

OLALEYE FAJIMOLU
V.
UNIVERSITY OF ILORIN
COURT OF APPEAL
(ILORIN DIVISION)

CA/IL/49/2003J

MUHAMMAD SAIFULLAHI MUNTAKA-COOMASSIE, J.C.A. (Presided)
TIJJANI ABDULLAH1, J.C.A.
HELEN MORONKEJI OGUNWUMUU. J.C.A. (Read the Leading Judgment)

THURSDAY. 13th JULY, 2006

ACTION - Limitation of actions - Limitation law - Non-compliance therewith - Effect.

ACTION - Limitation of actions - Section 2(a) of the Public Officers' (Protection) Act --Object and operation of.

COURT - Jurisdiction of court - Where challenged - Duty on court to determine first.

INTERPRETATION OF STATUTES - Public Officers (Protection), Act - "Any person" in section 2(a) - Meaning of.

INTERPRETATION OF STATUTES - Public Officers (Protection)' Act, section 2(a) - How construed- Whether "bias" or "malice" may be read into it.

JURISDICTION - Jurisdiction of court - Where challenged- Duty] on court to determine first.

LIMITATION LAW - Limitation of actions - Pubic Officers (Protection) Act - Scope of- Whether applicable to protect only individuals or/and public officers.

LIMITATION LAW - Limitation of actions - Section 2(a) Public Officers (Protection) Act - Special defence of limitation thereunder - When available - Issues of "good faith" or "malice" of public officer Whether relevant.

LIMITATION LAW - Limitation period - Where prescribed by statute - Effect of non-compliance therewith.

LIMITATION I AW-Section 2(a) of the Public Officers (Protection) Act - Object and operation of.

LIMITATION OF ACTIONS - Limitation law - Section 2(a) of Public Officers (Protection) Act - Special defence of limitation thereunder - When available - Issues of "good faith" or "malice" - Whether relevant.

LIMITATION OF ACTIONS - Public Officers (Protection) Act -Application of- Effect on cause of action.

PRACTICE AND PROCEDURE - Jurisdiction of court - Where challenged - Duty on court to determine first.

PUBLIC OFFICERS - Public Officers (Protection) Act-Application of - Effect on cause of action.

PUBLIC OFFICERS - Public Officers (Protection) Act - Scope of -Whether applicable to protect only individuals or to protect individuals and public officers.

PUBLIC OFFICERS - Public Officers Protection Act - 'Any person' in section 2(a) thereof - Meaning of - Whether includes Corporation sole or Public bodies corporate or incorporate.

STATUTES - Public Officers (Protection) Act - "Any person" in section 2(a) - Meaning of.

WCARDS AND PHRASES-Any person in section 2(a) Public Officers (Protection) Act - Meaning of.

Issue:

Whether, having regard to the circumstances of this matter, the trial court was not right to have terminate the case of the appellant on the ground of statute limitation having regard to the materials before the court and the stage of the matter.

Facts:

The appellant was the bursar of the respondent from 1989 till his appointment was terminated by a letter dated 7th August, 1995, The appellant did nothing about his termination of appointment until; 3rd August, 2001 when he filed a writ of summons and statement of claim at the Federal High Court challenging the termination.

In the suit, he claimed against the respondent as follows:

- "(a) A declaration that the respondent's letter dated 7th August, 1995 terminating the appellant's appointment as Bursar of the respondent's University is unfair, irregular, improper, made without due regard to natural justice and ought to be declared null and void.
- (b) A declaration that the appellant' is still in the employment of the respondent."

Upon being served with the originating process, the respondent I filed a conditional memorandum of appearance and its statement of defence. The respondent raised the following objection in its statement of defence:

The respondent shall at or before the trial pray this Honourable Court to dismiss and/or strike out the case of the appellant in its entirety on the following grounds that

- (i) the court lacks the vires and/or jurisdiction to entertain the appellant's claim.
- (ii) the case of the appellant is caught by the provisions of the Public Officers Protection Act and is therefore statute-barred,
- (iii) the suit of the appellant discloses no reasonable cause of action or any cause of action at all. The respondent later brought an application to set down for j hearing the preliminary objection.

The trial court in a considered ruling upheld the preliminary objection and struck out the suit for being statute-barred having been commenced more than 3 months after the cause of action accrued.

Dissatisfied with the decision the appellant appealed to the Court Of Appeal- In determining the appeal the Court of Appeal considered the provision of section 2(a) of the Public Officers (Protection) Act which states thus:

"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) the action, prosecution, or proceeding shall not be 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."

Held (*Unanimously dismissing the appeal*):

1. *On Duty on court To first dispose of preliminary objection to its jurisdiction when raised -*
It cannot be premature to seek to dispose of a preliminary objection to the jurisdiction of the court at the first opportunity especially where it would dispose of the case without the need to call evidence. Hence, failure to determine a preliminary objection based on the issue of limitation which may affect the jurisdiction of the court is a grievous error. In the instant case, the trial court was right to have taken the issue of objection to its jurisdiction based on law of limitation first. *Adigun v. Ayinde* (1993) 8 NWLR (Pt. 313) 516; *ACE v. Obiami Brick & Stone* (1993) 5 NWLR (Pt. 294) 399; *Yusuf v. Co-operative Bank* (1994) 7 NWLR (Pt. 359) 676; *Egbe v. Adefarasin* (1987) 1 NWLR (Pt. 147) 1 referred to.] (P. 86, paras. E-G)
2. *On Effect of non-compliance with limitation period where prescribed for action -*
Where a law prescribes a period for instituting an action, proceedings cannot be instituted after that period. [*Obiefuna v. Okoye* (1961) 1 All NLR 357; *Udoh v. Abe re* (2001) 11 NWLR (Pt. 723) 114 referred to.] (P. 87, para. H)
3. *On Application of The Public Officers (Protection) Act-*
By virtue of section 2(a) of the Public Officer (Protection) Act, where any action, prosecution, 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 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. (P. 87, paras. E-H)
4. *On Meaning of "any person" in section 2(a) Public Officers (Protection) Act –*
"Any person" referred to in section 2(a) of the Public Officers (Protection) Act means both artificial and natural persons alike. The Public Officers (Protection) Act protects as distinct entities in certain cases public officers holding public offices in the public service. This includes corporation sole or public bodies, corporate or incorporate. [*Ibrahim v. J.S. C.* (1998) 14 NWLR (Pt. 584) 1 referred to.] (Pp. 86-87, paras. H-A.)
5. *On Object of section 2(a) of the Public Officers (Protection) Act –*
The main objective of section 2(a) of the Public Officers (Protection) Act is to protect public officers who have acted pursuant to the duties of their office from being harassed with stale claims and proceedings. In the instant case, the appellant waited for nearly six years before deciding to have his day I

6. *On Effect of non-compliance with section 2(a) of Public Officers (Protection) Act -*
Under the provision of section 2(a) of the Public Officers (Protection) Act, any action or prosecution or other proceeding commenced outside the three months period is totally haired as the right of the injured person to commence the action, prosecution or proceeding, has been extinguished by the law. Indeed, at that stage the person has no cause of action. Thus, whether an act complained against a public officer was done in the execution of a public duty can only be canvassed where there is a cause of action i.e. where the action is instituted within three months. (P. 89, paras. A-C)
7. *On Whether good faith or malice avail or deprive defendant of special defence of limitation under section 2(a) Public Officers (Protection) Act dependent on conduct of defendant -*
It does not require good faith to avail a defendant of the special defence of limitation of action nor does it require malice to deprive him of the defence provided under section 2(a) of the Public Officers (Protection) Act. Similarly, the right of any person injured or wronged by the act, neglect or default is not extinguished by the good faith of the public officer. (P. 99, paras. D-E)
8. *On How section 2(a) Public Officers (Protection) Act construed and whether the words 'malice' or 'bias' may be read into it -*
The words used in S. 2(a) of the Public Officers (Protection) Act are plain and ought to be given their ordinary meaning. The beneficial statutes which are to protect certain members of the public ought to be construed in such a way as to meet that objective. It is not right to read into an enactment an exception which it has not expressed and which will have the effect of depriving the person intended to be protected of that protection. The words 'bias' and 'malice' are not part of the provisions of the statute and should not be read into it. In the instant case, whether the issue of malice, bias, etc was pleaded or not by the appelland is irrelevant since at the time he filed the action, he no longer had a cause of action. If he had filed the action within time, then issues may be joined and evidence led to show that indeed the respondent acted ultra vires the office while motivated by bad faith, malice etc. (Pp. 88, B-C; 90, A-B)
9. *On When good faith or malice may avail or deprive defendant special defence of limitation under section 2(a) Public Officers Protection Act –*
Where an action against a public officer is instituted J within the period of the three months prescribed, there is a cause of action, and the legality vel non of the action complained of can be in issue. It is in such a situation that at the trial evidence can be led to determine whether the protection under the Public Officers (Protection) Act has been vitiated by malice, improper motive, bad faith or deliberate exercise of power without lawful authority. (P. 89, paras. D-F)
10. *On When good faith or malice may avail or deprive defendant of special defence of limitation under section 2(a) Public Officers Protection Act –*
In a civil action, when the defendant invokes, in limine, the provision of the Public Officers (Protection) Act, it is not proper for the trial court to conclude or infer from the pleadings that the protection afforded the defendant by the law has been vitiated by malice or bad faith. What the trial court is obliged to decide at that stage is whether the action is maintainable and not whether the defendant is liable. Where the protection is not raised as a shield in limine and is merely pleaded, and issues are joined and evidence led on it by

the parties, the trial court is entitled to examine the circumstances under which the cause of action or the act complained of was performed, in order for it, in determining liability, to decide whether the protection has been vitiated by malice or bad faith. (Pp. 89-90, paras. F-A)

Nigerian Cases Referred to in the Judgment:

A.C.B. v. Obmiami Block & Stone (1993) 5 NWLR (Pt.294) 399.
Adigun v. Ayinde (1993) 8 NWLR (Pt. 313) 516
Brawal Shipping (Nig.) Ltd. v. F.I. Onwadike (2000) 11 NWI .R (Pt. 678) 387
Egbe v. Adefarasin (1987) 1 NWLR (Pt. 47) 1
Egbe v. Alhaji (1990) 1 NWLR (Pt. 128) 546
Egbuiziem v. Egbuiziem (2005) All FWLR (Pt. 279) 1361
Ibrahim v. J.S.C (1998) 14 NWLR (Pt.584) 1
Obiefuna v. Okoye (1961) 1 All NLR 357
Obinali v. Okwaranyia (2004) All FWLR (Pt. 227) 552
Offoboche v. Ogoja L.G. (2001) 16 NWLR (Pt.739) 458
Oguchi v. F.M.B. (1990) 6 NWLR (Pt.156) 330
Udoh Trading Co. v. Abe re (2001) 11 NWLR (Pt. 723) 114
UMTHMB v. Dawa (2001) 16 NWLR (Pt.739) 424
Williams v. Williams (1995) 24 NWLR (Pt.375) 1
Yusuf v. Cooperative Bank (1994) 7 NWLR (Pt. 359) 676

Nigerian Statute Referred to in the Judgment:

Public Officers (Protection) Act, Cap 379, Laws of the Federation of Nigeria. 1990. S. 2(a)

Appeal:

This was an appeal against the decision of the Federal High Court striking out the appellant's suit for being statute-barred. The Court of Appeal, in a unanimous decision, dismissed the appeal.

History of the Case:

Court of Appeal:

Division of the Court of Appeal to which the appeal was brought:

Court of Appeal Ilorin Names of Justices that sat on the appeal:

Muhammad Saifullahi Muntaka-Coomassie J.C.A. (Presided); Tijjani

Abdullahi. J.C.A.: Helen Moronkeji Ogunwumiju, J.C.A (Read the Leading Judgment)

Appeal No.: CA/IL/49/2003

Date of Judgment: Thursday, 13th July. 2006

Names of Counsel: Taofik Yusuf - for the Appellant

K. K. Eleja (with him, B. Kawu [Miss], V. Udenze) -for] the Respondent

High Court:

Name of High Court: Federal High Court, Ilorin

Name of the Judge: Olayiwola, J.

Date of Judgment: Friday, 14* March, 2003

Counsel:

Taofik Yusuf - for the Appellant

K. K. Eleja (with him, B. Kawu [Miss], V. Udenze) -for the Respondent

OGUNWUMIJU, J.C.A. (Delivering the Leading Judgment):

This is an appeal against the ruling of Hon. Justice P. F. Olayiwola of the Federal High Court Ilorin delivered on 14th March, 2003. The facts that gave rise to this appeal are as follows:-

The appellant was the plaintiff at the lower court and the respondent was the defendant. The appellant was in the employment of the respondent from 1st September, 1976. By a letter dated 7th. August, 1995 his appointment was terminated by the respondent. He was the Bursar of the University from about 1989 till the termination of his appointment. The appellant did nothing about his termination of appointment until 3rd August, 2001 when he filed a writ of summons and statement of claim at the Federal High Court challenging the termination. He sought for the following orders in paragraph 34 of the statement of claim.

"WHEREOF the plaintiff claims against the defendant:-

- (c) A declaration that the defendant's letter dated 7th August. 1995 terminating the plaintiff's appointment as bursar of the defendant's University is unfair, irregular, improper, made regard to Natural Justice and ought to be declared null and void.
- (d) A declaration that the plaintiff is still in employment of the defendant".

Upon being served with the originating process, the respondent with the leave of court filed a Conditional Memorandum of Appearance which is at page 18 of the record and also filed its statement of defence. The respondent raised the following objection in paragraph 1 thereof as follows:-

- "1. The defendant shall at or before the trial pray this Honourable Court to dismiss and/or strike out the case of the plaintiff in its entirety on the following grounds:
- (i) The court lacks the vires and/or jurisdiction to entertain the plaintiff's claim
 - (ii) The case of the plaintiff is caught by the provisions of the Public Officers Protection Act and is therefore statute barred.
 - (iii) The suit of the plaintiff discloses no reasonable cause of action or any cause of action at all."

The respondent later brought an application to set down for hearing the preliminary objection contained in paragraph 1 of the respondent statement of defence and dismissing and/or striking out the case on the following grounds.

- (i) The case of the plaintiff (i.e. the appellant) is caught by the Public Officer Protection Act and is therefore statute barred,
- (ii) The suit of the plaintiff disclose no reasonable cause of action or any cause of action at law.

The respondent filed an affidavit to support her application whilst the appellant also filed a counter affidavit.

The matter was heard by the trial court. The learned trial Judge gave a ruling striking out the appellant's case. The court ruled as follows:-

"In the light of the above, I have no choice but to uphold the contention that this suit is statute barred because it was commenced more than 3 months after the cause of action accrued."

The appellant has appealed against that ruling.

An amended notice of appeal was later filed when an order do so was granted by this court.

Mr. Taofik Yusuf for the appellant adopted the brief of argument filed on 31/10/05. Mr. K.K. Eleja for the respondent adopted the' brief dated 10/3/06 and deemed filed on 28/3/06

The appellant's counsel identified three issues for determination and argued them together.

1. Whether or not the preliminary objection taken and ruled upon can be so taken when the parties have joined issues on the pleadings.
2. Whether it is not premature for objection to be taken on the issues joined by the parties' pleadings.
3. Whether having regard to the pleading of the plaintiff/appellant, the issue relating to the protection of defendant as afforded by the Public Officers Protection Act could be taken at the stage it was taken and ruled upon by the court below.

The respondent identified a sole issue which is stated as follows:-

Whether having regard to the circumstances of this matter, the trial Judge was not right to have terminated the case of the appellant on the ground of statute of limitation having regard to the materials before the court and the stage of the matter.

I will adopt the issue as couched by respondent's counsel since the sole issue covers all the grounds of appeal.

Learned appellant's counsel argued that the ruling of the learned trial Judge striking out the appellant's claim in the lower court was based primarily on the effect of the Public Officers (Protection) Act Cap 379 Laws of the Federation of Nigeria 1990 which stipulates that any action against a Public Officer must be commenced within three months.

He also argued that having regard to the claim of the appellant and as set out in his Statement of Claim to which the respondent filed a defence, it is clear there are pleaded facts to show bad faith, abuse of office and malice as could be seen from the combined effect of the paragraphs in the statement of claim

He submitted that issues were patiently pleaded to show that there were arguable points to show whether or not the termination of the plaintiff/appellant has or has not the following:-

- (i) Semblance of legal justification and that
 - (ii) The termination is an abuse of office, and whether or not
 - (iii) Defendant acted in bad faith and/or maliciously and
 - (iv) Whether or not the defendant acted bona-fide
-
- (iv) Whether or not the defendant is biased

He submitted that these are issues that cannot be resolved one way or the other unless there is some evidence in support of all the averments in the pleadings of the plaintiff. He cited *Obinali v. Okwaranyia and 9 other* (2004) ALL FWLR (Pt.227) page 552 at 558).

He further submitted that since the defendant had traversed the plaintiff's pleading, the case should have gone to trial and that until evidence is taken the learned trial Judge ought not to have struck out the case.

He argued that before the full force of section 2(a) of the Public Officers (Protection) Act Cap 379 Laws of the Federal Republic of Nigeria can have effect the officer (herein the respondent) must not have been actuated by the Malice. Mala fide, without semblance of legal justification, lack of bona fide, bias. etc.

He cited *Oguchi v. EM.B.* (1990) 6 NWLR (Pt.156) pg. 330 pg.340 at 342; *UMTHMB v. Dawa* (2001) 16 NWLR (Pt.739) pg. 424 at 448 at 449; *Brawal Shipping (Nig.) Ltd. v. F. I. Onwadike* (2000) FWLR (Pt.23) pg. 1254 at 1275-1276, (2000) 11 NWLR (Pt. 628)387; *Williams v. Williams* (1995) 2 NWLR (Pt.375) pg. 1 at 17; *Egbuziem v. Egbuziem* (2005) All FWLR (Pt.279) pg. 1361 at 1368, (2005) 4 NWLR (Pt. 16) 488. He also cited *Obinali Bricks &*

Stone v. F. I. Okwaranya (2004) All FWLR (Pt. 227) pg. 552 at 558.

Learned respondent's counsel in reply submitted that the position of the law now is that the provision of the Public Officers Protection Act applies not only to natural persons but also to artificial persons like a corporation sole or limited liability company. He cited Ibrahim v. J.S. C (1998) 14 NWLR (Pt.584) pg. 1; Offoboeh v. Ogoja I-G. (2001) 16 NWLR (Pt.739) pg.458. He submitted that the respondent in this case is entitled as a public body to the protection of the Act.

In my view, the appellant's counsel's submission is mainly that the appellant ought to have been allowed to lead evidence to show all the claims as stated and also to show that these claims are exemptions to the protection claimed by the respondent under the Public Officers Protection Act and consequently to prove the respondent was not entitled to protection under the Act. He argued that it was premature for the learned trial Judge to hold that the court below had no jurisdiction because the claims were statute barred.

The questions posed by the appellant in the grounds of appeal and issues identified by the appellant's counsel are:-

- (1) Should the preliminary objection have been taken at the point in time during the trial when it was taken.
- (2) Did the pleadings of the parties at the lower court reveal facts, which show that the court should have heard oral evidence before arriving at its conclusion that the respondent was entitled to protection under the Public: Officers Protection Act?
- (3) If the answer to 2 above is YES, is it a relevant, consideration in the circumstances of this case.

The respondent had in the statement of defence raised her; objection to the jurisdiction of the court on the grounds that the action was statute barred under the Public Officers Protection Act.

The learned trial Judge in my view was right to have taken the issue of objection to his jurisdiction first. It cannot be premature to seek to dispose of a preliminary objection to the jurisdiction of the court at the first opportunity especially where it would dispose of the case without the need to call evidence. See Adigun v. Ay hide (1993) 11 SCNJ 1; (1993) 8 NWLR (Pt. 313) 516, AC.5. v. Obmiami (1993) 5 NWLR (Pt.294) pg. 399.

The learned trial Judge could not have done otherwise. In the first instance, failure to determine a preliminary objection based on the issue of limitation which may affect the jurisdiction of the court is a grievous error. See: Chief Fesuts Yusuf v. Cooperative Bank (1994) 9 SCNJ 67, (1994) 7 NWLR (Pt. 359) 676; Egbe v. Adefarasin (1987) 1 SCNJ 1: (1987) 1 NWLR (Pt. 47) 1.

It is not in dispute that the respondent is a "Public Officer" within the meaning of S. 2(a) of the Act. Igun, J.S.C. defined "any person" referred to in S. 2(a) of the Public Officers Protection Act as both artificial and natural persons alike. His Lordship laid down the decision law that the Act protects as distinct entities in certain cases "Public Officers" holding "Public offices" in the "Public Service"- This includes corporation sole or public bodies corporate incorporate. See Ibrahim v. J.S.C. (1998) 14 NWLR (Pt.584) pg.1 at 38.

It is also not in dispute even by the appellant that the cause of action almost six years before the action was filed in court to challenge it. The dispute is that the appellant is claiming that it had facts on his pleadings that showed that the respondent was not entitled to the protection of the Act. The respondent is claiming that there are no such facts in the appellant's statement of claim. The learned trial Judge held:-

"I have looked through the length and breadth of the statement of claim; I could not find a single traverse on malice. The contention in that behalf is therefore rejected" (Page 48 lines 18-20)

I agree with the learned trial Judge that there is absolutely nothing in the Statement of

Claim to show that there were special facts, which must go to trial before the court could consider the preliminary objection.

The statement of claim filed on 3/8/01 was never amended to include all the acts of bias, lack of good faith, malice, abuse of office supposedly perpetrated on the appellant by the respondent.

Be that as it may, S. 2(a) of the Public Officers Protection Act Cap 379 Laws of the Federation applicable to the respondent states:-

"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) 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.

Where a law prescribes a period for instituting an action, proceeding cannot be instituted after that period *Obiefuna v. Okoye* (1961) 1 All NLR pg.357 P.N. *Udoh v. Sunday Abere* (2001) 5 SCNJ 274, (2001) 11 NWLR (Pt. 723) 114.

The full court made of Mohammed Bello CJN. A.O. Obaseki, JSC. A. Nnamani JSC. M.L.U wais:-JSC. Beading the lead judgment) A.G Karibi-Whyte JSC. S.M.A Belgore JSC, and P. Nnaemeka- Agu JSC considered the questions posed by the appellant in this appeal exhaustively in *Egbe v. Alhaji* (1990) 1 NWLR (Pt. 128)1 Pg.546.

The learned Justices of the Supreme Court were unanimous in U holding that the words used in S. 2(a) of the Public Officers Protection Act, are plain and ought to be given their ordinary meaning. They held that beneficial statutes which are to protect certain members of the public ought to be construed in such a way as to meet that objective. Furthermore, they held that it is not right to read into an enactment an exception which it has not expressed and which will have the effect of depriving the person intended to be protected of that protection. The words 'bias' and 'malice' are not part of the provisions of the statute and should not be read into it.

It does not require good faith to avail a defendant the special defence of limitation of action nor does it require malice to deprive him of the defence provided under section 2(a) of the Public Officers Protection Act. Similarly the right of any person injured or wronged by the act, neglect or default is not extinguished by the good faith of the Public officer. *Nnaemeka-Agu, JSC* at page 600 of *Egbe v. Alhaji* said:

"The issue of malice in connection with section 2(a) of the Public Officers Protection Law may arise in two circumstances. A public officer might have done an act in pursuance or execution or intended execution of a law or his public duty with an ulterior motive, such as helping himself or his friend or injuring the plaintiffs Another public officer may, while a public officer and under cover of the office do an act contrary to, or not authorized by law, or not in accord with his public duty. If both acts result in an injury to a plaintiff, it may be said that both acted maliciously. But it is my view that the former can successfully plead the statute if an action is filed against him after three months of the accrual of the cause of action, whereas the latter cannot. The former was contemplated by the statute, but the latter was not, as to do so would tantamount to using the statute as a cover for malefaction"

Under the provisions of section 2(a) of the Public Officers Protection Act. any action or prosecution or other proceeding commenced outside the three months period is totally barred as the not of the injured person to commence the action, prosecution or proceeding, has been extinguished by the law. Indeed, at that stage the person has no cause of action.

Thus, whether an act complained against a public officer was done in the execution of a public duty can only be canvassed where there is a cause of action i.e. where the action is instituted within three months. Per Nnamani, J.S.C., at page 585. Para. B of *Egbe v. Alhaji* said:

"A public officer who in the course of performance of public duty does so maliciously or for private spite has no protection from law ... where the suit commenced within three months."

Per Karibi-Whyte, J.S.C. at pages 596-597. paras, H-A of the same case held:

"Where the action was instituted within the period of three months prescribed, there is a cause of action, and the legality vel non of the action complained of can be in issue. It is in such a situation that at the trial evidence can be led to determine whether the protection under the Public Officers protection Act has been vitiated by malice, improper motive, bad faith or deliberate exercise of power without lawful authority."

Uwais, JSC (as he then was) reading the lead judgment explained the position on page 572 of *Egbe v. Alhaji*

"In a civil action, where the defendant invokes, in limine, the procedure under... it is ... not proper for the trial court to infer or conclude from the pleadings that the protection afforded the defendant by the law, has been vitiated by malice or bad faith. For what the trial court is obliged to decide at that stage is whether the action is maintainable and not whether the defendant is liable."

Where the protection is not raised as a shield in limine and is merely pleaded, and issues are joined and evidence led on it by the parties, the trial court is entitled to examine the circumstances under which the cause of action or the act complained of was performed, in order for a, in determining liability, to decide whether the protection has been vitiated by malice or bad faith.

In this case- whether the issue of malice, bias etc was pleaded or not pleaded by the appellant is irrelevant since at the action, he no longer had a cause of action. If he had filed then issues may be joined and evidence led to show that indeed the respondent acted ultra vires the office while motivated by bad faith, malice, etc.

The main objective of the section 2(a) of the public Officers protection law is to protect the public officers who have acted pursuant to the duties of their office from being harassed with stale claims and proceedings.

The appellant waited for nearly six years before deciding to have his days in court. Needless to say, he left it too late. The appeal completely lack merit and it is hereby dismissed. I award N10,000 costs to the respondent against the appellant.

MUNTAKA-COOMASSIE, J.C.A.: I have seen before now the illuminating judgment just delivered by my learned brother Ogunwumiju, JCA. I have no cause to disagree with her reasons and conclusions.

The claims not to doubt are stale and are beyond salvation. Equity does not assist the indolence. I think I will agree with her Lordship that the appeal lacks merit same is here by dismissed by me. I will however reluctantly endorse the award of costs against the appellants.

ABDULLAHI, J.C.A.: I have had the opportunity to read in advanced, the judgment of my

learned brother Ogunwumiju, JCA just delivered with which I entirely agree.

In aforesaid judgment, His lordship has comprehensively and completely dealt with all the live issues submitted for determination. I adopted her reasoning and conclusions as mine and I accordingly dismiss the appeal as it is lacking in merit.

I abide by the order for costs contained in the aforesaid judgment.

Appeal dismissed