

SUPREME COURT OF NIGERIA
FRIDAY 3RD JULY, 2015. SC. 309/2014
CORAM:- W. S. N. ONNOGHEN, S. GALADIMA,
N. S. NGWUTA, K. M. O. KEKERE-EKUN,
J. I. OKORO, JJSC

INDEPENDENT NATIONAL
ELECTORAL COMMISSION
AND

..... APPELLANT

1. OGBADIBO LOCAL GOVERNMENT
2. HON. EJIGA OKOH (CHAIRMAN
OGBADIBO LOCAL GOVERNMENT)
3. HON. SUNDAY ONAJI (VICE
CHAIRMAN OGBADIBO LOCAL GOVT.) RESPONDENTS
4. HON. JOE OJOBO
(REPRESENTATIVE OF OGBADIBO
IN BENUE STATE HOUSE OF ASSEMBLY)
5. HON. HASSAN ANTHONY SALE
(REPRESENTATIVE OF OKPOKWU,
ADO AND OGBADIBO FEDERAL
CONSTITUENCY IN THE HOUSE OF
REPRESENTATIVE OF FEDERAL
REPUBLIC OF NIGERIA) & 9 ORS

LOCUS STANDI - Proof - Plaintiff is said to have shown sufficient interest - Once he has right or vested interest to protect and enforce - Which has been disclosed in the writ and statement of claim (H1)

ACTIONS - Public officers - Limitation law - Effect - Subject to the exception provided in P.O.P Act s. 2(a) - The law extinguishes cause of action - If it is commenced after the stipulated period of three months (H2)

FACTS

By way of originating summons, plaintiffs/respondents instituted this action against defendant/appellant at the Federal High Court Abuja (later transferred to Federal High Court Makurdi), seeking following reliefs inter alia, a declaration that the Benue State House of

Assembly is not properly constituted as required by sections 91 and 112 of the 1999 Constitution and a declaration that having regard to the aforementioned provisions, appellant acted improperly in refusing to include the suppressed Otukpa State Constituency in Ogbadibo Local Government Area among the names of the suppressed State constituencies it forwarded to the National Assembly for approval for restoration.

Upon being served with the originating summons, appellant filed a preliminary objection, challenging the jurisdiction of the court to entertain the matter. Appellant contend that the suit was statute barred and incompetent, having not been instituted within three months after the accrual of the cause of action. The court in its judgment dismissed the preliminary objection and held that the complaint of respondents is a continuous act which removes the protection granted by section 2(a) of the Public Officers Protection Act. The court further granted all the reliefs sought by respondents. Not satisfied with the judgment, appellant appealed to the Court of Appeal Makurdi Division. The court dismissed the appeal and affirmed the trial court's judgment. Aggrieved further, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

“Issue No. 2

Whether the Appellant is not protected by Section 2(a) of the Public Officers Protection Act having regard to the circumstances of this case.

Issue No. 3

Whether the Court of Appeal was right in holding that Exhibits A, B and C are admissible in evidence and their usage cannot be faulted.

Issue No. 4

Whether the Court of Appeal was right in relying on its judgment in the case of Oju Local Government v. INEC (2007) 14 NWLR (Pt 1054) 242 having regard to the circumstances of this case.

Issue No. 5

Whether the Court of Appeal was correct to require the Appellant to proffer legal argument by affidavit evidence in the circumstances of this case.

Issue No. 6

Whether the Court of Appeal was correct when it held that there were sufficient materials for grant of declaratory reliefs in the circumstances of this case."

HELD (Unanimously allowing the appeal per GALADIMA JSC)

LOCUS STANDI - Proof

1. Locus standi is a Latin term or expression. It denotes the plaintiff's capacity to sue in a court of law to enforce a legal right. Once the plaintiff has the right or vested interest to protect and enforce legally and this has been disclosed in Writ of Summons and Statement of Claim and in an action commenced by Originating Summons (as in the instant case) in the averments in the affidavit in support of the summons, the plaintiff would be adjoined to have shown sufficient interest which entitles him to sue on the subject matter. Chances of success of an action are not relevant consideration.

I cannot but hold that the Respondents have demonstrated and shown that they have vested interests in seeing to the restoration of the alleged "suppressed constituency". Most of the Respondents are political and community leaders of the electoral district. (pp. 2408 D/2409 B)

ACTIONS - Limitation law - Effect

2. I must state here that the limitation Law does generally either of two things; it either bars the remedy without extinguishing the right or bars the remedy and at the same time extinguishes the right whichever effect it has will depend on the particular statute. However, there is a general consensus that all limitation laws have the effect of closing the doors of the court against the plaintiff.

The essence or effect of the Public Officers Protection Act herein, is to extinguish the cause of action if it is commenced after the stipulated period, which is three months, subject to the exception provided for in Section 2(a) of the Act. Thus, where there has been a continuance of injury or

damage, a fresh cause of action arises from time to time, as often as damage or injury is caused.

It is clear from the above judicial views on the basis of limitation law, once a defence of limitation of time is stated and grounded in the averments in support of the summons, (as in this case at hand) and it is established, this bars the plaintiff's remedy and extinguishes the right of his action; then the Court will wash off its hands and decline to entertain the action. This in effect means that there is absolutely no basis for prying into the conduct of the Appellant howsoever which gave rise to the action, even as being suggested here by the learned counsel for the Respondents.

In the light of the foregoing, I resolve this issue in favor of the Appellant, and set aside the findings of the two courts below on this issue, and accordingly strike out the suit.

(pp. 2412 F/2414 H)

NOTABLE POINT OF INTEREST

GALADIMA JSC

1. Delineation of constituencies - INEC to act fairly

However, where the hands of the court is tied, as in the circumstance of this case, which disallows it to go into the merit of the case, it is not unusual for this court to make such passing remarks as this, which works and pricks the conscience of the affected party. In this wise; in exercise of its numerous statutory functions, some of which are delineation and creation of State and Federal Constituencies, may the Respondents' alleged "suppression" of their State Constituency be fairly looked into along with other ones in the country, calling for Appellant's attention. I say no more and make no order as to cost. (p. 2415 C)

REPRESENTATION

No representation for the Appellant in court
John Ioryina Esq., with Alfred Tijah, for the Respondents

CASES REFERRED TO

Adesonoye v. Adewole (2007) 1 FWLR (pt. 353) 856

- Ajayi v. Adebisi (2012) 11 NWLR (pt. 1310) 137
Akinsanya v. UBA Ltd. (1986) 4 NWLR 12 (pt. 35) 273
Animashaun v. Olojo (1990) 6 NWLR (pt. 154) 111
Hilary Farms Ltd. v. M/V. “Mahatra” (2007) 14 NWLR (pt. 1054) 210
Taiwo v. Adegboro (2011) 11 NWLR (pt. 1159) 562 B
Ajayi v. Adebisi (2012) 11 NWLR (pt. 1310) 137
Atunrase v. Sunmola (1985) 1 NWLR (pt. 1) 105
Amadi v. NNPC (2000) 6 SC (pt. 1) 66
Inakoju v. Adeleke (2007) 4 NWLR (pt. 1025) 423 C
Madukolu v. Nkemdilim (1962) All NLR 587
Ngonadi v. Ezenwosu (1988) 6 SCNJ 88
Sulgrave Holdings Inc v. Federal Govt. of Nigeria (2012) 2 SCNJ 251
Ugo v. Obiekwe (1989) 2 SC (pt. 11) 41 D
Shasi v. Smith (2009) 12 SC (pt. 111) 1

STATUTES REFERRED TO

- Public Officers Protection Act Cap. P41 LFN 2004, s. 2
Constitution of the Federal Republic of Nigeria 1999, ss. 91, 112 E

LEAD JUDGMENT BY GALADIMA JSC

This appeal is against the judgment of the Court of Appeal, Makurdi Division (hereinafter referred to as “the court below”) delivered on 13/2/2014, which affirmed the judgment of the Federal High Court, and Makurdi (hereinafter referred to as “the trial court delivered on 26/6/2012. The court below upheld the decision of the trial court and dismissed the appellant’s appeal. It held, inter alia, that the trial court had jurisdiction to entertain the suit and that the respondents herein are vested with the necessary locus standi to institute the action at the trial court and that there is “continuance in the oppression” of Otukpa State Constituency. F

Aggrieved by the decision of the court below, the Appellant filed a Notice of Appeal on 1/4/2014 containing 6 grounds of appeal. I shall come to this anon, but for better understanding of this matter, I shall expose, in summary, the facts that gave rise to this appeal. G

The Respondents commenced their action at the Federal High H

Court, Abuja on 25/10/2011 against the Appellant. The suit was subsequently transferred to the Federal High Court Makurdi and registered as suit No.FHC/MKD/CS/17/2012. In the suit, the respondents herein raised 6 questions and prayed for the following 4 reliefs:

B *“1. A declaration that the Benue State House of Assembly is not properly constituted or composed as required by Sections 91 and 112 of the 1999 Constitution of the Federal Republic of Nigeria.*

C *2. A declaration that having regard to the provision of Section 91 and 112 of the 1999 Constitution of the Federal Republic of Nigeria the defendant acted improperly and unfairly in refusing or failing to include the suppressed OTUKPA State Constituency in Ogbadibo Local Government Area among the names of the suppressed state constituencies it forwarded to the National Assembly for approval for restoration.*

D *3. An order directing the respondent to comply with the provisions of Section 91 and 112 of the Constitution of the Federal Republic of Nigeria 1999 by Restoring the suppressed OTUKPA state constituency in Ogbadibo Local Government Area, Benue State to bring the composition of the Benue State House of Assembly in line*
E *with the provisions of the Constitution.*

4. An order of the Court directing or compelling the dependant to restore the suppressed OTUKPA state constituency in Ogbadibo Local Government Area.”

F The Originating Summons was supported by a 7-paragraphs affidavit and a number of documents annexed as exhibits A - E. The Appellant, in reaction to the Respondents' originating processes, filed a Notice of Preliminary objection wherein it contended that the jurisdiction of the trial court to entertain the suit was statute barred, having not been instituted within three months after the accrual of the cause of action. It is contended therefore that the suit was incompetent.
G

H In his considered judgment of 26/6/2012, the learned trial judge dismissed the Appellant's Preliminary Objection and held that the complaints of the Respondents is a continuous act which removes the protection granted by Section 2(a) of the Public Officers Protection Act. The court further granted all the reliefs sought by the Respondents.

Aggrieved by the judgment of the learned trial judge, the Ap-

pellant filed its Notice of appeal on 19/7/2012, which was amended and filed on 14/11/2012. It contained 6 grounds of appeal.

After hearing argument from both parties, the Court of Appeal delivered its judgment on 13/2/2014, wherein it affirmed the decision of the trial court and dismissed the Appellants' appeal.

Dissatisfied, the appellant has further appealed to this court vide its 6 grounds of appeal out of which the following 6 issues have been raised for determination:

"Issue No. 1

Whether the Court of Appeal was right in holding that the respondents satisfied the requirements of the law on locus standi and therefore clothed with the necessary locus standi to institute the action (Ground 1)

Issue No. 2

Whether the Appellant is not protected by Section 2(a) of the Public Officers Protection Act having regard to the circumstances of this case. (Ground 2)

Issue No. 3

Whether the Court of Appeal was right in holding that Exhibits A, B and C are admissible in evidence and their usage cannot be faulted. (Ground 3)

Issue No. 4

Whether the Court of Appeal was right in relying on its judgment in the case of Oju Local Government v. INEC (2007) 14 NWLR (Pt 1054) 242 having regard to the circumstances of this case (Ground 4).

Issue No. 5

Whether the Court of Appeal was correct to require the Appellant to proffer legal argument by affidavit evidence in the circumstances of this case. (Ground 5)

Issue No. 6

Whether the Court of Appeal was correct when it held that there were sufficient materials for grant of declaratory reliefs in the circumstances of this case. (Ground 6)"

In their brief of argument, the Respondents adopt the issues raised by the Appellant and argue same seriatim.

On the 21/4/2015, when this appeal was heard, neither the Appellant nor its counsel was in Court to argue the appeal. The Court

registrar confirmed the record of the Court to the effect that the learned counsel for the Appellant I.K. Bawa Esq. was present in Court on 17/12/2014 when the appeal was adjourned to 21/4/2015 for hearing. In the circumstance, in view of the provision of Order 6 Rule 6 of the Rules of this court, 2009; the appellant's brief of argument filed on B 11/8/2014 was deemed as having been argued, and same shall be considered in this judgment.

On the other hand, learned counsel for the Respondent, John Ioryina Esq. was in court. He identified the brief of the Respondents C dated and filed on 20/10/2014. Without further amplifications on the six issues distilled for determination of the appeal, he adopted the brief and urged this court to dismiss the appeal and uphold the concurrent decisions of the two courts below.

On issue No. 1, the Appellant both at the trial court and court D below had contended that the Respondents did not satisfy the requirements of the law on the issue of locus standi and argue therefore that they have no necessary locus standi to have commenced the action that culminated in this appeal. He cited the 1st Respondent as a Local Government Council which has no right to vote at an E election, cannot claim to have a right to do so. It is argued that the creation of constituencies is not made for the benefits of the Local Government Council but for the population that meet constitutional requirements. That as for the 2nd and 3rd Respondents, chairman and vice-chairman respectively of the 1st Respondent, they failed to F state their respective interest or locus in the 7 paragraphs affidavit in support of the Originating Summons deposed to by one Michael Omikpa on behalf of the Respondents. Learned Counsel has further submitted that mere description of the Respondents in relation to G offices they occupied at one time or the other without more, will not and cannot donate locus standi to them. Reliance was placed on the case of ADESANJOYE v. ADEWOLE (2007) 1 FWLR (Pt.353) 856 at 884 and AJAYI v. ADEBIYI (2012) 11 NWLR (Pt 1310) 137 at 175 - 176, on the guiding principle in determining whether a person has H locus standi or not.

In view of the foregoing decisions of this court on this issue, and the fact that the affidavit in support of the originating process did not in any way disclose sufficient interest in favour of the Respondents, this court is urged to resolve this issue in favour of the Appel-

lant.

Responding to issue No.1, learned counsel for the Respondents submitted that the Appellant neglected or failed to counter the averments in the Respondents' affidavit in support of the Originating Summons at the trial court but only opted to raise a preliminary objection, as they have strongly held unto even in this court. That the findings of the two courts below are concurrent and since the Respondents have not shown the findings to be either perverse or that there is a substantial error in the substantive or procedural law which if not corrected will lead to a miscarriage of justice, this court should not interfere. Reliance was placed in the cases of *AKINSANYA v. UBA LTD* (1986) 4 NWLR 12 (Pt 35) 273, *ANIMASHAUN v. OLOJO* (1990) 6 NWLR (Pt 154) 111, *HILARY FARMS LTD v. M/V. "MAHATRA"* (2007) 14 NWLR (Pt 1054) 210 at 233.

It is further submitted that the argument of the Appellant on this point is totally misconceived and should be discountenanced on the following grounds: Firstly, because the right to vote is not co-extent to the right to have a suppressed state constituency reinstated as applicable to 1st respondent in this appeal. It is the submission of the learned counsel that the Respondents did show their interest in the action by strongly presenting the following evidence in their Affidavit in support of their Originating Summons. These are paragraphs:

"(c) That it was in 1996 that Otukpa State Constituency was excised and suppressed. That Otukpa State Constituency exists intact as it was then in the present Ogbadibo Local Government Area of Benue State.

(d) That the 3rd plaintiff is the vice-Chairman of Ogbadibo Local Government Area Council whiles the 4th plaintiff is the member representing Ogbadibo Local Government Area in the Benue State House of Assembly and 5th plaintiff the Hon. Member representing Okpokwu, Ado and Ogbadibo Federal Constituency at the Nigeria House of Representative.

(e) While the 7th plaintiff who is the erstwhile national chairman of the People Democratic Party of Nigeria (PDP), was the 1st representative of the suppressed Otukpa Constituency in the Benue State House of Assembly in 1979 and was subsequently succeeded in that position by the 8th and 9th plaintiffs. The 6th, 10th, 11th and 12th plaintiffs are the community leaders of the suppressed Otukpa

State Constituency.

(f) *That the defendant is the Statutory Body created by the 1999 Constitution of the Federal Republic of Nigeria with powers to divide every state in the Federation into such number of State Constituencies as is equal to three or four time the number of Federal Constituencies within a state.*

(g) *That the defendant is also vested with powers to delineate state constituencies, organize, undertake, conduct and supervise all elections to the House of Assembly of each State of the Federation.”*

It is the submission of the learned counsel for the Respondents that it was from the established principle of law on the vexed question of locus standi in the case of AJAYI v. ADEBIYI (Supra) and the averments of the Respondents in their affidavit in support of the Originating Summons, the court below concluded that the Respondents have the legal capacity to institute the action. In the light of the foregoing, this court is being urged to dismiss the preliminary objection.

Locus standi is a Latin term or expression. It denotes the plaintiff’s capacity to sue in a court of law to enforce a legal right. Once the plaintiff has the right or vested interest to protect and enforce legally and this has been disclosed in Writ of Summons and Statement of Claim and in an action commenced by Originating Summons (as in the instant case) in the averments in the affidavit in support of the summons, the plaintiff would be adjoined to have shown sufficient interest which entitles him to sue on the subject matter. Chances of success of an action are not relevant consideration. See Taiwo v. Adegboro (2011) 11 NWLR (Pt.1159) 562.

For a party to establish locus standi, he must show that the matter is justiciable - capable of being disposed of judiciously in a court of law and the existence of dispute between parties. See Ajayi v. Adebisi (2012) 11 NWLR (Pt. 1310) 137.

The Appellant had contended both at the trial and court below that the Respondents did not satisfy the requirements of the law on the locus standi and therefore not vested with necessary locus standi to have commenced this action. In other words, that the Respondents failed to establish by their affidavit evidence that their locus standi to initiate the suit at the trial court. The Respondents have referred to the totality of their averment particularly paragraph 3(c) -

(e) and (g), and urged vehemently that they have disclosed in those paragraphs that they have a right or vested interest to protect and enforce legally.

I have endeavored to reproduce those paragraphs earlier. These are also culled verbatim on page 524 of the record of appeal. The Appellant has not contradicted, challenged or controverted the facts in those paragraphs. ***I cannot but hold that the Respondents have demonstrated and shown that they have vested interests in seeing to the restoration of the alleged “suppressed constituency”. Most of the Respondents are political and community leaders of the electoral district.*** Locus standi is a concept that has been misunderstood and misapplied by our courts as an impediment, which sometimes works injustice to deny access to justice to the citizens. The Appellant’s stand here is one such example.

Given all the foregoing circumstances and closely guided by the guidelines in a plethora of cases of this court particularly in *AJAYI v. ADEBIYI* (supra); *ADESANYA v. THE PRESIDENT* (1981) NCCC vol.12, 146 at 160; *TAIWO v. ADEGBORO*; *ADESANOYE v. ADEWOLE* (2006) 14 NWLR (Pt.1000) 242, I am of the firm view that the Respondents have established locus standi to sue. They have discharged the onus on them to establish same.

Issue No. 2, as raised by the appellant herein, challenges the competence of Respondents’ suit, which the Appellant has contended that by virtue of Section 2(a) of the Public Officer’s Protection Act Cap P41, Laws of the Federation of Nigeria 2004, the Respondents suit is statute-barred.

It is the contention of the learned counsel for the Appellant that the court hearing found that the difference between the time the Otukpa State constituency was excised and suppressed and the time of coming into life of the action was about 15 years (period in excess of the three months) the Act allocated for commencement for any act against the public officer, the lower court for this fact alone should not have proceeded to hold that there is continuance in the suppression of the said Otukpa state constituency.

That there was no paragraph in the Respondents affidavit in support of originating summons which disclosed any fact as to continuance in the suppression of Otukpa state constituency. It is submitted the court below arrived at a perverse decision on this issue.

In other words, it is the contention of the appellant that the Court below having found that the Respondents commenced their joint action against the Appellant months in excess of the 3 months the Act allowed for commencement of proceedings for any act, neglect or default against any wrongdoing, the court ought to have dismissed the suit of the Respondents. Relying on the case of *ATTORNEY-GENERAL RIVERS STATE v. ATTORNEY-GENERAL BAYELSA STATE* (2013) 3 NWLR (Pt.1340) 123 at 148, and *AREMO II v. ADEKANYE* (2004) All FWLR (Pt.224) 2113 at 2132.

Learned counsel has submitted that assuming without his conceding that there is any continuance of damage or injury occasioned by the Appellant against the Respondents, same must be pleaded or averred in the affidavit in support of the originating summons and the court must take oral evidence before determining the issue. It is submitted that the Court below simply imagined continuance of damage in favour of the Respondents against the clear evidence before the court even as deposed to by the Respondents themselves that the cause of action arose in 1999 in paragraph 3(c) of the affidavit in support of the summons; and that there was no averment in any paragraph of the affidavit stating any damage at all, let alone such being continuous. In the light of the foregoing, the learned counsel has urged this court to hold that the court below erred in law when it imported continuance of damage to defeat the essence of the Public Officer's Protection Act (*supra*).

It is the submission of the learned counsel for the Respondents, on this issue, that the court below correctly held that the time for the institution of the action by the Respondents had not elapsed, or expired as this could only expire on the cessation of the alleged wrong, that is, the suppression of Otukpa State Constituency. He submitted that the Respondents' suit at the trial court and court below was an Originating Summons for the interpretation of Sections 9 and 112 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). That the statutes of limitations do not apply to litigation on interpretation of constitutional provisions. Reliance was placed on cases *AREMO v. ADEKANYE* (*supra*) and *ATTORNEY-GENERAL PLATEAU STATE v. ATTORNEY-GENERAL OF THE FEDERATION* (2006) 3 NWLR (Pt.467) 346.

It is further submitted that the Appellant acted illegally and

unconstitutionally and these acts as clearly confirmed by the two courts below deprived the appellant of the protection of Section 2(a) of the Public Officers Protection Act (supra).

This court is urged not to disturb the concurrent findings of the two lower Courts on this issue.

In issue No.1, I have expressed the view that the Respondents have shown they were fully interested in the subject matter before the trial court, but coming to the second issue, the question is whether the Respondents have not failed to bring their action within the time stipulated by law. They are confronted by Section 2(a) of the Public Officers Protection Act Cap. P.14 Laws of the Federation 2014. It states:

“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 act or law or of any public duty or authority, or in respect of any alleged right or default in the execution of any such act, law, duty or activity, the following provision shall have effect:

Limitation of time:

(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 ceasing thereof”.

It is the contention of the Appellant that the Respondents' suit is statute-barred by virtue of Section 2(a) of the foregoing Law.

The Court below in its judgment at page 529 - 530 of the records, in trying to reconcile the provision of this statute of limitation with the averment of the Respondents in paragraph 3(c) of the affidavit in support of the originating summons, stated the law as follows:

“It can be discerned from the provision that the time frame for institution of any action regarding any act against a public officer is three months. As can be gathered from paragraph 3(c) of the affidavit, contained on page 9 of record, “it was in 1996 that Otukpa State Constituency was excised and suppressed.” As evidenced from the terminus (sic) of the affidavit, the respondents' suit was commenced on 25/10/2011.. in keeping with the orthodox judicial method for ascertaining statute-bar, I have married the time the constituency was

suppressed, *id est*, 1996, with the time of coming into life of the action. By simple arithmetical and lunar computation, the difference between the two dates is about 15 years. Indisputably, that period is months in excess of the three months the Act allocated for commencement of proceedings for any act, neglect or default against any wrong doer”.

It is the contention of the learned counsel for the Appellants that the court should have stopped after the foregoing findings. Yes indeed, I cannot fathom the reason why the court below made sudden u-turn and stated that there is a continuance in the suppression of Otukpa state constituency.

There is no paragraph in the Respondent’s affidavit in support of the summons which disclosed any fact as to continuance in the suppression of the constituency. The court having found that constituency was excised and suppressed in the year 1996 and without any further affidavit evidence on record, disclosing continuous damage, failed to be guided by a number of judicial authorities of this court on statute of limitation thereby arriving at a perverse decision on this issue. Paragraph 3(c) of the Respondents’ affidavit in support of the originating summons as earlier reproduced above disclosed in plain terms that “it was in 1996 that Otukpa State Constituency was excised and suppressed”, but the Respondents commenced their action on 25th October, 2011 that is 15 years in excess of three months the Act allows for commencement of proceedings.

I must state here that the limitation Law does generally either of two things; it either bars the remedy without extinguishing the right or bars the remedy and at the same time extinguishes the right whichever effect it has will depend on the particular statute. However, there is a general consensus that all limitation laws have the effect of closing the doors of the court against the plaintiff.

The essence or effect of the Public Officers Protection Act herein, is to extinguish the cause of action if it is commenced after the stipulated period, which is three months, subject to the exception provided for in Section 2(a) of the Act. Thus, where there has been a continuance of injury or damage, a fresh cause of action arises from time to time, as often as damage or injury is caused. See AREMO v. ADEKANYE

(supra), BATTISHEE v. REED (1856) 18CB.69C at 714.

It is submitted by the Respondents' counsel that the lower court, after examining carefully the exception in the limitation law, correctly stated that there is a continuance of change that is the unchallenged affidavit that there is the continuance in the suppression of Otukpa state constituency and that at the time of commencement of the action by the respondents, it had not elapsed. At the risk of repetition, this position taken by the Respondents cannot be correct in view of the obvious fact averred in paragraph 3(c) of the Respondents' affidavit in support of the originating summons (supra). The issue is now trite as it has been demonstrated in a number of decisions and dicta of this court and other jurisdictions. I find them quite illuminating and worthy of ponder. In ATUNRASE v. SUNMOLA (1985) 1 NWLR (Pt.1) 105 at 120, this court giving reasons why persons with good causes of action should pursue them with reasonable diligence, this court stated thus;

"In all actions, suits and other proceedings at law and in equity, the diligent and careful actor or suitor is favoured to the prejudice to him who is careless and slothful, who sleeps over his rights. The law may therefore deny relief to a party who by his conduct has acquiesced or assented to the infraction of his rights, or has led the opposite party responsible for or guilty of such infringement to believe that he has lived (sic) or abandon his right."

It was Abbott C.J in BATTLE v. FAULKNER 106ER, 668 at 670 who had this to say:

"The statute of limitation was intended for the relief and quiet of the defendants and to prevent persons from being harassed at a distant period of time after the committing of the injury complained of."

In the case of BOARD OF TRADE v. LAYSER IRVINE & CO. LTD (1927) A.C. 610 at 628, Lord Atkinson said:

"The whole purpose of the limitation Act is to apply to person who have good causes of action which they could if so disposed, enforced and to deprive them of power of enforcing them after they have lain by for a number of years respectively and omitted to enforce them. They are thus deprived of the remedy which they have omitted to use."

This court, in the case of AJAYI v. ADEBIYI (supra) on the

essence of statute of limitation stated as follows:-

*“The essence of a limitation law is that the legal right to enforce an action is not a perpetual right but a right generally limited by statute where a statute of limitation prescribes a period within which an action should be brought, legal proceedings cannot be properly
B or validly instituted after the expiration of the prescribed period. Therefore a cause of action is statute-barred if legal proceedings cannot be commenced in respect of same because the period laid down by the limitation law had lapsed. An action which is not brought within the
C prescribed period, offends the provisions of the law and not give rise to a cause of action. The yardsticks to determine whether an action is statute-barred are:*

(a) The date when the cause of action accrued.

*(b) The date of commencement of the suit as indicated in the
D writ of summons.*

(c) Period of time prescribed to bringing an action to be ascertained from the statute in question. Time begins to run for the purposes of the limitation law from the date the cause of action accrues.”

Also, see the Apex Court decision in *Sulgrave Holdings Inc. v. FGN (2012) 17 NWLR (Part 1329) 309* and *MERCANTILE BANK (NIGERIA) LTD. v. FCTECO LTD (1998) 3 NWLR (Pt.540) 143 at 156.*

It was Aniagolu JSC (of blessed memory) who in *LASISI v. A.G. Oyo State (1982) 4 SC at 56* who, when referring to the limitation provision in the Public Lands Acquisition Law, put the issue more succinctly thus:
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*“The two Law Lords could not, by their pronouncements quoted in the minority judgment, be understood in all fairness to them to be advocating that the courts should ride rough shod of statutory periods of limitations by reason only of otherwise arguable facts having been placed on joinder of issues. What is there to try when the statute has provided that the period allowed for bringing an action in which those facts which have been in issue has expired?
H Absolutely nothing.”*

It is clear from the above judicial views on the basis of limitation law, once a defence of limitation of time is stated and grounded in the averments in support of the summons, (as in this case at hand) and it is established, this bars the

plaintiff's remedy and extinguishes the right of his action; then the Court will wash off its hands and decline to entertain the action. This in effect means that there is absolutely no basis for prying into the conduct of the Appellant howsoever which gave rise to the action, even as being suggested here by the learned counsel for the Respondents. See AMADI v. NNPC (2000) 6 SC (Pt.1) 66; INAKOJU v. ADELEKE (2007) 4 NWLR (PT.1025) 423. B

In the light of the foregoing, I resolve this issue in favor of the Appellant, and set aside the findings of the two courts below on this issue, and accordingly strike out the suit. C

However, where the hands of the court is tied, as in the circumstance of this case, which disallows it to go into the merit of the case, it is not unusual for this court to make such passing remarks as this, which works and pricks the conscience of the affected party. In this wise; in exercise of its numerous statutory functions, some of which are delineation and creation of State and Federal Constituencies, may the Respondents' alleged "suppression" of their State Constituency be fairly looked into along with other ones in the country, calling for Appellant's attention. I say no more and make no order as to cost. E

ONNOGHEN JSC

I have had the benefit of reading in draft the lead judgment of my learned brother, GALADIMA, JSC just delivered. F

I agree with his reasoning and conclusion that the appeal has merit and should be allowed.

The lower court, at pages 529 - 530 of the record found as a fact as follows:- G

"It can be discerned from the provision that the time frame for institution of any action regarding any act against a public officer is three months. As can be gleaned from paragraph 3C of the affidavit, contained at page 9 of the record, it was in 1996 that 'Otukpa State Constituency was excised and suppressed'. As evidenced from the terminus of the affidavit, the respondents' suit was commenced on 25/10/2011. In keeping with the orthodox judicial method for ascertaining statute-bar, I have married the time the constituency was sup- H

pressed id est, 1996, with the time of coming into life of the action. By simple arithmetical and lunar computation, the difference between the two dates is about 15 years. Indisputably, that period is months in excess of the three months the Act allotted for commencement of proceedings for any act, neglect or default against any wrong doer."

B The above finding cannot be faulted on the facts and the applicable law i.e. Section 2(a) of the Public Officers Protection Act, Cap P41 Laws of the Federation of Nigeria, 2004. Having come to the conclusion supra, the lower court ought to have terminated the proceedings at that stage but it did not. The court went further to
C hold at pages 530 - 531 of the record, erroneously in my view, that there was continuance of the wrong of suppression of Otukpa State Constituency of Benue State thereby keeping the cause of action alive. There is, however, no affidavit evidence in support of the court's
D finding that there was continuance of the wrong done to the respondents.

It is settled law that a limitation law, such as the provisions of Section 2(a) of the Public Officers Protection Act, takes away the legal right of a litigant to enforce an action leaving him with an empty
E shell of a cause of action where the action is not instituted within the time frame enacted in the statute of limitation. Where the action is instituted outside the time so allotted by the statute, we say that the action so instituted is statute-barred and cannot be maintained since
F it robs the court of the jurisdiction to entertain and determine same.

It is for the above and the more detailed reasons assigned in the lead judgment of my learned brother, GALADIMA, JSC that I too find merit in the appeal and allow same.

Since the action was statute-barred at the time of its institution,
G the proper order is that of striking same out. Consequently, suit No. FHC/MKD/CS/17/2012 is hereby struck out for being incompetent.

I abide by the other consequential orders made in the said lead judgment including the order as to costs.

Appeal allowed.

H

NGWUTA JSC

I had the honour of reading before now the lead judgment prepared and just delivered by my learned brother, Galadima, JSC.

I agree with and adopt the reasons for setting aside the judgment of the Court below which had affirmed the ruling of the trial Court on the preliminary objection raised by the appellant, then defendant, as well as the order striking out the suit in the trial Court.

The two issues raised and canvassed in the preliminary objection:

(1) that the suit is time-barred and,

(2) that the respondents as plaintiffs do not have the requisite locus standi to bring the suit, call in question the jurisdiction of the trial Court to hear and determine the suit.

Jurisdiction is the bedrock of any judicial proceeding and its absence or defect renders any proceeding a nullity notwithstanding that it was well conducted. See *Madukolu v. Nkemdilim* (1962) All NLR 587; *Aaron Ngonadi v. Clement Ezenwosu* (1988) 6 SCNJ 88 at 95-96.

In my humble view, each of the questions of statute-bar and locus standi comprised in appellant's issue one are threshold issues which ought to be addressed before any further step is taken in the appeal. Of the two issues, the one of statute-bar ought to be taken first. This, in my view, is so because if the issue of locus standi is taken first a subsequent determination that the matter is statute-barred would render the prior proceeding relating to locus standi a nullity. See *Madukolu v. Nkemdilim* (supra). Whether or not the question of locus standi will be resolved will depend on whether or not the suit is statute-barred.

Was the suit commenced on 25th October, 2011 caught by the relevant statute of limitation, i.e. the Public Officers Protection Act, Section 2(a) thereof? It provides:

"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 act or law or of any public duty or authority, or in respect of any alleged right as default in the execution of any such act, law, duty of the following provision shall have effect:

Limitation of time (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 ceasing thereof."

The relevant paragraph of the affidavit in support of the originating process is paragraph 3(c) hereunder reproduced:

“Paragraph 3(c):

That it was in 1996 that Otukpa State Constituency was excised and suppressed. The Otukpa State Constituency exists in fact as it was then in the present Ogbadibo Local Government Area of Benue State.”

From the above averment, the act complained of occurred in 1996 when Otukpa State Constituency “was excised and suppressed”. In other words, the cause of action occurred in 1996. Whether or not the suit commenced on 25/10/2011 was filed within the period stipulated in the limitation provision or is statute-barred will be ascertained by the date of the accrual of the cause of action (1996) and date the suit was filed (25/10/2011). See *Sulgrave Holdings Inc & Ors v. Federal Government of Nigeria & Ors* (2012) 2 SCNJ 251. As the Court below rightly stated “the difference between the two dates is about 15 years. The Court below found that the period of filing the suit is months by excess of the three months stipulated in the Act. The Court was being charitable, the excess is in years.

Since the suit was filed clearly outside the period of three months from the date of accrual of cause of action, the suit is statute-barred as no legal proceedings can be validly or properly instituted after that period. The Court is divested of its jurisdiction in the matter as it is no longer a live issue. It is dead in substance and in form. Chief Dr. Felix Amadi & Anor v. Independent National Electoral Commission (INEC) & Ors (2012) 2 SCNJ 163.

My noble Lords, I need to point out that if the difference in time between the commencement of the suit and the time it should be commenced in compliance with the limitation statute had been in days and/or months it would have been difficult for the respondents to satisfy the Court that the suit was filed within the time limited by statute.

The limitation period is three months and each year including 1996 has twelve months. Paragraph 3(c) of the supporting affidavit did not disclose, as it should have disclosed, what month of the year 1996 their cause of action arose. The Court of Appeal, rightly in my humble view, concluded that:

“Indisputably that period is months in excess of the three months

the Act allocated for commencement of proceedings from any act, neglect or default against any wrong doer.”

I endorse this finding and conclusion and the matter should have rested here. However, His Lordship who authored the lead judgment found it necessary to rely on the proviso to the limitation section of the Act to the effect that “*or in case of a continuance of damage or injury within three months next after the ceasing thereof contained in the provision of the Act.*”

This is where I part ways with their Lordships of the Court below. “A continuance of injury” is not a question of law. It is a fact to be pleaded where pleadings are appropriate or to be averred in affidavit as in this case initiated by originating summons. Neither paragraph 3(c) nor any other paragraph of the supporting affidavit averred that the injury suffered by the respondents, if any, is continuing.

The issue of a continuance of injury is a fresh issue which the respondents as plaintiffs cannot raise without leave of Court first sought and granted. When a Court raises an issue suo motu as was done in this case, the issue so raised cannot form the basis of any decision if Counsel to the parties are not given the opportunity to address the Court on it. See *Ugo v. Obiekwe* (1989) 2 SC (Pt. 11) 41; *Shasi & Anor v. Smith & 2 Ors* (2009) 12 SC (Pt.111) 1.

While this Court does not, in principle and practice, make a habit of disturbing a concurrent finding of fact of the two Courts below, it will not hesitate to interfere where it has reason to do so in the interest of justice. For the Court to raise the matter of continuance of injury suo motu and base its ruling on the preliminary objection on same without inviting learned Counsel for the parties and in particular, learned Counsel for the appellant, to address the issue is a grave error amounting to a denial of the right to fair hearing of the appellant.

The result is a miscarriage of justice and this Court has a right and indeed a duty to intervene. See *Njoku & Ors v. Eme & Ors* (1973) 5 SC 293 at 306; *Kale v. Coker* 12 SC 252 at 271.

Based on the above and the fuller reasons elaborately stated in the lead judgment, I also resolve issue one in favour of the appellant and consequently, I set aside the decision of the Court below which affirmed the decision of the trial Court. The resolution of issue one has rendered any other issue in the appeal academic.

I order that the suit in trial Court be, and is hereby struck out, as statute-barred. Parties are to bear their respective costs.

KEKERE-EKUN JSC

B By an Originating Summons filed on 25/10/2011 before the Federal High Court, Abuja, the respondents as plaintiffs sought the determination of the following questions:

C 1. Whether upon the true and proper construction of Section 91 and 112 of the Constitution Federal Republic of Nigeria 1999 there is power in the Defendant to suppress an existing State Constituency within a Federal Constituency.

2. If the answer to question one is in the sense that they are so entitled then whether the 1st-14th Plaintiffs are not:

D (i) Entitled to their suppressed Otukpa State Constituency and representation in the Benue State of Assembly (sic).

E 3. Whether upon the true and proper construction of Section 91 of the Constitution of Federal Republic of Nigeria 1999 there is discretion in the Defendant to suppress and/or refuse the restoration of a suppressed existing State Constituency within a Federal Constituency.

F 4. If the answer to question two is in the sense that there is no discretion in the Defendant to suppress and/or refuse the restoration of a suppressed existing State Constituency within a Federal Constituency. If they are so entitled then whether the 1st -14th plaintiffs are not:

G (ii) Entitled to an order of the Honorable court directing and/or commanding the Defendant to so restore the suppressed Otukpa State Constituency in the Okpokwu, Ado and Ogbadibo Federal Constituency.

H 5. Whether upon the true and proper construction of Section 91 of the Constitution Federal Republic of Nigeria 1999 there is power and/or discretion in the Defendant to suppress and/or refuse the restoration of a suppressed existing Constituency within a Federal Constituency and thereby deprive members of that constituency their constitutional right of representation in their State House of Assembly.

6. If the answer to question three is in the sense that the Con-

stituency members of the suppressed Otukpa State Constituency are entitled to their constitutional right of representation at the Benue State House of Assembly. If they are so entitled then whether the 1st -14th plaintiffs are not:

(iii) Entitled to an order of the Honourable court directing and/or commanding the Defendant to so restore the suppressed Otukpa State Constituency in the Okpokwu, Ado and Ogbadibo Federal Constituency. As to enable the enjoyment of their constitutional rights.

In the event that the questions were answered in their favour, they sought the following reliefs:

1. A declaration that the Benue State House of Assembly is not properly constituted or composed as required by Sections 91 and 112 of the 1999 Constitution of the Federal Republic of Nigeria.

2. A declaration that having regard to the provision of Sections 91 and 112 of the 1999 Constitution of the Federal Republic of Nigeria the defendant acted improperly and unfairly in refusing or failing to include the suppressed Otukpa State Constituency in Ogbadibo Local Government Area among the names of the suppressed state constituencies it forwarded to the National Assembly for approval for restoration.

3. An order directing the defendant to comply with the provisions of Sections 91 and 112 of the Constitution of the Federal Republic of Nigeria 1999 by restoring the suppressed Otukpa State Constituency in Ogbadibo Local Government Area, Benue State to bring the composition of the Benue State House of Assembly in line with the provisions of the Constitution.

4. Order of the court directing or compelling the defendant to restore the suppressed Otukpa State Constituency in Ogbadibo Local Government Area.

The originating summons was supported by a 7-paragraph affidavit with documents annexed thereto. The appellant did not file a counter affidavit but filed a notice of preliminary objection contending that the suit was statute-barred not having been instituted within three months after the accrual of the cause of action as required by Section 2(a) of the Public Officers' Protection Act. The suit was subsequently transferred to the Makurdi Division of the Federal High Court. In a considered judgment delivered on 26/6/2012, the court dismissed the preliminary objection and held that the respon-

dents' complaint is a continuing act, which removes it from the protection afforded by Section 2(a) of the Act. It granted all the reliefs as sought in the originating summons.

The appellant was unhappy with the decision and appealed to the Court of Appeal, Makurdi Division (the lower court). The appeal was dismissed on 13/2/2014. The appellant is still aggrieved, hence the present appeal.

The appellant distilled six issues for determination from six grounds of appeal. The issues are:

1. Whether the Court of Appeal was right in holding that the respondents satisfied the requirements of the law on locus standi and therefore clothed with the necessary locus standi to institute the action.

2. Whether the appellant is not protected by Section 2(a) of the Public Officers Protection Act having regard to the circumstances of this case.

3. Whether the Court of Appeal was right in holding that Exhibits A, B and C are admissible in evidence and their usage cannot be faulted.

4. Whether the Court of Appeal was right in relying on its judgment in the case of Oju Local Government Vs INEC (2007) 14 NWLR (Pt. 1054) 242 having regard to the circumstances of this case.

5. Whether the Court of Appeal was correct to require the appellant to proffer legal argument by affidavit evidence in the circumstances of this case.

6. Whether the Court of Appeal was correct when it held that there were sufficient materials for grant of declaratory reliefs in the circumstances of this case.

Issues 1 and 2 in my considered opinion, which raise the issue of locus standi and limitation law go to the root of the entire appeal. The resolution of either issue in the appellant's favour would obviate the need to consider any of the other issues.

Issue 1

Locus standi has been defined severally as the legal capacity to institute proceedings in a court of law; a place of standing or standing to sue. See: *Adesanya Vs President of the Federal Republic of Nigeria* (1981) 5 SC (Reprint) 69; *Thomas Vs Olufosoye* (1986) 1 NWLR (Pt.18) 669; *A.G. Kaduna State Vs Hassan* (1985) 2 NWLR (PT.8)

483; Odeneye Vs Efunuga (1990) NWLR (Pt.164) 618. Explaining the importance of locus standi in Adesanya's case (supra), M. Bello, JSC (as he then was), (of blessed memory) stated thus at page 95 (supra):

"It is a common ground in all the jurisdictions of the common law countries that the claimant must have some justiciable interest which may be affected by the action or that he will suffer injury or damage as a result of the action. ... In the final analysis, whether a claimant has sufficient justiciable interest or sufferance of injury or damage depends on the facts and circumstances of each case."

In A.G. Kaduna State Vs Hassan (supra) at 524 G Oputa, JSC stated:

"The legal concept of standing or locus standi is predicated on the assumption that no court is obliged to provide a remedy for a claim in which the applicant has a remote, hypothetical or no interest."

The legal consequence of lack of locus standi is that the court would lack the jurisdiction to entertain the plaintiff's claims and the suit would be liable to be struck out. See: Madukolu Vs Nkemdilim (1962) 2 SCNLR 341.

It is the appellant's contention that the averments in the supporting affidavit do not show the interest the respondents are seeking to protect. I think paragraphs 3(c), (d) and (e) of the supporting affidavit at page 9 of the record, which are unchallenged, are instructive. Therein it was averred as follows:

"3(c). That it was in 1996 that Otukpa State Constituency was excised and suppressed. That Otukpa State Constituency exists intact as it was then in the present Ogbadibo Local Government Area of Benue State."

d. That the 3rd plaintiff is the Vice-Chairman of Ogbadibo Local Government Area Council while the 4th plaintiff is the member representing Ogbadibo Local Government Area in the Benue State House of Assembly and 5th plaintiff the Hon. Member representing Okpokwu, Ado and Ogbadibo Federal Constituency at the Nigeria House of Representatives."

e. While the 7th plaintiff who is the erstwhile national chairman of the Peoples Democratic Party of Nigeria (PDP) was the 1st representative of the suppressed Otukpa Constituency in the Benue

State House of Assembly in 1979 and was subsequently succeeded in that position by the 8th and 9th plaintiffs. The 6th, 10th, 11th and 12th plaintiffs are the community leaders of the suppressed Otukpa State Constituency.”

B At page 525 of the record, the lower court considered these averments and held thus:

C *“These incontrovertible facts amply demonstrate the inextricable nexus between the respondents, as plaintiffs, whose locus standi is sought to be impugned and the suppressed Otukpa State Constituency. They significantly indicate the deeply-vested interests which the respondents have in the restoration of the suppressed constituency. Most of the respondents are political and community leaders of the constituency - an electoral district. Hence, it can be inferred from the averments that they have sufficient special interest in the existence or*
D *otherwise of the constituency.*

Besides, the unrefuted material depositions in paragraphs 3(k) and (l) and 5(a), (b), (n), (p), (q) and (r), clearly show that the suppression of Otukpa State Constituency has adversely affected the respondents, residents of the Constituency. This is because they have
E *been short changed in their representation in the Benue State House of Assembly owing to its deliberate omission by the appellant. Democracy, as practiced in Nigeria is all about representation, which, in turn, is tied to electoral districts.”*

F The above findings of fact are fully supported by the affidavit evidence referred to, which stands unchallenged. The appellant has failed to advance any cogent reason to warrant interference by this court. The respondents’ averments illustrate clearly their complaint that their civil rights and obligations and those of the communities
G they represent have been infringed by the appellant.

I therefore resolve this issue against the appellant.

Issue 2

H In respect of this issue, the two lower courts were of the view that the refusal of the appellant to restore the suppressed constituency up till the time of instituting the action amounts to a continuing injury and therefore comes within the exception to the limitation period stipulated in Section 2(a) of the Public Officers Protection Act. The appellant on the other hand maintains its position that, as found by the lower court, the undisputed fact is that the Otukpa State Con-

stituency was excised and suppressed in 1996. It is further contended that in the absence of any specific averments disclosing continuous damage, the decision of the lower court that the action was not caught by the Act is perverse.

Section 2(a) of the Public Officers Protection Act Cap. P41 Laws of the Federation of Nigeria 2004 provides: B

“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 such Act, Law, duty or authority, the following provisions shall have effect - C

(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 the case of a continuance of damage or injury, within three months next after the ceasing thereof.”

The effect of a limitation law such as the Public Officers’ Protection Act (supra), as has been stated in numerous decisions of this court is that it deprives the court of jurisdiction to entertain a matter instituted outside the limitation period and it also forecloses a litigant’s right to enforce a cause of action, which he might otherwise have had, once the stipulated time for bringing the action has elapsed. The right becomes extinguished by effluxion of time. See: *Egbe Vs Adefarasin* (1987) 1 NWLR (Pt.47) 1; *Ibrahim Vs J.S.C.* (1998) 14 NWLR (Pt.584) 1; *Ajayi v. Adebisi* (2012) 11 NWLR (Pt.1310) 137; *Alhaji Ado Ibrahim Vs. Alhaji Maigida U. Lawal & Ors.* (2015) LPELR - SC.99/2009 delivered on 5/6/2015. F

The continuance of the damage or injury constitutes an exception to the general rule. It was held in: *Obiefuna Vs Okoye* (1961) All NLR 357 @ 360 that: G

“Continuance of injury or damage means continuance of the legal injury and not merely continuance of the injurious effects of a legal injury.” See also: *Olaosebikan Vs Williams* (1996) 5 NWLR (Pt.449) 437 @ 456 - 457 D - H. H

Two salient facts are not in dispute. The first, as averred in paragraph 3(c) of the affidavit in support of the originating summons is that the Otukpa State Constituency was excised in 1996. The sec-

ond is that the originating summons was filed on 25th October 2011, fifteen years later. The legal injury complained of by the respondents was the excision of Otukpa State Constituency in 1996. The act was complete in 1996. The fact that the respondents have since the excision not been represented in their State House of Assembly constitutes the effect of the legal injury they allegedly suffered by that singular act. The legal injury occurred once. The respondents therefore ought to have instituted their action within three months of the excision. Having slept over their rights for fifteen years, by virtue of Section 2(a) of the Public Officers Protection Act, they lost the right to enforce their cause of action by judicial process. The suit was statute-barred and the trial court lacked jurisdiction to entertain it. Similarly the lower court lacked jurisdiction to entertain the appeal arising from the incompetent proceedings.

Having, for the reasons stated above, resolved the second issue in the appellant's favour and for the more comprehensive reasons so ably advanced in the lead judgment of my learned brother, GALADIMA, JSC, which I read before now and with which I am in full agreement; I also find merit in this appeal and I allow it. I also set aside the findings of the two lower courts and accordingly strike out the suit. I make no order for costs.

OKORO JSC

The facts giving birth to this appeal are that the respondents commenced this action at the Federal High Court, Abuja on 25th October, 2011 against the appellant. The suit was subsequently transferred to the Federal High Court Makurdi on 14th March, 2012 and registered as FHC/MKD/CS/17/2012. The respondents raised six questions and claimed four reliefs which inter alia included an order of the trial court directing or compelling the appellant to restore the suppressed Otukpa State Constituency in Ogbadibo Local Government Area of Benue State.

The originating summons was supported by a seven paragraphs affidavit with Exhibits A-E annexed. The appellant in reaction to the respondents' originating process filed a Notice of Preliminary objection wherein it contested the jurisdiction of the trial court to entertain the suit and that same was statute barred having not been instituted

within three months after the accrual of the cause of action. The appellant therefore contended that the suit was not competent. The learned trial judge dismissed the appellant's preliminary objection and held that the complaint of the respondents is a continuing act which removes the protection granted by Section 2(a) of the Public Officers Protection Act. The trial court also granted all the reliefs sought by the respondents in its judgment delivered on 26th June, 2012. ^B

Aggrieved by the stance of the trial court, the appellant appealed to the Court of Appeal which upheld the decision of the trial court and dismissed the appellant's appeal. The appellant has further appealed to this court. Six issues have been formulated by the appellant for the determination of this appeal. The issues are:- ^C

1. Whether the Court of Appeal was right in holding that the respondents satisfied the requirements of the law on locus standi and therefore clothed with the necessary locus standi to institute the action. ^D

2. Whether the appellant is not protected by Section 2(a) of the Public Officers Protection Act having regard to the circumstances of this case.

3. Whether the Court of Appeal was right in holding that Exhibits A, B and C are admissible in evidence and their usage cannot be faulted. ^E

4. Whether the Court of Appeal was right in relying on its judgment in the case of Oju Local Government V. INEC (2007) 14 NWLR (Pt. 1054) 242 having regard to the circumstances of this case. ^F

5. Whether the Court of Appeal was correct to require the appellant to proffer legal argument by affidavit evidence in the circumstances of this case.

6. Whether the Court of Appeal was correct when it held that there were sufficient materials for grant of declaratory reliefs in the circumstances of this case. ^G

The respondents' counsel adopts the six issues formulated by the appellant. Having read and considered the arguments in the briefs of both parties vis-à-vis the facts giving birth to this appeal, it is my well considered opinion that this appeal can be adequately determined based on the second issue as distilled by the appellant. At the risk of sounding repetitive, the said issue states:- ^H

“Whether the Appellant is not protected by Section 2(a) of the

Public Officers Protection Act having regard to the circumstances of this case.”

The facts of this case disclose that the Otukpa State Constituency was excised and suppressed in 1996 by the appellant herein. It is also not in doubt that this suit was filed and commenced on 25th October, 2011, clearly about 15 years interval between the accrual of the cause of action and the filing of the suit. There is no argument that the appellant is a public officer and acted under a law regulating its activities. Thus, the applicability or otherwise of Section 2(a) of the Public Officers Protection Act becomes an issue. Both the trial court and the Court of Appeal held that the act of suppression of the constituency amounted to a continuance of damage or injury to the respondents and as such the suit of the respondents was not caught by Section 2(a) of the Act.

For ease of reference, I shall reproduce Section 2(a) of the Public Officers Protection Act Cap. P41 Laws of the Federation of Nigeria 2004 as follows:-

“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 such Act, Law, duty or authority, the following provisions shall 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, or in the case of a continuance of damage or injury, within three months next after the ceasing thereof.”

The above provision has been given judicial interpretation by this court in several decided cases. It is simply that an action against a public officer in respect of any act done in pursuance or execution of any Act or Law of a Public duty or default of same can only be commenced within three months next after the act, neglect or default complained of except in a case of continuance of damage or injury in which the person aggrieved must institute the action within three months next after the cessation of the damage or injury complained of.

The general principle of Section 2(a) of the Public Officers Protection Act is that where a statute provides for the institution of an action within a prescribed period, the action shall not be brought after the time prescribed by such statute. Any action that is instituted after the period stipulated by the statute is totally barred as the right of the plaintiff or the injured person to commence the action would have been extinguished by such law. What this means in effect is that the Limitation Act or Law removes the right of action of a plaintiff, his right of enforcement and right of judicial relief leaving him with a bare and empty cause of action which he cannot enforce by judicial process. It is statute barred. See *Egbe V. Adefarasin* (1987) 1 NWLR (Pt.47) 1, *Military Administrator Ekiti State V. Aladeyelu* (2007) 14 NWLR (Pt.1055) 619, *Hassan V. Aliyu* (2010) 17 NWLR (Pt.1223) 547, *PN. Udoh Trading Co. Ltd. V. Sunday Abere & Anor.* (2001) 11 NWLR (Pt 723) 114, *Alhaji Ado Ibrahim V. Alhaji Maigida U. Lawal* (2015) LPELR - SC. 99/2009 delivered on 5th June, 2015.

Now, bringing the above postulation to bear on the facts of this case, clearly shows that the cause of action, i.e the suppression of the Otukpa State Constituency by the appellant took place in 1996. This suit was not commenced until after about 15 years, clearly outside the three months prescribed by the Limitation Act. The respondents were able to convince both the trial court and the Court of Appeal to hold that the act of the suppression of their constituency was a continuing act and as such sec. 2(a) of Limitation Act did not affect their case. But was the act of appellant of a continuing nature?

I remember that during my sojourn on the Bench of the Court of Appeal, I had occasion to examine the meaning of an act which damage or injury is a continuing one. In *Alhassan V. Aliyu & Ors* (2009) LPELR - 8340 (CA) at pp.31-32 paras F-G, I said as follows:-

"...Where the injury complained of is a continuing one, time does not begin to run for the purpose of the application of a limitation law until the cessation of the event leading to the cause of action. In other words, "continuance of injury" means the continuance or repeat of the act which caused the injury. It does not and cannot be said to mean the concomitant effect of the damage or injury." In *Olaosebikan V. Williams* (1996) 5 NWLR (Pt.449) 437 at 456, Salami, JCA, quoting Dickson J, has this to say:-

"The issue is very well illustrated by the dictum of Dickson, J. in

Michael Obiefina V. Alexander Okoye (1961) All NCR 357. At pages 360 and 362, Dickson, J. said "Continuance of injury or damage means continuance of the legal injury, and not merely continuance of the injurious effect of a legal injury. The continuance of the injurious effects of an accident is not a continuance of the injury or damage within the meaning of the Public Authorities Protection Act 1893: Halsbury (2nd Edition) page 771... With regard to the construction of those words, I am clearly of opinion that the matter is governed by the decision of the Court of Appeal as far back as 1903. In the case of Curey V. Metropolitan Borough of Bermondsey (67 J.P. 447) confirming the judgment of Channel J., in that same case reported in the same volume at page III. Lord Halsbury, L.C. in giving judgment in the Court of Appeal in that case, affirming the judgment of Channel, J. said:-

"It is manifest that 'continuance of injury or damage' means the continuance of the act which caused the damage. It was not unreasonable to provide that, if there was a continuance of an act causing damage, the injured person should have a right to bring an action at any time within three months of the ceasing of the act complained of." I concur. I have nothing to add. For me, I agree as that is the correct interpretation of that section."

I have had to reproduce part of the judgment in extenso in order to underscore the meaning of the phrase "continuance of damage or injury" as used in Section 2(a) of the Act. In 1996, the appellant excised and suppressed the respondents' State Constituency. There was no other act of excision or suppression. It was a completed act. What the respondents and the two courts below relied upon was the "continuance of the injurious effects of a legal injury." Clearly, this is where the mistake came about. It was therefore wrong for the two lower courts to hold that Section 2(a) of the Public Officers Act did not apply to the suit of the respondents.

The sum total of what I have endeavoured to say above is that the suit of the respondents was statute barred having not been commenced within three months of the accrual of the cause of action. I agree with my learned brother, Galadima, JSC that this appeal is meritorious and is hereby allowed. The respondents' suit at the trial court is accordingly struck out. I also make no order as to costs.