ABDULKADIR OBA ALAO
V.

1. **VICE CHANCELLOR. UNIVERSITY OF ILORIN**
2. **UNIVERSITY OF ILORIN**
3. **COMMISSIONER OF POLICE**

COURT OF APPEAL
(ILORIN DIVISION)

CA/IL/48/2005

MUHAMMAD SAIFULLAHI MUNTAKA-COOMASSIE. LC.A. (presided)
TIJJANI ABDULLAHI. J.C.A.
JUMMAI HANNATU SANKEY. J.C.A. (Rend the Leading Judgment)
TUESDAY. 5th DECEMBER. 2006

ACTION - Competence of action - Issue of- Nature of- Whether can he raise for the first time on appeal.
APPEAL - Judgment of court - Error or mistake therein - Whether in all cases will result in reversal of judgment on appeal -Relevant considerations.
APPEAL - Jurisdiction of court - Issue of- Whether can be raised for the first time on appeal.
COURT - Jurisdiction of court - Issue of - Whether can be raised for the first time on appeal.
DAMAGES - Salaries, emoluments and allowances accruing to an office - Claim for - Nature of- How proved.
DOCUMENT - Documentary evidence - Contents of - Oral evidence thereof-Whether admissible- Treatment of where admitted in evidence.
ESTOPPEL - Estoppel by conduct - Doctrine of-Application of.
EVIDENCE - Documentary evidence - Contents of - Oral evidence, thereof- Whether admissible Treatment of where admitted m evidence.
EVIDENCE - Estoppel by conduct - Doctrine of- Application of.
EVIDENCE - Proof- Salaries, emoluments and allowance accruing to an office - Claim for - How proved.
EVIDENCE- Proof - Content of documents - Whether oral evidence admissible in proof thereof - Section 132, Evidence Act.
EVIDENCE - Proof- Pleadings - Whether constitute evidence.
JUDGMENT AND ORDER - Judgment of court - Error or mistake therein - Whether in all cases will result in reversal of judgment on appeal - Relevant considerations.
JUDICIAL PRECEDENT- Conflicting decisions of court of equal jurisdiction - Which prevails - Guiding principles.
JURISDICTION - Jurisdiction of court - Issue of - When can be raised - Whether can be raised for the first time on appeal.
PRACTICE AND PROCEDURE - Judgment of court - Error or mistake therein - Whether in all cases will result in reversal of judgment on appeal - Relevant considerations.
PRACTICE AND PROC EDURE. Competence of action - Issue of-Nature of- Whether can he raised I'm the first time on appeal.

PRACTICE AND PROCEDURE-Decision of court - Conflicting decisions of court of equal jurisdiction - Which prevails -Guiding principle
PRACTICE AND PROCEDURE- Document evidence-contents of – oral evidence thereof-whether admissible-treatment of where admitted in evidence.
PRACTICE AND PROCEDURE – Jurisdiction of court- issue of- when can be raised for the first time on appeal.
PRACTICE AND PROCEDURE- Pleading- bindingness of- averment therein – where not denied – how treated.
PRACTICE AND PROCEDURE – Pleading- whether constitute evidence.
PUBLIC OFFICER - Public Officers (protection) act-application of- Whether applicable in cases of of contract of employment.
STARE DECISIS - Conflicting decisions of court of equal jurisdiction - Which prevails - Guiding principles.
STATUTE - Public Officers (Protection) Act - Application of -Whether applicable in cases of contract of employment.

Issues:

1. Whether the Public Officers Protection Act is applicable to the appellant's employment, and if it is, whether the trial court was right in holding that the action was statute-barred.
2. Whether the trial court was not justified in holding that the appellant had put in more than 35 years in public service.
3. Whether the appellant proved his claims before the trial court to entitle him to judgment.

Facts:

The 2nd respondent. University of Ilorin, employed the appellant on the 1st November, 1985 as the Registrar of the university. Prior to that appointment, the appellant was a Permanent Secretary with the Kwara State Civil Service Commission an had served both the Northern Nigeria Civil Service and the Kwara state civil service.

The appellant served as the registrar of the 2nd respondent from 1st November, 1985 until 8th December 1997 when he was redeployed to the Vice-Chancellor's office as the director of administrationon that position, the appellant was asked by a letter of retirement dated 4th November, 1999 to proceed on retirement on the ground that he had put in more than 35 years in service.

The appellant sued the respondents challenging his retirement from service on two grounds, namely:

(a) that he had not yet put in 35 years in service, and

(b) that he was not yet 60 years of age as agreed upon in his conditions of service and as stipulated in the regulations governing the 2nd respondent.

The appellant also complained that the 1M and 2nd respondents unlawfully caused him to be arrested and detained on 4"' July. 2000 by the 3rd respondent on the allegations that he stole or misappropriated the Federal Government Vehicle No. FG 165 E45 Peugeot 505 allocated to him. The appellant therefore claimed a number of reliefs against the respondents.

The 1s1 and 2"ci respondents, in response, filed an amended statement of defence and raised in paragraph 1 thereof, an objection to the hearing of the suit in these terms:

"1. The defendants shall at or before the trial, pray this Honourable Court to dismiss and 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. Failure to institute the action within 3 months of the accrual of the cause of action is fatal to the cause.

The suit of the plaintiff discloses no reasonable cause of action or any cause of action at all."

In addition, the lsl and 2nd respondents filed a motion on notice wherein they prayed that the preliminary objection raised in paragraph 1 of their amended statement of defence be set down for hearing. The trial court, however, without making a pronouncement on the motion, elected to proceed with the trial and to pronounce on the issues raised in respect of its jurisdiction, in the body of its judgment.

At the trial, the appellant testified and tendered numerous documents in evidence marked exhibits 1- 41. These documents included the appellant's application for inter-service transfer (exhibit 40). Which showed that the appellant was first appointed into civil service On 1s' December, 1960, and the letter of retirement (exhibit 17) issued to the appellant. The lsl and 2"'' respondents also called one witness who testified on their behalf and relied on the exhibits tendered by and through the appellant. The 3rd respondent did not file any pleadings in the case and so did not adduce evidence.

At the close of the case, the trial court dismissed the appellant's claim in its entirety. The appellant was dissatisfied and he appealed to the Court of Appeal.

Held *(Unanimously dismissing the appeal:*

1. *On When issue of competence of suit or jurisdiction can he raised* -
   Any issue that touches on the competence of a suit before a court and therefore the jurisdiction of the court to entertain the same can be raised at any time, even for the first time on appeal, in the instant case, though the issue of the applicability of section 2 of the Public Officers Protection Act to a contract of employment was not canvassed directly at the trial court, the Court of Appeal entertained the issue. (P. 445, paras G-H)
2. *On Whether Public officers Protection Act applies to contract cases* -
   The provisions of the Public Officers Protection Act do not apply in contract cases, or in an action founded on breach of contract. [C.B.N. v. Adedeji (2004) 13 NWLR (Pt. 890) 226; N.P.A. v. Consmtzioni Generali Farsura Cooefar SPA (1974) 1 All NLR (Pt. 2) 463; F.G.N. v. Zebra Energy Ltd. (2002) 18 NWLR (Pt.798) 162 referred to and applied; Adi gun v. Ayinde(1993) 8 NWLR (Pt.313) 516; Ibrahim v. J.S.C. (1998) 14 NWLR (Pt.584) 1; Gyang v. N.S.C. (2002) 15 NWLR (Pt. 791) 454 referred to and explained. (Pp. 446-450, paras. A-C; 451, paras. B-C)
3. *On Which of Adigun v. Ayinde (1993) 8 NWLR (Pt. 315) 534 and conflicting decisions of the Supreme Court prevails* –
   Where there are conflicting judgments of courts of equal jurisdiction, the rule is that the decision that is later in time prevails. In the instant case, in the face of the conflict in the decisions of the Supreme Court on whether or not the Public Officers Protection

Act applies in cases of contract in Adigun v. Ayinde (1993) 8 NWLR (Pt. 313) 534; F.G.N. v. Zebra Energy Ltd. (2002) 18 NWLR (Pt.798) 162, the latter case, which decided that the Act does not apply, being later in time, prevails. [Mkpedem v. Udo (2000)9 NWLR (Pt.673) 631 referred to.] (p 450, paras. F-G)

4. *On Application of doctrine of estoppel by conduct* -Where a person, by his words or conduct, wilfully causes another person to believe the existence of certain state of things and induces the latter to act on that belief so as to alter his own previous position, the former is precluded from averring against the latter a different state of things as existing at the same time. In other words, if a man by his words or conduct willfully endeavours to cause another person to believe in a certain state of things, which the first knows to be false and if the second believes in such state of things and acts upon his belief, he who knowingly made the first statement is estopped from asserting afterwards that such a state of things does not exist at the time. This is how the rule in estoppel by conduct otherwise known as estoppel by matter in pais has been stated. In the instant case, the Court of Appeal held that the appellant was estopped from denying the contents of the document (exhibit 40), which he held out to the respondents as his record of service for the period of 14 years prior to when exhibit 17 (letter of retirement) was served on him. [Nsirim v. Nsirim (2002) 3 NWLR (Pt.755) 697, Iga v. Amakiri (1976) J1 SC 1; Ude v. Nmira (1993) 2 NWLR (Pt. 278) 638; Hoi-icon Limited v. Wasurum (1987) 4 NWLR (Pt. 66) 646; Ikpuku v. Ikpuku (1991) 5 NWLR , (Pt. 193) 571; Ukaegbu v. Ugoji, (1991) 6 NWLR (Pt.196) 127 referred to.] (Pp. 463. paras. C-H; 469. paras. A-E)

Per SANKEY, J.C.A. at pages 462-463, paras. F-E: "This document speaks for itself. The date of first appointment is clearly stated therein to be 1st December, 1960. It is duly signed by the appellant. These are facts which are not in issue as this document was readily admitted by the appellant, even as it was tendered through him by counsel to the 1st and 2nd respondents, being the document he held out to the respondents, on the basis of which he was employed. The appellant only sought to explain in his evidence that the contents of the document were not filled in by him but by his secretary in error and that he only appended his signature thereto. That therefore the date of 1st appointment stated therein was stated in error. It is noted however that this is an error which presumably was never detected by the appellant and which he in no way sought to correct until 14 years later, after the 2nd respondent had duly acted on the information held out by the appellant as being correct. It is to be noted further that, not only did the appellant append his signature to this document thereby giving it the stamp of authenticity, but no less a personality than the Secretary to the Military Government and the Head of Service also counter-signed lending further weight to the genuineness and correctness of the information therein contained. For the purpose of emphasis, between the 9th August, 1985, when this document was made and the 5th November, 1999 when the appellant wrote exhibit 18 protesting his retirement from service, the appellant never made any attempt to correct the purported error or to disabuse the mind of the 2nd respondent, his employer, as to the number of years he had put in service. He wittingly or unwittingly allowed the 2nd respondent to continue in its belief in the contents of exhibit 40, act on it and change its position based on same. It is only after all this had been done, some 14 years later, that the appellant now seeks to resile from his position as stated in

exhibit 40 and present the respondent with fresh evidence of his new date of appointment and other details of his record of service. Justice and equity says he cannot do this, and if he does, he will not be allowed to get away with it."

5. On Nature of claims for salaries, emoluments and allowances accruing to an office - Claims for salaries, emoluments, allowances, and other benefits accruing to an office are in the nature of special damages for which strict proof is required. In the instant case, the appellant's claim for salaries, emoluments, allowances and reimbursements was a claim for special damages. However, there was a dearth of proof in the evidence presented by the appellant at the trial court on the claims. (P. 466, paras. F-G)
6. On Whether oral evidence of contents of documents admissible - By section 132 of the Evidence Act, oral evidence of contents of documents which are not before a court may not be given, and where given, should not be acted upon. In the instant case, evidence of the circular referred to copiously both in the 1s1 and 2nd respondent's amended statement of defence, and in exhibit 17, by which the appellant was retired from service, was never produced before the court. The evidence was therefore hearsay and offended section 132 of the Evidence Act. (P. 456, paras. F-G)
7. *On Bindingness of pleading and treatment of undenied assertion* – Whatever is not expressly denied in pleading is deemed admitted and further evidence need not be adduced in proof of the same. In the instant case, the appellant averred in his pleading that he was bound to retire upon putting in 35 years in the public service and or upon attaining 60/65 years of age. In the circumstance, the Court of Appeal held that the appellant could not depart from his case in his pleadings and set up a different case in court in respect of that fact. (Pp. 457-458, paras. E-B)
8. *On Whether pleadings amount to evidence* - Pleadings do not amount to evidence, especially in the face of a vehement denial of a plaintiff's claims by the defendant. (P. 466, paras. (I-H)
9. *On Whether every error in judgment will result in its reversal on appeal* - It is not every mistake or error in a judgment that will result in an appeal being allowed. It is only when the error is substantial in that it has occasioned a miscarriage of justice that the appellate court is bound to interfere. In the instant case, no miscarriage of justice was occasioned as a result of the slip in the judgment of the trial court. [Ibrahim v. J.S.C. (1998) 14 NWLR (Pt. 584) 1; Onajobi v. Olaiupckun (1985) 4 NWLR (Pt. 2) 156: Ike v. VKboaja (1993) 6 NWLR (Pt. 301) 539; Anyunwu v. Mhara (1992) 5 NWLR (Pt. 242) 386; Nwosu v. I.S.E.S.A. (1990) 2 NWLR (Pt. 135) 688 referred to.] (Pp. 467-468, paras. D-B; 468, para. F)

Nigerian Cases Referred to in the Judgment:

A.C.B. Plc v. Emostrade Ltd. (2002) 8 NWLR (Pt. 770) 501
Adi gun v. Avinde (1993) 8 NWLR (Pt. 313) 516
Adimora v. Ajufo (1988) 3 NWLR (Pt. 80) 1
Akibu v. Oduntan (2000) 13 NWLR (Pt. 685) 446
Amaeze v. Anyaso (1993) 5 NWLR (Pt. 291) 1
Anyemwu v. Mhara (1992) 5 NWLR (Pt. 242) 386
Banigun v. Amuhikahun (1989) 3 NWLR (Pi. 107) 18

Bamgboye r. Unilorin (1999) 10 NWLR (Pt. 622) 290
Benin Rubber Producers Ltd. v. Ojo (1997) 9 NWLR (Pt. 52]) 388
C.B.N. v. Adedeji (2004) 13 NWLR (Pt. 890) 226
Edjewde v. Ikine (2001) 18 NWLR (Pt. 745) 446
Ezeoke v. Nwagbo (1988) 1 NWLR (Pt. 72) 616
F.G.N. v. Zebra Energy Ltd. (2002) 18 NWLR (Pt. 798) 162
Gyang v. N.S.C. (2002) 15 NWLR (Pt. 791) 454
Horicon Ltd v. Wasuntm (1987) 4 NWLR (Pt. 66) 646
Ibrahim v. J.S.C. (1998) 14 NWLR (Pt. 584) 1
Iga v. Amakiri (1976) 11 SC 1
Ike v. Ugboaja (1993) 6 NWLR (Pt. 301) 539
Ikpuku v. Ikpukit (1991) 5 NWLR (Pt. 193) 571
Inyang v. Ebong (2002) 2 NWLR (Pt. 751) 284
Ivienagbor v. Baznaye (l999) 9 NWLR (Pt. 620) 552
Kode v. Yussuf (200\) 4 NWLR (Pt. 703) 392
Kwajaffu v. B.O.N. Ltd. (2004) 13 NWLR (Pt. 889) 146
Mkpedem v. Udo (2000) 9 NWLR (Pt. 673) 631
N.P.A. v. Contusion' Generah' Farsura CogefarSPA (1974) 1
All NLR (Pt. 2) 463
Narindex Trust Ltd. v. N.I.M.B. Ltd. (2001) JONWLR (Pt. 721) 321
Nsirim v. Nsirim (2002) 3 NWLR (Pt. 755) 697
Nsirim v. Omuna Construction Co. Ltd. (2001) 7 NWLR (Pt. 713)742
Nwosn v. I.S.E.S.A. (1990) 2 NWLR (Pt. 135) 688
Ogbunyiya v. Okudo (1979) 6-9 SC 32
Oilfield Supply Center v. Johnson (1987) 2 NWLR (Pt. 58) 625
Olalekan v. Wema Bank Plc (2006) 13 NWLR (Pt. 998) 617
Onajobi v Olampekim (1985) 4 NWLR (Pt. 2) 156
Onibitdo v. Akibu (1982) 7 SC 60
R.C.C. (Nig.) Ltd. v. Buratfo (1993) 8 NWLR (Pt. 312) 508
Salako v. L.E.D.B. (1953) 20 NLR 169
Sanda v. Kukawa L.G.A. (1991) 2 NWLR (Pt. 174) 379
U.B.N. Plc. v. Umeoduagii (2004) 13 NWLR (Pt. 890) 352
Vde v. Nwam (1993) 2 NWLR (Pt. 278) 638
Ukaegbu v. Ugoji (1991) 6 NWLR (Pt. 196) 127
Welco Ind. S.P.A. v. J. 1. Nwanvanwu Ltd. (2005) 32 WRN 133
Foreign Case Referred to in the Judgment:
Midland Railway' Co. v. The Local Board for the District of Wellington (1882-3) 11 Q.B.D. 788

Nigerian Statutes Referred to in the Judgment:

Constitution of the Federal Republic of Nigeria, 1999, S 35(1) (c)
Evidence Act Cap. 112Laws of the Federation of Nigeria, 1990, Ss. 75, 113, 132 & 151
Police Act, Cap. 359 Laws of the Federation of Nigeria, 1990, S. 4(a)
Ports Act Cap. 361 Laws of the Federation of Nigeria, 1990, S. 97
Public Officers Protection Act, Cap. 379, Laws of the Federation of Nigeria, 1990, S. 2(1)(a)

Public Officers Protection Law Cap. Ill Laws of Northern Nigeria, 1963 S. 2(a)
University of Ilorin Act Cap 117 of 1976 Ss. 6(3), 10(l)(a) & (b)
University of Ilorin Act, Cap. 455 Laws of the Federation of
Nigeria, 1990, S. 22(6)

Appeal:

This was an appeal against the judgment of the Federal High Court, which dismissed the appellant's suit. 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.; Jummai Hannatu Sankey, J.C.A. (Read the Leading Judgment) Appeal No.: CA/IL/48/2005 Date of Judgment: Tuesday, 5''' December, 2006 Names of Counsel: A.O. Mohammed. Esq. (with him, Ngozi E. Okoye [Miss] -for the Appellant K.K. Eleja Esq. (With him, B. Akintunde [Miss]; V. Udenze [Miss]) -for the 7'' and 2'''' Respondents J.A. Mumini. Esq., D.P.P. Kvvara Stale Ministry of Justice - for the 3th Respondent

High Court:

Name of the High Court: Federal High Court. Ilorin Name of the Judge: P.P. Olayiwola, J. Date of Judgment: Friday, 17''' December 2004

Counsel:

A.O. Mohammed, Esq. (with him, Ngozi E. Okoye [Miss] -for the Appellant
K.K. Eleja Esq., (with him, B. Akintunde [Miss]; V. Udenze
[Miss],) -for the 7th and 2nd Respondents
J.A. Mumini Esq., D.P.P., Kwara State Ministry of Justice -for the 3th Respondent

SANKEY, J.C.A. (Delivering the Leading Judgment): This is an appeal against the judgment of Hon. Justice P. F. Olayiwola of the Federal High Court, Ilorin, delivered on 17th December, 2004, i in favour of the defendants/respondents herein.

The plaintiff/appellant claimed against the defendants/ respondents as follows in paragraph 28 of their amended statement of claim dated 5/8/2001 but filed on 6/10/2003:

(i) A Declaration that the plaintiff is entitled to the , possession and use of his official car Peugeot 504 SR Car Registration No. FG 165 E45 (AE.204LRN) until January. 2002 when plaintiff will retire from the service of 2nd defendant at the age of 60 years.

(ii) A court declaration that plaintiff's appointment as , Director of Administration with the University of Ilorin is still subsisting and that plaintiff is entitled to the salaries, emoluments, allowances and other benefits accruing to his office and position with effect from 1st September. 1999 to January. 2002 when he will retire ^ from the service of 2nd defendant.

(iii) An order of injunction restraining the defendants, either by themselves or through their servants, agents and privies from dispossessing or interfering with plaintiffs possession and use of said Peugeot 504 Saloon Car until he retires from the service of 2nd defendant.

(vi) A mandatory court order directing the 1st and 2nd defendants to pay plaintiff's salaries, emoluments, allowances and other benefits accruing to his office and position with effect from 1st September, 1999 to January 2002. And damages amounting to N4, 380,055.12 as follows:-

(a) Unpaid salaries for 8 months i.e. September 1999 - April 2000

N298.239.92

(b) Unpaid salaries for May 2000 - May 2001

N1.486.242.06

(c) Salaries for June 2002 - January 2002

N914, 610.88

(d) Unpaid Arrears of Leave Bonus for 1995 – 2001

N128.867.46

(e) Unpaid Travelling expenses

N270.000.00

(f) Unpaid running & maintenance expenses for official car

N128, 633.05

(g) Cost of preparing Report to visitation panel and other documents

N10, 611.75

(h) Reimbursement for recommended drugs purchased (with receipts)

N6, 858.00

(i) Reimbursement for 2 Newspapers per day from September. 1997 - January 2002

N 135.210.00

(j) Expenses on meals during official journey

N7S2.00

(k) Plaintiff shall found on a copy of the agreement between the Federal Government and Senior Stall Association of Nigerian Universities dated August. 2001 and all relevant receipts where available are here pleaded.

2. N 1.000.000.00 from all the defendants both jointly and severally being damages for unlawful assault, arrest, detention and humiliation, plaintiff suffered in the hands of defendants' agents.

The defendants in response filed an amended statement of defence dated 17/10/03 and filed on 20/10/03. In paragraph 1 thereof, they raised an objection to the hearing of the suit in these terms:-

1. The defendants shall at or before the trial, pray this Honourable Court to dismiss and strike out the case of the plaintiff in its entirety on the following grounds:-
   i. The court lacks the 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-haired.
   iii. Failure to institute the action within 3 months of the accrual of the cause of action is fatal to the cause.
   iv. The suit of the plaintiff discloses no reasonable cause of action or any cause of action at all.

In addition to this, the 1st and 2nd defendants filed a motion on notice wherein they prayed that the preliminary objection raised in paragraph 1 of their amended statement of defence be set down for hearing. The learned trial Judge however, without making a pronouncement on this, elected to proceed with the trial, and instead pronounced on the issues so raised relating to jurisdiction in the body of his judgment. p

The 3rd defendant, even though duly served with all the processes in this suit, did not file any pleadings and so did not adduce any evidence.

At the close of the case, the trial court dismissed the appellant's claim in its entirety in these words:-

"In the light of the foregoing, I cannot come to the conclusion that the plaintiff has proved his case beyond case against the defendants in this matter. This case is therefore dismissed accordingly." Dissatisfied with this judgment, the appellant appealed to this p court by filing a notice of appeal consisting of thirteen grounds, and sought from the court the following reliefs:

(a) Allow the appeal, set aside the judgment of the trial court.

(b) Allow the claims of the plaintiff as per his statement of g claim.

The facts of the case as can be gleaned from the record of proceedings are briefly that the 2"" respondent employed the appellant herein on the 1"' November. 1985 as the Registrar of the University. Prior to this appointment, he was a Permanent Secretary with the I Kwara State Civil Servant Commission and had served both the Northern Nigeria Civil Service and the Kwara State Civil Service.

The appellant served as the Registrar of the 2nd respondent from 1M November. 1985 until 8th December. 1997 when he was redeployed to the Vice Chancellor's office as the Director of Administration. It is from this position that the appellant was asked to proceed on retirement having put in more than 35 years in service. The letter of retirement is dated 4"1 November, 1999.

The appellant challenged his retirement from service on two grounds, namely:-

(a) that he had not yet put in 35 years in service, and

(b) that he was not yet 60 years of age as agreed upon in his conditions of service and as provided for in the regulations governing the 2nd defendant.

The appellant also complained that the 1s1 and 2nd respondents unlawfully caused him to be arrested and detained on 4"' July, 2000 by the 3rd respondent on the allegation that he stole or misappropriated the Federal Government vehicle No. FG 165 E45 Peugeot 505 allocated to him.

The appellant, who was the plaintiff at the lower court, testified and tendered numerous documents in evidence marked exhibits 1 -41. The 1st and 2nd respondents, who were the 1st and 2nd defendants at the lower court, also called one witness who testified on their behalf and relied on the exhibits tendered by and through the plaintiff. The 3rd defendant/respondent did not file any pleadings in the case and so did not adduce evidence. As earlier stated, the lower court in its judgment, found that the plaintiff/appellant did not prove his case against the defendants/respondents and so dismissed his claim in its entirety.

Dissatisfied, the appellant filed an appeal in the terms of his notice and grounds of appeal dated 2/3/05 and filed on 7/3/05.

In compliance with our rules, both parties filed their briefs of argument. In addition, the 3rd respondent, who even though filed no pleadings and adduced no evidence at the lower court, similarly filed a brief of argument in this appeal, having been duty served all the processes arising therefrom.

The appellant's brief of argument dated 30/1/06 was deemed filed and served on 7/2/06 with the leave of court. Same was fully adopted as the appellant's argument in this appeal by Mr. Mohammed, learned counsel for the appellant, on 17/10/06. In adopting the brief, learned counsel made the following oral submissions to buttress his written arguments. He submitted that the Public Officers Protection Act does not apply to the appellant's case because the cause of action is based on a contract of employment. He referred to the case of F.G.N. r. Zebra Energy Ltd. (2002) 18 NWLR (Pt. 798) 162. Should the court however, rule otherwise, he submitted that subsequent correspondences between the appellant and the 1st and 2nd respondents and the negotiations \ following them revived the matter. He submitted further that by its j finding at page 236 of the record, the trial court set a standard of proof unknown to law before the appellant. Based on these and other reasons stated in the appellant's brief of argument, he urged us to allow the appeal and grant the respondent's claim at the lower court. ;

Mr. Eleja, learned counsel to the 1st and 2nd respondents, filed the 1st and 2nd respondents' brief of argument dated 3/4/2006 and same was deemed as properly filed and served with the leave of court on the 17/5/2006. He adopted the said brief of argument as the 1st and 2nd respondents' arguments in this appeal on the 17/10/2006. In addition to the written brief, Mr. Eleja, with the leave of court, submitted under issue No. 2 at pages 15-16 of the brief that the appellant cannot resile from exhibit 40.

In this regard, he cited another authority in the decision of the Supreme Court in Olalekan v. Wema Bank Plc (2006) 13 NWLR (Pt.998) 617, (2006) All FWLR (Pt. 329) 807 at 814 per Onu, JSC to further buttress his argument on this in the brief. It was further his submission that S.2 (a) of the Public Officers Protection Act applies fully to the case of the appellant because all the respondents are Public Institutions or offices whose official conduct was being challenged by the appellant. He referred to pages 8 - 9 of the brief to submit that the case of FGN v. Zebra Energy Lid. (Supra) is not applicable to this case because the case dealt with a specific contract and not a contract of employment as in this case. On the exchange of correspondences, he submitted that it is only when negotiations lead to a definite commitment by a party entitled to the protection under the Act that will lead to a revival of the matter. Concerning the pronouncement of the learned trial Judge at page 2.36. He submitted that it was only a slip that did not amount to setting an unusual standard of proof by the trial court. He again reiterated that it is not every slip or error in the judgment of the trial court that will lead to a reversal of the judgment of the court, but only a slip that has occasioned a miscarriage of justice. Learned counsel submitled that the case of the parties was duty considered in the judgment of the court at pages 216 - 236 of the record.

Further, that since the slip was made towards the end of the, judgment, it could not be said to have weighed on the mind of the j court when it was considering the case. Finally, learned counsel; submitted that, if the slip had not been made, the judgment would still have been the same. He urged the court to dismiss the appeal for being unmentonous.

Mr. Mumuni. D.P.P., Kwara State and learned counsel for the 3rd respondent, stated that the 3rd respondent's brief of argument dated and filed on 26/4/2006 was deemed properly filed and served by the order of this court on 17/5/2006. He adopted same as the 3rd respondent's arguments in this appeal. He urged the court to dismiss the appeal against the 3rd respondent because the respondent acted strictly within the provisions of the Constitution of the Federal Republic of Nigeria. S.35 (1) thereof and S.4(a) of the Police Act.

The appellant, in his brief dated 30/1/2006 formulated the following three (3) issues for our determination in this Appeal:-

1. Whether the Public Officers Protection Act is applicable to plaintiff's on tract of employment and if it does, (*sic*) whether given the peculiar facts of this case the action is statute bared (sic). (Grounds 2 and 3).
2. Whether by the terms and conditions of plaintiff's employment and position, he is bound to retire upon putting in 35 years in the Public Service or upon attaining 60/65 years of age (Grounds 1, 4 and 10)
3. Whether upon the evaluation of the oral and documentary evidence on record plaintiff had served for 35 years in the public service as at 22/10/99. (Grounds 5. 6, 7 and 8)
4. Whether plaintiff proved his claims. (Grounds 9. 11. 12 and 13).

The 1st and 2nd respondents in turn, distilled four (4) issues from the grounds of appeal filed. I reproduce them thus:

1. Whether the provisions of the Public Officers Protection Act are not applicable to the appellant's case and whether the trial court was not right in holding that his action was statute barred. (Grounds 2 and 3)
2. Whether the trial court was not justified in holding that the appellant had put in more than 35 years in public service. (Grounds 5. 6 and 8)
3. Whether the appellant was not validly retired (Grounds 1.4. 7. 9 and 10).
4. Whether the appellant's claim before the trial court was not rightly dismissed by that court. (Grounds 11 and 13).

On their own part, the 3rd respondent identified only one issue for our determination as it concerns him, and that is: -

Whether the 3rd defendant is endowed with statutory power to receive and act on a criminal complaint, and how justifiable in the instant case?

On my own part, I am of the view that a juxtaposition of the; issues for determination formulated by all the parties will properly; bring out all areas that need to be examined for a just and proper determination of this appeal. Therefore formulate the issues for determination in this appeal thus:

1. Whether the Public Officer's Protection Act is applicable to plaintiff's employment, and if it is, whether the trial court was right in holding that the action is statutet barred.
2. Whether the trial court was not justified in holding that the appellant had put in more than 35 years in Public Service.
3. Whether the plaintiff, on the evidence before the trial court, had served in the public service for a period of 35 years.
4. Whether the plaintiff proved his claims before the trial court to entitle him to judgment.

Issue One

Learned counsel for the appellants submitted that since the subject matter in issue in this case has to do with the contract of employment of the plaintiff, section 2 of the Public Officers Protection Act is inapplicable. He referred to the cases of: Sahiko v. L.E.D.B. & Anor. (1953) 20 NLR 169: Nigeria Ports Authority v.. Q Constnizioni Generali farisum Spa & Anor. (1974) All NLR (Pt. 2) 463: Central Bank of NJoena v. Adede/i (2004) 13 NWLR (Pt. 890) 226 at 245-247.

Learned counsel distinguished the cases of Adi gun v. Ayinde (1993) 8 NWLR (Pt.315i 534: and Road Construction Co. (Nig)Ltd. v. Buratto (1993) 8 NWLR (Pi.3 12) 502. cited at the lower court with the instant case in that those cases arc concerned with tortuous acts and not contracts of employment, and therefore irrelevant here. He further submitted that it is the plaintiff's claims in his statement of claim that determines whether or not the plaintiff's action is statute barred and not the statement of defence. He referred to the case of Union Bank Plc v. Umeoduagu (2004) 13 NWLR (Pt.890) 352, (2004) 7 SCNJ 75 at 83 - 85.

Furthermore, learned counsel submitted that lime only begins to run against a cause of action after a series of facts or events have crystallised and given rise to a cause of action. He referred to the following cases on this point: Oseyenion v. Ojo (1997) 7 SCNJ 365 at3841. (1997)9NWLR ('Pt.521) 388; Edjerode v. Ikine (2001) 18 NWLR (Pt.745)446. (2001) 12 SCNJ 184 at 199; Akibu. Oduntan (2000) 7 SCNJ 189 at 209: (2000) 13 NWLR (Pi. 685) 446. Applying these principles to the facts of this case, it was learned counsel's submission that the matter of the plaintiff's retirement Iron ilk-service of the 2nd defendant was still pending and unresolved by the University Council when this suit was filed; lie referred in particular to exhibits 16. 17. 18. J8A, 19. 20. 27. 29, 30. 31, 33 and 33A. By these exhibits, it is his position that the p was kepi alive. Even though exhibit 17 set in motion the chain of actions and reactions, n is not the beginning and (he end or the conclusion of the matter concerning the plaintiff's retirement. He contended that contrary to the finding of the learned trial Judge at page 233 of the record that nothing kept the cause of action alive after exhibit 17 was served on the plaintiff, exhibits 27. 28 and 29 issued by the reconstituted Council of the 2nd defendant and the meeting the Council held with the plaintiff sustained and kepi the plaintiff's cause of action alive. For this submission, he relied on the case of Adimora v. Ajufo (N88) 3 NWLR (Pt.80) 1. (1988) 6 SCNJ 18 at 30 - 31. Learned counsel also took up issues with the vie expressed by the learned trial judge at page 231 of the record that the meeting the plaintiff held with the Governing Council in a hotel cannot be equated to a meeting of the Governing Council, it was his submission that there is no law which says that the meeting of the Governing Council must be held al a particular place. He underscored the importance of the meeting by the notice of meeting, exhibit 27 written and signed by the Registrar of the University who is also the Secretary to the Governing Council on the instruction of the Chairman Governing Council. In addition, five members of the Governing Council including its Chairman. Vice Chancellor. Secretary and Registrar allended the meeting. It was also his position that exhibit 29 constitutes the record of proceedings at the meeting. Learned counsel further submitted that, assume without conceding that time started to run against the plaintiff after exhibit 17 was made, the agreement reached by the defendant with the plaintiff at the said meeting to reinstate him as contained in exhibits 27. 28 and 29 reopened the matter and set aside exhibit 17 because the 2nd defendant's authority had reached a settlement with the plaintiff on the matter through exhibit 29 and agreed to reinstate the plaintiff. He submitted that it is trite law that where a settlement has been reached through negotiation, time ceases to run and this is generally accepted as an exception to the Rule of Statute of Limitation for bringing an action after three months. He referred to the case of Welco Industry S.P.A. v. J.I. Nwanyanwu Ltd. (2005) 32 WRN 133 at 164. He contends that exhibits 27. 28 and 29 present evidence of settlement reached by the plaintiff and the 1st and 2nd defendants during the negotiations held at Nocbul Hotel in llorin at the instance of the defendants.

Learned counsel submitted that the learned trial Judge had a duty to examine all the documents placed before him by the plaintiff to determine whether exhibit 17 by itself constituted the only document that gave rise to the plaintiff's cause of action.

He therefore asks this court to evaluate exhibits 16. 17. 18. 18A. 19. 20. 27, 28. 29. 30. 31, 33 and 33A to determine whether the plaintiff's cause of action began and ended with exhibit 17.

On exhibit 19, learned counsel submitted that it contains an admission by the defendants that exhibit 17 was written in error and was inconclusive of the matter of the plaintiff's retirement. He disagreed with the finding of the learned trial Judge at page 232 of the record that exhibit 19 reaffirmed or restated exhibit 17. Instead, it is his view that exhibit 19 effectively set aside exhibit 17 because it converted the mandatory retirement to compulsory retirement. In addition, in the light of the oral evidence of D W1 that on the retirement of a member of staff, his official car and driver are immediately retrieved, (page 204 of the record), learned counsel asked the court to infer that the defendants were aware and therefore acquiesced to the fact that the matter of plaintiff I s retirement had not been resolved because the plaintiff's driver was not withdrawn until 6/11/2001 by exhibits 30 and 31. two years after exhibits 17 and 19. He contended that this is clear evidence that as at the time plaintiff filed this suit, the matter of his retirement was still awaiting the final decision of the University Council and that is why his official driver was not withdrawn until two years later.

Learned counsel submitted that the combined effect of exhibits 17, 19, 28.28B. 30 and 31. and the meeting of the Council held with the plaintiff is that the defendants had not resolved the matter of the plaintiffs' retirement from the University when this suit was filed on 6/7/2000. He submitted further that even by exhibit 29 written by the Chairman of Council, he still left the door open to resolve the matter of the plaintiff's retirement. However, by exhibits 33 and 33 A. plaintiffs decided to retire voluntarily having reached the age of 60. Learned counsel therefore submitted finally that the plaintiff's action is not statute-barred and he prayed the court to answer issue number one in the negative.

On his own part, Mr. Eleja, learned counsel for the 1st and 2nd respondents to this appeal, submitted that given the facts and circumstances of the case, the provision of section 2(a) of the Public Officers Protection Act applies. He submitted that, by the relief's adumbrated on the writ of summons, especially relief's 1 and 3 thereof, which were reinforced and restated in paragraphs 28(1)(i)(iii) and 28(2) of the amended statement of claim at page 168 of the record, there arc two causes of action in the appellant's claim before the lower court. He also referred to paragraphs 18 and 19 of the amended .statement of claim in this regard. The first was the retirement of the appellant by the 1st and 2nd respondent from the 2nd respondent's employment, and the 2nd was the propriety or otherwise of the 1st and 2nd respondent's request for the return of the Peugeot 504 car retained by the appellant as his official car and the subsequent invitation by the 1st and 2nd respondents to the 3rd respondent to assist in the recovery of the said car. being the property of the 2nd respondent. He submitted that since an amendment of process relates to the date of the original process that was amended, this 2nd cause of action was in existence when the action was filed originally. Learned counsel therefore submitted that the provision of section 2(1) of the Public Officers Protection Act applies with all force to the two causes of action.

He contended that since all the respondents' arc public officers and a public office respectively, the cause of action relating to the contract of employment governed by the University of ilorin Act and having statutory flavour, is covered by section 2(a) of the Act. He referred to the cases of Adigun v. Ayinde (1993) 8 NWLR (Pt. 313) 516 at 534; RCC (A'/«J Ltd., v. Buratto (1993) 8 NWLR (Pt.312) 508 at 513: Mkpedem v. Udo (2000) 9 NWLR (Pi.673) 631. (2001) FWLR (Pt.66) 827 at 842; and Ibrahim v. JSC (1998) 14 NWLR (Pt.584) 1 at 11.

With regard to the case of NPA v. Constnizioni (supra) at page 956 which relied on the case of Sedako v. L.E.D.B. (supra), learned counsel submitted that therein, the Supreme Court made the point that the protection offered was not applicable because the contract that was involved was a specific contract i.e. a contract for a certain construction earned out by the respondent on behalf of the appellant therein. He contended that a contract of employment governed by statute is not in the category of specific contract to which the provisions of the Public Officers Protection Act arc excluded. In respect of the case of Salako v. L.E.D.B. (supra) cued, learned counsel submitted that the authority is not helpful since the facts upon which its relevance may be judged are not contained in the report.

Again, learned counsel urged the court not to follow its decision m C.J1.N. r. Adedeji (supra) because the ease was decided per incuriam. He premised his submissions on two reasons, namely:-

1. The case of NPA v. Constitution (supra I and FGN v.Zebra Energy Lid. (2002) 18 NWLR (Pt. 798) 162 which were heavily relied upon by the court in C.B.N. v. Adedeji's case dealt with specific contract as opposed to contract of employment which was the subject matter of Adedeji's case.
2. The decision in Adedeji's case runs contrary to the Supreme Court's decision in Ibrahim v. JSC (1998) 14 NWLR (Pt.584) 1. Where the Supreme Court upheld the applicability of the provisions of section 2(a) of the Public Officers Protection Act. Even though the subject matter of that case was the compulsory retirement of the appellant was an Upper Area Court Judge.
3. Thirdly this court had earlier correctly stated the position also the applicability of the provision of section 2(a) of the Public Officers Protection Act to a contract of employment in the case of Gyang v. NSC (2002) 15 NWLR (Pt. 791) 454 at 465 to the effect that section 2(a) of the Act covers a contract of service in which an action in relation thereto must be filed u within 3 months next after the accrual of the cause of action. He submitted that this decision was not adverted to by the court in CBN v. Adedeji‘s case (supra) neither was it overruled.

Learned counsel therefore urged the court not to place reliance on the authorities cited by the appellant, but should prefer and apply the decision in Gyang v. NSC (supra).

Yet again, learned counsel to the 1st and 2nd respondents submitted that, perceived from another angle, section 2(a) of the Act is applicable to this appeal with respect to the second cause of action which is founded on the attempt to recover the Peugeot 504 car from the appellant. He submitted that since reliefs 1 and 3 on the writ of summons at page 2 of the record and paragraphs 28(1) (i) and 28(2) in the amended statement of claim at page 168 of the record were not withdrawn nor severed at any point, they justify the invocation of the provisions of section 2(a) of the Act to the appellant's case.

Learned counsel therefore submitted that decision of the trial court that the provision of section 2(a) of the Act applies is sound and unassailable and should be affirmed.

Following on the above, learned Counsel Mr. Eleja, therefore raised the poser: Was the trial court not right in dismissing the appellant's case on the ground that it was statute-barred1.' By this poser, learned counsel went on to apply the 1 acts of the case to the law. He answered the poser in the affirmative. He submitted that in the determination of whether or not a cause of action is statute barred, the materials to be considered are the writ of summons and the statement of claim. The writ discloses that same was filed on 6/7/ 2000. and by paragraph 12 of the amended statement of claim at page 165 of the record, the complaint of the appellant was against his retirement on the 4th November. 1999. coupled with the directive on the same date for him to hand over the 2nd respondent's property, particularly the Peugeot 504 saloon car in his possession, as stated in the letter of retirement exhibit 17. From these facts, the cause of action accrued on 4/11/1999 while the action challenging same was not filed until 6/7/2000. a period of 8 months after. The action was therefore not filed until after the expiration of the time prescribed for doing so. Which period is three months by virtue of section 2(a) of the Public Officers Protection Act. On the authority of Adigun v. Ayinde (supra) at 534: RCC Nig. Ltd. r. Burato (supra) at 513: Mkpedeiu v. Udo (supra): and Ibrahim v. JSC (supra) at 32. learned counsel submitted that such proceedings instituted outside the prescribed period for filing are liable to be struck out or dismissed as the cause of action has become extinguished by law. It was his contention that the appellant's cause of action had accrued fully on 4/11/1999 whereas the case was not filed until 6/7/2000. There was no credible evidence before the lower court that the appellant's retirement had not been resolved when the suit was filed. He contended that nothing in exhibits 16, 17, 18, 18(a), 19, 20, 27, 29, 30, 31, 33 and 33a as well as the oral evidence of the appellant B before the court point to the assertion that the cause of action had' not accrued as at 6/7/2000. Learned counsel raised another poser: if; the cause of action had not accrued why did the appellant file the' suit?

Mr. Eleja further submitted that the complaint of the appellant) which led to the cause of action is not a continuing one and there was nothing done by the parties to revive the cause of action alter if had lapsed. He submitted that, for there to be a transaction or agreement between the parties that would revive the cause of action that had lapsed, there must be evidence of admission of liability by the defendant. Going to the facts, learned counsel submitted that there was no evidence to show that 1st and

2nd respondents admitted that they would recall the appellant. He contended that exhibits 27, 28 and 29 relied on by the appellant fell far short of the required; admission to revive the cause of action, further to which the appellant failed to produce the minutes of the meeting of the Council which he claimed in his brief, effectively sustained and Kept plaintiff's cause of action alive. In addition, the appellant, under cross-examination at page 196 of the record, was unable to lender any letter, minute or document to that effect.

On exhibit 19 learned counsels contended that, rather than revive the appellant's cause of action, it confirms the accrual and consummation of the same right from 4/11/1999.

On the contention that the non-withdrawal of the appellant's driver after the issuance of exhibits 17. 19 and 24 amounted to at continuance of the cause of action, learned counsel contended that' this is a fallacy since exhibits 17. 19 and 24 state unequivocally that, the appellant's appointment has been brought to an end and that he; should return forthwith the University property in his possession. Indeed exhibit 24 specifically requested for the return of the official vehicle. He submitted that, at best, exhibits 24. 27. 28. 29. 30 and 31 could be considered evidence of negotiation and not an admission, and negotiation between parties will not stop time from running nor revive a cause of action that has become spent by virtue of limitation. He referred to RCC Ltd. V. Burato (supra) at 513.1

Learned counsel finally prayed this court to hold that section 2(a) of the Public Officers Protection Act applied to the appellant's case and that the trial court was justified in concluding that the Statute of Limitation caught the appellant's action. He therefore urged the court to dismiss the grounds of appeal from which issue one was distilled.

Having substantially reviewed the submissions of both learned counsel in respect of issue one. It is quite apparent that there exists a labyrinth of authorities concerning the applicability of section 2(a) of the Public Officers Protection Act to cases involving contracts. Whereas it is the appellant's position that the Act is not applicable to cases moving contract of employment, the 1st and 2nd respondents contend that it is wholly applicable. At this point, it is pertinent to set out the provision of section 2(a) of the Public Officers Protect Act. LFN, 1990, which is being contended for better appreciation of the argument.

"2. Where any action, prosecution, or other proceeding is commenced against any 1 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 he 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:"

It is also noted that the issue of the applicability or otherwise of the said Act to a contract of employment was not canvassed directly at the lower court, and therefore,

the learned trial Judge made no pronouncement on same. The issue canvassed there was whether or not the plaintiff's action is statute barred. Nevertheless, since it is the law that any issue that touches on the competence of a suit before a court and therefore the jurisdiction of the court to entertain same can be raised at any lime, even for the first time on appeal. I will go on to examine this issue, which essentially is the applicability of section 2 of the Public Officers Protection Act to a contract of employment.

In coming lo a decision. I have waded through the maze of decisions given by the courts, starting from the case of Nigerian Ports Authority v. Consmtzioni Cicncrali Farxura Cogefar SPA & An or. (supra).

In the N.P.A. v. Construzioni case (supra), as has been properly stated by learned counsel for the respondents, it involved a contract entered into between the appellants, who were a statutory corporation entrusted with the management of the Nigerian Ports Authority, and the 1st respondent who was a building contractor engaged by the appellants to construct the 2nd Apapa Wharf Extension, The appellants sought to rely on section 97 of the Ports Act, which required notice of action to be served on the appellant before commencing any proceedings. The trial court held that this provision was inapplicable and found for the 1st respondent on their counter claim. On appeal, the Supreme Court in a very well considered judgment upheld the decision of the lower court. To better appreciate the reasoning or ratio decidendi of the decision, it is better to capture it in its essence as was stated by the apex court per Ibekwe. JSC at pages 476- 477 of the report.

> "We shall now deal with the other point which to our mind, does not seem to be well-settled, namely whether the kind of statutory privilege which we have been considering is applicable to an action founded upon a contract. In other words, whether S. 97 of the Ports Act applies to cases of contract. We think that the answer lo this question must be in the negative. We agree that the section applies to everything done or omitted or neglected to be done under the powers granted by the Act. But we are not prepared to give to the section the stress which it does not possess. We take the view that the section does not apply to cases of contract. The learned Chief Justice, in deciding this point, made reference to the case of Salako v. L.E.D.B. and Anor: 20 NLR 169 where de Commarmond S.P.J. as he then was, construed the provision of S. 2 of the Public Officers Protection Ordinance which is almost identical with S. 97 of the Ports Act. and thereafter stated the la\\ as follows: -
>
> > '1 am of the opinion that section 2 of the Public Officers Protection Ordinance does not apply in cases of recovery of land, breaches of contract, claims for work and labour done, etc." We too are of the opinion that dc Commarmond S.P.J. has quite rightly stated the law in the passage of his judgment cited above. It seems to us that an enactment of this kind i.e. S. 97 of the Ports Act. is not intended by the legislature to apply to specific contract. It is pertinent to point out that the view which we have just expressed seems to be in consonance with the trend of the judgments pronounced in English cases dealing with similar provisions in certain English Siatules. We shall refer only to one ca.se as an example. In the Midland Railway Company v. The Local Board for the District of Washington (18X2-3) 1 I OBD 788. the Court of Appeal construed S. 264 of the Public Health Act. 1875 (38 & 39 vict. C.55) which, more or less falls in line with S. 97 of the Ports Act. the subject-matter of this appeal. We think that it is

desirable that we should here set out the provision of S.264 of the Public Health Act. 1 875. as follows: -

> 'S. 264..A writ or process shall not be sued out against or served on any local authority, or any member thereof', or any officer of a local authority, or person acting in his aid. for anything done or intended to be done or omitted to be clone under the provisions of this Act. until the expiration of one month after notice in writing has been served on such local authority, member, officer or person... Delivering the judgment of the court at p. 794. Bret. M.R..made the following illuminating observation:-
>
> 'It has been contended that this is an action in contract, and that whenever an action is brought upon a contract, the section does not apply. 1 think that where an action has been brought for something done or omitted lo be done under an express contract, the section does not apply: according lo the cases cited an enactment of this kind docs not apply to specific contracts. Again.

when goods have been sold, and the price is to be paid upon a quantum meruit. the section will apply to an action for the price, because the refusal or omission to pay would be a failure to comply with the terms of the contract and not with the provisions of the statute.'

We agree with their Lordships' exposition of the law on this point. Clearly, the appellants' claim and the 1st respondent's counterclaim in the present case are founded in contract. The counterclaim, in brief, is for the payment of the balance of money due from the appellants to the respondents as a result of the contract they both entered into for the construction of the second Apapa Wharf Extension."

This same issue came up for consideration again in the case of F.G.N. & Ors. v. Zebra Energy Lid. (2002) 18 NWLR (Pt.798) I62J Here, the applicability of section 2(a) of the Public Officers (Protection) Act. Cap. 379, LFN. 1990 came up directly for interpretation. In this regard, the issue before the court was whether; the trial court had jurisdiction to entertain the suit in view of the Public Officers (Protection) Act, Cap. 379, LFN. 1990. Here again] the Supreme Court unequivocally held thus at pages 195 - 197 of the report:-

> "The strongest point, in my view, for the respondent in this issue is whether the Public Officers Protection Act, applies to matters concerning breach of contracts. The' Court of Appeal agreed with the submissions oi the respondent that the Act does not apply to cases of contract. Learned counsel for the appellants argued that Ibrahim's case concerns contract of service. He also referred to Sanda v. Kukawa LG.A. (1991) 2 NWLR' (Pt.174) 379 at 388-9. With respect to the learned counsel the issues considered in the two cases did not touch the pertinent argument on whether the privilege in the Act is applicable to an action founded upon a contract. In Ibrahim's case, the issues considered in the lead Judgment written by Iguh.. JSC are as follows:
>
> > "1. Whether the respondents in this matter i.e. the Judicial Service Committee of Kaduna State and the Attorney-General of Kaduna Slate,
> >
> > howsoever defined, fall within the contemplation of the protection afforded public officers by the Public Officers (Protection) Law, Cap. I11, Laws of Northern Nigeria, 1963 as applicable to Kaduna State?

2. Whether it is proper for the Court of Appeal to decide on an important issue raised by it suo main without inviting the parties or their counsel to address the court on same particularly when that issue had in an earlier decision between the parties been finally determined by the Court of Appeal? It is abundantly clear that this court in Ibrahim's

case, did not consider whether the Act applies to cases

01 contract...

Mr. Akpamgbo. SAN. submitted, quite rightly, that this Court whilst interpreting the provisions of section 97 of the Ports Act. which is in pari material with section 2 of the Public Officers Protection Ordinance held in the case of Nigeria Ports Authority v. Conslruzioni Gcnerali Farsura Cogefar SPA & Anor. (1974) 1 All NLR (Pt. 2) 463 that the said law was not intended by the legislature to apply to contracts... 1 have looked into those cases and I agree that the Supreme Court considered the applicability of the Public Officers Protection Ordinance (o actions founded upon cases of breach of contract. The appellants have again tailed in this issue and 1 resolve it in favour of the respondent."

Once again in the case of C.B.N. v. Adedeji (2004) 13 NWLR (Pt. 890) 226. this court following the above 2 decisions decided that section 2(a) of the Public Officers Protection Act did not apply to a contract of employment. In delivering the judgment of the court. Mohammed, JCA slated the position of the law clearly thus at pages 245 -247:

"The fundamental question raised by the appellant when it contended at the lower court that respondents action was "statute-barred" was whether in view of the Public Officers Protection Act. Cap. 379. LFN. 1990 the lower court had the jurisdiction to entertain the suit. The straight answer is that the court had the necessary jurisdiction. Respondents were on firm terrain because the privilege provided by the Public Officers Protection Act does not apply to contract cases. Respondent's cause of action certainly was founded on the breach of the contract of employment they had with the appellant. In the case of Nigerian Ports Authority v. Construzioni Generali Farsura Cogejar SPA &Anor. (1974) 1 All NLR (Pt. II) 463 the Supreme Court while intei-preting S. 97 of the Ports Protection Act which is in pari materia with S. 2 of the Public Officers Protection Act. held that the law was not intended lo apply to contracts... It is clear from the foregoing that the respondent's right of action and access to relief cannot he extinguished on the basis of the' Public Officers Protection Act branded by the appellant. We are all hound by the quoted decision. See also J-.G.N. v. Zebra Energy Ltd. (2002) 18 NWLR(Pi.798) 162,(2002). 12SC(Pt. II) 136 at 150- 151."

In the face of all these decisions. Mr. Eleja. learned counsel for' the 1st and 2nd respondents has asked us to prefer the decisions in the cases of Adigun v. Ayinde (supra): Ibrahim v. JSC (.supra); and Gyang v. NSC (supra). With due respect to learned counsel. 1 am of the opinion that he is mistaken in his submission that the Supreme Court in the ease of Ibrahim v. JSC (supra) pronounced on the' applicability of the Act lo contracts of employment. As was clearly pointed out by this Court in the case of CBN v. Adedeji (supra), this was not directly in issue in that case and so no pronouncement therein \\ as made one \\ ay or the other.

1 am also, not unmindful of the decision of the Supreme Court in the case of Adigun v. Ayinde (supra) at page 533. There, the court, in interpreting section 2(a) of the Public Officers (Protection) La\\, Cap. 111, Laws of Niger State held that it applied without exception to "any action". However, with due respect and deference to this decision, the lax\ is that, where there are conflicting judgments of courts of equal jurisdiction, the rule is that the decision later in time pre\'ails. See Mkpedum v. lido (supra). Since therefore the decision of the same Court in f-G.N v. Zebra Energy Ltd. I supra) decided in 2002 is later in time to the decision in Adigun v. Ayinde / supra), it prevails

As for the case of Gyang v NSC .supra), admittedly this Court,' as differently constituted, express \ decided that S. 2(a) of the Public Officers Protection Act applied lo contracts of employment. However. since the decisions of the apex Court in the cases of NPA r. Contruzioni General: Farsura Cogefar SPA (supra) and FGN v.

Zebra Energy Ltd., (supra) were not considered therein, with the area test respect to their Lordships, I would take it that the decision was given per incuriam.

Mr. Eleja sought to draw a distinction between contracts of service or specific contracts and contracts of employment. From the Supreme Court decisions on the point, I am of the view that he is on shaky ground.

Granted that the cases of NPA v. Coustruzoni (supra) and F.G.N. v. Zebra Energy Ltd. (supra) were in respect of specific contracts in the realm of commerce, however, the most recent case of CUN v. Adedeji (supra) was in respect of a contract of employment. In addition to this, in all these cases, no such distinction was drawn. Instead, the firm findings of the courts were that S.2 (a) of the Public Officers Protect ion Act or its equivalent were not applicable in cases of contract or breach of contract. As was slated in the case of NPA r. Construzioni, (supra), with the greatest respect, learned counsel herein is attempting to give the Section "the stress which it does not possess". The issue that was dealt with firmly and squarely was. whether this kind of statutory privilege is applicable to an action founded upon a contract, in other words, whether the statute applied to cases of contract. And the answer was a resounding "No"!

In consequence of all the above. I answer the first part of issue one in the negative, i.e. that the Public Officers Protection Act is not applicable to the plaintiff's employment with the 2nd respondent. The learned trial Judge was therefore in error when he held that the action \was statute barred.

Issue Two:

My issue two here relates to appellant's issue two and 1st and 2nd respondents' issue three in their briefs of argument.

Learned counsel for the appellant submitted that, by the combined effect of exhibits 1. 1A and B. the appellant's letter of appointment setting out the terms and conditions of service attached to the appointment and service, and exhibit 7. which is the University of Ilorin Revised Regulations governing the condition of service of Senior Staff Chapter 1 i item 26.2. the plaintiffs employment is to retiring age of 60 years. which age was later increased to 65 years in the course of his employment. That exhibit 7 is made pursuant to the University of Ilorin Act. Cap. 455. LFN. 1990. He also referred the court to Chapter 1 SS 1.1.1 and 1.1.2 of the exhibit 7. Learned counsel submitted that this position was acknowledged by the learned

trial Judge at page 19 of his judgment, (which is at page 234 of the record). It was further his submission that neither the University Act nor the Regulations governing the conditions of service of the plaintiff, (exhibit 7), supports the alleged Government circular that the plaintiff must retire after 35 years in service. Indeed, the alleged circular or notice was never placed before the court nor cited by learned counsel to the defendants. The trial court merely assumed that such a circular existed and relied on same in absentia in his judgment ignoring exhibits 1. 1A, IB and 7 as well as the University of llorin Act. He submitted that a court should not base its decision on speculation but on admissible and admitted evidence before it. He referred to the cases of Alliaji Onibndo & Ors. v. Alhaji Akibn & Ors. (1982) 7 SC 60 at 62: Ivienagbor v. Bazuaye (1999) NWLR (Pt.620) 552. (1999) 6 SCN.l 235 at 243-244: A. C. B. Plc v. Emostrade Ltd. (2002) 8 NWLR (Pt.770) 501. (2002) 4 SCNJ 299 at 308. Learned counsel submitted that the learned trial Judge, by relying on a document not before him, had occasioned a gross miscarriage of justice. He submits that S. 22(6) ol the University of Ilorin Act makes exhibit 7 superior to any circular or notice which purports to alter the plaintiffs conditions of service from the age of retirement to 35 years service. He submitted that the defendants are bound by the terms and conditions of service in the exhibits 1. 1 A. IB and 7 and the University of Ilorin Act. all of which regulate plaintiff's appointment to the age of retirement of 65 years, and not 35 years of service. Learned counsel therefore urged the court to hold that plaintiff's appointment is to retiring age ol 65 years and not subject to retirement after serving for 35 years.

The submission of learned counsel to the 1st and 2nd respondents on this comes under his issue three. Therein, he starts by posing the question, was the appellant validly retired'.' He referred to paragraph 9 of the amended statement of claim at page 165 of the record, which reads:-

> "9. In accordance with the terms and conditions of service attached to the plaintiff's appointment and position the plaintiff is to retire from the service of the 2nd defendant upon attaining the age of 60 years or alter putting in 35 years of service inclusive of the transferred period of service with Northern Region and Kwara State Go\ eminent." He contended that 1st and 2nd respondents admitted the above pleading in paragraphs 2 and 10(iv) of their amended statement of defence at pages 171 - 173 of the printed record. That therefore the appellant is hound by his pleading. He referred to the cases of Nsirim Omuna Construction Co. Ltd. (2001) 7 NWLR (Pt.713) 742. (2001) FWLR (Pi 44) 45 at 416 and Kode v. Yusuf Y2001)4 NWLR (Pt.703) 392, (2001) FWLR (Pi. 40) at 1754. He further submitted that fads admitted require no further proof. He relied on S.75 of the Evidence-Act and the ease of Nar index Trust Ltd. v. Nigerian Intercontinental Merchant Bank Ltd. (2001) 10 NWLR (Pt.721) 321, (2001) FWLR (Pt.49) 1546 at 1558. Learned counsel therefore submitted that the appellant who pleaded that he is to retire after 35 years service cannot be heard to contend that he is not bound by his pleadings. In addition, that any evidence led to the contrary of his pleadings goes to no issue He referred to Bamgbove v. University of Ilorin (1999) 10 NWLR (Pt.622) 290, (2001) FWLR (Pt. 32) 12 at 48. lie further referred to a purported admission to this effect by the plaintiff at pace 195 of the record. Learned counsel finally submitted that since no issue was joined on the issue of 35 years in public service as the retirement age of the appellant, the court is urged to discountenance the appellant's contention that 35 years retiring age is inapplicable to his employment. He urged the court to answer this issue in the affirmative.

To resolve this issue, it is necessary that the contract of employment between the appellant and the 2nd respondent, the conditions of service and any regulations governing the relationship between the parties, as well as the Act setting up the University must be looked at. Starting from the rear. 1 have examined the University of Ilorin Act. Cap. U7 of

1976 particularly section 6 thereof which pertains to the office of "the Registrar" which is the office the appellant was appointed to by exhibits 1. LA and IB in 1987. The provision relevant to the issue now under consideration is section 6 (3) and it provides thus:

> "(3) The Registrar shall hold office for such period and on such terms as to the emoluments of his office as may be specified."

In line with S. 10(1)(a) and (b) of the University of Ilorin Act. Cap. I"7 of 1979. the Regulations Governing the Conditions of Service of the Senior Staff was issued as Statute No.3 of 1991. See sections 1.1.1 and 1.1.2 of the exhibit 7. The said revised regulations governing the conditions of service of senior staff, being exhibit 7 before the court provided in section 2.16.2 at page 1 as follows:

"U2.16.2. Appointment to the rank of Principal Officers and Professors shall be tenable to the age of retirement." In regard to what terms govern the appointment of an officer under this statute, S .2.221.1 provides as follows:-

> "Every appointment shall be made by written agreement between the University and the member of the staff! concerned and on such terms as may be agreed upon at the time of appointment ..."

By this it is therefore clear that the individual agreement between an officer and the University shall govern the relationship between the parties.

Finally, on statute No. 3 of 1991. (exhibit 7) section 11.2.0 provides for the age of retirement of officers of the University of Ilorin. It is reproduced hereunder:-

"11.2.0 Age of Retirement:

11.2.1 The age of compulsory retirement of all staff of the University shall be 65 years.

11. 2.3. Voluntary Retirement:

> Any member of staff may retire voluntarily at any age below the age of compulsory retirement."

In line with section 2.21.1 of the statute in exhibit 7, the appellant's letter of appointment, and exhibits 1. 1A and IB before the court, set out the terms and conditions agreed upon between the appellant and the 2nd respondent in respect ol his appointment. It is important to set out the relevant portions thereof for clarity of argument. It states inter alia:

"5th August. 1985

> Dear Mr. Alao.
>
> I write on behalf of Council of the University of Ilorin. to offer you an appointment as Registrar of the University of Ilorin. The appointment, which is subject to the University regulations and your being declared medically fit. will commence on 1st Nov.. 1985.
>
> The appointment, which is to retiring age, max lie terminated on cither side, at any time, by six months notice in writing or payment of six months' salary in lieu of notice ……."

(Italics mine for emphasis)

From these documents, which are all exhibits before the court, and from the provisions of the University of Ilorin Act. Cap. U7 of ^979, it is apparent that nowhere therein is it stated that a Principal Officer, being the position being held by the appellant, may be retired upon serving for 35 years, instead, the age of compulsory retirement is 65. while an officer may voluntarily retire at any age below the age of compulsory retirement. It is obviously due to this fact that the 2nd respondent grounded its reason for compulsorily retiring the appellant on a Federal Government circular. This is clearly contained in exhibits 17 and 19 before the court. For ease of reference, these documents are reproduced hereunder-

"4th Nov.. 1999

Mr. A.O.A. Alao,

Director of Administration,

Vice Chancellor's Office,

University of Ilorin.

Ilorin.

Dear Mr. Alao.

RETIREMENT FROM SERVICE

The governing council of the University of Ilorin at its 78th meeting of Friday 22nd October. 1999. reviewed your record of service in the Public Service and noted that you had put in more than 35 years in the public service.

In accordance with the provisions of the Federal Government Circular No. B.63216/S. 1/X of 20th August. 1999. you ought to have retired from the Public Service by 31st August. 1999 having spent more than 35 years in the service.

The council therefore, in accordance with the above circular, has directed that you proceed on your retirement forthwith.

Signed

M. T. Balogun

Registrar & Secretary to Council"

Following the appellant's protest letter to the 2nd responded (exhibit 18 before the court), the 2nd respondent reiterated its position in exhibit 19. It also stales thus:-

"20 April.
2000

Mr. A.O.A. Alao.
C/o Vice Chancellor's Office.
University of Ilorin,
Ilorin.

Dear Mr. Alao,

RE: COMPULSORY RETIREMEN FROM UNIVERSITY OF 1LORIN SERVICE

Please refer to our letter Ref. No. UI/CO/13 of 4tlr November, 1999 in which you were compulsorily retired from the University Service as a Director of Administration in the Vice Chancellor's Office. Following this development, your name has ceased to be on the normal University payroll with effect from 1st Sept., 1999 accordingly.

Based on your pensionable service of 35 years, you are entitled to 300% of your total annual emoluments of N 157,288.92 (EUSS 15 step 19) as gratuity and 80% of it as pension. Signed.

M.A. Ololade (Mrs.)

F or: Registrar. " '

As has been rightly pointed out by learned counsel for the appellant, the circular referred to copiously both in the 1st and 2nd defendant's amended statement of defence and the exhibit 17, based upon which the appellant was retired from service, was never produced before the court. It is therefore both hearsay and offends section 132 of the Evidence Act which provides that oral evidence of contents of documents which are not before a court may not be given, and where given, should not be acted upon. Instead, the DW1, the sole witness of the respondents in his evidence at pages 201 202 re I erred lo an unnamed Decree purportedly promulgated by the Federal Government in 1997 lo the effect that Principal Officers who had attained the age of 60 years or put in 35 years of service, should proceed on retirement. This document, variously referred Was "Decree" and "Circular" in both the pleadings and the oral and documentary evidence, is not before the court. The learned trial Judge therefore correctly staled in his judgment at page 234 of the record that

"...If the Laws and regulations justified the defendants' action, the defendants would not be liable, but if otherwise, the plaintiff would succeed." However, following this noble statement of intention, the learned trial Judge went on to find otherwise without any iota of evidence having been produced before the court to justify the appellant's retirement based on his having allegedly put in 35 years of service.

Nevertheless. 1 am mindful of the fact that in his judgment at pace 235 of the record, the learned trial Judge relied on the appellant's apparent admission in his amended statement of claim on this issue to find in this vein. The relevant portion of the Judgment at page 20 thereof states:-

"It is too late for the plaintiff lo contend that 35 years of age is not applicable to the case of the plaintiff as the amended statement of claim admitted by the defendant provided that the plaintiff is to retire from the service on attaining 60 years or after putting up 35 years of service inclusive (sic) the transferred period of service with Northern Nigeria and Kwara State Governments. "

It is in the light of this pronouncement that I have examined the pleadings of the parties in this regard. Indeed, paragraph 9 of the amended statement of claim dated 5th August, 2001 states unequivocally thus:-

"9. In accordance with the terms and conditions of service attached to plaintiff's appointment and position, plaintiff is to retire from the service of 2nd defendant upon attaining the age of 60 \ears of service or after putting in 35 years of service inclusive of transferred period of service with Northern Region and Kwara State Governments." (Italics mine for emphasis).

Quite predictably, the defendants did not deny this paragraph in the amended statement of defence of the 1st and 2nd defendants dated 17th October. 2003. The rule of pleadings is that whatever is not expressly denied is deemed admitted and no further evidence is required to be adduced in proof of same. This perhaps explains why the defendants did not deem it necessary to tender any document in proof of what was already admitted by the appellant. Consequently solely in the face of the appellant's own admission in his pleadings, I answer issue two in the affirmative. The appellant is bound to retire upon putting in 35 years in the Public Service and/or upon attaining 60/65 years of service in line with his own averment in his pleading.! He is not allowed to depart from his case in his pleadings and set up a different case in court in respect of this.

Issue Three

Whether the 2nd respondent was justified in holding that the appellant had served in the Public Service for a period of more than 35 years as at 22nd October. 1999.

While this is issue 3 in the appellant's brief of argument, it is argued as issue 2 in the 1st and 2nd respondent's brief of argument. The submission of learned counsel for the appellant on this issue in

sum is that, by the oral evidence of the appellant as PW1 in count and the exhibits 2. 2A. 3. 4. 5, 5A and 22 tendered through him. The appellant had not put in up to 35 years in Public Service. It is his I contention that these are documents which properly and legally constitute the appellant's record of Public Service, and not exhibit. 40. the form which he filled and submitted to the 2nd respondent; when he transferred his service from the Kwara Stale Government to the 2nd respondent University in 1985. It was therefore his submission that the learned trial Judge misled himself and made a fatal error when he relied on evidence not before the court at page; 233 of the record to make a monster of exhibit 40. Learned counsel p then went on in paragraph 3.6 at page 15 of his brief, with surprising venom, to cast aspersions on and deprecate the very document, exhibit 40, which the appellant himself had admitted in his evidence in court having appended his signature to and holding same out to; the 2nd respondent as containing information on himself with regard to his application for a transfer of service. While accusing the leaned trial Judge of dwelling in the realm of speculation, learned counsel himself fell into the same trap when he conjectured and speculated as he did in paragraph 3.7 at page 1 5 of his brief of argument Thus:-"Submit that exhibit 40 could never have been the only plaintiff's record of service from the position of Education Officer in 1996 to January. 1983 when he became a Permanent Secretary. It is unthinkable that the plaintiff would have been appointed to the position of Registrar of 2nd defendant without submitting his curriculum vitae (exhibit 22) to his application. It is also unthinkable that exhibits 2,2A. 3,4. 5 and 5 A which officially and legally constitute Plaintiff's record of service would have been excluded from the plaintiff's record of service transmitted to 2nd defendant by the Kwara State Civil Service Commission in 1985." Learned counsel submitted further that by the decision in Obianwuna Ogbimyinya v. Obi Okudo and Ors. (1979) 6-9 SC 32 at 49. the production of the relevant Gazette is conclusive proof of such appointment when the date of the first appointment of a public officer is in issue. That the learned trial Judge was in error when he failed to consider and follow[1] this decision. He contended further that whereas the Gazettes have the force of law under S. 113 of the Evidence Act. exhibit 40 has no probative value. He therefore urged the Court to hold that, as at 22nd October, 1999 when the plaintiff was purportedly retired from the service of the 2nd respondent vide exhibits 17 and 19, he had not put in 35 years in Public Service, and to answer issue No. 3 in the negative. On his part, learned counsel tor the 1st and 2nd respondents submitted on this issue that exhibit 40 was made on the 9th August, 1985 even before the transfer was effected.

It was signed by the appellant and countersigned by his employer, from whom the transfer was sought, to the 2nd respondent. Also, contrary to the express direction in exhibit 40. the appellant did not furnish the 2nd respondent any details of a gazette notice at the time of the transfer of service. Instead, the appellant held out exhibit 40 to be true and correct for a period of 14 years, until exhibit 17. the letter of retirement, was issued him on 4th November. 1999. Learned counsel therefore submitted that the appellant, having held out exhibit 40 as his record of service to the 2nd respondent, he is estopped from denying its authenticity or correctness, and the 2nd respondent was justified in relying on same in computing the public service of the appellant. The appellant cannot resile from exhibit 40 after relying on same for about 14 years. For these submissions, he referred to the decisions in Anacze v. Anyaso (\ 993) 5 NWLR (Pt. 291) 1 (a) 33: Kwajaffa v. Bunk of the North (2004) 13 NWLR (Pt.889) 146. (2004) All FWLR (Pi. 215) 222 at 248 and Inyang v. Ebon^ (2002) 2 NWLR (Pt.755) 697. (2002) FWLR (Pt. 125) 703. The burden of bearing the appellant's mistake, (if any), rests on him and not on the respondents. Oil Field Center v. Johnson (1987) 2 NWLR (Pt.58)

625 at 639 referred to. The appellant is therefore estopped by conduct and by record as demonstrated in exhibit 40 because he is bound by his documents. Nsirim v. Nsirim (2002) EWER (Pt. 96) 433 at 445 -446; (2002) 3 NWLR (Pt. 755) 697 referred to. Learned counsel submitted that exhibit 22 was made about 14 years after exhibit 40 while exhibits 2. 2A. 3. 4, 5 and 5A only sprang up in the course of this trial long after 2nd respondent had issued exhibit 17. He therefore contended that the failure to furnish the particulars of the ga/,etles at the earliest opportunity to cast doubt on exhibit 40 is at the appellant's peril and the sin should not be visited on the 1 st and 2nd respondents. Learned counsel finally contended that since the appellant stated in exhibit 40 thai he was first appointed on 1st December. 1960 while he was retired by exhibit 17 on 4th November. 1999. a computation of the years of service would reveal that, as at 4th November. 1999, he had put in 39 years in the Public service. He therefore, urged the court to answer this issue in the affirmative and dismiss the appeal. In his judgement, the learned trial Judge held inter alia thus on this issue at pages 234 - 235:

> "Now the plaintiff himself admitted that exhibit 40 was the only record on him by the defendants. Do they deserve to be blamed therefore for acting on what is before them in respect of the officer;
>
> 1 do not doubt the authenticity of the gazette publications and other records later presented to the defendants by exhibit 18 but the truth is that these documents were not before defendants when they took action. Moreso exhibit 17 was a document signed by plaintiff himself when he was transferring his services to the University..-. The plaintiff herein cannot therefore benefit from the incorrectness of the record which he himself held out as correct to the defendants..."

From the oral evidence in court of the appellant as plaintiff at pages 176 - 198 of the printed record and ex-fade the documents in exhibits 2. 2A.3. 4. 5. 5A and 22, it is glaring that at the lime the 2nd respondent issued and send the letter of retirement dated 4th November. 1999 on the appellant, these subsequent documents : cataloguing his record of Public service were not within the knowledge and/or in the custody of the 1st and 2nd respondents. Nowhere in the appellant's evidence in chief or cross-examination; did he state that prior to his retirement on 4th November. 1999. He had forwarded any of these documents to the 1st and 2nd respondents, instead, he only admitted forwarding exhibit 40 which is an "Application for Inter-Service Transfer" to the 2nd respondent. The 2nd respondent, on its own part, via the evidence of the DW1. has admitted

acting solely on the record of service disclosed in the exhibit 40 put forward by the appellant, in computing his years of service. From pages 176-181 of the record, it is clear that the exhibits 2. 2A, 3 4, 5. 5A and 22 were all tellingly produced, not from the custody of the 2nd respondent, but from the custody of the appellant. Also from the lace of these exhibits, except for exhibit 22. they were all certified on the 22nd August. 2001. long after the letter of retirement, exhibit 17. was issued and even alter this suit was filed. As for exhibit 22. the curriculum vitae of the appellant, it is dated 1st January. 1999, which means u was prepared about 14 years after the exhibit 40, the application for inter-service transfer, the latter having been made on 9th August. 1985. It therefore admits of no argument to state, as did the learned trial Judge, that at the time the 2nd respondent wrote exhibit 17 on 4lh November, J999 retiring the appellant from service for having put in 35 years of service, it acted solely on the information available to it as contained in the exhibit 40 held out to it by the appellant himself.

Now since the exhibit 40 is the pivot upon which this issue revolves, it is pertinent to set it out in extension in this Judgment. It states thus:-

" MIN1STR Y/DEPAR TMENT

The Permanent Secretary.

Civil Service Commission. Ilorin.

APPLICATION FOR INTER-SERVICE TRANSFER

PART ! - TO BE COMPLETED BY THE

APPLICANT.

Name: ABDULKADIR OB A ALAO

Present Appointment: PERMANENT SECRETARY

Ministry/Department: MILITARY GOVERNOR'S

OFFICE

AGE -: 43 YEARS

Educational Qualifications: BA (ABU). PGCE (ABU).

MA (LONDON)

(Attach photocopies)

Date of first Appointment: 1.12.60

Date promoted to present Rank: 1. 1.83 Post for which you are applying: REGISTRAR UNIVERSITY OF ILORIN

Salary Scale of Post: USS15 (N 14,280 x 720 - N I 5,720) State of Service: FEDERAL

Ministry/Department: UNIVERSITY OF ILORIN Date of confirmation of Appointment. Quote Gazette Notice (if any): 25.2.70

Reasons for seeking Transfer: APPOINTED REGISTRAR UNIVERSITY OF ILORIN

(Signed)

Signature of
Applicant and date.

PART II - TO BE COMPLETED BY PERMANENT SECRETARY/HEAD OF DEPARTMENT.

Ref....

Date: 9^{m} AUGUST, 1985.

Can Applicant be released without replacement: YES I Remarks: PERMANENT AND PENSIONABLE CONFIRMED

Last 2 years' Confidential Reports to be attached.

(Signed)

Permanent Secretary/Head of Department

SECRETARY TO THE MILITARY GOVERNMENT AND HEAD OF SERVICE."

(Italics mine for emphasis)

This document speaks for itself. The date of first appointment is clearly stated therein to be 1st December. 1960. It is duly signed by the appellant. These are facts which are not in issue as this document was readily admitted by the appellant, even as it was tendered through him by counsel to the 1st and 2nd respondents, being the document he held out to the respondents, on the basis of which he was employed. The appellant only sought to explain in his evidence that the contents of the document were not filled in by but by his secretary in error and that he only appended his signature-thereto. That therefore the date of 1st appointment stated therein was stated in error. It is noted however that this is an error which presumably was never detected by the appellant and which he. in no way. sought to correct until 14 years later, after the 2nd respondent Had duly acted on the information held out by the appellant as being correct It is to noted further that, not only did the appellant append his signature to this document thereby giving it the stamp of authenticity, but no less a personality than the Secretary to the Military Government and the Head of Service also counter-signed, lending further weight to the genuineness and correctness of the information therein contained. For the purpose of emphasis, between the 9th August. 1985, when this document was made and the 5th November, 1999 when the appellant wrote exhibit 18 protesting his retirement from service, the appellant never made any attempt to correct the purported error or to disabuse the mind of the 2nd respondent, his employer, as to the number of years he had put in service. He wittingly or unwittingly allowed the 2nd respondent to continue in its belief in the contents of exhibit 40, act on it and change its position based on same. It is only after all this had been done, some 14 years later, that the appellant now seeks to resile from his position as stated in exhibit 40 and present the respondent with fresh evidence of his new dale of appointment and other details of his record of service. Justice and equity says he cannot do this, and if he does, he will not be allowed to get away with it. Where one, by his words or conduct, willfully causes another to believe the existence of certain state of things and induces him to act on that

belief so as to alter his own previous position, the former is precluded from averring against the latter a different state of things as existing at the same time. This is how the rule in estoppels by conduct otherwise known as estoppels by matter in pais has been stated. See Nsiriin v. Nsirim (2002) 2 NWLR (Pi.755) 697, (2002) FWLR (Pt. 96) 433; Joe Iga and Others v. Ezekiel Amakri and Others (1976) 11 SCI; Gregory Ude v. Clement Nwara & An or. (1993) 2 NWLR (Pt. 278) 638 at 662 - 663. Put another way. if a man by his words or conduct willfully endeavours to cause another to believe in a certain state of things which the first knows to be false and if the second believes in such state of things and acts upon his belief, he who knowingly made the first statement is estopped from asserting afterwards that such a state of things does not exist at the time. See Horieon Limited v. Wasurumi (1987) 4 NWLR (Pi. 66) 646: Ikpuku v. Ikpuku (1991) 5 NWLR (Pt. 193) 571; Ukaegbu and Ors. v. Ugoji & Ors. (1991) 6 NWLR(Pt.l96) 127.

In the light of all the above. 1 answer issue 3 in the affirmative.

Issue 4

Whether the plaintiff proved his claims before the trial court to entitle him to judgment.

The appellant/plaintiff's claims are as set out in paragraph 28 of his amended statement of claim at pages 167 - 169 of the printed record. Since they are varied, they will be taken one after the other. But first, the learned counsel to the appellant's submission on this issue is that these claims are essentially the appellant's terminal entitlements accruing to his position as principal officer of the defendant up to January. 2002 when he voluntarily retired from service. He contended that since the plaintiff was not cross-examined on his claim for terminal entitlements and unpaid travelling expenses and exhibits 23, 33-33A. 34 and 35 are admitted in evidence without any objection by defence counsel, the plaintiff's aims are deemed admitted and/or proved.

Further, learned counsel referred to exhibits 17 and 19 wherein defendants agreed that plaintiff was entitled to terminal benefits which had been prepared and was to be paid into plaintiff's account. That plaintiff rejected the amount only on the ground that he was short paid. That therefore the terminal benefits are not in dispute. Learned counsel however complains that the learned trial Judge neither made reference to nor considered the evidence on this adduced by the plaintiff. That the dismissal of same for no reason had occasioned a gross miscarriage of justice and he urged the court to set it aside.

Learned counsel for the 1st and 2nd respondents on his own part submitted that since relief 28(iii) is premised on 28(i). the trial court was right in dismissing same as relief 28(i) was dismissed. He adopted his argument in support of the correctness of the trial court's decision that the retirement of the appellant was in order. He contended that these two reliefs had become otiose at the dale of the judgment of the lower court on 17th December. 2004 because the appellant had passed the retiring age and his entitlement to possession of the 2nd respondent's car no longer arose. On relief 28(2), he submitted that based on his previous submissions on the claim, which he adopted, the dismissal of this head of claim was also unassailable.

On the reliefs in paragraphs 28(i\ ). he submitted that having shown under cross-examination that exhibit 34 was unreliable, the court was right in refusing the claim in paragraph 28(i)(i\)(e) for unpaid travelling expenses. In respect of the reliefs claimed in

paragraphs 28(i)(iv)(a) - (j). learned counsel submitted that they constitute terminal damages and so same must be strictly proved. He contended that the plaintiff only

attempted to prove relief (iv)(e) and failed woefully, while he led no evidence in support of the other claims in paragraph 28(i\ ). They were therefore bound to fail. He submitted that since pleadings do not constitute evidence, the reliefs claimed in paragraphs 28(i)(iv) (a), (h), (c). (d). (f), (g), (h) and (j) are deemed abandoned and the trial court was right when it refused to grant same as they were not supported by evidence at the trial.

With regard to the claim in paragraph 28(2) of the amended statement of c aim at page 14" of the record wherein the appellant seeks the sum of "N 1.000.000.00 from all the defendants jointly and severally as damages for unlawful assault, arrest, detention and humiliation suffered in the hands of the defendant's agents", the learned counsel to the appellant offered nothing by way of argument in his brief on this. However, learned counsel for the 1st and 2nd respondents submitted that the appellant having refused to hand over the 2nd respondent's properly in his possession in spite of exhibits 17. 19 and 24. the 2nd respondent was constrained to resort to the law enforcement agency i.e. the 3rd respondent, for the recovery of the car. He submitted that since the 2nd respondent had reason to believe that a wrong which had criminal elements had been committed he cannot be held liable in damages merely for reporting same to the police. In like vein, the 3rd respondent cannot be held to be the agent of the 2nd respondent in carrying out its duty. He further submitted that the arrest and detention of' the appellant pursuant to a genuine complaint for an act that has criminal intent is no! contrary to S.35(c) of the 1999 Constitution of the Federal Republic of Nigeria. He therefore submitted that the claim for N1.000.000.00 in paragraph 28(2) of the amended statement of claim was rightly dismissed.

On the claim in paragraph 28(2) of the amended statement of claim which is sought jointly and severally from all the defendants/ respondents herein, learned counsel for the 3rd respondent made an input in this vein: He filed his brief of argument dated 26th April. 2006. Therein, he formulated one issue for determination thus: Whether the 3rd defendant is endo*wed with statutory power to receive and act on a criminal complaint and how justifiable in the instant case? He submitted that S. 4 of the Police Act empowers officers and men under the command of the 3rd respondent to prevent and detect crime. Furthermore, that there is a limitation to the liberty of an individual in S. 35(1 He) of the 1999 Constitution of the Federal Republic of Nigeria. Also, that the 3rd respondent is empowered to effect an arrest upon a reasonable suspicion that an offence has been committed or is about to be committed. See Balogun v. Amubikaluum (1989) 3 NWLR (Pt.107) 18. (1989) 2 NSCC 195 at 197. Learned counsel submitted that the action of the 3rd respondent was premised on the complaint of the 2nd respondent lodged before it, which complaint was tantamount to unlawful possession. He therefore submitted that the learned trial Judge was perfectly in order to have held as he did al page 236 of the record. He therefore urged the court to resolve the issue in favour of the respondents and affirm the decision of the trial court.*

I have examined all the heads of claim of the appellant as set out in paragraph 28 of his amended statement of claim contained at pages 167 - 168 of the record. Without much ado. 1 too am of the considered opinion that, much as it left a lot lo be desired in the way and manner the learned trial Judge peremptorily lumped together and dismissed the separate heads of claim, he came lo a right decision
and there is therefore no ground on which to impeach same. In the light of the earlier findings of this court in respect of issues 2 and 3, which are here adopted, the appellant is clearly not entitled to the
claims contained in paragraphs 28(1)(i).(n) and (iii) wherein he seeks declaratory reliefs and an order of injunction, his retirement by the 2nd respondent after putting in 35 years in service, having been held
to be right. On the claim in paragraph 28(iv)(a)-(j). 1 agree entirely with learned counsel for the 1st and 2nd respondents that these are in the nature of special damages for which

strict proof is required. That there is a dearth of proof in the evidence presented by the appellant at the trial court is to put it mildly. From his evidence at pages 176 - 198 of the record, except for paragraph 28(1 Mix He), the appellant made no attempt at all to adduce evidence in proof of these claims. He seemed to have overlooked the fact that pleadings do not amount to evidence, especially in the face of a vehement denial of his entitlement lo these claims by the respondents. As regards the claim in paragraph (iv)(c). 1 find no reason to disturb the finding of the trial court on this as 1 am in agreement that by virtue of the cross- examination on the documents in support, i.e. exhibit 34. the evidence was rendered unreliable.

In respect of the c aim in paragraph 28(2) being for the sum of N1, 000,000.00 damages, the finding of the trial court on this at page 936 of the printed record is unassailable. Indeed, the appellant totally failed to show by evidence how the 3rd respondent acted beyond the scope of his powers in S.4 of the Police Act and S. 35 of the [999 Constitution of the Federal Republic of Nigeria. That being so the appellant has also failed to show his entitlement to this head of claim.

Finally, on the complaint of the appellant that the learned trial Judge, by pronouncing in the penultimate paragraph of its judgment on page 236 of the record as follows:

> *"In the light of the foregoing. 1 cannot come to the conclusion that the plaintiff has proved his case beyond case against the defendants in this matter."*

the court had set a standard of proof for the plaintiff which is unknown to civil proceedings and has therefore occasioned a miscarriage of justice. I agree with learned counsel to the 1st and 2nd respondents that the law is trite that it is not every slip in a judgment that will lead to a reversal of an otherwise good judgment. The appellant is required lo show how the alleged imposition of the 'unknown' scale has led to a miscarriage of justice. This he has failed to do. It is however apparent that the said statement of the learned trial Judge was more in the nature of a slip than setting a new standard of proof for the appellant to meet. Indeed, stating that "the plaintiff has proved his case beyond case..." is nonsensical and hardly conveys any decipherable meaning.

It is to be noted that it is not every mistake or error m a inclement that will result in an appeal being allowed. It is only when the error is substantial in that it has occasioned a miscarriage of justice that the appellate court is bound to interfere. See Ibrahim v. ISC *(1998) 14NWLR (Pi. 584) 1 at 47;* Onajobi v. Olanipekum (*1985) 4 NWLR (Pt. 2) 156 at 153:* Azuetonma Ike *v. Ugb*oaja *(1993) 6 NWLR (Pt. 301) 539 at 556:* Anyamvu v. Mbara (*1992) 5 NWLR (Pt. 242) 386 at 400.*

In the instant case. I am satisfied that no miscarriage of justice was thereby occasioned as a result of the said slip in the judgment of the court below. I cannot put it better than Nnaemeka-Agu. JSC did in the case of Osita Nwosu v. line Stare Environmental Sanitation Authority & 4 Ors. (1990) 2 NWLR (Pt. 135) 688 at 717. He said:-

> "The court now takes the view that not every slip is Fatal to the cause of justice. Judges are not omniscient robots which never deviate from a programmed course They sometimes slip. But only those slips that have shown to have affected the decision appealed again, will amount to a substantial misdirection which result in the appeal being allowed. See Onajobi v. Olanipekun (1985) 4 NWLR (Pt.2) 156, (1985) 1 Si (Pt. 2) 156 at 163; also Jude Ezeoke and Ors. V. Moses Nwabgo and Another (1988) 1 NWLR (Pt. 72) 616 at 626."

It is therefore for all the reasons sel out above that 1 find this appeal unmeritorious. lt tails and is dismissed. I affirm the judgment of the trial court. 1 award the sum of N 10.000.00 as costs to the respondents.

MUNTAKA-COOMASS1E. J.C.A.: I am privileged to have read before now the lead Judgment in a draft form, of my learned Lord Sankey, J.C.A. 1 am in complete agreement with the reasons and conclusions reached therein. They tally with my understanding of the law on the matter. Consistently with the above. 1 beg to adopt both the reasons and conclusions as mine. 1 will be treading a very
elastic and dangerous path if I attempt to add anything or to try and improve on the judgment. This is because her lordship does not leave any stone unturned.

1 am particularly happy on how her lordship treated the slip rule and in a \\ay maintained that minor slips were protected and shielded. Not all slips in a judgment or ruling will attract sanction especially when no miscarriage of justice is occasioned thereby.

Appeal lacks merit and same is accordingly dismissed by me. endorse the order as to costs.

ABDULLAHI, J.C.A.: *1 ha\ e read in a draft form this all embracing judgment of my learned brother. .1. H. Sankey. J.C.A. and I hereby with respect endorse it. M\ learned brother has in a most meticulous manner dealt with all the live issues presented to us for out consideration in this appeal. The opinions and legal conclusions expressed on the issues raised accord with my own thoughts and expectations.*

Section 151 of the Evidence Act provides thus:

> *"When one person has by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative in interest shall be allowed, in any proceedings between himself and such person or such person's representative in interest to deny the truth of that thing."*

it is very amazing that the appellant in clear violation of the principle of law enunciated above put a feeble and unwarranted argument to resile from a document he held out to the respondents as his record of service for the past 14 years. Exhibit 40 from which the appellant wanted to resile from came into existence 14 years ago. It is indeed intriguing to note that it was only when exhibit 17 was given to him that he came up with his feeble, unwarranted and unacceptable argument that it was his secretary that prepared the said exhibit and did not go through before signing it in a desperate effort to save his work.

I am in complete agreement with His Lordship that exhibits 2, 2A, 34, 5 and 5A were all made, some in contemplation of a legal action or even after the commencement of the same.

For these reasons and the fuller ones admirably stated in the lead judgment. I too hold that the appeal lacks merit. I dismiss same with N 10.0000.00 costs against the appellant in favour of the respondent.

Appeal dismissed.