

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON WEDNESDAY THE 23RD DAY OF JANUARY, 2020.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO -ADEBIYI
SUIT NO. CV/2923/2018

MR. MICHEAL INYANGUDO -----PLAINTIFF

AND

FEDERAL HOUSING AUTHORITY -----DEFENDANT

JUDGMENT

Plaintiff filed a writ of Summons dated 8th September, 2018 claiming for:-

1. A declaration that the Plaintiff is the owner and exclusive title holder of all that property, parcel and portion of land situate at Plot No CRD 32 Cadastral Zone 07-07 Lugbe 1 Layout, Lugbe FCT Abuja.
2. A declaration that the Defendant's act of demolishing the property of the Plaintiff situate and located at Plot No CRD 32 Cadastral Zone 07-07 Lugbe 1 Layout, Lugbe FCT Abuja is wrongful and illegal.
3. (A) An order compelling the Federal Housing Authority to reconstruct the demolished property of the Plaintiff at Plot No. CRD 32 Cadastral Zone 07-07 Lugbe 1 Layout, Lugbe FCT Abuja within 6 months from the date of the judgment of this court to the satisfaction of the Plaintiff and in line with his building drawing and bill of quantities.

IN THE ALTERNATIVE:

- (B). An order directing the Defendant to pay the Plaintiff the sum of N5,200,000.00 (Five Million, Two Hundred Thousand Naira) Only as special damages for the cost of work so far done on the property before it was demolished.
4. General damages for the trauma and the hardship caused the Plaintiff by the defendant.
 5. An order directing the defendant to pay as cost of this suit the sum of N2,000,000 (Two Million Naira) only.
 6. An order to pay 10% monthly interest on the total judgment sum from the date of delivery of judgment until final liquidation thereof.
 7. Any other order(s) as the court may deem fit to make.

In support of the writ of Summons is a 20 paragraph affidavit deposed to by Mr. Michael Inyangudo, the Plaintiff. Attached are 8 Exhibits.

A summary of the plaintiff's case as gathered from the statement of Claim is that the Plaintiff was duly allocated Plot No. CRD 32 Cadastral Zone 07-07 Lugbe 1 Layout, Lugbe FCT Abuja by the Hon. Minister of the Federal Capital Territory through Abuja Municipal Area Council (AMAC). That he sought and obtained building approval and he immediately commenced building. That he contracted the services of a construction company known as Advent Engineering Limited for the building of the two (2) bedroom bungalow. That the construction company forwarded the bill of quantities which total sum was N6,839,850 (Six Million, Eight Hundred and Thirty Nine Thousand and Fifty Naira). That by agreement he paid the total sum of N5,200,000 (Five Million,

Two Hundred Thousand Naira Only) in two instalments of N3,900,000 and N1,300,000. That on the 21st of December, 2016 the staff and agents of the Federal Housing Authority from Lugbe office and Asokoro head office trespassed upon the said property and demolished it to ground level without notice. That on the 23rd of December, 2016 his solicitors wrote to the defendant demanding for the reconstruction of the said property which was illegally demolished by the staff and agents of the defendant. That on the 11th of June, 2018, defendant wrote the Plaintiff in which they admitted to have pulled down his structure but denied liability. That he caused his solicitor to write to the Abuja Geographic Information System (AGIS) to confirm the title over the plot in issue and same was confirmed by AGIS that the Plaintiff is the true holder of the title over the plot. That the Federal Housing Authority is not the grantor of the title neither is the Plaintiff's property under their control and management. That it is the Abuja Municipal Area Council and the Department of Development Control of the FCT that has control and management over the land in issue. That he has been in possession till the day the Defendant trespassed and demolished his property. That the act of the defendant have caused him to suffer untold hardship, pain, trauma, psychological disaster, losses and damages.

The Plaintiff Mr. Michael Inyangudo testified as the sole witness and tendered 9 Exhibits, after having adopted his witness statement on Oath as his testimony in the case. The nine (9) Exhibits were admitted and marked as follows:

1. Letter of demand dated 23/12/2016 addressed to the Defendant and signed by TAWO E. TAWO a firm of solicitors, Exhibit P 1.
2. Letter from Defendant with reference no: FHA/FCA/LEG dated 11/6/2016 addressed to Taiwo E. Taiwo and signed by U. S. Gonto on behalf of the Defendant, Exhibit P 2.
3. Letter from FCT administration department of land administration dated 10/4/2017 addressed to Taiwo E. Taiwo and signed by O. A. David on behalf of FCT, administration department of land, Exhibit P 3.
4. Letter dated 23/12/2016 written by Taiwo E. Taiwo addressed to the director land administration (AGIS) Abuja, Exhibit P 4.
5. Conveyance of provisional approval in favour of defendant dated 27/6/1996 issued by the Abuja Municipal Area Counsel , Exhibit P 5
6. Right of occupancy no: MZTP/LA/05/OY6831 issued by Abuja Municipal Area Council in favour of Plaintiff, Exhibit P 6.
7. Conveyance of approval for building plan dated 21/12/2005 with reference no: FCDA/OC/BP/PID/FCT/32 issued by Federal Capital Development Authority in favour of the Plaintiff, Exhibit P 7A.
 - ii. Revenue collections receipt for the sum of N10,000, dated 20/12/2005, Exhibit 7B
 - iii. Revenue collection receipt for the sum of N91, 294.16 dated 30/02/2006, Exhibit P 7C
8. Conveyance of approval for building development plan with ref no: MZTP/LA/2003/CD/PID/BP/6831 dated 22/06/2003 issued to the Plaintiff by Abuja Municipal Area Council, Exhibit P8A

- Abuja Municipal Area Council departmental receipt for the sum of N6,565.89k , Exhibit P8B
9. Bill of quantities for the proposed 2 Bedroom bungalow of Plaintiff dated March 2015, Exhibit P9A
- Covering letter forwarding billing of quantity to Plaintiff by Advent Engineering limited addressed to Plaintiff, Exhibit P9B
 - Two (2) nos of receipts from Advent Engineering limited for the sums of N,900,000 and N1,300,000 respectively, Exhibits P9C and P9D

After the Claimant's Counsel closed his case the matter was then adjourned to 3/6/19 for cross examination of PW1 and defence. But on that day, again both the plaintiff and his Counsel were present but the defendant was absent and without legal representation. The Claimant counsel prayed the Court to foreclose the Defendant from cross-examination of PW1. The Court foreclosed the Defendant from cross-examining the PW1 and case was adjourned to 19/6/19 for defence subject to service of hearing notice. On the said date, Defendant was absent with no legal representation and Claimant applied that they be foreclosed from defence. The Court granted the application and case was adjourned to 17/9/19 for adoption of final written address. On the 17/9/19 the matter could not go on and on the application of the Claimant, case was adjourned to 10/10/19 for adoption of Final Written Address. Again the Defendant was absent with no legal representation, the Claimant counsel adopted their final written address.

It should be noted that hearing notices were served on the Defendant prior to each adjournments.

The Claimant Counsel in the written address filed formulated a single issue for determination and that is; “whether the Claimant has made out sufficient case against the Defendant to warrant the grant of its claims”. Learned counsel submitted that the Claimant has presented evidence by way of exhibits A to E to buttress its case. That it is trite that he who asserts must prove, citing also the case of **GENEVA V. AFRIBANK NIGERIA PLC (2013) LPELR-20662 (S.C.)** and that **Section 135(1), (2) and 136 of the Evidence Act** on burden of proof remains potent and plays constant role in all spheres of evidential advocacy. Counsel relying on the cases of **COKER V. ADETAYO (1992) 6 NWLR (Pt. 249) 612** and **SPLINTERS (NIG.) LTD V. OASIS FINANCE LTD (2013) 18 NWLR (Pt. 1385) 188 AT 220** and that by the authority of **ALAO V. KURE (2000) ALL FWLR (Pt. 6) 908**, the Claimant has discharged his burden of proof. That by the decision of **ONINOLE V. ADEFOLABI (2008) ALL FWLR (Pt. 438) 539**, they further submitted that it is not the business of the Court to make a case for a party who opted to be absent despite being served and that the decision of the Court must be based on the facts and materials placed before the Court. Counsel submitted that the silence of the Defendant amounts to admission hence facts admitted needs no proof, urging the Court to so hold. Learned counsel submits that the Claimant is entitled to the rent, mesne profit, 10% interest and cost of action, with respect to mesne profit Claimant placed reliance on the case of **ODUTOLA V. PAPERSACK (2006) 18 NWLR (Pt. 1012) 470 SC**. He

submitted that the Claimant deserves 10% of interest awarded by the Court on Judgment debt relying on **Order 56 Rules 12 and 13 of the Rules of this Court 2018** and the case of **NIDB V. DE EASY LIFE ELECTRONICS (1999) 4 NWLR (Pt. 597)** which states that the claim for interest is statutory having its source from the rules of Court, therefore requires no further proof and that the Claimant as well deserves the cost of the suit by payment of the legal fee. Learned counsel submits that the case of the Claimant has merit and ought to succeed, having proved its case against the Defendant, urging the Court to so hold.

The Defendant rested its case on that of the Plaintiff and did not call any evidence. The Defendant filed its final written address dated and filed 16/10/19. Defendant counsel adopted same as their oral submission in respect of this suit. The Defendant raised tow (2) issues for determination to wit;

1. Whether the suit as instituted is statute barred and is caught up with by the Public Officer's Protection Act.
2. Whether the Plaintiff has proved his case to, on balance of probability to be entitled to the relief claimed.

On issue 1; "whether the suit as instituted is statute barred and is caught up with by the Public Officer's Protection Act". Learned counsel submitted that the law is clear that a suit brought against a public officer must be commenced within 6months of the accrual of cause of action. Counsel submitted that alleged demolition occurred on the 21st of December, 2016 and this suit was file on the 10th of September, that the computation of the accrual of the cause of action and the filing of this suit

is at least 18 months which makes this suit statute barred. Counsel urged the court to hold that this suit having been caught up with by the Public Officer's Protection Act is bound to fail. He cited **OKENNA V. MILITARY GOVERNMENT OF IMO STATE (1997) 6 NWLR PT 507, 154; ONADEKO V. UBN PLS (2005) 4 NWLR PT 916 RATIO 4**. Counsel further submitted that what the court considers in examining whether a suit is statute barred or not is to look at the statement of claim to find out when the cause of action accrued. See **OGBIMI V. OLOLO (1993) 7 NWLR PT 304, 128**. Counsel referred the Court to **Section 2 (a) of the Public Protection Act Cap P41, LFN, 2004** and submitted that the provision is devoid of ambiguity and must be given its literal meaning. Counsel cited Section 18 of the Interpretation Act for who is a "public officer" and Section 318 of the Constitution of the Federal Republic of Nigeria 1999 (as Amended) on what is "public service" and submitted that the Federal Housing Authority is one of the bodies established under the law and covered by the public officer's protection Act. Counsel submitted that the legal consequence of a statute barred action is that the Plaintiff has lost his right of action, lost his right of enforcing, has irretrievably lost the right to judicial relief and only has an empty cause of action which no court will assist him to enforce. He cited the cases of **DAUDU V. AGRIC. MAKURDI (1987) 1 FWLR PG. 704, Para F-H** and **EGBE V. ADEFARASON (1987) 1 NWLR PT 47**, urging the court to find that the present suit as instituted is statute barred and hence unenforceable by this court.

On the second issue; “Whether the Plaintiff has proved his case to, on balance of probability to be entitled to the relief claimed”. Learned counsel submitted that the onus of proof in civil trials rest on he who asserts, in this case the Plaintiff, that he is bound to prove his case by cogent, verifiable and credible evidence to be entitled to the reliefs sought. Counsel submitted that the purported allocation of Plot No. CRD 32 Cadastral Zone 07-07 Lugbe 1 Layout, Lugbe, Abuja is manifestly unbelievable, as Abuja Municipal Area Council has the status of a Local Government and cannot confer title on the Plaintiff over the Respondent because of the provisions of Sections 302 and 147 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). Counsel further submitted that section 291 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) stipulates that there shall be a Federal Capital Territory Abuja and Section 291 (2) provides that all lands in the Federal Capital Territory in the Federal Republic of Nigeria. Counsel cited the cases of **Madu v. Madu (2008) 2 SCNJ 245 @ 257** and **ONA V. ATANDA (2000) 5 NWLR, PT. 656** to the effect that customary title does not exist in the Federal Capital Territory. Counsel asserts that what the Plaintiff has before this court is a mere piece of document, he ought to show that the vendor’s title supersedes that of the defendant and that the title document before the court does not automatically give ownership to the Plaintiff, he has to conclusively prove ownership, referred the court to the case of **LAMINU V. MAIDUGU (2015) 7 NWLR, pt. 1458 @ 287**. Counsel submitted that the absence of title document properly issued by the issuing authority in this case (the FCT Minister) is fatal to the case of the Plaintiff and referred the court to **section 167 (d)** of

the evidence Act 2011 (as amended) on the presumption of irregularity and the case of **FABUNMI V. AGBE (1985) NWLR Pt. 2,1985-LPELR,1221, SC**. Counsel further submitted that the Plaintiff in this suit has to prove the title of his vendor and predecessor in title, (in this case the chairman caretaker committee) to establish that its title supersedes that of the Defendant as mere possession of title documents does not automatically prove the title of the Plaintiff, as it does not conclusively prove ownership in the Res.

Counsel also submitted that for the relief of injunction and damages to be granted, the party seeking same must establish a better title than that of the defendant. He cited **AJIBULU V. AJAIYE (2014), 2 NWLR, Pt. 1392, 483 @497**. Counsel submitted that the case of the Plaintiff must woefully fail as he has not adduced any credible evidence to be entitled to declaration of title, or any other claim sought in this suit, that he has not established any of the ways of proving title identified in the time tested cases of **Eyo v. Onuoha (2011) 11 NWLR, pt. 1259** and **Idundu v. Okwumagba (1976) 1 NWLR, pt. 200**. That the Plaintiff must prove his ownership of land on the strength of his case and not on the weakness of the defense's case, he cited **Shashi v. Smith (2010) FWLR, pt. 513, 123 @ 1233**. Counsel urged the court to follow the judicial precedent in **Madu v. Madu (supra)** and find that the Plaintiff's case fails woefully. Counsel submitted that the Defendant is at liberty to utilize any aspect of the Defendant's case to support his case and cited the case of **Anukam v. Anukam (2008) 1-2, SC 34**. Counsel finally referred the Court to section 1 (3) of the Federal Capital Territory Act which abolishes customary title in the FCT and urged the Court to find that the Plaintiff's title is

manifestly defective, having emerged from an authority that act ultra vires its powers. He urged the Court to dismiss this suit in its entirety and grant substantial cost.

Plaintiff counsel filed a reply on points of law dated 22nd of October, 2019 and addressed the two (2) issues for determination raised by the Defendant. On the first issue, learned counsel submitted that for the Defendant to be able to raise this defence of the case of statute barred, they ought to have first filed raised it in their Statement of Defence so as to enable parties join issues on same. That the statute of limitation or Public Officers Protection Act is a matter of law, founded on facts as the facts of each case differ from the other. He cited **Chief John Eze v. Dr. Cosmas I. Okechukwu (1998) 5 NWLR (pt. 548) 43 at 73; Governor of Ebonyi State & ors v. Isuama (2004) 6 NWLR (pt. 870) pg 511 at 516 and Asogwa v. Chukwu (2003) 4 NWLR (pt. 811) 5540 at 550-551.** Counsel submitted that the Defendant is not covered by the Public Officers Protection Act not being a juristic person but in the event that the court holds otherwise, he submitted that the Defendants have taken upon themselves the powers of this court whom they ought to have come before in the event that they feel the land in issue belongs to them. That by so doing they acted outside the colour of their office or outside their statutory or constitutional duties. In that case, action can lie against Public Officers even outside the statutory time limit of 3 months prescribed under the Public Officers (Protection) Act. He cited the cases of **ATTORNEY GENERAL OF RIVERS STATE V. ATTORNEY GENERAL BAYELSA STATE (2013) 3 NWLR (pt. 1340) 123, 148-149;**

ANOZIE V. ATTORNEY GENERAL OF FEDERATION (2008) 10 NWLR (pt. 1095) 290-991 and IBRAHIM V. JSC, KADUNA STATE (1989) LPELR-1408 (SC) and therefore urged the Court to hold that this is an exceptional case or situation or circumstance where the Public Officer cannot seek refuge or cover under the Public Officer (Protection) Act especially as the case of the Plaintiff is on the recovery of land and continuity of injury, he further cited **ALI V. GOVERNOR OF BORNO STATE (2008) ALL FWLR (408) 365, 376**. Counsel submitted that the general position of law is that when in respect of cause of action, the period of limitation begins to run, it is not broken and it does not cease to run merely because the parties engaged in negotiation. He cited **EBOIGBE V. NNPC (1994) 5 NWLR (PT. 347) Pg 649 and EKEOCHA V. C.I. & P. S.B. (2007) ALL NWLR (PT. 392) Pg 1976**. Counsel submitted that where there is admission of liability, the limitation time begins to run from the date of acknowledgment of the liability, the cause of action is thus revived. **KOKOORIN V. PATIGI LOCAL GOVERNMENT (2009) 15 NWLR (Pt. 1164) pg 205 and N.S.I.T.F.M.B. V. KLIFCO NIG. LTD (2010) 13 NWLR (Pt. 1211) Pg. 307**.

On the second issue, learned counsel submitted that the Defendant after entering appearance did not file any defence nor did he lead evidence in rebuttal of the case of the Plaintiff. That the consequence in law is that, the evidence adduced by the Plaintiff remained uncontradicted and uncontroverted and in such a circumstance, only minimum proof is required. Counsel submitted that this is base on the principle that, where a Defendant disputes the Plaintiff' claims or case, he must file a statement of Defence and lead evidence thereon at the trial. He referred

the court to **Ege Shipping & Trading Inco & Ors v. Tigris International Corporation (1999) 14 NWLR (Pt. 637) p. 70 at 84-85; Oba Adeyinka Oyekan 11 & Ors. V. MR. ELLI ROSSEK (2009) LPELR011906 (CA) per Ogunbiyi, JCA (as he then was); Okoebor v. Police Council (2003) 12 NWLR (Pt. 834) p. 444; Silite Assurance Co. Ltd v. Societe Gen. Bank Ltd (1992) 2 NWLR (Pt. 224) p. 495 at 503 and Ben. C. Emodi & Ors V. Mrs. Patricia C. Emodi & Ors (2013) LPELR-21221 (CA), Akeju, JCA.**

I have listened to witness testimony and gone through the processes filed by the respective counsel and I wish to adopt the Defendant's issues for determination. They are:-

- (1) Whether the Plaintiff has proved its case on a balance of probability to be entitled to the relief sought.
- (2) Whether this suit as instituted is statute barred and caught up with by the Public Officers Protection Act.

Section 7 (2) of the FCT Act 1976 provides that;

“The Authority shall have power to require every person who, otherwise than in pursuance of an approval granted or order made under subsection (1) of this section, proceeds with or does any work within the Federal Capital Territory to remove any work performed and reinstate the land or, where applicable, the building, in the condition in which it was before the commencement of such work, and in the event of any failure on the part of any such person to comply with any such requirement, the Authority shall cause the necessary work to be carried out, and may recover the expenses thereof from such person as a debt”.

S. 7 (2) FCT Act states that any person who has not acquired a written approval from the FCDA to develop land shall if such land be developed within FCT reserve the powers to remove any work performed and reinstate the land or the building to the condition in which it was before commencement of such work.

S.7 (1) No person shall carry out development within FCT unless with approval of the authority first had and obtained.

It is trite that each case is decided according to its own peculiar circumstances. Plaintiff relied on Exhibit P7 amongst other exhibits which is “Conveyance of Approval for Building Pan” dated 21/12/2005 issued and signed by Jummai A. Kwanashie Director, Development Control on behalf of executive secretary FCDA. Development Control is the Department that issues building permit in Abuja. S. 28 (1) & (2) of the Nigerian Urban and Regional Planning Act 1992 provides:

- (1) Approval of the relevant development control department shall be required for any land development within the FCT.
- (2) A developer shall submit a development plan for the approval of the development control department.

From S.28 (1) & (2) of Nigerian Urban and Regional Planning Act 1992 before any individual can develop land within the FCT, the approval of development control department of FCDA is mandatory in line with the use of the word “SHALL” in the above sections.

Hence it is only the department of development control that can validly grant approval for any development of land in FCT. From Exhibits before me, Claimant tendered Exhibit P7a which is a conveyance of approval for

building plan” issued by the department of development control dated 21/12/2005 granting Plaintiff it’s approval to commence building on the land in dispute. It is noteworthy that S. 7 (2) of FCT Act 1976 gives the FCDA the powers to demolish any development on land carried out without an approval S. 7(2) FCT Act provides:

The FCDA (Federal Capital Development Authority) in this suit issued to the Plaintiff through their department of development control a conveyance of approval for building plan. It is procedural that Plaintiff must furnish the FCDA with title document to the land before the FCDA grants him building plan approval. Unfortunately, Plaintiff in this suit failed to furnish the Court with title documents which led to his being granted building approval. The FCDA has not challenged the title of the Plaintiff. The Defendant Federal Housing Authority had simply gone ahead to demolish the Plaintiff property without notice served on plaintiff.

The Defendant did not file a defence neither did they give evidence which makes the claim of the Plaintiff not only unchallenged but uncontroverted

Although learned defence counsel wrote a brilliant final written address, it is trite that no matter how sound and brilliant a written address is, it cannot take the place of evidence. See **SANYAOLU VS INEC (1999)7 NWLR (Pt. 612) pg. 600 CA @ 611 paras (-1)** where Olagunju JCA held that address of counsel cannot be a substitute for evidence.

As stated earlier Defendant did not give evidence nor file its defence but rather rested its case on that of the Plaintiff and thereafter defence counsel file a written address. It is worthy to note that cases are not

normally decided on written addresses nor oral addresses of counsel but on credible evidences. No amount of brilliance in a final speech or address can be substituted for evidence neither can it make up for the lack of evidence to prove and establish or also disprove and demolish parts in issue; Hence I am inclined to rely strictly on the uncontroverted and unchallenged evidence of the Plaintiff and admit Plaintiff's evidence as the true state of affairs. From evidence before me, the Federal Capital Development Authority (FCDA) is saddled with the burden of handling the design, planning and construction of the FCT. As I earlier stated S. 7 (2) of the FCT Act gives the FCDA the powers to demolish any property erected without building approval from the FCDA and the pre-requisite for getting a building plan approval is the tendering of title to land.

The FCDA department of development control which is a department under the FCT minister issued a building plan approval to the Plaintiff via Exhibit P7a but Plaintiff failed to tender his title documents duly issued and signed by the FCT minister which is a pre-requisite to getting Exhibit P7A.

There is no document tendered before this court in proof of Plaintiff's title and in the circumstances prayer one fails.

Going further, a claim in a civil suit is judged on preponderance of evidence. As earlier stated, there is no evidence before the court that notices were issued and served on the Plaintiff before demolition was carried out by Defendant. There is no evidence before this court that Defendant hold legal title to the said land in dispute.

In essence, Defendant has failed to justify the demolition of Plaintiff's property without due notice being served on the Plaintiff neither did

Defendant proof that they own the said land and without much ado, I therefore hold that prayer 2 succeeds.

On the second issue for determination, “whether this suit as instituted is statute barred and caught up with by the Public Officers Protection Act”.

Section 2 of the Public Officers Protection Act 1916 states thus:

2. Where any action, prosecution, or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Act Of 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- [Order 47 of 1951.]

(a) Limitation of Action the action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of, or in case of a continuance of damage or injury within three months next after the ceasing thereof: Provided that if the action, prosecution or proceeding be at the instance of any person for cause arising while such person was a convict prisoner, it may be commenced within three months after the discharge of such person from prison;

It is trite that where an action is statute barred, a Plaintiff whose right had a cause of action loses the right to enforce the cause of action by judicial process because the period of limitation laid down by the limitation law for instituting such an action has elapsed. See **SYLVA V INEC (2015)16 NWLR (pt1486)576 page 630.**

Statute- barred simply means being barred by the provision of the statute. In **ARAKA V. EJEAGWU (2000) 12 S.C. (PART I) 99** or **(2000) LPELR-533(SC)(P.47, Paras.A-C)** KALGO J.S.C had this to say.

"What then is statute bar and of what effect is it? In my interpretation "statute-barred" simply means barred by a provision of the statute. It is usually as to time i.e. the bar gives a time limit during which certain actions or steps should be taken, and one is barred from taking action after the period specified in the statute. Any action taken after or outside the specified limit or period is of no avail and has no valid effect. The bar can be lifted or the limit extended only if the statute allows it to be done. Where there was no such extension, the action carried out will be invalid, and the court will treat as such."

It is imperative therefore to state that **Section 2 (a) of the Public Officers Protection Law** is aimed at protecting public officer(s) against stale claims and unnecessary litigation. The Act is therefore to protect a public officer from being sued three months next after cause of action has arisen. The provisions of section 2(a) of the Public Officers Protection Act is very clear that the action, prosecution, or proceeding against public officers shall not lie or be instituted unless it is commenced within **three months next after the act, neglect or default** complained of, or in case of a Continuance of damage or injury within three months next after the ceasing thereof.

To determine whether an action is statute barred, the Court of Appeal, in the case of **MAJOR GENERAL OLU BAJOWA v. FEDERAL REPUBLIC OF NIGERIA & ORS (2016) LPELR-40229(CA)** held thus:-

“To determine if an action is statute barred, the Court as earlier stated, must determine:-

(i) What the cause of action is

(ii) The date the cause of action accrued;

(iii) The date of the commencement of the suit as indicated on the writ of summons, and

(iv) The time prescribed by the relevant law to bring the action.

Where the period between the date of the accrual of the cause of action and the date of the commencement of the suit is beyond the time prescribed by the relevant law the suit is statute barred.”

It is trite that what constitutes the cause of action in a case is determined by examining the writ of summons and the averments and reliefs in the statement of claim.

Thus the Plaintiff in his statement of claim contended that he is the title holder to Plot No. CRD 32 Cadastral Zone 07-07, Lugbe 2 Layout, Lugbe FCT Abuja having been duly allocated to him by AMAC and tendered Exhibit P5 and Exhibit P6 the conveyance of provisional approval and existing right of occupancy having paid the requisite rent and fees and having sought and obtained all necessary approvals, had commenced the building of his house on the said plot before Defendant demolished the building on the 21st December, 2016. That neither Defendant nor his agent gave notice to the Plaintiff before carrying out the demolition.

The Defendant counsel in his written address submitted that having demolished the property on 21st December, 2016 and plaintiff filing this suit on the 8th September, 2018 the suit is caught up with the Public Officer Protection Act which makes it statute barred.

In the case of **RAHAMANIYYA UNITED NIG LTD V MINISTRY FOR THE FEDERAL CAPITAL TERRITORY & ORS (2008) LPELR 8391**, the Court of Appeal, Abuja judicial division held thus:-

“A cause of action ripens or arises on a date when a breach of duty or act occurs which warrants the person aggrieved or injured by such breach of duty or action to institute a legal action to assert or protect his legal right which has been breached or violated.”

And in the case of **MAJOR GENERAL OLU BAJOWA v. FEDERAL REPUBLIC OF NIGERIA & ORS (supra)** a cause of action has been defined as *“...In effect, the fact or combination of facts which gives rise to a right to sue and it consists of two elements- the wrongful act of the defendant which gives the plaintiff his cause of complaint and the consequent damage”*.

From the above it is safe to state that the cause of action arose when the Defendant demolished the Plaintiff's land which was on the 21st December, 2016 and this suit was commenced the 10th day of September, 2018 as can be inferred from the filing date on the Writ, which makes it over one (1) year the cause of action accrued.

In the case of **AG RIVERS STATE V. AG BAYELSA STATE & ANOR (2012) LPELR-9336(SC)** it was held thus;

“...The general principle of law is that where a statute provides for the institution of an action within a prescribed period, the action shall not be brought after the time prescribed by such statute. Any action that is instituted after the period stipulated by the statute is totally barred as the right of the Plaintiff or the injured person to commence the action would have been extinguished by such law.

For the section of the Act to avail any person two conditions must be cumulatively satisfied: These are: (i) It must be established that the person against whom the action is commenced is a public officer or a person acting in the execution of public duties within the meaning of that law. (ii) That act done by the person in respect of which the action is commenced must be an act done in pursuance or execution of any Law. Public duty or authority or in respect of an alleged neglect or default in the execution of any such law, duty or authority”.

From the Provisions of Section 2 (a) of the Public Officers Protection Act, it is obvious that the time line for institution of action against a public officer which is 3months has elapse. However the Act is not absolute but subject to exceptions. The question here is does the claim of the Plaintiff fall within the exceptions? From the writ of summons and the statement of claim as reproduced above, the claim of the Plaintiff is premised on the declaration that Plot No CRD 32 Cadastral Zone 07-07, Lugbe 1 Layout, Lugbe FCT Abuja and the Defendant’s act of demolishing said property. This is an exceptional situation or circumstance and the court of the Land have recognized these exceptional circumstances and have given effect to it. In **WURRO BOGA NIG LTD V. MINISTER OF FEDERAL CAPITAL TERRITORY (2009) LPELR-20032 (CA)** it was held that provisions of the Public Officers Protection Act would not apply to cases or matters bordering on recovery of land, breach of contract or claims for work done. See also **ENERGY MARINE AND INDUSTRIAL LTD V. MINISTER FEDERAL CAPITAL TERRITORY (2010) LPELR-19774**

(CA); FEDERAL GOVERNMENT OF NIGERIA V. ZEBRA ENERGY LTD (2002) 18 NWLR (PT. 798)162.

Moreover, Defendant in this suit has not proved title to the land; in essence the Defendant is not the owner of the said land as there is no evidence led by Defendant to prove same. Having proved that Defendant simply went on a frolic of their own to demolish Plaintiffs' property without serving requisite notice nor proving title to the Land hence demolition of Plaintiff's building was carried out by Defendant not acting in good faith, abuse of office and with malicious intent. See **LAGOS CITY COUNCIL VS OGUNBIYI (1969) 1 ALL NLR 279, CBN VS OKOJIE (2004) 10 NWLR (Pt. 882) 488** and that the Supreme Court has propounded a number of exceptions to the protection provided for public officers which includes:

- (a) Cases of continuance of damage or injury
- (b) Cases of recovery of land
- (c) A situation where the public officer acted outside his statutory or constitutional duties
- (d) Breaches of contract
- (e) Good faith
- (f) Claims for work done.

In the instant case, it is obvious that Defendant acted outside his statutory and constitutional duty by demolishing a land which they do not have title, by not serving the Plaintiff with requisite notice as they did not bother to open their case and prove title. In essence Defendant does not have reversionary interest on the said land. See **A.G. RIVERS**

**STATE VS A.G. BAYELSA STATE & ANOR (2013) 3 NWLR (Pt. 1340)
123 @ pages 149 para F-G where GALADIMA JSC held**

“The second exception to the application of the Act as a defence is that it does not cover a situation where the person relying on it acted outside the colour of his office or outside his statutory or constitutional duty”.

Hence it is wrong for the Defendants to hold up the placard of statute barred in respect of this action as Defendant acted outside its authority, moreover cases of recovery of land are exceptions to the Public Officers Protection Act and I hold that matter does not fall under the Public Officers Protection Act.

In respect of Plaintiff's claim for special damages, it is the general principle of law that special damages be specifically pleaded and strictly proved with credible evidence:

“Special damages are damages which the law does not infer from the nature of an act but which are exceptional in character. Special damages denote those pecuniary losses which have crystallised in terms of cash and value before trial. It is the kind of damages that though based on the discretion of the court, such must be backed up by credible evidence adduced before the court which simply profess the Plaintiff's entitlement to the award”.

**Per ADELEYE JSC IN UBN PLC VS AJABULE & ANOR (2011) LPELR
– 8239 (SC) (PP 35- 36 Paras f – g)**

Plaintiff in his claim pleaded the loss of ₦5, 200,000.00 which he had paid a construction company and to back up his claim, Plaintiff tendered Exhibit P9A which is the bill of quantities for the construction of the said property. Plaintiff also tendered Exhibit P9C and P9D which altogether is a receipt for the sum of ₦5, 200,000.00 paid by the Plaintiff to Advent Engineering Ltd a company he had contracted to help him build the house.

Defendant as earlier said did not dispute the Plaintiff's claim nor file a defence.

Consequently it is hereby HELD as follows:

- (1) Prayer 1 of the Plaintiff seeking that the court declares him the owner and exclusive title holder of all that parcel of land situate at Plot NO CRD 32, Cadastral Zone 07 – 07 Lugbe 1 layout, Lugbe FCT Abuja hereby FAILS.
- (2) Prayer 2 succeeds and it is hereby declared that Defendants act of demolishing the property of the Plaintiff situate and located at Plot No. CRD 32, Cadastral Zone 07-07 Lugbe 1 layout, Lugbe FCT Abuja is WRONGFUL AND ILLEGAL.
- (3) it is hereby ordered that Defendants pay to the Plaintiff the sums of ₦5, 200,000.00 only as special damages for the cost of work so far done on the property before it was demolished.
While the law of evidence requires special and exemplary damages to be proved, general damages need not be proved.
- (4) General damages are damages which the law presumes to flow naturally from the wrong complained of and from evidence before

me. I am inclined to award general damages to the Plaintiff. Consequently, general damages in the sum of ₦2,000,000 (Two Million Naira) is hereby ordered to be paid by the Defendant to the Plaintiff.

(5)It is hereby ordered that Defendant pays to the Claimant 10% monthly interest on the total judgment sum from date of judgment until final liquidation.

ORDER AS TO COST:- Cost in the sum of ₦500,000 is hereby ordered to be paid by the Defendant to the Plaintiff.

Parties: Absent

Appearances: Obinna Omeh for the Plaintiff. Ejike Nwonwu for the Defendant.

HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
30TH JANUARY, 2020