramount ruler of Ebira land in Kogi State became vacant on the 10th July, 1996 following the death of Ohinoyi Mohammed Sani Omolori. At the relevant period the applicable statute regulating ascension to the stool of Ohinoyi of Ebira land was the Kogi State Chiefs (Appointment, Deposition and Establishment of Traditional Councils) law, 1992. That being the case, the applicable law at that moment is the 1992 law. B

After the performance of the burial rites, interested Ebira sons started submitting applications for the vacant stool. The said applications received by the body of Kingmakers included that of some respondents herein. C

On the 6/5/1997, the then Military Administrator of Kogi State enacted an Edict known as procedure for Ascension to the throne of Ohinoyi of Ebira land Edict No. 3 of 1997 which came into force on the 6/5/1997. D

On 9/5/1997, the Ebira Area Traditional Council met to deliberate upon the application already submitted by interested candidates to the vacant stool. The said council short-listed three names, including the appellant to the Military Administrator for appointment to the vacant stool. The appellant Alhaji (Dr.) Ado Ibrahim was appointed as the Ohinoyi of Ebira land on the 2/6/1997. E

The Respondents felt highly aggrieved and instituted this action against the Appellant as Ohinoyi of Ebiraland. They stated that they are sons of Ebira land interested in the stool and were not happy by the failure of the appointing body to follow due process culminating in depriving them of the opportunity of vying for the post and also alleged breach of several provisions of the laws applicable to the chieftaincy stool. F

On the 6/3/1998, the aggrieved 1st-4th Respondents as plaintiffs along with the two others, now deceased, instituted this action against the appellant and the 5th & 6th respondent challenging the appointment of the appellant as the Ohinoyi of Ebira land. G

After considering both the statements of claim and further amended statement of defence the learned trial judge delivered judgment on 3/4/2006 in favour of the Respondents. The learned trial judge granted all the reliefs sought by the 1st-4th Respondents - pp. 338-405 referred. This judgment was delivered by S. T. Hussaini J. H

The Appellant unsuccessfully appealed to the Court of Appeal

Abuja Division. The Court of Appeal herein referred to as court below dismissed the appeal and allowed the cross-appeal filed by the 1st-4th Respondent Omoleye, JCA Abuja Division read the lead judgment. See pp. 182-263 of the record.

Not satisfied with the judgment of the court below the Appellant finally appealed to the Supreme Court. He filed a Notice of Appeal containing fifteen (15) grounds of appeal. The Appellant out of these grounds of appeal formulated ten (10) issues for the determination of this appeal before us.

My learned brother Hon. Justice Okoro, JSC delivered his lead judgment in which he allowed the appeal with which I entirely agreed with him.

The issue of jurisdiction made the earlier law inapplicable in this chieftaincy tussle. The suit filed by the 1st-4th Respondents in the trial court, I agree was statute barred. The court below was wrong in upholding the judgment of trial court. Accordingly I hold that both judgment of the High Court of Kogi State delivered on 3/4/2006 and that of the court below delivered on 12/1/2009 are wrong and are hereby set aside.

The suit instituted at the trial High Court cannot stand same is hereby struck out. Having done that, the issues formulated by the Appellant are no longer valid and are hereby suspended. Appeal is hereby allowed.

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### ***RHODES-VIVOUR JSC***

I read in draft the leading judgment delivered by my learned brother, Okoro, JSC. In view of the importance of jurisdiction I add a few words of mine.

The fundamental issue is whether the 1st to 4th Plaintiffs/Respondents suit is statute barred. If it is, the High Court had no jurisdiction to hear it and the Court of Appeal was equally without jurisdiction to hear an appeal on a judgment the court of first instance had no jurisdiction to pronounce on.

The issue is whether the 1st to 4th Respondents action is statute barred?

The Facts are these.

On the 10th day of July, 1996 the ruler of Ebira land in Kogi

State died. After the process of selecting a successor to the deceased ruler was completed by the Ebira Area Traditional Council the Appellant was appointed the Ohinoyi of Ebira land on the 2nd day of June, 1997.

This appointment did not go down well with the 1st to 4th Respondents. They were aggrieved. So on the 6th day of March, 1998 they filed an action in court challenging the appointment of the Applicant. B

The issue is whether the 1st-4th Respondents action filed on the 6th day of March, 1998 is statute barred. C

Section 2(a) of the Public Officers Protection Act state that:

*“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 -*

*(a) Limitation of time - 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 -”* E

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 discharges of such person from prison. F

Limitation Law sets out the time within which an action must be brought. It protects a defendant from the injustice of having to face a stale claim. Claims brought a long time after the events in question may be difficult or impossible to proceed with as witnesses may have died or evidence may no longer be available or the memories of witnesses available may have faded.

By the clear provisions of section 2(a) of the Public Officers Protection Act actions brought against public officers must be brought within three months after the accrual of the Plaintiffs’ cause of action. The plaintiff must seek prompt action for the breach of his rights within the stipulated time. If he fails to bring his action within three months he has a cause of action but one that cannot be heard by the H

courts anymore as the courts would have no jurisdiction over such claims after three months has elapsed. See *Olagunji & Anor. v. PHCN* (2011) 4 SC (Pt. i) p.152.

When did the 1st to 4th Respondents as plaintiffs, have a cause of action?

B They had a cause of action on the 2nd day of June, 1997 when the 5th Respondent, the Military Administrator of Kogi State appointed the Appellant the new ruler of Ebira land.

Is the Military Administrator a Public Officer?

C The Military Administrator is a Public Officer and he comes within the provisions of section 2(a) of the Public Officers Protection Act.

When was the plaintiff's action filed.

The plaintiff's action was filed on the 6th day of March, 1998.

D Is the Plaintiffs action statute barred?

The plaintiff's had a cause of action on the 2nd day of June, 1997 when the 5th Respondent appointed the Appellant the new ruler of Ebira land.

E The courts would have jurisdiction to hear the Plaintiffs' action if it was filed within three months from the 2nd of June, 1997. That is to say the plaintiffs' action ought to have been filed on or before the 2nd day of September, 1997.

Was the 1st to 4th Plaintiffs'/Respondents' action statute barred?

F The 1st to 4th Plaintiffs'/Respondents' action was statute barred since it was filed on the 6th day of March, 1998, clearly outside the three months provided by Section 2(a) of the Public Officers Protection Act.

For this and the comprehensive reasoning in the leading judgment I abide with the conclusions therein.

The appeal is allowed.

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### NGWUTA JSC

H I have read the draft of the lead judgment prepared and just delivered by my learned brother, Okoro, JSC. I entirely agree with the lucid reasoning leading to the conclusion that the appeal has merit and ought to be allowed.

I desire to chip in a few words on Section 2 (a) of the Public

Officers Protection Act which provides:

*“S.2 Where any action, prosecution or other proceedings is commenced against any person from any act done in pursuance to 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 Act, Law, duty or Authority, the following provision should have effect:*

*(a) Limitation of time: The action, prosecution or proceedings shall not lie or be instituted unless it is commenced within three months next after the act. Neglect or default complained of, in case of a continuance of damage or injury, within three months next...”*

Learned Counsel for the 1st-4th Respondents expressed the view that only the public officers (5th and 6th respondents) for whom he said the protection offered by the Act is made can raise the issue and a non-public officer cannot raise and/or rely on same.

With respect to the learned counsel, I think his argument in this respect is a fallacy borne out of a skewed construction of the title of the Act “Public Officers Protection Act” without reference to the provision therein. See the judgment delivered by this court on 6/3/2015 in SC.85/2014, Timpre Sylvia v. INEC & Ors (unreported as of now).

The expression in the Section reproduced “...against any person for any act...” demonstrates the fallacy in the contention that the protection under the Act is restricted to the public officer whose act or neglect gave rise to the suit.

In my view, a defendant sued alone or together with the public officer whose act or omission is questioned is entitled to raise and rely on the defence under the Act, irrespective of its title. However, a non-public officer raising the defence in a purported status of a public officer would lose not because he is not entitled to it but because he does not possess the status in which he raised the defence. See Rufus Alli Momoh v. Afolabi Okewale & Anor (1977) 6 SC 81 at 92.

For the above and the fuller reasons in the lead judgment I also allow the appeal. I adopt the order that parties should bear their respective costs.