**ABIA STATE UNIVERSITY**

**v.**

**ANYAIBE**

COURT OF APPEAL, (PORT HARCOURT DIVISION)

TUESDAY, 12TH DECEMBER, 1995

CA/PH/105/94

**LEX (1995) – CA/PH/105/94**

**OTHER CITATIONS**

2PLR/1995/3 (SC)

(1995) 3 NWLR (Pt. 439) 646

**BEFORE THEIR LORDSHIPS**

ALOYSIUS IYORGYER KATSINA-ALU, J.C.A. (Presided and Read the Leading Judgment)

OBINNAYA ANUNOBI OKEZIE, J.C.A.

MORONKEJI OMOTAYO ONALJA, J.C.A.

**BETWEEN**

1. ABIA STATE UNIVERSITY, UTURU

2. VICE CHANCELLOR, ABIA STATE UNIVERSITY UTURU

3. THE ACADEMIC REGISTRAR, ABIA STATE UNIVERSITY

4. THE SENATE, ABIA STATE UNIVERSITY

5. GOVERNING COUNCIL, ABIA STATE UNIVERSITY

**AND**

CHIMA ANYAIBE

**ORIGINATING COURT**

HIGH COURT, ABIA STATE HOLDEN AT ISIUKWUATO [Isuama, J., Presiding]

**REPRESENTATION**

C.I. OHAKWE - for the Appellants

AHAM EKE-EJELAM - for the Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

EDUCATION AND LAW:- Maintenance of law and order within a school/university environment – Discipline of students – Purported administrative acts which may amount to usurpation of the powers of courts – Alleged ‘misconduct’ on part of student amounting to a crime – “Internal Discipline” - Competency of a school authority to determine same through administrative panels – Attitude of courts thereto - Where the person accused of committing an offence admits his involvement in the commission of the offence – Whether constitutes an exception thereto

EDUCATION AND LAW:- Public school established via statute – Officers whose powers and functions were stipulated under the same establishment statute – Whether impliedly vested with capacity to be sued – Justifications of

EDUCATION AND LAW:- Expulsion of student for conduct amounting to crime – Standard of proof – Competent authority to decide same – Whether restricted to judicial authorities – Legal effect

CHILDREN AND WOMEN LAW:- Young people and Education/Justice Administration – Expulsion of a university student based on findings of an administrative panel – Where finding amounted to criminal guilt – Duty of court thereto – When an educational center can validly take disciplinary measures against student for a conduct amounting to a crime

GOVERNMENT AND ADMINISTRATIVE LAW:- Judicial powers in section 6(6) of the 1979 Constitution - Bodies that have competence to exercise same – Administrative tribunal set up by a University - Whether has competence to try wrongs amounting to commission of crime

GOVERNMENT AND ADMINISTRATIVE LAW:- Statutorily recognised officers of public bodies – Whether can be sued as such – Basis of – Relevant considerations

GOVERNMENT AND ADMINISTRATIVE LAW:- Administrative/disciplinary panels – Duty to observe fair hearing principles – Determination of issues bordering on crime – Validity of – Distinction of such determination from merely determining disciplinary measure to be taken against a person who has admitted to the commission of a crime - Legal effect

CONSTITUTIONAL LAW AND HUMAN RIGHTS:- Action for enforcement of fundamental rights - Nature of - Duty on party bringing same to adhere strictly to the provisions of the Fundamental Rights (Enforcement Procedure) Rules, 1979.

CONSTITUTIONAL LAW AND HUMAN RIGHTS:- Fundamental Rights (Enforcement Procedure) Rules, made pursuant to section 42 of the 1979 Constitution - Status and Constitutional force of vis-à-vis other laws of the land

CONSTITUTIONAL LAW AND HUMAN RIGHTS:- Supremacy of the Constitution vis a vis other laws – Whether extends to rules of courts/tribunals made pursuant to a constitutional provision

CONSTITUTIONAL LAW AND HUMAN RIGHTS:- Access to court and limitation laws - Where a subsidiary legislation pursuant to the Constitution allows directly provides for a condition precedent to bringing an action while recognising conditions that may be imposed under other laws – Where conflict arises – How construed

CONSTITUTIONAL LAW AND HUMAN RIGHTS:-Judicial powers in section 6(6) of the 1979 Constitution - Bodies that have competence to exercise same - Administrative tribunal set up by a University - Whether has competence to try wrongs amounting to commission of crime

CONSTITUTIONAL LAW AND HUMAN RIGHTS:- Right to fair trial before a court or tribunal - Section 33 (1) of the 1979 Constitution - Effect of breach thereof

CONSTITUTIONAL LAW AND HUMAN RIGHTS - FUNDAMENTAL RIGHTS:- Fundamental Rights (Enforcement Procedure) Rules, 1979 made pursuant to section 42 of the 1979 Constitution -Status and Constitutional force of vis-à-vis other laws of the land.

CONSTITUTIONAL LAW AND HUMAN RIGHTS - FUNDAMENTAL RIGHTS:- Right to personal liberty - Where a person is charged with commission of crime - Effect of on his right to personal liberty

CORPORATE AND COMPANY LAW - LEGAL PERSONALITY:- Right to sue and be sued - On whom conferred - Categories of persons or bodies conferred with the right

CORPORATE AND COMPANY LAW - LEGAL PERSONALITY:- Right to sue or be sued - Vice Chancellor, Registrar, Senate, Governing Council of a University - Whether can sue or be sued – Basis of – Legal implication

CORPORATE AND COMPANY LAW - LEGAL PERSONALITY:- Statutory bodies or functionaries created by statute without being expressly conferred with powers to sue or be sued – Implied capacity thereto - Circumstances when can be deemed to have been conferred with such powers - Relevant considerations

**PRACTICE AND PROCEDURE ISSUES**

ACTION - LIMITATION OF ACTION:- Fundamental rights -12 month period of limitation prescribed by the Fundamental Rights (Enforcement Procedure) Rules, 1979 - Whether can be further reduced by another statute - 3 month period provided in section 22(2) of the Imo State University Edict, 1985 (as amended) – Validity of

LIMITATION OF ACTIONS:- Section 22(2) of Imo State University Edict 1985, (as amended)-Validity of vis-à-vis Order I rule 3(1) of the Fundamental Rights (Enforcement Procedure) Rules, 1979 - Conflict between – How resolved

INTERPRETATION OF STATUTE: Section 22(2) of Imo State University Edict 1985 - Order I rule 3(1) of the Fundamental Rights (Enforcement Procedure) Rules, 1979 – Interpretations of

WORDS AND- PHRASES:- “Or” – How construed in a statute

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The Respondent, a student of the Abia State University, Uturu was alleged to have assaulted two students on the University Campus. The 2nd appellant, the Vice Chancellor of the University set up a Panel in February 1990 to investigate the incident. The respondent was invited to testify before the Panel by a letter dated 7th March, 1990. The respondent duly appeared before the Panel and testified. He denied the allegation. Based upon the report of the Panel, he was expelled on ground of ‘misconduct’. The respondent instituted this action against his expulsion claiming, among others, for:

“(1) A declaration that his expulsion constitutes a violation of his fundamental right to fair hearing under S.33(1) and(4)of the Constitution of the Federal Republic of Nigeria 1979 (as amended) and therefore null, void and of no effect.

(2). An order compelling the University to readmit the applicant into the University to continue with his academic studies with immediate effect.”

On the 11th of March, 1991 the Okigwe High Court upon a motion Ex-parte granted the respondent leave to bring a motion on notice for the enforcement of his fundamental right and also ordered the appellants to re-admit the respondent into the University to carry on with his studies pending the hearing of a motion on notice to be filed by the respondent. The respondent filed his substantive motion for the enforcement of his fundamental rights on 25th of March 1991. The appellants filed a counter-affidavit and a further counter-affidavit in opposition to the motion. The appellants in addition filed a Motion on Notice to dismiss the respondent’s action for failure to bring the action within 3 months from the date of the act complained of as prescribed by Section 22(2) of the Imo State University Edict, 1985.

Upon hearing arguments of counsel for the parties on 14th of January, 1993, the learned trial Judge on 25th of January, 1993 declared the respondent’s expulsion from the University null and void and ordered his re-admission into the University.

DECISION(S) APPEALED AGAINST

1. Failure or refusal of trial court to dismiss the Applicant/Respondent’s application for being statute barred.

2. Failure of trial Court to strike out the names of the 2nd, 3rd, 4th and 5th Respondents/Appellants from the suit as they are in law not juristic persons capable of being sued.

3. Holding pf the trial Court that the Investigating Panel set up by the Vice Chancellor usurped the Judicial powers vested in the Law Courts by trying the applicant/respondent for a criminal offence or assault.

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT(S):*

“(a) Whether the trial Judge was right in entertaining the respondent’s action which was not maintainable at the time the action was filed and the Court divested of jurisdiction by virtue of a Statute of Limitation i.e. Section 22(2) of Abia State University Edict No. 21 of 1985 as amended by Imo State University Edict No. 5 of 1991.

(b) Whether the trial Judge was right in holding that the 12 months period prescribed by Order I Rule 3(1) of Fundamental Rights (Enforcement Procedure) Rules 1979 overrides the Limitation period of 3 months within which a person can institute legal proceedings against the University as provided in section 22(2) of Abia State University Edict No. 21 of 1985 (as amended) by Into State University Edict No. 5 of 1991.

(c) Whether the Vice Chancellor Abia State University, the Academic Registrar Abia State University, the Senate Abia State University, the Governing Council, Abia State University are legal persons either by virtue of Abia State University Edict 1985 (as amended) or by other statute which can sue and be sued in their names in this suit.

(d) Whether the trial Judge having found that the Investigation Panel did afford the respondent opportunity to (sic) defend himself and that “Assault on this Campus” which appears on Exhibit “A” the Panels terms of reference does not mean an assault on a human person within the technical meaning of assault under Section 252 of the Criminal Code, was right in holding that the respondents Fundamental Rights to fair hearing was infringed by the same Investigation Panel.

*BY RESPONDENT(S)*

1. Whether the learned trial Judge was correct in holding that since the action commenced under the Fundamental Rights (Enforcement Procedure) Rules 1979 which were made pursuant to Section 42(3) of the 1979 Constitution, the twelve month period of limitation provided in the Rules overrides the three month limitation period in Edict No. 21 of 1985 as amended.

2. Whether the Vice Chancellor, The Registrar, The Senate and the Governing Council of the 1st appellant can be sued in this action?

3. Whether the learned trial Judge was correct in holding that the Investigating Pane lacked jurisdiction to adjudicate on matters concerning an assault to the person, a criminal offence as that will amount to a usurpation of judicial powers in the law courts. A subsidiary issue is that the Learned Trial Judge having held that the Investigating Panel usurped the function of a regular court, whether the further finding that the respondent was given an opportunity to defend himself by the Panel was sufficient to have defeated the respondent’s action?

*AS ADOPTED BY COURT*

*[The Court of Appeal determined the appeal based on issues formulated by the Appellant]*

DECISION OF COURT OF APPEAL

1. The law is settled that if the legislature has created a thing or body with functions and powers which can own property, employ servants and inflict injury, the legislature must be taken to have impliedly given the power to make it suable in a court of law for injuries done by its authority and procurement – even if it was not expressly given the power to sue and be sued.

2. It was common ground between counsel that the Vice-Chancellor, the Registrar, the Senate and the Governing Council are creations of the Imo State University Edicts as amended. It was further common ground that the Edict did not expressly confer the right to sue and be sued eo nomine on any of them. However each of them is assigned specific functions as provided for in the Edict and in the exercise of such functions rights of other persons will most certainly be affected. If in the exercise of these functions the right of any one is infringed, any of these functionaries can be sued even though the Edict did not expressly provide that they can sue or be sued.

3. A finding of guilt without a trial is unquestionably a breach of all the rules of natural justice. The Investigating Panel not being a court or judicial tribunal has no competence in law to try the respondent upon a criminal charge. This was not a matter of internal discipline. Assault is a crime against the State. An investigative Panel is not competent to make findings bordering on a crime like assault.

**MAIN JUDGEMENT**

**KATSINA-ALU, J.C.A.** **(Delivering the Leading Judgment):**

This appeal is against the ruling of Isuama, J., of the Isiukwuato High Court, Abia State delivered on 25 January, 1993. The ruling was upon an application brought by the respondent (as Applicant) against the appellants (as respondents) to enforce his fundamental rights.

The respondent was a student of the Abia State University, Uturu before his expulsion from the said institution with effect from the 10th day of April, 1990. This was sequel to the Report of the Panel set up by the Vice Chancellor which found him guilty of misconduct. The short facts of this case are these. The respondent was alleged to have assaulted two students also of the 1st appellant Emeka Ijeoma and Achimola Okezie on the University Campus in the month of February, 1990. The 2nd appellant, the Vice Chancellor of the University set up a Panel in February 1990 to investigate the incident. The respondent was invited to testify before the Panel by a letter dated 7th March, 1990. The respondent duly appeared before the Panel and testified. He denied the allegation.

At the conclusion of its sitting, the panel submitted its Report to the 2nd appellant who acted upon it by expelling the respondent by letter dated 10th April 1990 (Exhibit B). The respondent instituted this action against his expulsion in February 1991.

This suit originated from the Okigwe High Court, Imo State wherein the respondent commenced this action on 27th day of February 1991 by way of Enforcement of Fundamental Rights claiming the following reliefs:

“(1) A declaration that the applicant’s expulsion with effect from the 10th day of April, 1990 from the Imo State University constitutes a violation of his fundamental right to fair hearing under S.33(1) and(4)of the Constitution of the Federal Republic of Nigeria 1979 (as amended).

(2) A declaration that the expulsion of the applicant from the Imo State University, Okigwe based on the said violation of fundamental right of the applicant under S.31(1) and (4) of the Constitution of the Federal Republic of Nigeria 1979 (as amended) is null, void and of no effect.

(3). An order of the Honourable Court compelling the University to readmit the applicant into the Imo State University to continue with his academic studies with immediate effect.”

On the 11th of March, 1991 the Okigwe High Court upon a motion Ex-parte granted the respondent leave to bring a motion on notice for the enforcement of his fundamental right and also ordered the appellants to re-admit the respondent into the University to carry on with his studies pending the hearing of a motion on notice to be filed by the respondent.

The respondent filed his substantive motion for the enforcement of his fundamental rights on 25th of March 1991. The appellants filed a counter-affidavit and a further counter-affidavit in opposition to the motion. The appellants in addition filed a Motion on Notice to dismiss the respondent’s action for failure to bring the action within 3 months from the date of the act complained of as prescribed by Section 22(2) of the Imo State University Edict, 1985.

Before the hearing of the motion by Okigwe High Court, Abia State was created out of Imo State, and consequently, Imo State University was ceded to Abia State and the University was re-named Abia State University. This led to the transfer of the case from Okigwe High Court to Isiukwuato High Court, Abia State. Upon hearing arguments of counsel for the parties on 14th of January, 1993, the learned trial Judge on 25th of January, 1993 declared the respondent’s expulsion from the University null and void and ordered his re-admission into the University. This appeal is from this ruling. The appellants filed four original grounds of appeal and later with the leave of this court two additional grounds of appeal. The grounds altogether read as follows:

1. The learned trial Judge erred in Law by failing or refusing to dismiss the applicant/respondent’s application for being statute barred.

Particulars of Error

(a) The applicant/respondent was expelled from Imo State University (now Abia State University) on 10th day of April, 1990 vide a letter dated 10th day of April, 1990 served on him on the same date.

(b) On 20th day of December, 1990 the applicant/respondent served the respondents/appellants with Notice of Intention to commence legal action against the University.

(c) In March, 1991, 11 (Eleven) months after the expulsion the applicant/respondent commenced legal proceedings against the respondents/appellants challenging his expulsion from the University by way of application for the enforcement of his fundamental rights of fair hearing under Order 1 Rule 2 (1 & 6) of the Fundamental Rights Enforcement Procedure Rules 1979 and Section 42 of the Constitution of the Federal Republic of Nigeria 1979 (as amended).

(d) Under the provision of section 22 (2) of Imo State University Edict No. 21 of 1985, no suit against the University or against any of its bodies or against any member officer or employee thereof respecting any act, neglect or default done or omitted in his capacity as such shall or be instituted in any Court unless it is commenced within three (3) months from the occurrence of the act, neglect or in the case of continuance of damage or injury within three (3) months immediately after the cessation thereof, so however that any Notice served to sue the University shall be deemed to be commencement of such proceedings.

(e) The trial Judge failed to appreciate that the applicant/ respondent brought a stale action in that he failed to comply with the clear provisions of Section 22 of the said Imo State University Edict (as amended).

2. The Learned trial Judge erred in Law by holding that the period of 12 months within which a person can apply for leave as provided for in Order 1 Rule 3(1) of Fundamental Rights (Enforcement Procedure) Rules 1979 overrides the limitation period of 3 months within which a person can institute legal proceedings against the University as provided for under Section 22(2) of Imo State University Edict No. 21 of 1985 (as amended).

Particulars of Error

(a) The trial Judge failed to appreciate that Order 1 Rule 3(l) of Fundamental Rights (Enforcement Procedure) Rules 1979 while prescribing the period of 12 months within which a person can apply for leave also recognises and incorporates such other period as may be prescribed by any enactment such as in this case section 22 (2) of Imo State University Edict No. 21 of 1985 (as amended).

(b) The trial Judge failed to appreciate the position of the law that a period of limitation prescribed by a statute does not offend the constitution.

(c) That Order I Rule 3(1) of Fundamental Rights (Enforcement Procedure) Rules 1979 is a guide as to procedure to be followed by persons seeking enforcement of Fundamental Rights and does not operate to render impotent or invalid a limitation period prescribed by a statute such as the provisions of section 22(2) of Imo State University Edict No. 21 of 1985 (as amended).

3. The learned trial Judge erred in law by failing in his judicial duty to strike out the names of the 2nd, 3rd, 4th and 5th respondents/ appellants from the suit as they are in law not juristic persons capable of being sued.

Particulars of Error

(a) The Vice-Chancellor, the Registrar, The Senate and the Governing Council Imo State University (now Abia State University) are mere duty posts and have no separate legal personality from Imo State University (now Abia State University). They cannot sue or be sued in their duty posts.

(b) Imo State University (now Abia State University) is a legal person capable of being sued in its corporate name.

4. The learned trial Judge erred in Law by failing to strike out the respondent’s application which is based on leave irregularly or improperly obtained.

Particulars of Error

(a) Leave was granted to the respondent after 11 months the respondent’s cause of action arose without due regard to the clear provisions of Section 22(2) of lmo State University Edict No. 21 of 1985 (as amended).

(b) No reason for the delay was accounted for or given by the respondent in his application for leave to apply for enforcement of fundamental rights as provided for in Order 1 Rule 3(1) of Fundamental Rights (Enforcement) Rules 1979.

5. The learned trial Judge erred in law by holding that the Investigating Panel set up by the 1st respondent/appellant usurped the Judicial powers vested in the Law Courts by trying the applicant/respondent for a criminal offence or assault.

Particulars of Error

(a) The trial Judge found that “Assault on this Campus” as contained in Exhibit “A” cannot by any stretch of imagination mean assault on a human person as defined in section 252 of the Criminal Code yet he wrongly concluded that the Investigation Panel tried the respondent/applicant for the offence of Assault under the Criminal Code, by virtue of paragraph 6(a) of the Counter-Affidavit.

(b) The facts deposed to in paragraph 6(a) of the Counter-Affidavit do not state, suggest or infer assault on anybody within the intent and purposes of section 252 of the Criminal Code.

(c) Fighting as deposed to in paragraph 6(a) of the Counter-Affidavit is a brawl, a quarrel in a public place to the disturbance of the peace of the University and this the University considers a misconduct.

(d) The Investigating Panel in performing its duty under Section 18(1) of the said Edict has the competence to investigate cases of misconduct by students of the University and in so doing, the Investigating Panel is not a Court or Tribunal under Sections 33(1) and (4) of the 1979 Constitution of the Federal Republic of Nigeria.

6. The learned trial Judge erred in Law by refusing to dismiss the applicant/respondent’s action when the trial Judge found as a fact that the respondent/applicant was given opportunity by the Investigating Panel to defend himself.

Particulars of Error

(a) Under Section 18(1) of the State University Edict No. 21 of 1985 (as amended) all that an Investigating Panel needs do is to afford a student opportunity to be heard and this the panel did.

(b) The trial Judge found as a fact that the Investigating Panel in its proceedings observed the principle of natural justice of *audi alteram partem* and afforded the applicant/respondent an opportunity to defend himself and state his case.

Both parties filed their respective briefs of argument which were adopted at the hearing of this appeal. At pages 4 and 5 of their brief of argument the appellants formulated four issues for determination in this appeal. These read as follows:

“(a) Whether the trial Judge was right in entertaining the respondent’s action which was not maintainable at the time the action was filed and the Court divested of jurisdiction by virtue of a Statute of Limitation i.e. Section 22(2) of Abia State University Edict No. 21 of 1985 as amended by Imo State University Edict No. 5 of 1991.

(b) Whether the trial Judge was right in holding that the 12 months period prescribed by Order I Rule 3(1) of Fundamental Rights (Enforcement Procedure) Rules 1979 overrides the Limitation period of 3 months within which a person can institute legal proceedings against the University as provided in section 22(2) of Abia State University Edict No. 21 of 1985 (as amended) by Into State University Edict No. 5 of 1991.

(c) Whether the Vice Chancellor Abia State University, the Academic Registrar Abia State University, the Senate Abia State University, the Governing Council, Abia State University are legal persons either by virtue of Abia State University Edict 1985 (as amended) or by other statute which can sue and be sued in their names in this suit.

(d) Whether the trial Judge having found that the Investigation Panel did afford the respondent opportunity to (sic) defend himself and that “Assault on this Campus” which appears on Exhibit “A” the Panels terms of reference does not mean an assault on a human person within the technical meaning of assault under Section 252 of the Criminal Code, was right in holding that the respondents Fundamental Rights to fair hearing was infringed by the same Investigation Panel.

For his part, the respondent raised three main issues and a subsidiary issue which in his view arise for determination. These are:

1. Whether the learned trial Judge was correct in holding that since the action commenced under the Fundamental Rights (Enforcement Procedure) Rules 1979 which were made pursuant to Section 42(3) of the 1979 Constitution, the twelve month period of limitation provided in the Rules overrides the three month limitation period in Edict No. 21 of 1985 as amended.

2. Whether the Vice Chancellor, The Registrar, The Senate and the Governing Council of the 1st appellant can be sued in this action?

3. Whether the learned trial Judge was correct in holding that the Investigating Pane lacked jurisdiction to adjudicate on matters concerning an assault to the person, a criminal offence as that will amount to a usurpation of judicial powers in the law courts. A subsidiary issue is that the Learned Trial Judge having held that the Investigating Panel usurped the function of a regular court, whether the further finding that the respondent was given an opportunity to defend himself by the Panel was sufficient to have defeated the respondent’s action?

The appellants’ first and second issues relate to the lack of jurisdiction of the trial court by virtue of the Imo State University Edict No. 21 of 1985 as amended. It was said that the respondent’s action was predicated on Exh ‘B’ the letter of expulsion from the University. Exhibit B was dated 10th April, 1990. It was contended that in the circumstance that the cause of action arose in April 1990 and that the respondent’s time began to run from that date.

It was pointed out that the Imo State University Edict No. 21 of 1985 prescribes a period of 3 months from the date the cause of action arises within which an aggrieved party must commence an action against the University. The present action was not instituted until February 1991 which is 10 months from the date of the respondent’s expulsion from the University.

In the light of the provisions of S.22(2) of the Limitation Law, it was submitted that the action was statute-barred. Learned counsel for the appellants relied on the decision of Nwadiaro v. Shell Development Co. Ltd. (1990) 5 NWLR (Pt. 150) 322, Sanda v. Kukawa Local Government (1991) 2 NWLR (Pt. 174) 379.

It was further argued that although this action was brought under the Fundamental Rights (Enforcement Procedure) Rules 1979 (hereinafter referred to as the Rules) the Rules do not oust any period of limitation prescribed by any enactment but rather recognises and incorporates such other period of limitation. Counsel relied on the case of Maradesa v. Governor of Oyo State (1986) 3 NWLR (Pt. 27) 125 at 127. Having regard to the state of the law, it was submitted that the learned trial Judge was without jurisdiction to entertain the respondent’s suit.

Section 22(2) of the Edict provides that no suit shall be brought against the University unless it is commenced within three months from the day the cause of action arose. Order I rule 3(1) of the Rules provides inter alia that an applicant must apply for leave within twelve months from the day the cause of action arose or within “such other period as may be prescribed by any enactment.” The contention of the appellants is to the effect that this provision of the Rules recognises and protects section 22(2) of the Edict. In other words if the respondent herein commenced his action outside the 3 months period prescribed by the Edict, Order 1 rule 3(1) of the Rules cannot save the action. The learned trial Judge held a contrary view. In his ruling he said:

“As his application is brought under the Fundamental Rights (Enforcement Procedure) Rules 1979, made pursuant to Section 42(3) of the Constitution of the Federal Republic of Nigeria, 1979, I hold that the twelve months period herein overrides the three months period in Edict No. 21 of 1985 as amended.”

So what is the proper construction to be given to the provisions of Order 1 rule 3(1) I of the Rules and Section 22(2) of the Edict?

The complaint of the respondent in the trial court was that his right to be tried by a competent court on an allegation of a criminal conduct as entrenched in Section 33(4) of 1979 Constitution was breached by the Investigation Panel set up by the 2nd appellant. That right is one of the Fundamental Rights entrenched in the constitution which in Section 42(1) equally provides an access for persons affected to remedy the infraction complained of by obtaining the appropriate relief. Section 42(3) of the Constitution also empowered the Chief Justice of Nigeria to make Rules with respect to the practice and procedure to be allowed in cases concerning Section 42(1) and the Rules were accordingly enacted pursuant thereto. They form part of the Constitution. See Akanbi & Ors. v. Alan & Anor (1989) 3 NWLR (Pt. 108) 118. In that case the Supreme Court was considering the Court of Appeal Rules which were made under powers conferred on the Honourable President of the Court of Appeal by Section 227 of the 1979 Constitution. The Supreme Court held that: -

“... the legal effect is that once it is shown that the Rules are made under powers conferred by the Constitution, they would have the same force of law as the Constitution itself.”

It is without argument therefore that the respondent, who complained of a breach of his fundamental rights, must commence a form of action specifically seeking the constitutionally provided remedy. To obtain his reliefs therefore, the respondent must follow and observe the procedure specifically provided for that purpose by the Rules. See Ransome-Kuti v. Attorney-General of the Federation & Ors. (1985) 2 NWLR (Pt. 6) 211; Orubu v. National Electoral Commission & Ors. (1988) 5 NWLR (Pt. 94) 323. 1 think it is now settled that where a statute has provided specially for the doing of a thing recourse must first be had to such statute. Similarly where the statute which has provided a right also provides a remedy, the remedy provided by the statute must be resorted to. Surely, if a contrary remedy is resorted to, the implication is that the court will be exercising a jurisdiction which it has been forbidden by the constitution or other law to exercise.

Section 22(2) of the Imo State University Edict No. 21 of 1985 as amended provided as follows:

“No suit against the University or against any of its Bodies or against any member, officer or employee thereof respecting any act, neglect or default done or omitted in his capacity as such, shall or be instituted in any court unless it is commenced within three months from the occurrence of the act, neglect or default or in the case of continuance of damage or injury within three months immediately after the cessation thereof, so however that any notice served pursuant to subsection (1) of this section shall be deemed to be commencement of such proceedings.”

However under the Fundamental Rights (Enforcement Procedure) Rules 1979, Order 1 rule 3(1) provides that:

“3(1) Leave shall not be granted to apply for an order under these Rules unless the application is made within twelve months from the date of the happening of the event, matter or act complained of, or such other period as may be prescribed by any enactment or except where a period is so prescribed, the delay is accounted for to the satisfaction of the court or Judge to whom the application for leave is made.”

I think an action under the Fundamental Rights (Enforcement Procedure) Rules, 1979 is a peculiar action. It is a special action. The procedure is provided by the Rules which were made pursuant to Section 42(3) of the 1979 Constitution. For the court to have jurisdiction, the procedure specifically provided for must be strictly followed. As I have already stated earlier on in this judgment, the Rules have the same force of law as the Constitution itself. What this means is that the Rules overrides any other enactment envisaged by Order I Rule 3(1) of the Rules. So what is the relevance of the phrase:

“... or such other period as may be prescribed by any enactment ...”

The words “such other period” referred to herein mean a period other than the 12 months period proceeding it. The words “any enactment” mean any other enactment which provides for a period other than the preceding twelve months period within which an application for leave can be made.

It is to be noted that twelve months period is separated from the next period following by the word “Or.” This word always bears the disjunctive meaning in an enactment. That is to say it separates the provision preceding it from the provision coming after it. Its role is to show that the provisions in which it is appearing are distinct and separate one from the other. In Black’s Law Dictionary, Sixth Edition, the word “Or” is defined inter alia:

“A disjunctive participle used to express an alternative or to give a choice of one among two or more things.”

It is therefore clear that the provisions following the word “Or” after the words “complained of,” in the Rule are to provide for “an alternative” to the twelve month period. But is that feasible in applications made under the Rules? I think not.

As I have already indicated an action -under the Fundamental Rights (Enforcement Procedure) Rules, 1979 is a peculiar action. The procedure is provided by the Rules. For the court to have jurisdiction the procedure must be strictly followed. Since the Rules have the force of law as the Constitution itself, it overrides the provisions of any other enactment which seeks to provide “an alternative.” In other words the 12-month period in Order I Rule 3(1) without a doubt overrides the three month period provided for in Section 2-(2) of the Edict. I cannot envisage a situation when the words “such other period as may be prescribed by any enactment ............” may play a role when standing side by side with the twelve months period prescribed in Order I Rule 3(I) of the Rules. The Rule will not suffer any disability if the words are deleted and I so recommend.

I turn now to issue 3. It was argued for the appellants that the suit against the 2nd, 3rd, 4th and 5th appellants i.e. Vice Chancellor, Registrar, the Senate and Governing Council of the Abia State University, is wrong in law in that they are not juristic persons capable of suing and being sued. Learned counsel for the appellants relied on the decision of the Court of Appeal in the case of University of Jos v. Carlen (Nigeria) Ltd. (1992) 5 NWLR (Pt. 241) 352. It was contended that under the Imo State University Edict, 1985 as amended by Edict No. 5 of 1991 only the University is a legal entity that can sue and be sued.

For the respondent it was said that the Imo State University Edict No. 21 of 1985 as amended by Edict No. 5 of 1991, the statute governing the 1st appellant, specifically and distinctly provided for and established the 2nd to 5th appellants herein. Each of them was also assigned specific duties and functions. Necessary powers were also given to each of them to enable them to carry out their functions and duties. It was contended that the nature of those functions and duties is such that in performing them, injury can be occasioned to persons. It was said that if in the course of carrying out functions, injuries are occasioned, then the aggrieved person is entitled to sue the particular body/bodies concerned eo nomine. In such occasions, the courts take it that the statute which gave those functions and powers to the body or office concerned impliedly vested it with capacity to be sued. In support of this proposition, learned counsel relied on the Supreme Court decision in Carlen (Nig.) Ltd. v. University of Jos. (1994) I NACR 125: 133-137; (1994) 1 NWLR (Pt.323) 631. which upturned the decision of this Court. Learned counsel finally submitted that in the circumstances of this case, the 2nd to 5th appellants could be sued eo nomine.

It was common ground between counsel that the Vice-Chancellor, the Registrar, the Senate and the Governing Council are creations of the Imo State University Edicts as amended. It was further common ground that the Edict did not expressly confer the right to sue and be sued eo nomine on any of them. However each of them is assigned specific functions as provided for in the Edict and in the exercise of such functions rights of other persons will most certainly be affected. If in the exercise of these functions the right of any one is infringed, can it be said that any of these functionaries cannot be sued because the Edict has not expressly provided that they can sue or be sued?

The general law, or course, is that any person, natural or artificial may sue and be sued. See Fawehinmi v. N.BA. (No. 2) (1989) 2 NWLR (Pt. 105) 558. Generally, no action can be brought by or against any party other than a natural person or persons unless such a party has been given by statute expressly or impliedly, or by the common law, either (a) a legal persona under the name by which it sues or is sued or (b) a right to sue or be sued by that name, for example partnership, trade unions, friendly societies and foreign institutions authorised by their law to sue and be sued.

The law is however, now settled. It is this, that if the legislature has created a thing or body with functions and powers which can own property, which can employ servants and which can inflict injury the legislature must be taken to have impliedly given the power to make it suable in a court of law for injuries done by its authority and procurement. See Carlen (Nig.) Ltd v. UNIJOS (1994) 1 NWLR (Pt. 323) 631 at 656. In that case Ogundare, J.S.C. said:

“The University of Jos Act has not expressly conferred on the council of the University nor the Vice-Chancellor such a right to sue or be sued eo nomine. If there be such right or obligation, it can only be derived by implication from the Act.

I have earlier in this judgment set out some provisions of the Act whereby functions are conferred on the council and the Vice-Chancellor. Considering the nature of these functions and other powers, duties and responsibilities conferred by other sections of the Act, e.g. the power of discipline over staff and students, it cannot be doubted that in their exercise of these functions and powers rights of third parties would necessarily be affected and it will amount to injustice if such third parties cannot seek redress for any wrong done to them. This is the rationale behind the decision of this Court in Thomas v. Local Government Service Board (1965) NMLR 310, (1965)1 All NLR 174. See also Willis & Anor v. Association of Universities of the British Commonwealth (1964) 2 All ER 39, 42 per Lord Denning M.R. where he accords judicial personality to a body unincorporated that is given expressly or impliedly by statute the right and obligation to sue and be sued.” In the instant case, the 2nd appellant acting under powers given to him by the law establishing the Imo State University the 1st appellant, setup the Investigating Panel. He received the Report of the said Panel and acted on it. The result was that the respondent was expelled by the 2nd appellant. The complaint of the respondent was that his fundamental rights were breached by the Vice-Chancellor in the course of performing the functions assigned to his office by the relevant law.

The respondent was expelled at a time he was still an undergraduate of the University. The lower court had to order his readmission by “the authorities” of the 1st appellant. The 2nd to 5th appellants are of course those “authorities.” The effect of the expulsion of the respondent was such that for him to be readmitted, each of the appellants has a role to play as provided for by the relevant statute. Thus the 3rd appellant is responsible for re-registering the respondent as a student and the 4th and 5th appellants responsible for ultimately awarding the respondent a Degree of the 1st appellant. In the circumstances of this case, therefore, the 2nd to 5th appellants could be sued eo nontine.

I come now to the fourth issue which is whether the learned trial Judge was correct in holding that the Investigating Panel lacked competence to hear and determine a criminal charge against the respondent. It was submitted for the appellants that the facts before the Panel did not state or imply that the Panel tried the respondent for the offence of assault within the intent and purposes of section 252 of the Criminal Code Laws of Eastern Nigeria. It was argued that the fact that other students identified the respondent as the person they saw fighting, does not per se amount to saying that the Panel tried the respondent for the criminal offence of assault. It was denied that the respondent was accused of assaulting anybody.

Paragraphs 1, 2, 3, 4, 6, 7, 8, 10, 11 and 12 of the affidavit of the respondent, Chima Anyaibe, read:

I. That I am a third-year student of Department of Estate Management, Imo State University, Okigwe and the Appellant in this suit.

2. That on the 7th day of March 1990 I was served with an Internal Memorandum referenced IMSU/PAN/INV inviting me to come and testify before an Investigation Panel constituted by the Vice Chancellor to investigate a case of assault. The said Internal Memorandum is annexed and marked Exhibit “A.”

3. On the 12th March, 1990 I testified before the Panel to the effect that I did not assault one Emeka Ijeoma or any other person.

4. That I orally applied to the Panel to allow me call witnesses to testify on my behalf in support of my assertion that I did not assault any person but the Panel refused the application without reason.

6. That in consequence of the findings of the Investigation Panel, the Vice-Chancellor directed my expulsion and I was expelled vide a letter dated 10th day of April, 1990 with reference number IMSU/ ACR.2l/1. The said letter is hereto annexed and marked Exhibit

7. That I am informed by my Solicitor E.A. Egbebu, Esq and I verily believe him that assault is a criminal offence under our criminal Code, Cap. 42.1958.

8. That I am further informed by my Solicitor E.A. Egbebu, and 1 verily believe him that the Panel lacked jurisdiction to try me on a case of assault, a criminal offence.

10. That if the order of expulsion on me is not quashed, I might not benefit from further University Education in my life.

11. That I will suffer great mischief and life hardship if the order of expulsion is not quashed on the basis of an investigation panel which lacked Criminal jurisdiction.

12. That by this expulsion order the respondents constituted themselves into a criminal court.

On the other hand paragraphs l, 2, 4, 5, 6, 8, 9 and 11 of the Counter-Affidavit of John Chukwunwike Ogike, Director of Administration, Imo State University read:

“1. That I am the Director of Administration/Academic Registrar, Imo State University and by virtue of my position in the said University, I am conversant with the facts of this case.

2. That I depose to these facts on behalf of the University and on behalf of all the other respondents which are the organs of the University.

4. That paragraph 1 of the affidavit verifying the applicant’s application is true only to the extent that the applicant was a student until the -10th April, 1990 when he ceased to be a student of the Imo State University, following his expulsion from the said University for misconduct.

5. That paragraph 2 of the affidavit is partially true. The true fact is that the applicant was invited to appear before the panel set up by the Vice Chancellor to investigate a case of assault on the University Campus during the month of February 1990.

(a) The assault on the Campus took the nature of harassment to students by some group of students, fighting and large scale disturbance within the University Campus during the month of February, 1990.

(b) By Imo State University regulations harassment of a student by any student or group of students, fighting and disturbance of the peace of the University, organizing or belonging to societies not approved by the Vice Chancellor constitutes a misconduct.

6. That paragraph 3 of the affidavit is false. I further state as follows:

(a) The following students:- Achimala Okezie and Emeka Ijeoma identified the applicant before the Panel as one of the students who fought them at Felicity Restaurant within the Campus.

(b) The applicant had opportunity and in fact cross-examined the said Emeka Ijeoma and other students who testified against him before the Panel.

8. That paragraph 6 of the affidavit is true and I add as follows:

Following on the Panel’s investigation of cases of misconduct involving the applicant and other students after affording them opportunity to defend themselves, the Panel found them guilty of misconduct and in consequence the Vice-Chancellor exercised his statutory powers and expelled the Applicant from the University

9. That paragraphs 7 and 8 of the affidavit are not correct. I further state:

(a) That the assault on the university Campus took the form of harassment, fighting and large scale disturbance of peace and order within the University by some students of the University which amounted to misconduct.

(b) The Panel was consequently set up to investigate the causes of the said misconduct and to identify those behind it for punishment.

(c) The Panel did not try the applicant for the offence of assault and it also did not convict the applicant for any crime or offence of assault.

(d) The Panel rather found the applicant guilty of misconduct.

(e) The Vice Chancellor of Imo State University has the statutory authority to discipline any of its students found guilty of misconduct.

11. That paragraphs 11 and 12 are completely false and misleading. I further state as follows:

(a) The Panel that looked into the case of misconduct on the University Campus did not purport to be acting as a court of law but existed as a regulatory machinery of the University to maintain Law and order.

(b) The University exists for all keeping people like the applicant within the system will undermine discipline and the academic pursuit of the University.

It is clear from the affidavit and counter-affidavit and it is indeed common ground that the respondent was a student at the University, that he was found guilty of misconduct which has been described as and amounting to assault. This under the University regulations is said to encompass harassment of a student or students by any student or group of students, fighting and disturbance of the peace of the University.

If the Investigating Panel was not set up to try the respondent as deposed to in paragraph 9 of the Counter-affidavit I wonder by what process the panel found the respondent guilty of the acts complained of. A finding of guilt without a trial is unquestionably a breach of all the rules of natural justice.

Under Section 33(l) and (4) of the 1979 Constitution only a court of law or Judicial tribunal is competent to hear and determine a criminal charge against the respondent. It is common knowledge that assault is an offence under Section 252 of the Criminal Code of Eastern Nigeria. See Garba & Ors v. University of Maiduguri (1986) 2 SC. 128; (1986) 1 NWLR (PL 18). I agree with the learned counsel for the respondent that the Investigating Panel not being a court or judicial tribunal has no competence in law to try the respondent upon a criminal charge. This was not a matter of internal discipline. Assault is a crime against the State. In Garba & Ors v. University of Maiduguri (supra) the Supreme Court per Obaseki, J.S.C. said at pages 575-576:

“On issue No. 4, learned counsel submitted that under section s33(1), (4) and (13) only a court of law or a judicial tribunal is competent to hear and determine a criminal charge against the appellants. I agree that neither the Investigating Panel, the disciplinary Board nor the Vice-Chancel for has any competence in law so to do.

Assault is an offence under section 265 of the Penal Code. Stealing or theft is an offence under sections 287 and 288 of the Penal Code. Robbery is an offence under section 298 of the Penal Code. House trespass is an offence under section 352 of the Penal Code. Arson and mischief by fire is an offence under section 337 of the Penal Code. These are all serious offences which carry heavy punishment under the Penal Code. Any person found guilty of any of them will have his reputation and name tarnished and stigmatized for life. It is therefore clear why the right to fair hearing within a reasonable time by a court or tribunal is given to any person charged.”

It is appropriate at this juncture to refer to the provisions of Section 33(1) and (4) of the 1979 Constitution. They read:

“(1) In the determination of his civil rights and obligations including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality.

(4) Whenever a person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing within a reasonable time by a court or tribunal.”

Where the conduct of a particular student amounts to a crime, it is a matter for the courts to deal with. It is not a matter of internal discipline. See also Dr. O.E. Sofekun v. N.O.A. Akinyemi & Ors (1980) 5-7 SC. 1; Dongtoe v. C.S.C. Plateau State (1995) 7 NWLR (Pt. 408) 448. In such a situation the power of the 2nd appellant to act is suspended until the regular court has determined the matter one way or the other. This is because if a person is accused of committing or having committed a criminal offence, his civil obligation to freedom from arrest, prosecution and punishment is called into question. It is therefore clear that offences against the laws of the land fall outside the jurisdiction of the visitor and the Vice Chancellor. There are however exceptions to the general statement of the law, for instance where the person accused of committing an offence accepts his involvement in the commission of the offence. See Garba v. University of Maiduguri (supra);F.C.S.C. v. Laoye (1989) 2 NWLR (Pt. 106) 652. In the latter case Eso, J.S.C. said at page 679:

“I would like to emphasize herein that the decision in Garba should not be taken as a prohibition of instituting disciplinary measures against civil servants where there has been a criminal charge accusation. However, other consideration might enter. For once such criminal investigations are involved care must be taken that the provisions of S.33 (4) of the Constitution are adhered to. It is not so difficult where the person so accused accepts his involvement in the acts complained of, and so proof of the criminal charges against him would be required. He has, in such a case, been confronted with the accusation and he admitted it. He could face discipline thereafter.”

The complaint of the respondent that he has been tried by an incompetent body for a criminal offence is well founded. In my judgment therefore, the fundamental right of the respondent to fair hearing within a reasonable time by a court has been violated by his being punished for a criminal offence without a preceding trial and conviction by a court. The issue here is not whether the respondent was afforded opportunity to defend himself before the Panel but whether the Panel had the competence to hear and determine a criminal charge accusation against the respondent. For all that I have said it is clear that the panel lacked the competence in law so to do.

In the result, this appeal fails and it is dismissed. I affirm the decision of the lower court given on 25th January, 1993. The respondent is entitled to costs which I assess at N2,000.00.

**OKEZIE, J.C.A:**

I have read in advance the judgment just delivered by my learned brother Katsina-Alu, J.C.A. I agree with him that the appeal should be allowed.

But I must add that this court in a number of decisions has made the position clear. It is that where public bodies, such as the Universities vested with the power to discipline certain persons, it can exercise such power at all relevant times, in accordance with laid down rules of procedure, if any and the rules of natural justice. If there are no laid down rules, it will exercise the functions in accordance with the rules of natural justice. But where the charges against the person amount to criminal offences under our criminal laws, such a body must take the view that it is not vested with power to try criminal offences and cannot usurp the power intended by the constitution to be exercisable by the courts or tribunals. See Denloye v. Medical & Dental Practitioners Disciplinary Committee (1968) 1 All NLR 306, Kotoye v. Central Bank of Nigeria (1989) 1 NWLR (Pt. 98) p. 419 at 444.

I abide by the consequential orders made in the lead judgment.

**ONALAJA, J.C.A:**

I have been privileged to read in advance the lead judgment eminently delivered by my learned brother, Katsina-Alu, J.C.A. whose reasoning and conclusion accord with my thoughts on the issues raised in this appeal and adopt it as my own and that the appeal be dismissed. This is without prejudice to adding few comments to the lead judgment.

The Supreme Court in Garba v. University of Maiduguri 1986 l NWLR (Pt. 18) p.550 laid down the procedure for discipline of undergraduates in university especially where the allegation is of a criminal nature which made Obaseki, J.S.C. to observe as follows at p.584 thus:

“Judicial powers are not vested in private persons, administrative tribunal or other authorities. By the purported exercise of judicial powers, the person injured is denied the right to fair hearing under Section 33(1) and (4) by the action of those persons or authorities. If a person is accused of committing or having committed a criminal offence his civil obligation not to commit the offence is called into question. Similarly, his civil right to freedom from arrest, prosecution and punishment is called into question.”

See further Dr. G.O. Sofekun v. Chief N.O.A. Akinyemi & Ors. (1980) 5-7 SC 1, followed recently and applied in CA/PH/42/92 between Emmanuel Isu Egwu v. University of Port Harcourt unreported judgment, Court of Appeal, Port Harcourt Division delivered on the 20th day of June, 1995.

Applying the above judgments and the fuller masons given in the lead judgment, I agree that the appeal be dismissed and is hereby dismissed.

I abide with the consequential orders of costs.

Appeal dismissed.