

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE H. MU'AZU

SUIT NO: FCT/HC/CV/7250/2023

PRELIMINARY OBJECTION

DELIVERED ON THE 04/06/2025

BETWEEN:

ADESOJI ADEWUMI OLADEJI.....CLAIMANT/RESPONDENT

AND

1. NATIONAL GALLERY OF ART
 2. THE BOARD OF MANAGEMENT, NATIONAL GALLERY OF ART
 3. DIRECTOR GENERAL, NATIONAL GALLERY OF ART
 4. MR. IVARA WILLIAM EBETEM
 5. MR. TOM SUNDAY
 6. MRS. OBADIMEJI ARIKE
 7. LEADERS AND COMPANY LIMITED
 - PUBLISHERS OF THISDAY NEWSPAPERS
- DEFENDANTS/APPLICANTS
-DEFENDANT/RESPONDENT

RULING

This Ruling is at the instance of the 1st to 6th Defendants/Applicants who approached this Hon. Court by way of Notice of Preliminary Objection praying this Hon. Court to strike out this suit on the following grounds:

- (1) The suit is statute barred having been caught up by the Public Officers Protection Act.
- (2) The suit is incompetent on the ground that the 2nd and 3rd Defendants are non-juristic persons.

- (3) The suit is incompetent on the ground that No. cause of action for defamation can be maintained against the 4th Defendant who is now deceased.
- (4) The Hon. Court lacks the jurisdiction to entertain the suit.

The Notice of Preliminary Objection is supported by 6 paragraph affidavit deposed to by one Israel Temitope Odunlami, a litigation Clerk in the Law firm of the Counsel for the 1st to 6th Defendants/Applicants.

It is the deposition of the deponent that this suit is statute barred and that 2nd and 3rd Defendants are non juristic persons, hence no action can be maintained against them.

That an action for defamation cannot be maintained against the 4th Defendant who is now deceased.

A written address was filed wherein three issues were formulated for determination to wit;

- (1) Whether this suit is not statute barred in view of section 2(a) of the Public Officers Protection Act 2004.
- (2) Whether this Hon. Court has the jurisdiction to entertain the Claimants action commence against the Defendants jointly with the 2nd and 3rd Defendants who are non juristic persons.
- (3) Whether this suit which bothers on defamation of character can survive the 4th Defendant who is now deceased.

Learned Counsel argued the above issues relying on several case laws in urging the Court to grant the application of the 1st to 6th Defendants'/Applicants'.

On the part of the seven (7) Defendant, learned Counsel aligned himself with the submission and position of learned Counsel for the 1st to 6th Defendants/Applicants.

Reacting to the Application, learned Counsel for the Claimant filed a counter affidavit of 12 paragraphs deposed to by one Judith Obadiah, a litigation Secretary in the law firm of the Counsel to the Claimant.

It is the deposition of the Claimant that the suit is not statute barred and that both 2nd and 3rd Defendants are juristic person that action can be maintained against them.

That the death of the 4th Defendant does not affect the continuation of the suit against the rest Defendants.

A written address was filed wherein the following issues were formulated for determination to wit;

- (1) Whether from the facts supplied by the Defendants/Applicants affidavit, whether the Claimant's suit is statute barred by the provisions of section 2(a) of the Public Officers Protection Acts, 2024.
- (2) Whether the 2nd and 3rd Defendants are non juristic persons and incapable of being sued.
- (3) Whether the Court has jurisdiction to entertain the Claimant's action.
- (4) Whether the suit cannot proceed due to the death of the 4th Defendant (Mr. Ivara William Ebetem).

Learned Counsel argued, the above issues submitting that, this Hon. Court should dismiss this application in the interest of justice.

I have gone through the application under consideration filed by the 1st – 6th Defendants and the elaborate written address of Counsel in support of same on the one hand, and the counter affidavit of the Claimant and the written address in support of same on the other hand. To my mind, the three issues formulated by both learned Counsel for the Defendants/Applicants and that of the Claimant/Respondent are enough to determine the issues at stake, the Court therefore adopt same as issues for determination in this case to wit;

- (1) Whether this suit is not statute barred in view of section 2(a) of the Public Officer Protection Act, 2004.
- (2) Whether this Hon. Court has the jurisdiction to entertain the Claimants action commence against the Defendants jointly with the 2nd and 3rd Defendants who are non juristic persons.
- (3) Whether this suit which borders on defamation of character can survive the 4th Defendant who is now deceased.

I shall therefore address the aforesaid issues to ascertain whether same have merit worth judicial pronouncement.

On issue No. 1, **whether this suit is not statute barred in view of section 2(a) of the Public Officer Protection Act, 2004.**

It is the contention of the 1st – 6th Defendant that the cause of action as contained in paragraph 18 of the statement of claim accrued on the 31/10/2022 when the Defendants were alleged to have made a defamatory publication against the Claimant and that this suit was only filed on the 17/08/2023 and therefore statute barred.

What then is a cause of action? A cause of action is the fact which established or give rise to a judicial relief. It is constituted by the boundless or aggregate of facts which will be recognized as giving the Claimant a substantive right to make the claim against the relief or

remedy sought *UDA PLC VS. ABDULLAHI (2003) 3 NWLR (PT. 807) 359.*

Indeed, an action is said to be statute barred when the party suing bring his action beyond the period laid down by the limitation law. *ARAKA VS. AJEAGWU (2000) 12 SC (Pt. 1) @ 99.* Where an action is statute barred, a Claimant who might have had a cause of action loses the right of enforcement of such cause of action or claim in Court of law as result of the expiration of the prescribed period *EDOIGBA VS. NNPC (1994) 5 NWLR (Pt. 347) 649.*

It is trite position of the law that time begins to run for the purpose of limitation when the cause of action arose, that is when the Claimant becomes aware that his legal right has been breached by the Defendant. Time will equally begin to run where there is in existence a person who can sue and be sued and another who can be sued. *INEC VS. ADP & ANOR (2023) LPELR 60333 (CA).*

The period of limitation is determined by looking at the writ of summons and statement of claim alleging when the wrong was committed that gave the Claimant a cause of action and by comparing that date on which the writ of summons was filed *ADEKOYA VS. FHA (2000) 11 NWLR (Pt. 1099) 529.*

Indeed, the Public Officer's Protection Act stipulates time frame within which an action against a public officer can be commenced. Section 2(i) (a) of the Act provides that; "where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Act, or law or of any public duty or authority, or in respect of any 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 provision

shall have effect (a) limitation of action, the action, prosecution or proceeding shall not lie or be instituted unless it is commenced within three month next after the act, neglect or default complained of or in a case of continuance of damage or injury within three months next after the ceasing thereof, provided that in the action, prosecution or proceeding be at the instance of any person for cause arising thereof. ***INEC VS. ADP & ANOR (2023) LPELR 60333 (CA)***.

I have gone through the writ of summon before me, it is pertinent to state here that the entire gamut of the claims has to do with defamation, a tort, which the Claimant alleged took place on the 13/10/2022.

In ***BUREAU OF PUBLIC ENTERPRISES VS. REINSURANCE ACQUISITION GROUP LTD & ORS. (2008) LPELR 85 60 (CA)*** the Court of Appeal held as thus:

“The Public Officer Protection Act was not intended by the legislature to apply to contract, the law does not apply in cases of recovery of land, breaches of contract or for claims for work and labour done. FGN VS. ZEBRA ENERGY LTD (2002) 18 NWLR (PT. 798) 162 at 196 per MOHAMMED JSC.

The defence of the public officer protection law can avail public officers who act in execution of their duty without malice. Thus motive on the part of public officer is relevant but the mala fide of the public officer must be made an issue ***Okeke Vs. Baba (2000) 3 NWLR (Pt. 798) 644 at 652.***

Indeed, the action of the Claimant been a defamation Act, it is definitely fall outside the protection of the public officer protection law. As public officer protection act applies only to actions performed within the scope of public officer’s lawful duties. Tortious Acts outside official duties are excluded. ***FGN VS. A.G ABIA STATE (2002) 4 NWLR (PT. 756) (1).***

From the above therefore, I hereby resolve issue one in favour of the Claimant against the Defendant. I so hold.

On issue two, whether the 2nd and 3rd Defendant are non juristic persons and incapable of being sued.

Indeed, for an action to be properly constituted so as to vest jurisdiction in the Court to adjudicate on it, there must be a competent plaintiff and a competent defendant each with the juristic or legal capacity to sue or be sued. As a general principle of law, when either or the parties is not a legal person, either natural or artificial, then the capacity or competence to initiate or defend the action as the case may be, would be absent and the action is liable to be struck out. ***AGBONMAGBLE BANK LTD VS. GENERAL MANAGEER G. B OLIVANT LTD (1981) ALL NLR 116.***

The law is that when both parties are quite familiar with the entity envisaged in a writ of summons and could not have been misled or have any real doubt or misgiving as to the identity of the person suing or being sued, then there cannot be a problem of mistaken identity to justify a striking out of the action. A misnomer that will vitiate the proceedings would be such that will cause reasonable doubt as to the identity of the person intending to sue or be sued. ***THE REGISTERED TRUSTEES OF THE AIRLINE OPERATOR OF NIGERIA VS. NIGERIAN AIRSPACE MANAGEMENT AGENCY (2014) LPELR 22372 (SC).***

The 2nd and 3rd Defendant being bodies Corporate under the Nigerian Law have the capacity to be sue and be sued.

From the above, I shall equally resolve issue two in favour of the Claimant/Respondent against the Defendants/Applicant.

Having resolved issue two, I shall now beam my searchlight on issues No. 3, whether this suit which borders on defamation of character can survive the 4th Defendant who is now deceased.

It is instructive to state here that an action generally survive for the benefit of the estate of a deceased person except in an action which is purely except in an action which is purely person action. In ***RE NDIC VS. ROSABOL (NIG) LTD & ORS. (2017) LPELR 41925 (CA)*** the Court held as thus;

“Cause of action generally survive for the benefit of the estate of a deceased person except in actions for defamation, seduction, inducement of spouse or where the orders sought is brought by or against a dead person which are personal to him.

The fact that Mr. Ivara William Ebetem is now deceased is not in dispute; therefore, defamation action be action in personation which cannot be continued against the estate of a deceased person, I shall do the needful by striking out the name of the 4th Defendant out of this suit, consequently, the name of Mr. Ivara William Ebetem is hereby struck out.

**SIGNED:
HON.JUDGE
04/06/2025**

APPEARANCE:

A.P. Samson, Esq, for the Claimant

C. I. Ogueri, Esq, for the 1st – 6th Defendants/Objectors

E. F. Olowofela, Esq, for the 7th Defendant