**CIL RISK & ASSET MANAGEMENT LIMITED**

**V.**

**EKITI STATE GOVERNMENT & ORS**

IN THE SUPREME COURT OF NIGERIA

ON FRIDAY, THE 13TH DAY OF MARCH, 2020

SC.990/2018

**LEX (2020) - SC.990/2018**

**OTHER CITATIONS**

3PLR/2020/9 (SC)

(2020) LPELR-49565(SC)

**BEFORE THEIR LORDSHIPS**

OLABODE RHODES-VIVOUR, JSC

MARY UKAEGO PETER-ODILI, JSC

CHIMA CENTUS NWEZE, JSC

AMINA ADAMU AUGIE, JSC

EJEMBI EKO, JSC

**BETWEEN**

CIL RISK & ASSET MANAGEMENT LIMITED - Appellant(s)

AND

1. EKITI STATE GOVERNMENT

2. MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT, EKITI STATE

3. ATTORNEY GENERAL OF EKITI STATE

4. AFE BABALOLA UNIVERSITY - Respondent(s)

**ORIGINATING COURT(S)**

1. EKITI STATE HIGH COURT [Holden at Ado Ekiti, C. L Akintayo, J. Presiding]

2. COURT OF APPEAL [Ado-Ekiti Division, Coram: A. B. Belgore, F. O. Akinbami and P. O. Elechi JJCA)

**REPRESENTATION**

Peter Nwatu, Esq., with him, Michael Olawale, Esq. and Chioma Ezeobika Esq. - For Appellant

AND

O. Olatawura, Esq. for 1st - 3rd Respondents.

Toyese Owoade, Esq. for 4th Respondent. - For Respondent

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

REAL ESTATE AND PROPERTY LAW - LAND:- Revocation of right of occupancy – Where made contrary to provisions of the Land Use Act – Failure of acquiring authority to serve notice of revocation in flagrant breach of Sections 28 (1) (4) (6) and (7), 29 and 44 (a), (e) of the Land Use Act as well as Section 44(1)(a) (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

REAL ESTATE AND PROPERTY LAW – LAND:- Applicability of Section 2 (a) of Public Officers (Protection) Act to actions founded on land - Rule in Mulima V. Usman (2014) 16 NWLR (Pt.1432) 160 at 212, paras. C-E that: "Section 2 (a) of the Public Officers Protection Act does not apply in cases of recovery of land – Rule in A.G., Rivers State V. A.G., Bayelsa State (2013) 3 NWLR (pt.1340) 123 at 150 that: "The protection afforded public officers under the Public Officers (Protection) Act does not apply in cases of recovery of land" – Effect on judicial proceedings based on land

REAL ESTATE AND PROPERTY LAW – LAND:- Construction of the provisions of the Land Use Act relating to revocation – Rule that “expropriatory statutes such as the Land Use Act which encroach on a person's proprietary rights must be construed as penal laws that is, strictly against the acquiring authority but liberally and sympathetically in favour of the citizen whose proprietary rights are being deprived” - Duty of Court thereto

REAL ESTATE AND PROPERTY LAW – LAND:- Purported revocation of the right of occupancy or title to landed property – Principle in the case of Napoleon Orianzi V. A.G., Rivers State (2017) 6 NWLR (pt.1561) P.224 at 296, Paras, B-C that "Revocation of the right of occupancy or title to landed property is not just a mere executive or administrative act that can be done in secret or in any surreptitious manner and later conveyed in official government Gazette. The title holder is NOT ONLY ENTITLED to the notice of the proposed revocation with the public purpose for the revocation clearly spelt out therein, HE IS ALSO ENTITLED TO BE HEARD ON THE PROPOSED REVOCATION OF THIS TITLE."- Five ways of determining the validity vel non of a revocation of a Right of Occupancy under the Land Use Act

REAL ESTATE AND PROPERTY LAW – LAND:- Purported revocation of the right of occupancy or title to landed property – Five conditions precedent a revoking authority must satisfy – Failure thereto – Implications for revocation arising therefrom

REAL ESTATE AND PROPERTY LAW – LAND:- Purported revocation of the right of occupancy or title to landed property – Principle in the case of Napoleon Orianzi V. A.G., Rivers State (2017) 6 NWLR (pt.1561) P.224 at 296, Paras, B-C – Whether does not apply where a right of occupancy was revoked on ground of breach of the terms contained in the Certificate of Occupancy - Osho V. Foreign Finance Corporation (1991) 4 NWLR (Pt. 184)157 (1991) (1991) 5 S.C 59) in review

REAL ESTATE AND PROPERTY LAW – LAND:- Revocation of Rights of Occupancy - Osho V. Foreign Finance Corporation (1991) 4 NWLR (Pt. 184)157 (1991) (1991) 5 S.C 59) – Validity of a revocation of a Right of Occupancy over land for alleged breach of the terms and conditions contained in a Certificate of Occupancy and re-allocation of same land to another individual or private entity – View of Obaseki, JSC in review

REAL ESTATE AND PROPERTY LAW – LAND:- Revocation of Rights of Occupancy for public purpose or for any purpose – Duty to accord all those aggrieved by the revocation fair hearing as provided by Section 33 (1) of the 1979 Constitution if the revocation is for breaches of terms of the Certificate of Occupancy – Duty not to withhold information or be secretive as to the public purpose for which the land is acquired from the holder of the right of occupancy and the pubic – Effect of failure thereto

REAL ESTATE AND PROPERTY LAW – LAND:- Revocation of Rights of Occupancy for overriding public purpose - Section 28 of the Land Use Act- What constitutes “Overriding public interest” – Duty on revoking authority thereto

REAL ESTATE AND PROPERTY LAW – LAND:- Revocation of Rights of Occupancy or title over land – Requirement for service of notice of revocation on holder of title or rights – Duty to establish the satisfaction of same – On whom lies – How satisfied – Where conflicting evidence exists – How resolved

REAL ESTATE AND PROPERTY LAW:- Revocation of interest, title or right of occupancy, R of O, over land – Where an acquiring authority divests one citizen of his interest in property and vests the same in another – Validity of

ADMINISTRATIVE AND GOVERNMENT LAW - PUBLIC OFFICER - PUBLIC OFFICERS PROTECTION ACT: Exceptions to the three months limitation period for commencement of action against public officers – Abuse of position, malice and bad faith – Rule in Hassan V. Aliyu (2010) 17 NWLR (Pt.1223) 547 at 622. 589. paras E – When a public Officer will be deemed as not acting within the terms of statutory or other legal authority and as not bona fide in endeavoring to carry out statutory objects

ADMINISTRATIVE AND GOVERNMENT LAW - PUBLIC OFFICER:- Section 2 (a) of Public officers (Protection) Act – Delimitation of period when the cause of action is deemed to have arisen so that an action can be brought against a public officer – Stipulated three months – How computed – When accrues

ADMINISTRATIVE AND GOVERNMENT LAW:- The Public Officers (Protection) Act – Proper intendment – Intention to protect “a public officer from distraction and unnecessary litigation” distinguished from an intention “to deprive a party of legal capacity to ventilate his grievance in the face of stark injustice." - Rule in A.G., Rivers State V. A.G., Bayelsa State (2013) 3 NWLR (pt.1340) 123 at 150 – Legal effect

ADMINISTRATTIVE AND GOVERNMENT LAW - PUBLIC OFFICER - PUBLIC OFFICERS PROTECTION ACT:- Invocation of – Whether limited only to the protection of public officers in the "public service of the Federation" and not of general application as to cover public officers in the service of any State or Local Government within the Federal Republic of Nigeria – Justification

ADMINSTRATIVE AND GOVERNMENT LAW - PUBLIC OFFICER:- Public Officers Protection Act – Scope and spirit of - Whether applies to cases of recovery of land and/or breach of contract – Supreme Court decisions in A. G. RIVERS STATE V. A. G. BAYELSA STATE (2013) 3 NWLR (pt. 1340) 123 at 150; MULIMA V. USMAN (2014) 16 NWLR (pt. 1432) 160 at 212 in review

COMMERCIAL LAW – CONTRACT:- Contract constituted via gazette – Certificate of Occupancy/Rights of Occupancy issued by a State Government– Nature of as a binding simple contract – Parties thereto - Applicable limitation Law for proceedings arising therefrom

COMMERCIAL LAW – CONTRACT:- Terms, conditions and obligations contained in a Rights of Occupancy, R of O – Contractual nature of – Breach of – Whether public authority can invoke the provision of Section 2(a)of the Public Officers Protection Act, as a special defence, to extinguish a right to enforce the cause of action founded on the said breach of contract

CONSTITUTIONAL LAW - BREACH OF RIGHT TO FAIR HEARING: Failure of Court to consider a reply brief of argument in determining an appeal – Presumption as to miscarriage of justice arising from denial of fair hearing attaching – Burden of discharging the presumption – On whom lies

CONSTITUTIONAL LAW – JUDICIARY – POWERS OF THE SUPREME COURT:- Sections 235 and 287 of the 1999 Constitution (as amended) - Paramountcy of decisions of the Supreme Court in relation to other Courts below – Finality of judgment - Duty of lower Court thereto

CONSTITUTIONAL LAW – JUDICIARY – SUPREME COURT:- The Supreme Court as the highest Court in the land - Section 235 of the Constitution of the Federal Republic of Nigeria, 1999 – Finality of its decisions – Implications of – Duty of lower courts thereto

CONSTITUTIONAL LAW – PUBLIC SERVICE OF A STATE:- Constitutional basis as a matter within the residual list, that is, a matter neither in the Exclusive Legislative List set out in Part l of the Second Schedule to the Constitution nor in the Concurrent Legislative List set out in the First Column of the Second Schedule to the Constitution – Legislative platform with competency to legislate for a Public Service of a State - Section 4(6) & (7) of the Constitution,1999, as amended in review

CONSTITUTIONAL LAW AND HUMAN RIGHTS:- Section 44 (1) (a) and (b) of the 1999 Constitution (as amended) – Elements of - Purported revocation of title over land by a public authority – Five conditions precedent that must be satisfied pursuant to the Land Use Act to uphold the constitutional guarantees

HOSPITALITY AND LAW:- Security of land acquired for development of hospitality services – Certificate of Occupancy – Purported revocation of same for failure to comply with terms and conditions of the certificate including payment of land rents and development of hotel edifice within represented timeline – How treated

**PRACTICE AND PROCEDURE ISSUES**

ACTION – APPELLANT’S CASE:- Meaning and elements of - Whether includes not only the points canvassed in the main brief, but also points in the appellant's reply brief to the points of law in the respondent's brief

ACTION - CAUSE(S) OF ACTION:- Cause of action - Definition of - How judicially determined

ACTION - CAUSE(S) OF ACTION:- Reasonable cause of action – Meaning of – How disclosed – Basis of in the Writ of Summons and Statement of Claim only – Constitutive elements - Plaintiff's legal right qua the defendant's obligations towards him, and goes further to set out the facts constituting the infraction of the plaintiff – Duty of court thereto

ACTION - INTERLOCUTORY APPLICATIONS/MATTERS:- Duty of Court not to pronounce on substantive matters or issues in the course of interlocutory proceedings –

ACTION - LIMITATION LAW - LIMITATION PERIOD: When time begins to run for the purpose of limitation law - When, there is in existence, a person who can sue and another who can be sued and when, to the knowledge of the plaintiff, all facts have happened which are material to be proved to entitle him to succeed – How determined

ACTION – REPLY BRIEF:- Where one or few paragraph(s) of the appellant's reply briefs filed constitute a re-argument of the appeal – Duty of court to discountenance only such offending paragraph(s) and not the entire Reply Brief of Argument – Effect of failure thereto on the principle of audi alteram partem

ACTION - STATUTE BARRED ACTION: Effect of a statute barred action - Whether a cause of action extinguished or statute barred cannot be a reasonable cause of action

ACTION - STATUTE BARRED ACTION: How determined – Dictum in Egbe v Adefarasin (1987) 1 NWLR (Pt.47) 1 at p,20 - Judicial formula for determining whether or not a right of action is alive or barred by the provision of the statute of Limitation in force at the time of the institution of the cause or matter

APPEAL - INTERFERENCE WITH CONCURRENT FINDING(S) OF FACT(S):- Attitude of Supreme Court to invitation to interfere with concurrent findings of fact of two lower courts - Conditions precedent for the Supreme Court to interfere

COURT – DUTIES:- Maxim “ubi jus ibi remedium” – Origin and essence of – Duty imposed on courts thereto – Duty to eschew reliance on technicalities in the determination of disputes

EVIDENCE – AFFIDAVIT EVIDENCE:- Resolution of an interlocutory motion – Duty of court where there are conflicting evidence – Duty to call oral evidence to resolve glaring material conflicts in the parties' affidavits – Whether option is open to court

INTERPRETATION OF STATUTE:- Mandatory provisions of a substantive law including the constitution - Duty of all Courts to give effect thereto in their exercise of their construction powers

INTERPRETATION OF STATUTE:- Parties – Whether cannot by consent or acquiescence or failure to object, nullify the effect of a statute or constitution

INTERPRETATION OF STATUTE:- Where a law or legislation has set out the procedure for doing a thing – Duty of Court interpreting the instrument thereto

WORD AND PHRASES”- “Developed Land” – Meaning of, under the Land Use Act

WORD AND PHRASES”- “Development” – Meaning of

WORDS AND PHRASES:- “Cause of action” – “Reasonable cause of action” - Meaning of

WORDS AND PHRASES:- “Lawful revocation” – Meaning of under the Land Use Act

WORDS AND PHRASES – LATIN MAXIM:- “ubi jus ibi remedium” – Meaning of - Applicability of in Nigeria

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The Appellant's statutory Right of Occupancy (R of O), the grant of which was evidenced by the Certificate of Occupancy (C of O) No. DG 00104/2007 registered in the Lands Registry office, Ado Ekiti, Ekiti State, was revoked and the revocation was published in the Ekiti State Government (1st Respondent's) official Gazette No. 1, Vol. 20 of 20th October, 2016. The Appellant, as the Plaintiff at State High Court, sitting at Ado Ekiti, challenged the revocation contending, inter alia, that the revocation was illegal, unconstitutional and a nullity and that it be declared that he remained vested with the R of O over the disputed land - the same having neither been extinguished nor in anyway affected in law by the purported revocation. He also sought a declaration that the subsequent re-allocation of the disputed plot of land to the 4th Respondent, a neighbor and alleged encroacher upon the land - who allegedly actively instigated the revocation of the Appellant's R of O, was illegal, unlawful and a nullity. The Appellant further sought a perpetual injunctive order to restrain the 1st - 3rd Defendants/Respondents from issuing any C of O to the 4th Respondent and/or restraining the 4th Defendant/Respondent from howsoever interfering with his structures built on the land. In the ALTERNATIVE claims, the Appellant sought a declaration that he was in no way in default or breach of any term, condition or obligation in the C of O for the grant of the R of O. The Appellant's Statement of Claim at the trial Court was specially endorsed on the writ of summons taken out on 16th January, 2017.

The Respondents, as Defendants, had by way of demurrer, contrary to Order 22 Rules 1 & 2 of the Ekiti State High Court (Civil Procedure) Rules, filed Notices of Preliminary Objection on 1st February, 2017 supported by affidavits contending that the trial High Court lacked "jurisdiction to entertain this action and pray(s) that the suit be struck out in limine". The 1st - 3rd Respondents filed a joint Notice of preliminary objection, independent of the 4th Respondent predicated on the grounds that the suit -

i. was "statute barred having been brought outside of the three months period stipulated by Section 2 of the Public Officers Protection Act as the 1st to 3rd Defendants/Appellants issued the Claimant with notice of revocation via letter dated 16th December, 2014 on the ground that the Claimant breached Paragraph 4 of the Certificate of Occupancy.

ii. disclosed no reasonable cause of action.

In the supporting affidavit, particularly paragraphs 6, 7, 8, 9 and 10 thereof, the 1st - 3rd Respondents founded justification for their revoking the Appellant's R of O on the grounds that the Appellant had serially breached and violated the terms and conditions in the C of O under which the R of O was granted; that the Appellant, instead of paying ground rents, "appealed for waiver which was not granted" and was thereby in breach of paragraph 12(ii) of the C of O - Exhibit C. They further alleged that the Appellant was in breach of paragraph 4 of the C of O that enjoined the Appellant to erect and complete buildings in accordance with the approved building plans within two years. They admitted that the Appellant had merely built a perimeter fence round the disputed land. The Appellant opposed the Notices of Preliminary Objections.

DECISION(S) APPEALED AGAINST

1. TRIAL COURT (HIGH COURT):- The trial Judge (C. L Akintayo, J) sustained the preliminary Objection on the grounds that the suit of the Appellant, by virtue of Section 2(a) of Public Officers Protection Act (POPA), was statute barred having not been filed within 3 months after the revocation and further that the Appellant had not disclosed any reasonable cause of action in his statement of claim.

2. LOWER COURT (Court of Appeal, Ado-Ekiti Division delivered on 11th July 2018, Coram: A. B. Belgore, F. O. Akinbami and P. O. Elechi JJCA) upheld the decision of the trial court - hence this further appeal.

**ISSUE(S) FOR DETERMINATION ON APPEAL**

*BY APPELLANT - (Seven (7) Issues)*

1. Whether the Court below was right when it held that the appellant did not raise any issue relating to the property and/or value of Exhibits E, F, and FBA1 attached to the Affidavit and Further and Better Affidavit in support of the 1st-3rd Respondents' Notice of Preliminary Objection, and Exhibits D, E and F attached to the Affidavit and Further and Better Affidavit in support of the 4th Respondent's Notice of Preliminary Objection filed in the trial Court. (Distilled from Ground 1).

2. Whether the Court below was right when it held that the appellant was served Notice of Revocation of its Right of Occupancy in December, 2014. (Distilled from Ground 2).

3. Whether the Court below was right when it held that the appellant's cause of action accrued on 22nd December, 2014 and that the suit leading to the instant appeal is statute barred. (Distilled from Ground 3).

4. Whether the Court below was right when it held that the appellant's disclosed no reasonable cause of action. (Distilled from Ground 4).

5. Whether in the case at hand and on the doctrine of stare decisis, the Court below was not bound to follow the decisions of this noble Court in the cases of Napoleon Orianzi V. Attorney General of Rivers State (2017) 6 NWLR (pt.1561) p.224 at Pp.272, Paras, C- D, 296, paras B-C; Osho V. Foreign Finance Corporation (1991) 4 NWLR (Pt.184) 157 at 194; Attorney General of Lagos State V. Sowande (1992) 8 NWLR (pt.261) p.589 at Pp.601-602; Mulima V. Usman (2014) 16 NWLR (Pt.1432) 160 at 212 and Attorney General of Rivers State V. Attorney General of Bayelsa State (2013) 3 NWLR (pt.1340) 123 at 150 on the mandatory requirements for a valid revocation of a right of Occupancy and the exceptions to the applicability on Section 2 (a) of Public Officers Protection Act, (Distilled from Ground 5).

6. Whether the Court below was right when it discountenanced and failed to consider the Appellant's Reply Briefs of Argument on the ground that they are a re-argument of the appeal. (Distilled from Ground 6).

7. Whether the Court below did not breach the appellant's right to fair hearing when it failed to consider and determine Issues 4, 5 and 6 of the Appellant's brief of Argument. (Distilled from Grounds 7 and 8).

*BY RESPONDENTS*

1st-3rd respondents adopted the issues as crafted by the appellant.

4th respondent, raised five (5) issues for determination of the appeal which are thus:-

i. Having regard to the failure of the appellant to file a further counter affidavit to contradict the 4th respondent's assertion that the appellant was served the mandatory Notice of Revocation, was the Court of Appeal wrong to have upheld the trial Court's decision that the appellant's suit was statute-barred by operation of the Public Officers' Protection Act. (Grounds 1, 2 and 3).

ii. Whether the Court of Appeal was not right when, upon a consideration of the pleadings filed by the appellant before the trial Court, it held that the appellant's case disclosed no reasonable cause of action. (Ground 4).

iii. Whether the cases of Orianzi V. A.G. Rivers (2017) 6 NWLR (Pt.1561) 244 at 272; Osho V. Foreign Finance Corporation (1991) 4 NWLR (pt.184) 157 at 194; A.G. Lagos V. Sowande (1992) 8 NWLR (Pt.261) 589 at 601; Mulima V. Usman (2014) 16 NWLR (Pt.1432) 160 at 212 and A.G. Rivers State V. A.G. Bayelsa State (2013) 3 NWLR (Pt.1340) 123 at 150, all heavily relied upon by the appellant, are applicable to the facts of this case. (Ground 5).

iv. Whether given the re-argumentative nature of the appellant's Reply Brief, the Court of Appeal did not rightly discountenance same, (Ground 6).

v. Whether the refusal of the Court of Appeal to venture into a mere academic exercise by considering Issues 4, 5 and 6 of the Appellant's Brief of Argument amounts to a denial of fair hearing. (Grounds 7 and 8).

*AS ADOPTED BY COURT*

Out of the seven (7) distilled by the Appellant, two (2) of them – Nos 3 and 4 – were adopted in the Leading judgment of EKO JSC for the resolution of the appeal. Additionally, Mary Ukaego Peter-Odili JSC adopted the issues distilled by the 4th Respondent in her concurring judgment – aside from issue iii.

**DECISION OF COURT**

The Preliminary Objections argued at the trial Court overruled. The concurrent decisions of the two Courts below sustaining the preliminary objections, from which the appeal arose, set aside. Appeal allowed.

**MAIN JUDGMENT**

EJEMBI EKO, J.S.C. (Delivering the Leading Judgment):

The Appellant's statutory Right of Occupancy (R of O), the grant of which was evidenced by the Certificate of Occupancy (C of O) No. DG 00104/2007 registered in the Lands Registry office, Ado Ekiti, Ekiti State, was revoked and the revocation was published in the Ekiti State Government (1st Respondent's) official Gazette No. 1, Vol. 20 of 20th October, 2016. The Appellant, as the Plaintiff at State High Court, sitting at Ado Ekiti, challenged the revocation contending, inter alia, that the revocation was illegal, unconstitutional and a nullity and that it be declared that he remained vested with the R of O over the disputed land - the same having neither been extinguished nor in anyway affected in law by the purported revocation. He also sought a declaration that the subsequent re-allocation of the disputed plot of land to the 4th Respondent, who allegedly actively instigated the revocation of the Appellant's R of O, was illegal, unlawful and a nullity. The Appellant further sought a perpetual injunctive order to restrain the 1st - 3rd Defendants/Respondents from issuing any C of O to the 4th Respondent and/or restraining the 4th Defendant/Respondent from howsoever interfering with his structures built on the land. In the ALTERNATIVE claims, the Appellant sought a declaration that he was in no way in default or breach of any term, condition or obligation in the C of O for the grant of the R of O.

The Appellant's Statement of Claim at the trial Court was specially endorsed on the writ of summons taken out on 16th January, 2017. The revocation the Appellant complained of was conveyed in the official Gazette published on 20th October, 2016.

The Respondents, as Defendants, had by way of demurrer, contrary to Order 22 Rules 1 & 2 of the Ekiti State High Court (Civil Procedure) Rules, filed Notices of Preliminary Objection on 1st February, 2017 supported by affidavits contending that the trial High Court lacked "jurisdiction to entertain this action and pray(s) that the suit be struck out in limine". The 1st - 3rd Respondents filed a joint Notice of preliminary objection, independent of the 4th Respondent. The 1st - 3rd Respondents' Notice of Preliminary Objection, more exhaustive than that of the 4th Respondent's Notice, was predicated on the grounds that the suit -

i. was "statute barred having been brought outside of the three months period stipulated by Section 2 of the Public Officers Protection Act as the 1st to 3rd Defendants/Appellants issued the Claimant with notice of revocation via letter dated 16th December, 2014 on the ground that the Claimant breached Paragraph 4 of the Certificate of Occupancy.

ii. disclosed no reasonable cause of action.

In the supporting affidavit, particularly paragraphs 6, 7, 8, 9 and 10 thereof, the 1st - 3rd Respondents founded justification for their revoking the Appellant's R of O on the grounds that the Appellant had serially breached and violated the terms and conditions in the C of O under which the R of O was granted; that the Appellant, instead of paying ground rents, "appealed for waiver which was not granted" and was thereby in breach of paragraph 12(ii) of the C of O - Exhibit C. They further alleged that the Appellant was in breach of paragraph 4 of the C of O that enjoined the Appellant to erect and complete buildings in accordance with the approved building plans within two years. They admitted that the Appellant had merely built a perimeter fence round the disputed land. The Appellant vehemently opposed the Notices of Preliminary Objections.

In a lengthy Ruling (of 53 pages) on the two Notices of Preliminary Objection, the learned trial Judge (C. L Akintayo, J) delivered on 5th June, 2017, sustained the preliminary Objection on the grounds that the suit of the Appellant, by virtue of Section 2(a) of Public Officers Protection Act (POPA), was statute barred having not been filed within 3 months after the revocation and further that the Appellant had not disclosed any reasonable cause of action in his statement of claim. His appeal against the decision was unsuccessful - hence this further appeal.

The Appellant has formulated 7 issues for the determination of the appeal. My Lords, in my firm view, two major issues stand out for the determination of this appeal, that is - whether by virtue of Section 2(a) of the Public Officers Protection Act the suit of the Appellant at the trial Court was statute barred; and whether the Appellant disclosed, in the Statement of Claim, any reasonable cause of action?

The Appellant, under his issue 3, contends that the suit, by operation of POPA, was not statute barred. The Respondents postulate the contrary. The 1st - 3rd Respondents, in paragraph 4.75 of their Brief, insist "that the action of the Appellant is caught by Section 2(a) of the Public Officers Protection Act" having been instituted outside the 3 months reckoned from 22nd December, 2014 when the cause of Action accrued. The 4th Respondent maintains his position, concurrently affirmed by the two Courts below, that "the Appellant's action was statute barred by the operation of the Public Officers Protection Act".

The Respondents appear to me to have taken shelter under Section 2 (a) of the Public Officers Protection Act, Cap P41, 2004 LFN (updated up to the 31st day of December, 2010). This Act enacted pursuant to Item 53 of the Exclusive Legislative List and Section 4(2) & (3) of the Constitution of the Federal Republic of Nigeria, 1999, as amended, applies only to protect public officers in the "public service of the Federation". It has no general application such as to apply or offer protection to public officers in the service of Ekiti State or any other State in the Federal Republic of Nigeria. The public Service of Ekiti State is a matter within the residual list, that is matter neither in the Exclusive Legislative List set out in Part l of the Second Schedule to the Constitution nor in the Concurrent Legislative List set out in the First Column of the Second Schedule to the Constitution. The public service of Ekiti State, being a residual matter, only the Ekiti State House of Assembly, by dint of Section 4(6) & (7) of the Constitution,1999, as amended, to the exclusion of the National Assembly or any other State House of Assembly, can constitutionally legislate on it.

This basic Constitutional Law eluded the Respondents and the two Courts below. The resort to the Federal statute, the Public officers Protection Act, to scrounge a statutory defence for officers in Ekiti State public service is no doubt ultra vires.

This apart, granted Public Officers Protection Act were invokable by officers in the public service of Ekiti State, the two Courts below misapplied the scope of the Act to the peculiar facts of this case.

The Appellant had consistently submitted to the two Courts below that the provision of Section 2(a) of the Public Officers Protection Act is not applicable to the instant case, in that the action was founded on recovery of land and/or breach of contract. This Court had, in A. G. RIVERS STATE V. A. G. BAYELSA STATE (2013) 3 NWLR (pt. 1340) 123 at 150; MULIMA V. USMAN (2014) 16 NWLR (pt. 1432) 160 at 212, held that "the protection afforded public officers under the public Officers protection Act does not apply in cases of recovery of land".

The second limb of the Appellant's submission on the scope of Section 2(a) of the Public Officers Protection Act is that the provision does not apply to cases founded on contract, or breach of contract. The Appellant is correct. Numerous judicial dicta of this Court support this submission. OSUN STATE GOVERNMENT V. DALAMI (NIG) LTD (2007) 9 NWLR (pt. 1038) 66 is a case founded on breach of lease agreement. The respondent sued the Osun State Government seeking a declaration that the latter's purported termination of the Management Lease Agreement was wrongful. The respondent sought a further order nullifying or setting aside the purported termination, and an order for specific performance. Osun State Government pleaded limitation afforded by the Public Officers Protection Act. This Court unanimously rejected the plea and held that Section 2 of the Public Officers Protection Act does not apply in cases for recovery of land or breach of contract. It cited, with approval, previous decisions on the point in SALAKO V. L.E.D.B (1953) 20 NLR 159; NPA V. CONSTRUZIONI GENRALI F.C.S (1974) 9 NSCC 622; (1969) 1 ALL NLR (pt. 2) 463; BANKOLE V. NBL (1969) NCLR 385 at 390.

It is very clear from the ipixit dexit of the Respondents, at pages 150 - 160 and 191 - 192 of the Record, in their respective preliminary objections, that they justified the revocation of the Appellant's R. of O on the fact that the Appellant was in breach of the contract terms, conditions and obligations contained in the C of O. They accordingly invoked the provision of Section 2(a)of the Public Officers Protection Act, being a special defence, as having extinguished the Appellant's right to enforce the cause of action founded on the said breach of contract. It is apparent also from paragraphs 2.3; 4.43; 4.58; 4.91; 4.100 - 106, and 4.109 of the 1st - 3rd Respondents Brief that they had, contrary to established judicial precedents, invoked Section 2(a) Public Officers Protection Act as a statutory bar to Appellant's cause of action premised on breach of the contractual terms, condition or obligations in the Certificate of Occupancy.

In my firm view, my Lords, the two Courts below were in error to have acted on Section 2(a) Public Officers Protection Act to strike out the suit of the Appellant for being statute barred. The scope of the Act does not extend to actions founded on recovery of land or breach of contract. The two Courts below had definitely misconceived the scope and spirit of the Act. This issue is resolved in favour of the Appellant against the Respondents.

The Second reason given by the trial Court for striking out the Appellant's suit was that the statement of claim did not disclose any reasonable cause of action. The lower Court subsequently affirmed this obviously perverse finding of fact. The contention that the Appellant, as the claimant, did not in his statement of claim disclose any reasonable cause of action was largely instrumented by the erroneous finding that the suit was statute barred. It is of course true, and the law is, that where an action is statute barred the effect is that the cause of action is or becomes extinct by operation and it can no longer be maintained in the law Court: SOSAN V. ADEMUYIWA (1986) 3 NWLR (pt.27) 241. Consequently, a cause of action extinguished or statute barred cannot be a reasonable cause of action.

The appellant had in the statement of claim alleged that the revocation of his R of O, actively instigated maliciously by the 4th Defendant/Respondent, was wrongful, baseless and in bad faith. The Respondents admit that the right of occupancy over the disputed parcel of land vested originally in the Appellant and that it was revoked. They joined issues with the Appellant in their supporting affidavit at pages 159 - 160 of the Record where they averred that the disputed plot was allocated to the Appellant upon certain conditions including his perimeter fencing and developing the land in accordance with the approved building plans within 2 years of the issuance of the C of O; that the Appellant only fenced the plot and had not built or developed it in terms of the purpose of the grant; that the Appellant, instead of paying his ground rents as and when due, was asking for waiver. In the statement of claim, the Appellant had alleged that the refusal of the 1st - 3rd Respondents to properly compute the ground rents was a mere fait accompli for the malicious revocation of the R of O; that the ulterior purpose of the revocation was to satisfy the avarice of his neighbour, the 4th Respondent, who persistently actuated/instigated the revocation from which he benefited by the subsequent re-allocation of the same plot. The Appellant further averred, in the Statement of Claim, that the 4th Respondent, who had initially encroached on the land and reduced its size, was told to buy the land for N750,000,000.00 and that instead of making formal offer to buy or pay for the land chose rather, mala fide, to instigate the 1st - 3rd Respondents to revoke the R of O vested in the Appellant by petition writing. That the Governor of Ekiti State, the 1st Respondent, pandered to the instigation and petitions of the 4th Respondent by unilaterally, albeit maliciously and arbitrarily, declaring the area of the disputed land "Education Free Zone", only thereafter to re-allocate the disputed plot to the 4th Respondent.

In the face of the myriad allegations or complaints of the Appellant, as can be seen from the Statement of Claim particularly paragraphs 7, 8, 9, 11, 12, 13, 14, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 thereof the learned trial Judge found, and the lower Court affirmed, that the Statement of Claim disclosed no reasonable cause of action. I think and I hold the firm view, that the two Courts below were wrong in holding that the Appellant did not disclose any reasonable cause of action.

A cause of action simply means the fact (not evidence) that will be necessary for the plaintiff to prove, if traversed, to support his right to judgment: THE SUPREME COURT PRACTICE (THE WHITE BOOK - English) 1991, vol. 1, pages 172 - 173 paragraph 15/1/23: states that "A cause of action" was held to mean "the subject-matter of grievance founding the action": O'KEEFE V. WALSH (1903) 2, Ir. R.681 at 718; ANNS V. MERTON LONDON BOROUGH COUNCIL (1978) 2 ALL E.R. 492. In other words, it is the reason for the grievance and the complaint to the Court for redress. It includes every material fact the plaintiff must, or shall, prove to enable him succeed against the defendant: AFOLAYAN V. OGUNRINDE & ORS {1990) 2 SCNJ 62 at 70.

In other words, as Obaseki, JSC had put it, in THOMAS V. OLUFOSOYE (1986) 1 NWLR {pt. 18) 669, the cause of action is the factual situation, the existence of which entitles one to obtain from the Court a remedy against another person. See also Lord Esher, M. R in READ V. BROWN (1998) 2 QBD 128 at 131 & 151- cited with approval by this Court in SPDC OF NIG LTD V. XM (2005) 7 SC (pt. 2) 189; (2006) 16 NWLR (pt. 1004) 27.

For so long as the Statement of Claim discloses the cause the plaintiff has to complain to the Court against the defendant for violation, infraction or imposition of undue burden on his legal rights or obligations, or raises some question fit to be decided by the Court or the Judge: a reasonable cause is disclosed thereby: YUSUF & ORS V. AKINDIPE & ORS (2000) 8 NWLR (pt. 669) 376 (SC). In my view, a reasonable cause of action is disclosed once the Statement of Claim sets out the plaintiff's legal right qua the defendant's obligations towards him, and goes further to set out the facts constituting the infraction of the plaintiffs' legal rights or failure of the defendant to fulfill his obligations towards the plaintiff: RINCO CONSTRUCTION CO LTD V. VEEPEE IND. LTD & ANOR (2005) 9 NWLR (pt. 929). Once the Statement of Claim discloses a reasonable chance that the plaintiff will succeed, if not traversed, on his allegations as pleaded; a reasonable cause of action will be said to have been disclosed. That is the substance of the English decision in DRUMMOND-JACOKSON V. BRITISH MEDICAL ASSOCIATION (1970) 1 WLR 688; (1970) 1 ALL E. R. 1094 (CA) cited with approval in THOMAS & ORS V. OLUFOSOYE (supra). It is not material at this stage whether the case of the plaintiff is strong or weak. The only thing important at this stage is whether the Court can decipher from the Statement of Claim if there is either a prima facie triable case or issue or there is a reasonable chance of success if no defence were offered.

It is clear from the Notices of Preliminary Objection that the Respondents made efforts, at this interlocutory stage, to join issues with the Appellant on the salient allegations against them. They also raised special defences in law, without filing defence by way of demurer, to the claims of the Appellant. It does not lie in their mouths to say that the Statement of Claim, in the circumstances, does not disclose any reasonable cause of action against them. The concurrent finding of fact that the Statement of Claim discloses no reasonable cause of action is perverse, and it is hereby set aside. I hereby resolve this issue against the Respondents.

The Preliminary Objections argued at the trial Court are hereby overruled. The concurrent decisions of the two Courts below sustaining the preliminary objections are hereby set aside.

The appeal succeeds. The decision of the trial Court, by which the suit of the Appellant was struck out is hereby set aside. The suit is hereby restored on the cause List of the trial Court to be heard and determined by a Judge of the said Court other than C.I. Akintayo, J. This order shall forthwith be served on the Chief Judge of Ekiti State.

The Appellant is entitled to costs having from the trial Court through the lower Court to this Court thrown away costs by the needless and ill-thought out Notices of Preliminary Objection. Each set of Respondents, that is the 1st - 3rd Respondents on one hand and the 4th Respondent on the other, shall pay costs assessed at N600,00.00 to the Appellant.

Appeal allowed.

**OLABODE RHODES-VIVOUR, J.S.C.:**

I had the advantage of reading in draft a copy of the leading judgment prepared by my learned brother EKO, JSC.

I agree that the appeal should be allowed, and I endorse the order on costs as proposed in the leading judgment.

**MARY UKAEGO PETER-ODILI, J.S.C.:**

I agree with the judgment just delivered by my learned brother, Ejembi Eko JSC and to underscore the support in the reasonings from which the decision emanated, I shall make some comments.

This is an appeal against the judgment of the Court of Appeal, Ado-Ekiti Division delivered on 11th July 2018, Coram: A. B. Belgore, F. O. Akinbami and P. O. Elechi JJCA otherwise called the Court below or Lower Court.

BRIEF STATEMENT OF FACTS:

Sometime in the year 2007, the Appellant was granted title to a parcel of land measuring 26.672 hectares along Ikare Road, Ado-Ekiti for the purpose of building a five star hotel. As evidence of the grant, a Certificate of Occupancy was issued to the appellant in the year 2008.

Subsequently, the Certificate above mentioned was withdrawn and another one was issued in its place in the year 2011, but registered in the year 2012. Both Certificates contained terms and conditions including a term requiring the appellant to pay annual rent in the sum of N691,450,00 (Six Hundred and Ninety One Thousand, Four Hundred and Fifty Naira) in relation to the Certificate of 2008 and the sum of N6,668,000.00 for the Certificate of 2011 also inclusive in the terms of the grant was that the appellant must erect and complete the building on the land in line with Government approved building plans within 2 years of the issuance of the Certificate of Occupancy. The appellant failed to comply with the terms of the grant particularly as it related to the payment of ground rent and development of the land within 2 years of the issuance of the Certificate of Occupancy, consequent upon which the 1st Respondent by notice of revocation dated 16th October 2014 (contained at page 202 of volume 1 of the record of appeal) revoked the Appellant's right of occupancy and subsequently awarded the said parcel of land to the 4th Respondent.

In October 2016, the Notice of Revocation was published in a newspaper. Aggrieved that the notice of revocation was served or made known to it through the dailies, the appellant by writ of summons commenced this action at the Ekiti State High Court challenging the said revocation.

Deducible from the statement of claim is that the Appellant failed to plead payment of ground rent from 2007 - 2012. The appellant also pleaded that it erected a fence on the land between February and April 2015 (outside the 2 years period for development contained in the Certificate).

Premised on the foregoing, upon being served with the writ of summons and statement of claim, the 1st - 3rd Respondents filed a preliminary objection challenging the competence of the action on the grounds inter alia, that the action is statute barred, the revocation having taken place on 16th December 2014 and that the suit discloses no reasonable cause of action. The 4th respondent also filed a preliminary objection along the same terms. The appellant filed a counter-affidavit denying receipt and or service of any notice of revocation in December 2014. Pursuant thereto, the 1st - 3rd respondents filed a further affidavit and attached Exhibit F a receipt evidencing payment for dispatch of the notice of revocation and Exhibit FBA1, proof of delivery of the said notice of revocation.

Before the hearing and determination of the objection of the respondents, the appellant filed an application which in content is an objection challenging the respondents' preliminary objections.

The learned trial Judge heard arguments on both objections and upheld the respondents objection that the action is statute barred, after finding as a fact that the appellant was served with the notice of revocation in December 2014.

Dissatisfied with the ruling of the Lower Court, the appellant appealed against same to the Court of Appeal, the Notice of Appeal is contained at pages 1035-1045 of the record. The Appeal was argued on 9th April 2018.

In a considered judgment delivered on 11th April, 2018, the Court of Appeal dismissed the appeal and upheld the finding of fact by the High Court that the appellant was indeed served with the notice of revocation in December 2014 and as such the action is statute barred.

Aggrieved, the appellant has come before this Apex Court on appeal.

On the 16th day of December, 2019 date of hearing, learned counsel for the Appellant, Peter Nwatu Esq., adopted the brief of argument settled by Robert Emukpoeruo Esq., filed on 15/2/2019 and deemed filed on 15/5/19. He distilled seven (7) issues for determination which are as follows:-

1. Whether the Court below was right when it held that the appellant did not raise any issue relating to the property and/or value of Exhibits E, F, and FBA1 attached to the Affidavit and Further and Better Affidavit in support of the 1st-3rd Respondents' Notice of Preliminary Objection, and Exhibits D, E and F attached to the Affidavit and Further and Better Affidavit in support of the 4th Respondent's Notice of Preliminary Objection filed in the trial Court. (Distilled from Ground 1).

2. Whether the Court below was right when it held that the appellant was served Notice of Revocation of its Right of Occupancy in December, 2014. (Distilled from Ground 2).

3. Whether the Court below was right when it held that the appellant's cause of action accrued on 22nd December, 2014 and that the suit leading to the instant appeal is statute barred. (Distilled from Ground 3).

4. Whether the Court below was right when it held that the appellant's disclosed no reasonable cause of action. (Distilled from Ground 4).

5. Whether in the case at hand and on the doctrine of stare decisis, the Court below was not bound to follow the decisions of this noble Court in the cases of Napoleon Orianzi V. Attorney General of Rivers State (2017) 6 NWLR (pt.1561) p.224 at Pp.272, Paras, C- D, 296, paras B-C; Osho V. Foreign Finance Corporation (1991) 4 NWLR (Pt.184) 157 at 194; Attorney General of Lagos State V. Sowande (1992) 8 NWLR (pt.261) p.589 at Pp.601-602; Mulima V. Usman (2014) 16 NWLR (Pt.1432) 160 at 212 and Attorney General of Rivers State V. Attorney General of Bayelsa State (2013) 3 NWLR (pt.1340) 123 at 150 on the mandatory requirements for a valid revocation of a right of Occupancy and the exceptions to the applicability on Section 2 (a) of Public Officers Protection Act, (Distilled from Ground 5).

6. Whether the Court below was right when it discountenanced and failed to consider the Appellant's Reply Briefs of Argument on the ground that they are a re-argument of the appeal. (Distilled from Ground 6).

7. Whether the Court below did not breach the appellant's right to fair hearing when it failed to consider and determine Issues 4, 5 and 6 of the Appellant's brief of Argument. (Distilled from Grounds 7 and 8).

Appellant filed two reply briefs each against 1st - 3rd respondents and 4th respondent respectively on 11/10/2019 and deemed filed on 14/10/19.

Olalekan Olatawura Esq., learned counsel for the 1st-3rd respondents adopted the brief of argument filed on 28/5/2019 and deemed filed on 14/10/19 and also adopted the issues as crafted by the appellant.

Oluwasina Ogungbade adopted the brief of argument of 4th respondent, filed on 27/5/2019 and deemed filed on 14/10/2019 and in it raised five issues for determination of the appeal which are thus:-

i. Having regard to the failure of the appellant to file a further counter affidavit to contradict the 4th respondent's assertion that the appellant was served the mandatory Notice of Revocation, was the Court of Appeal wrong to have upheld the trial Court's decision that the appellant's suit was statute - barred by operation of the Public Officers' Protection Act. (Grounds 1, 2 and 3).

ii. Whether the Court of Appeal was not right when, upon a consideration of the pleadings filed by the appellant before the trial Court, it held that the appellant's case disclosed no reasonable cause of action. (Ground 4).

iii. Whether the cases of Orianzi V. A.G. Rivers (2017) 6 NWLR (Pt.1561) 244 at 272; Osho V. Foreign Finance Corporation (1991) 4 NWLR (pt.184) 157 at 194; A.G. Lagos V. Sowande (1992) 8 NWLR (Pt.261) 589 at 601; Mulima V. Usman (2014) 16 NWLR (Pt.1432) 160 at 212 and A.G. Rivers State V. A.G. Bayelsa State (2013) 3 NWLR (Pt.1340) 123 at 150, all heavily relied upon by the appellant, are applicable to the facts of this case. (Ground 5).

iv. Whether given the re-argumentative nature of the appellant's Reply Brief, the Court of Appeal did not rightly discountenance same, (Ground 6).

v. Whether the refusal of the Court of Appeal to venture into a mere academic exercise by considering Issues 4, 5 and 6 of the Appellant's Brief of Argument amounts to a denial of fair hearing. (Grounds 7 and 8).

I shall utilise the issues as crafted by the 4th respondent except for Issue iii.

i. Having regard to the failure of the appellant to file a Further Counter Affidavit to contradict the 4th respondent's assertion that the appellant was served the mandatory Notice of Revocation, was the Court of Appeal wrong to have upheld the trial Court's decision that the appellant's suit was statute-barred by operation of the Public Officers' Protection Act?

ii. Whether the Court of Appeal was not right when, upon a consideration of the pleadings filed by the appellant before the trial Court, it held that the appellant's case disclosed no reasonable cause of action.

iv. Whether given the re-argumentative nature of the appellant's Reply Brief, the Court of Appeal did not rightly discountenance same.

v. Whether the refusal of the Court of Appeal to venture into a mere academic exercise by considering Issues 4, 5 and 6 of the appellant's Brief of Argument amounts to a denial of fair hearing.

Learned counsel for the appellant submitted that contrary to the decision of the Court below, that the appellant at the trial Court, unequivocally raised serious issues relating to, and indeed challenged the propriety and/or probative value of the touted Exhibits E, R and FBA1, and Exhibits D, E and F attached to the Affidavits and Further and Better Affidavits in support of the respondent's Notice of preliminary Objection.

That there were serious conflicts in the affidavits that needed to be resolved and not having been done vitiated the decision at the Courts below especially since there was no oral evidence to so resolve those conflicts. Also, that some parts of the affidavit depositions that were patently false and ought not to have been used to reach the decisions made at the Court below. He cited F.S.B. International Bank Ltd. V. Imano (Nig.) Ltd. (2000) 11 NWLR (Pt.679) 620 at 635-636; Okoebor V. Police Council (2003) 5 SC 1...1; Okafor V. Igbo (1991) 8 NWLR (pt.210) 476 (CA) etc.

For the appellant, it was contended that the 1st respondent did not serve any notice of revocation on the appellant as mandatorily required by the combined provisions of Sections 28, 29 and 44 of the Land Use Act and so the purported revocation was null and void. He cited Osho V. Foreign Finance Corporation (1991) 4 NWLR (Pt.184) 157 at 194; Orianzi V. A. G. Rivers State (2017) 6 NWLR (Pt.1561) 224 at296 etc.

Learned counsel for the appellant submitted that the Public Officers (Protection) Act does not apply to the case in hand and does not avail any of the respondents in that the appellant commenced the action which led to the present appeal within 3 months, reckoned from 14th November, 2016 when the appellant's cause of action arose. He cited Egbe V. Adefarasin (1987) 1 NWLR (Pt.47) 1 at 20; Woherem V. Emereuwa (2004) 6-7 SC 161 etc. That the action is not statute barred.

It was further submitted for the appellant that the suit leading to the present appeal as constituted in the writ of summons and the statement of claim disclosed a reasonable cause of action upon which the Lower Court can adjudicate. He relied on Rinco Construction Co. V. Veepee Ind. Ltd. (2005) 9 NWLR (pt.929) 85 at 96 etc.

Learned counsel for the appellant stated on that the Court below discountenanced the appellant's reply brief and in failing to consider the same in determining the appeal thereby denying the appellant of his right to fair hearing. He cited Kalu V. State (2011) 4 NWLR (Pt.1238) 429 at 448 etc.

Also contended by the appellant is that the trial Court made far reaching pronouncements on the substance of the matter before taking evidence and so prejudged and determined the entire case in limine and at the interlocutory stage. He cited Onyesoh V. Nnebedun (1992) 3 SCNJ 129 etc.

Learned counsel for the 1st-3rd respondents submitted that it is not correct as stated by the appellant that appellant did not raise any issue relating to the propriety and/or the probative value of Exhibits E, F and FBA1, and so it is late in the day now to so raise that issue without leave of Court. He cited Oseni V. Bajulu & Ors. (2009) LPELR-2796 (SC); Ibikunle V. The State (2007) LPELR- 8068 (SC) etc.

That there were no conflicts in the affidavit and further and better affidavit of 1st - 3rd respondents and the counter affidavit of the appellant to warrant the calling of oral evidence by the trial Court and that assuming there had been conflicts, the documentary evidence proffered were sufficient for the Court's utilisation in resolving such conflict. He cited Bawa V. Phenias (2007) 4 NWLR (Pt. 1024) 251 at 267-269 etc.

That the Court below was right to have held that the appellant did not raise any issue relating to the propriety and/or probative value of Exhibits E, F, FBA1 attached to the affidavit and the further and better affidavit in support of the 1st - 3rd respondents preliminary objection at the trial Court and cannot do so at the Court below without the leave of Court.

That the Certificate of Occupancy granted the appellant was properly revoked and the concurrent findings of the two Courts below ought not be interfered with by this Court. He cited Obidike V. State (2014) LPELR-22590 (SC); Ojo & Ors. V. Anibire & Ors. (2004) LPELR -2378 (SC).

Learned counsel for 1st-3rd respondents submitted that Public Officers Protection Act, Section 2 (a) applied to sustain position of the respondents.

That a careful consideration of the case presented by the appellant vide its writ of summons and Statement of Claim will reveal that the appellant's suit does not disclose a reasonable cause of action as found by the Court below. He citedShell PDC Ltd. & Anor. V. X. M. Federal Limited & Anor. (2006) LPELR -3047 (SC).

He stated for 1st-3rd respondents that the revocation of the land was duly done within the provision of Sections 28 and 44 of the Land Use Act. Also that there was service of notice of revocation made properly on the appellant and so the issue of denial of fair hearing does not arise and the re-allocation done within the law. He cited many judicial authorities.

It was further submitted for the 1st-3rd respondents that the Court below was correct in holding that the action was statute barred. He relied on Odom & Ors V. PDP & Ors. 2015 LPELR P.56.

The arguments of learned counsel for the 4th respondent were along the same lines as those of the 1st-3rd respondents.

In reply on points of law, learned counsel for the appellant submitted that the present case falls within the category of cases of concurrent findings of fact where the Supreme Court should interfere with and disturb.

In a nutshell, the appellant urges the Court to allow the appeal while resolving the issues for determination in favour of the appellant. The 1st-3rd respondents reminded the Court of the notoriety of the policy not to disturb concurrent findings of fact of two Courts below except in special circumstances which in this instance do not exist. The 4th respondent sought a line of persuasion for the dismissing of the appeal as lacking in merit.

On whether the Court of Appeal was right when it held that the appellant was served the Notice of Revocation of the Right of Occupancy in December 2014, that appellate Court held thus:-

"Attempts were made to question the veracity and probative value of Exhibits E, F and FBA1 attached to the 1st-3rd Respondents' Further and Better Affidavit, which Exhibits are the same as Exhibit D, E and F attached to the 4th Respondent's Further and Better Affidavit in support of the Preliminary Objection... The appellant did not raise any issue(s) at the lower Court, relating to the propriety and/or probative value of the said Exhibits, and if it did, it was only part of counsel's address which did not constitute evidence...

The learned trial Judge was right to have found that the appellant was served with the letter of revocation of its Right of Occupancy in December, 2014, on the basis of Exhibits E, F and FBA1 attached to the Further and Better Affidavit of the 1st-3rd respondents, (sic) on the one handy and Exhibits D, E, and F attached to the Further and Better Affidavit of the 4th Respondent."

From the record, it is seen that the appellant raised serious issues relating to and in fact challenged the propriety and/or probative value of the Exhibits E, F and FBA1 and Exhibits D, E and F attached to the Affidavits and Further and Better Affidavits in support of the respondents' Notices of Preliminary Objection. For clarity and to leave nothing to chance, I shall refer to the averment of David Ogundipe in Paragraph 10 (i) (ii) (iii) (iv) and (vi) of the appellants counter-affidavit filed as the trial Court on 6/3/2017 in opposition to the 1st-3rd respondents' Notice of Preliminary Objection which depositions are thus:-

"10. That contrary to Paragraphs 11, 12, 13, 14, 15 and 16 of the Affidavit, the Claimant/Respondent states as follows:-

i. that the Claimant/Respondent was never served any Notice of Revocation of its Right of Occupancy by the 1st defendant or any of its agencies.

ii. that the claimant/respondent only became aware that its Right of Occupancy over the said land has been revoked vide a publication in the Nigerian Tribune Newspaper of 14th November, 2016, after the actual revocation had been carried out vide the 1st defendant's official Gazette of 20th October, 2016. Now shown to me and marked Exhibits C and C1 and copies of the said Nigerian Tribune Newspaper and the 1st defendant's Official Gazette.

iii. that Exhibits E and F attached to the 1st-3rd defendant/applicant's affidavit in support of Notice of preliminary Objection are complete afterthought, and merely improvised in contemplation of this suit.

iv. that there is no nexus whatsoever between Exhibit E and the 1st to 3rd defendants, in that it is neither shown to have proceeded from the 1st, 2nd or 3rd defendants nor signed by an officer of the 1st, 2nd or 3rd defendants.

v. that except oral evidence is called and the purported Exhibits E and F are demonstrated during trial, the issue cannot be resolved at an interlocutory stage."

Similarly, the appellant, vide Paragraph 9 (i) (ii) (iv) (v) (vi) (vii) (viii) (ix) (x) (xi) (x) and (xii) of its counter-affidavit in opposition to the 4th respondent's notice of preliminary objection sworn to by David Ogundipe and filed in the trial Court on 06/03/2017, challenged the propriety and/or probative value of Exhibits D, E and a fortiori, Exhibit F attached to the affidavit and further and better affidavit in support of the 4th respondent's notice of preliminary objection in the manner below:

9. "That contrary to paragraphs 10, 11, 12, 13 and 14 of the affidavit, the claimant/respondent states as follows:-

i. that the claimant/respondent was never served any Notice of Revocation of its Right of Occupancy by the 1st Defendant or any of its agencies.

ii. that the claimant/respondent only became aware that its right of occupancy over the said land has been revoked vide a publication in the Nigerian Tribune Newspaper of 14th November, 2016, after the actual revocation had been carried our vide the 1st defendant's official gazette of 20th October, 2016. Now shown to me and marked Exhibits B and B1 and copies of the said Nigerian Tribune Newspaper and the 1st defendant's official gazette.

iii. That the 1st defendant purportedly revoked the claimant's right of occupancy in bad faith.

iv. that I know as a fact that Exhibits D and E attached to the 4th defendant/appellant's affidavit in support of Notice of Preliminary Objection are complete afterthought, and merely improvised.

v. that the fallacy and falsehood with which Exhibits D and E are infested is evident in the fact that they were stated to have been purportedly served on the claimant since 2014, yet the 1st defendant waited till two years after in 2016 before purportedly revoking the claimant's right of occupancy purportedly on the basis of the non-existent Exhibits D and E.

vi. that Exhibits D and E do not exist and were never served on the claimant.

vii. that Exhibit D neither bears the letter head of the 2nd defendant from whom it purportedly proceeded nor shown to have been signed by any officers in the 2nd defendant's ministry.

viii. that there is no nexus whatsoever between Exhibit D and the 2nd defendant.

ix. that the signatory of Exhibit D is unknown to the 2nd Defendant from whom Exhibit D purportedly proceeded.

x. that Exhibit D when juxtaposed with Exhibit C attached to the affidavit in support of the 4th defendant's notice of preliminary objection purportedly proceeding from the same source, shows a patent, glaring and irreconcilable inconsistency and conflict.

xii. that except oral evidence is called and the purported Exhibits D and E are demonstrated during trial, the issue cannot be resolved at an interlocutory state.

The appellant not only raised the foregoing questions relating to the propriety and/or probative value of the aforementioned Exhibits, it also attached Exhibits B, B1 and C, C1 (the Nigerian Tribune Newspaper of 14th November. 2016, and the 1st defendant's official gazette of 20th October, 2016) which effectively debunked the purport and/or probative potency/value if any, of the aforementioned Exhibits E, F, FBA1 on the one hand and D, E and F on the other hand attached to the respondent's affidavits in support of their Notice of preliminary objection. Again, it is abundantly clear that Exhibits FBA1 and F attached to the Further and Better Affidavits in support of the respondent's notice of preliminary objection are like Siamese twins with and inseparable from Exhibits E and F, D and E respectively attached to the affidavits in support of the respondent's Notice of preliminary Objection. This is because Exhibits FBA1 and F are merely purported of dispatch/delivery of Exhibits E and D (the purported notice of revocation). Accordingly, an attack/challenge on Exhibits FBA1 and F. The corollary therefore, is that having effectively controverted and indeed, challenged, though its counter affidavits to the respondent's objections, the propriety and/or probative value of Exhibits E and D attached to the respondents' affidavits in probative value of Exhibits FAV1 and F.

From those depositions in the appellant's counter affidavits filed in the trial Court, it is difficult to go along with the Court below when it held that the appellant did not raise any issue relating to the propriety and/or probative value of Exhibits E, F and FBA1 (attached to the affidavit and further and better affidavit in support of the 1st -3rd respondent's notice of preliminary objection), which are the same as Exhibit D, E and F (attached to the affidavit and further and better affidavit in support of the 4th respondent's notice or preliminary objection). It must be noted that the holden of the Court below that the appellant was served notice of revocation of its right of occupancy was premised solely on Exhibits E, F, FBA1 on the one hand and D, E, and F on the other hand attached to the respondent's affidavits in support of their notice of preliminary objection, and the erroneous finding of the lower Court that the appellant did not raise any issue(s) relating to the proprietary and/or privative value of same. Having demonstrably and unassailably shown in the preceding paragraphs, that the appellant indeed, not only challenged the propriety and/or probative value of the aforesaid Exhibits, but also attached Exhibit B, B1 and C, C1 (the Nigerian Tribune Newspaper of 14th Novenber, 2016, and the 1st defendant's official gazette of 20th October, 2016) which effectively debunked the purport and/or probative potency, if any, of the aforementioned Exhibits E, F and FBA1 and D, E and F, it is submitted that the appellant was never served any notice of revocation of its right of occupancy. Accordingly, the finding/holden of the lower Court in this regard is perverse and we urge your Lordships to set same aside, ex debito justicae.

A perfunctory glance at Exhibits FBA1 and F (attached to the 1st-3rd respondent's further and better affidavit in support of their notice of preliminary objection) and the document described at Exhibit F (attached to the Further and Better Affidavit in support of the 4th respondent's notice of preliminary objection) both filed at the trial High Court, overtly reveal the desperation of the respondents to establish service of notice of revocation on the appellant by all means humanly possible. Thus, Exhibit F and FBA1 (EMS Speed post Delivery Form) the alleged receipt of which on behalf of the appellant was purportedly acknowledged by one Gbemisola, whose identity, designation and capacity in the appellant is unknown and so remains a strange document to the appellant and was never served on the appellant or any of its agents, servants, assigns or privies.

It is difficult not to agree with the appellants that except oral evidence is called and the facts and averments giving rise to the findings and decision of the two Courts below, as well as the purported Exhibit D, E, F and FBA1 are demonstrated during trial, the issues cannot be resolved in limine and/or at an interlocutory stage. It was indeed incumbent on the trial Court, in the face of these material conflicts to call oral evidence to resolve the conflicts. See Okafor V. Igbo (1991) 8 NWLR (Pt.210) P.476 where Katsina- Alu, JCA (as he then was) held at Pp.483, paras. F-H, Para. A as follows:-

"There is no general discretion in the judge to call a witness in a civil dispute whom he thinks might throw some light on the facts. However, a judge has the power and indeed the duty to call oral evidence to resolve some conflict in affidavit evidence. He has a duty to resolve the conflict if he is to make a finding even where the parties did not initiate it. See A.O. Uku & Ors. V. D. E. Okumagba (1974) 3 SC 35; Falobi V. Falobi (1976) 9-10 SC 1 at 15. His discretion to call a witness in this regard should not and must not be confined to the parties who would do no more than merely repeat the averments in their affidavits. He must then give leave to counsel to cross examine.

It is plain, on the facts, that this is what the learned trial judge did in the present case. I think the judge was right to call for oral evidence to resolve the conflict." (Underlining and italics supplied for Emphasis).

See also this Court's decision in F.S.B, International Bank Ltd V. Imano (Nig.) Ltd. (2000) 11 NWLR (Pt.679) P.620 at P.635-636 paras H-E: 637, Paras. A-B, B-D, where Achike JSC had this to say:

"Conflicts in affidavit evidence on fundamental issues to the matters in controversy must be attended to and not just glossed over. A Court of law - be it trial or appellate - is not imbued with divine or magical powers in the sense that it can divinely or magically resolve conflicts in factual matters which may only be done, in certain circumstances, by a dispassionate and painstaking evaluation of the facts or evidence placed before the Court. When a Court is faced with affidavits which are irreconcilably in conflict, the Judge hearing the case in order to resolve the conflict properly, should first hear oral evidence from the deponents or such other witnesses as at the parties may be advised to call. In the instant case, as there was a sharp dispute as to the capacity in which the appellant signed the promissory notes, it behooved the learned trial judge to have called oral evidence on the matter, instead to giving summary judgment against the appellant. In the interest of justice, it ought to be conceded that the appellant has produced strong prima facie assertions and affidavit evidence which should be evaluated against the respondent's assertions and affidavit evidence. IT SURELY DEMANDS, IN LAW, EITHER CALLING ORAL EVIDENCE TO RESOLVE THE AREAS OF CONFLICT IN THE AFFIDAVIT EVIDENCE AND OTHER FACTUAL ASSERTIONS OR, PERHAPS, BETTER STILL, TO ACCORD THE PARTIES A HEARING OF THE ACTION ON THE MERIT WHICH WILL FACILITATE THE RESOLUTIONS OF AREAS OF CONFLICT."

In the case at hand, the trial Court failed to call oral evidence to resolve the glaring material conflicts in the parties' affidavits, even when the appellant urged the Court to be circumspect in proceeding without doing so. The Court below, in grave error, approved this failure on the part of the trial Court. The corollary is that by making positive pronouncements on the basis of the above referenced Exhibits D, E, F and FBA1, the trial Court and the Court below prejudged the real matter even before evidence was led and arguments of counsel were marshaled on the substantive suit which was commenced by writ of summons. See OGBONNAYA & ORS. V. ADAPALM NIGERIA LTD (1993) LPELR-2288 (SC), Bakare V. Bakare (2012) 16 NWLR (Pt.29) at 49 - 50.

One cannot ignore the manifest discrepancies, conflicts which were irreconcilable with which Exhibits D, E, F and FBA1 are plagued and so the trial Court cannot act on them as evidence of service of notice of revocation on the appellant and in that wise the decisions of the Courts below based on those clearly unreliable exhibits cannot stand in the light of the provisions of Sections 28, 29 and 44 (a)) (e) of the Land Use Act as well as Section 44 (1) (a) and (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

For clarification, I shall quote 28 (1) (4) (6) (7) and 44 (a) - (e) of the Land Use Act provide as follows:-

28 (1) "It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest.

(4) The Governor shall revoke a right of occupancy in the event of the issue of a notice by or on behalf of the President if such notice declares such land to be required by the Government for public purposes.

(6) The revocation of a right of occupancy shall be signified under the hand of a public officer duly authorized in that behalf by the Governor and notice thereof shall be given to the holder.

(7) The title of the holder of a right of occupancy shall be extinguished on receipt by him of a notice given under Subsection (6) of this Section or on such later date as may be stated in the notice.

44 "Any notice required by this Act to be served on any person shall be effectively served on him -

(a) by delivering it to the person on whom it is to be served; or

(b) by leaving it at the usual or last known place of abode of the person; or

(c) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode; or

(d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office or sending it in a prepaid registered letter addressed to the secretary or clerk of the company or body at that office; or

(e) if it is not practicable after reasonable inquiry to ascertain the name or address of a holder or occupier of land on whom it should be served, by addressing it to him by the description of "holder" or "occupier" of the premises (naming them) to which it relates, and by delivering it to some person on the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises."

The views in relation to those statutory provisions are stated hereunder thus:-

In Nigerian Engineering Works Ltd V. Denap Ltd, (2001) 18 NWLR (Pt.746) P. 741, this Court held that pursuant to Section 44 of the Land Use Act, the requisite notice of revocation shall be effectively and validly served as provided under Section 44 (a) - (e) of the Act, and that failure to serve same renders any purported revocation null and void. See also The Administrators/Executors of the Estate of Gen, Sanni Abacha V. Eke-Spiff (2009) 1 NWLR (Pt.800) P.114; Ononuju V. A.G. Anambra State (1998) 11 NWLR (Pt.573) P.320 - 322. In the instant case, neither the 1st respondent nor any of its agencies served the appellant any notice of revocation before purporting to revoke its Right of Occupancy, in flagrant breach of the above mandatory provisions of the law. Thus, in Inakoju V. Adeleke (2007) 4 NWLR (Pt.1025) P.423, this Court held as follows:-

"The Courts are bound to enforce the mandatory provisions of a substantive law including the constitution. It is the duty of all Courts to give effect to legislation. Therefore, parties cannot by consent or acquiescence or failure to object, nullify the effect of a statute or constitution. In other words, it is the duty of a Court to enforce mandatory provision of an enactment."

I also refer to the case of Nwokoro V. Onuma (1990) 3 NWLR (Pt.136) 22 at 32 where Karibi- Whyte, JSC held as follows:-

"It is a fundamental principle of legality that where an act or course of conduct fails to meet with the requirements prescribed by law, such that the non-compliance renders the act or course of conduct devoid of legal effect, no legal consequences flow from such acts or course of conduct." (Underlining supplied for emphasis).

At the risk of repetition, the law provides for the mode/method to be followed in doing an act, that mode, and no other, must be strictly followed. Accordingly, in Okpalauzuebgu V. Ezemenari (2011) 14 NWLR (pt.1268) 492 at 524-525, paragraphs G - A, it was held as follows:-

"Where a law or legislation has set out the procedure for doing a thing, there should be no other method of doing it."

See also the case of APAPA V. INEC (2012) 8 NWLR (pt.1303) 409 at 431 Para. B; GALAUDU V. KAMBA (2004) 15 NWLR (pt.95) 31; INAKOJU V. ADELEKE (2000) 4 NWLR (pt.1025) 423. Similarly, in ABUBAKAR V. NASAMU (No.2) (2012) 17 NWLR (Pt. 1330) P.407 at P.590, Para. H, this Honourable Court, per Ngwuta, JSC aptly stated the law thus:-

"I entirely agree with the argument and authorities relied on by the respondents to the effect that when the law has specified the mode of doing an act or following a step in a proceeding, that mode must be strictly complied with. There can be no issue on this point."

Again, in CSS BOOKSHOPS LTD. V. R.T.M.C.R.S. (2006) LPELR-824 (SC) (2006) 11 NWLR (pt.992) 530, per Tobi, JSC captured the jurisprudential basis of Notice of Revocation thus:-

"In exercising the Governor's power of revocation, there must be due compliance with the provisions of the Act, particularly with regard to giving of adequate notice of revocation to the holder whose name and address are well known to the public officer acting on behalf of the Governor. The purpose of giving notice of revocation of a right of occupancy is to duly inform the holder thereof of the steps being taken to extinguish his right of occupancy. In the absence of notice of revocation of right of occupancy, it follows that the purported revocation of the right of occupancy by the officer duly authorized by the Governor is ineffectual."

See also Nigerian Telecommunications Limited V. Chief Ogunbiyi (1992) 7 NWLR (Pt.255) 543; Ononuju V. A.G. Anambra State (1998) 11 NWLR (Pt.573) 305 at 320 - 322; Ekundayo & Anor. V. FCDA & Anor. (2015) LPELR-24512 (CA); Adukwu V. Commissioner of Works, Lands & Transport, Enugu State (1997) 2 NWLR (Pt.489) 588, Case of NAPOLEON ORIANZI V. A. G., RIVERS STATE (2017) 6 NWLR (Pt.1561) P.224 at 296, Paras B-C, wherein this Court held that in revoking a right of occupancy, "the title holder is not only entitled to the notice of the proposed revocation with the public purpose for the revocation of his title."

The legal effect of the clear illegality and statutory breach with which the 1st respondent acted in purporting to revoke the appellant's right of occupancy over the land in dispute without notice, without hearing from the appellant or any of its principal officers, and thereupon reallocated the same Right of Occupancy to the 4th Respondent, a private entity is aptly captured in the holden of Obaseki, jSC in Osho v Foreign Finance Corporation (1991) 4 NWLR (Pt.184) 157 at 194 wherein the erudite jurist held thus:-

"An acquiring authority cannot rob Peter to pay Paul by divesting one citizen of his interest in property and vesting the same in another."

See also Orianzi v A.G., Rivers State (supra) at P.272, paras. C-D; The Administrators/Executors of the Estate of Gen. Sani Abacha v Samuel Eke-Spiff (2009) 7 NWLR (Pt.1139) P, 97 at Pp.130, Paras. A-E; 131, Paras. E-F; 132, Paras. A-B, per Aderemi, JSC.

I agree with the learned counsel for the appellant that appellant's cause of action accrued on the 14th day of November, 2016 when it became aware of the 1st respondent's revocation of the Right of Occupancy over the land in dispute by virtue of the writ of summons and statement of claim filed on 16th January, 2017 challenging the said revocation of its Right of Occupancy, which suit resulted in the current appeal. The case of Sifax (Nig.) Ltd v Migfo (Nig.) Ltd. (2018) 9 NWLR (Pt.1623) P. is apt for our purpose here and I quote:-

"At this stage, the issue is not whether these allegations are true or not; the issue is when the cause of action accrued, as gathered from the pleadings. The appellants say that it was when the fifth appellant was incorporated but, as the respondents rightly submitted, it is a well-established principle that the right of action accrues WHEN THE PERSON THAT SUES BECOMES AWARE of the wrong. See UBA v BTL Ind. (2006) 19 NWLR (1013) 61; Jallco v Owoniboys Tech. Services Ltd. (1995) 4 NWLR (Pt.391) 534 and Mulima v Usman (2014) 16 NWLR (Pt.1432) 160 at P.201, paras. F-G wherein Okoro JSC after noting the decision of this Court in UBN v Umeoduagu (2004) 13 NWLR (P.890) 352 -

I think it is only reasonable and just that a party only sues when he becomes aware that his right has been tampered with, for, as long as he is unaware that someone has dealt with his property inconsistent with his ownership, he cannot sue as you cannot shave a man's hair in his absence."

In UBN v Umeoduagu (2004) 13 NWLR (pt.B90) 352 at P.369, paras. D-E, this Court hit the nail on the head as follows:-

"From the combination of facts given by the respondent, it is abundantly clear that he came to know about the whereabouts of the missing money when he conducted a search which took him to the Central Bank. It was then that he discovered that the money had been kept in the Central Bank in the appellant's name.

The discovery has established a prima facie default by the appellant. It was only then that the cause of action has arisen and the respondent could institute a claim for recovery of the amount."

It is therefore abundantly clear that the suit which culminated in the instant appeal is not caught by the provision of Section 2 (a) of Public officers (Protection) Act, and therefore not statute barred, in that reckoned from 14th November, 2016 when the cause of action arose, to 16th January, 2017 when the appellant approached the trial Court, the said suit No. HAD/05/17 was filed within the 3 months limitation period stipulated in Section 2 (a) of Public Officers (Protection) Act, For ease of reference and consideration, Section 2 (a) of the Public Officers (Protection) Act provides as follows:-

“(2) Where any action, prosecution, or other proceeding is commenced against any person for any act done in pursuance of execution or intended execution of any Act or law or of any public duty, or authority or in respect of any alleged neglect or default in the execution of any such act, law, duty or authority, the following provisions shall have effect:

(a) the action, prosecution, or proceedings shall no 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."

Clearly, the above provision of the Public Officers (Protection) Act does not apply to the instant case, and does not avail any of the respondents, in that the appellant commenced the action which led to the present appeal within 3 months, reckoned from 14th November, 2016 when the appellant's cause of action arose.

The timeless decision of this Court in Egbe v Adefarasin (1987) 1 NWLR (Pt.47) 1 at p,20, laid down the judicial formula for determining whether or not a right of action is alive or barred by the provision of the statute of Limitation in force at the time of the institution of the cause or matter. In that case, this Court held as follows:-

"The period of limitation is determined by looking at the Writ of summons and Statement of Claim ONLY, to ascertain the alleged date the wrong in question which gave rise to the plaintiff's cause of action was committed and by comparing such date with the date on which the writ of summons was filed. If the time on which the writ of summons or statement of claim was filed is beyond the period allowed by the limitation law, the action is statute barred. What needs to be emphasized is that the determining facts are the averments in the plaintiff's writ of summons and statement of claim... "

Similarly, in WOHEREM v EMEREUWA (2004) 6-7 SC 161; (2004) 13 NWLR (Pt.890) 398 at 417, this Court held that:

"For the purpose of determining whether or not an action is statute barred, the period of limitation is determined by looking at the Writ of Summons and the Statement of Claim Only. I will however add, where one has been filed. It is from either or both of these processes that one can ascertain the alleged date when the wrong in question is said to have occurred or been committed, thereby giving rise to the plaintiff's cause of action. When that ascertained date is compared with the date of the writ of summons or originating process was filed in Court, it can then be determined whether the action was instituted within the period allowed by law or outside it. When it is found that the action was instituted within the period allowed by law, the action is said to be competent and the Court has the jurisdiction to entertain same."

See also Savannah Bank of Nigeria Ltd. v Pan Atlantic Shipping & Transport Agency Ltd.(1987) 1 NWLR (Pt.49) 212; Araka v Ejeagwu (2000) 15 NWLR (Pt.692) 684; Egbe v Adefarasin (1987) 1 NWLR (Pt.47) 1; Ibrahim v Judicial Service Commission (1998) 14 NWLR (Pt.584) 1; Military Administrator, Ekiti State v Aladeyelu (2007) 14 NWLR (Pt,1055) 619; A.G. Adamawa State & 15 Ors. v A. G. Federation (2005) 18 NWLR (Pt.958) P.581 at Pp.550, paras. B-E; 561. paras. E-F; 565, paras. E-G; Muhammed v Military Administrator, Plateau State (2001) 16 NWLR (pt.740) 570; British Airways Plc v Akinyosoye (1995) 1 NWLR (pt.371) 722.

It is no longer in dispute that time begins to run for the purpose of limitation law when the cause of action arose, that is, when the plaintiff becomes aware that his legal right has been breached by the defendant. In other words, time begins to run in this regard, when, there is in existence, a person who can sue and another who can be sued and when, to the knowledge of the plaintiff, all facts have happened which are material to be proved to entitle him to succeed. See this noble Court's decision in Michael Arowolo v Ifabiyi (2002) 4 NWLR (pt.757) 356 at 377, 383, paras. A-D, per Iguh and Kalgo, JJSC; Bulli Coal Mining Co. v Osborne (1989) AC 351 at 363; Faroly Establishment v NNPC (20011) 5 NWLR (Pt.1241) P.457.

In the light of the foregoing and having regard to the facts chronicled in paragraphs 10 (i) (ii) (iii) (iv) and (vi) of the Appellant's Counter Affidavit in opposition to the 1st - 3rd Respondents' Notice of Preliminary Objection and paragraphs 9 (i) (ii) (iv) (v) (vi) (vii) (viii) (ix) (x) (xi) and (xii) of its counter affidavit in opposition to the 4th respondent's notice of preliminary objection, that the suit leading to the instant appeal is not in any way or manner caught by Section 2 (a) of Public Officers (Protection) Act, and therefore, not statute barred, having been instituted against the respondents within three (3) months, reckoned from 14th November, 2016 when the cause of action accrued. See pages 859 - 860 and 686 - 688 of Volume 1 of the Record. See also paragraphs 2.1.5 - 2.1.6 of the submissions proffered on Issue 1 above.

Indeed, Section 2 (a) of the Public Officers Protection Act is inapplicable to the case in hand, because the matter under discourse and review pertains to land which is an exception to the applicability of that provision.

In this regard, I place reliance on the decision of this noble Court in Mulima v Usman (2014) 16 NWLR (Pt.1432) 160 at 212, paras. C - E, wherein it was held that:-

"Section 2 (a) of the Public Officers Protection Act does not apply in cases of recovery of land." Similarly, in A. G. Rivers State v A. G., Bayelsa State (2013) 3 NWLR (Pt.1340) 123 at 150, this Honourable Court held thus:

"The protection afforded public officers under the Public Officers (Protection) Act does not apply in cases of recovery of land..."

Also into the fray is that the suit leading to the instant appeal is an action founded on contract, in that the land allocated to the appellant by the 1st and 2nd respondents in consideration of the sum of N54,000,000.00 (Fifty Four Million Naira Only) paid by the appellant is a contractual arrangement between the parties. Also, the Certificate of Occupancy issued to appellant in 2012, by the 1st respondent registered as No. 67 at page 67 in Volume 68 of the Certificate of Occupancy registered in the Lands Registry office at Ado Ekiti on 4th day of May, 2012 contains terms and conditions which create a binding contract between the appellant and the 1st respondent. Thus, the applicable limitation Law is Section 4 (1) of the Limitation Law of Ekiti State which provides as follows:-

"The following actions shall not be brought after the expiration of SIX YEARS from the date on which the cause of action accrued, that is to say -

(a) actions founded on simple contract or not tort." See Tajudeen v C.I.P.S.B. (2010) 4 NWLR (pt.1184) 325 at 339.

In Osun State Government v Dalami Nigeria Ltd. (2007) LPELR-2817 (sc) at P,13, paras. A-B, this noble Court, per Katsina-Alu JSC (as he then was) stated the law thus:-

"It is now settled law that Section 2 of the Public Officers (Protection) Act does not apply to cases of contract."

We also place reliance on the authorities of Nigerian Ports Authority V. Construzioni Generali Farsura Cogefar SPA & Anor. (1974) 1 All NLR (Pt.2) 463; Energy Marine and Industrial Ltd V. Minister of the Federal Capital Territory & Anor. (2010) LPELR-1977 (CA).

Learned counsel for the appellant contends that bad faith is also an exception to the application of Section 2 (a) of the Public Officers Protection Act, that posture is unassailable and I refer to the averments in paragraphs 24, 25, 26,28, 32, 33 and 34 of the Statement of Claim filed on 16/01/2017 and paragraph 9 of the counter affidavit in opposition to the 4th respondent's Notice of preliminary objection filed in the Court below. See pages 12-17 and 686-688 of Volume 1 of the record. It can be seen that the 1st respondent's action in unlawfully revoking the appellant's Right of Occupancy over the land is dispute was clearly actuated by malice and bad faith. I place reliance on the case of Hassan V. Aliyu (2010) 17 NWLR (Pt.1223) 547 at 622. 589. paras E - G, wherein this Court held as follows:-

"Abuse of office and bad faith are factors that deprive a party who would otherwise have been entitled to the protection of Section 2 (a) of the Public Officers Protection Law of such protection... Where a public officer fails to act in good faith, or acts in abuse of office or maliciously, or with no semblance of legal justification, he will not be protected by the provisions of Section 2 (a) of the Public Officers Protection Act as to three months time limit for the commencement of action against him." (Underlining supplied for Emphasis). See also Offoboche V. Ogoja Local Government (2001) 16 NWLR (Pt.739) 458 at 485.

In Offoboche V. Ogoja Local Government (supra) at P.485, this Court held as follows:-

"Abuse of office that will deprive a party who would otherwise have been entitled to the protection of Section 2 (a) of the Public Officers (Protection) Act is use of power to achieve and other than those for which power was granted, for example, for personal gain or to show undue favour to another or wreak vengeance on an opponent."

(Underlining supplied for Emphasis).

See also the case of Muhammed V. A.B.U. Zaria (2014) 7 NWLR (Pt.1407) 500 at 534, paras A - H, it was held thus:

"The Public Officers Protection Act is designed to protect the officer who acts in good faith and does not apply to acts done in abuse of office and with no semblance of legal justification. The Act will not apply if it is established that the defendant had abused his position for purposes of acting maliciously, In that case, he has not been acting within the terms of statutory or other legal authority, He has not been bona fide in endeavoring to carry it out. In such a state of facts, he has abused his position for the purpose of doing a wrong and the protection of the Act never could apply to such a case. Thus, abuse of office and bad faith are factory that can deprive a party of the protection of Section 2 (a) of the Public Officers (Protection) Act he would otherwise have been entitled to. The protection enjoyed by public officers under the Public Officers Protection Law or Act is not automatic. The law does not automatically protect any public officer who had abused his position, Therefore, a Court should not immediately dismiss an action on the ground only that the action commenced against a public officer was filed outside three months from the date of accrual of the cause of action. The Court has to be satisfied that the act executed by the public officers was not done in bad faith or did not amount to abuse of office, that is to say, using the power to achieve personal gain, to show undue favour to another or to wreak vengeance on an opponent, or was exercised in breach of his statutory or constitutional duties, etc.” (Italics supplied for Emphasis).

See also A.G, Rivers State V. A.G., Bayelsa State (2013) 3 NWLR (Pt.1340) 123 at 148, wherein this Court held that:

"The Public Officers (Protection) Act is intended as much as within the limits of the law to protect a public officers from detraction and unnecessary litigation, but never intended to deprive a party of legal capacity to ventilate his grievance in the face of stark injustice. (Underlining and italics supplied for Emphasis).

As to the question whether the present appeal as seen through the writ of summons and statement of claim disclosed a reasonable cause of action upon which the trial Court can adjudicate, a definition of the term "reasonable cause of action" would assist.

In RINCO CONSTRUCTION CO. V. VEEPEE IND. LTD. (2005) 9 NWLR (Pt.929) 85 at 96, para. D, this Court per Ejiwunmi JSC stated thus:-

"For a statement of claim to disclose a reasonable cause of action, it must set out the legal rights of the plaintiff and the obligations of the defendant. It must then go on to set out facts constituting infraction of plaintiff's legal rights or failure of defendant to fulfill his obligation in such a way that if there is no proper defence, the plaintiff will succeed in the relief or remedy he seeks."

In the instant case, the appellant was lawfully allocated the land in dispute by the 1st and 2nd respondents. However, due to unsettled scores and strained relationships existing between the appellant and the 1st respondent, the detailed particulars of which are highlighted at pages 15-17 of Volume 1 of the record, and relying on the 4th respondent's petition against the appellant, contained at pages 34-39 of Volume 1 of the record, the 1st respondent allegedly actuated by malice and bad faith, purportedly revoked the appellant's Right of Occupancy over the land in dispute, and thereupon, re-allocated same to the 4th respondent. In purporting to revoke the appellant's right of occupancy as aforesaid, the 1st respondent failed to serve on the appellant any notice of revocation whatsoever, in flagrant breach of Sections 28 (1) (4) (6) and (7), 29 and 44 (a), (e) of the Land Use Act as well as Section 44(1)(a) (b) of theConstitution of the Federal Republic of Nigeria, 1999 (as amended). It is this brazen failure of the 1st respondent to fulfill its legal obligations, statutory and constitutional mandates, thereby allegedly infringing on the appellant's legal rights to the land in dispute that resulted in Suit No. HAD/05/2017 by the appellant to seek redress in judicial remedy for the 1st respondent's infraction of its legal and proprietary rights. Thus, the law is trite that where there a right, there is a remedy "ubi jus ibi remedium". See Aliu Bello V. A.G. Oyo State (1986) 5 NWLR 820 SC; Rinco Construction Co. V. Veepee Ind. Ltd. (supra). See also Saleh V. Monguno & Ors. (2006) LPELR-2992 (SC) at P.27, Paras D-F, wherein Tabai JSC stated the law thus:-

"I think it is erroneous to assume that the maxim ubi jus ibi remedium is only an English Common Law principle. It is a principle of justice of universal validity couched in Latin and available to all legal systems involved in the impartial administration of justice. It enjoins the Courts to provide a remedy whenever the plaintiff has established a right.

The Court obviously cannot do otherwise. It is enjoined to eschew reliance on technicalities in the determination of disputes."

Bringing the point home, this Court in Orianzi V. A. G, Rivers State (2017) 6 NWLR (pt.1561) 224 at 288, paras. C-G, held per Augie JSC as follows:-

"If a plaintiff has a right, he must of necessity have the means to vindicate it and the remedy if he is injured in the enjoyment or exercise of it. There cannot be a right without a remedy for want of right and want of remedy are reciprocal, The maxim "ubi jus ibi remedium" is the Latin rendition of the principle. The maxim is so fundamental to the administration of justice that where there is no remedy provided by common law or statutes, the Courts have been urged to create one. The Court cannot therefore be deterred by the novelty of an action. In other words, the law is an equal dispenser of justice and leaves none without a remedy for his right. Where ever there is a wrong, there must be a remedy to redress that wrong. Justice must not only be done but must be seen to be done. In the instant case, the appellant has a right, he was deprived of enjoying same and there must be a remedy. Bello V. A.G., Oyo State (1986) 5 NWLR (Pt.45) 828."

In this regard, having reproduced the provisions of Sections 28 (1) (4) (6) and (7), 29 and 44 (a) - (e) of the Land Use Act (supra) to which I seek attention, Section 44 (1) (a) and (b) of the 1999 Constitution (as amended) provides thus:

44(1) "No movable property or any interest in any immovable shall be in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that among other things -

(a) requires the prompt payment of compensation therefore; and

(b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a Court of law or Tribunal or body having jurisdiction in that part of Nigeria."

A recourse to the facts put across by the appellant would be helpful to clear the grey areas.

It would be found that from the facts averred by the appellant vide paragraphs 29-31 of the statement of Claim, the 1st respondent not only erroneously calculated the ground rent payable by the appellant retrospectively from 2007, purportedly on the basis of the old and spent Certificate of Occupancy issued to the appellant in 2008, but also failed to compute any ground rent payable by the appellant pursuant to the extant Certificate of Occupancy issued to it in 2012, which the 1st respondent purportedly revoked in 2016 without any notice served on the appellant.

It is to be noted that despite the appellant's letter of 1st August 2011 to the 2nd respondent referred to in paragraph 30 of the statement of claim, the 1st and 2nd respondents failed and/or refused to reply the appellant with a view to addressing the appellant's complaints as to the errors in the computation of the ground rent, but proceeded to purportedly revoke the appellant's right of occupancy over the land, without notice to the appellant. The appellant's right of occupancy purportedly revoked by the 1st respondent is in respect of the Certificate of occupancy registered as No. 67, at page 67 in Volume 68 of the Land Registry, Ado-Ekiti on 4th day of May, 2012, whereas as earlier noted, the ground rent to which the 1st respondent lays claim and on the purported basis of which the appellant's right of occupancy was revoked was computed retrospectively from July, 2007 in respect of the old and spent Certificate of Occupancy issued to the appellant in 2008.

Also, the 1st and 2nd respondents failed to compute the ground rent payable by the appellant from 2012 when the appellant was put into possession of the land in dispute and on the basis of the extant certificate of occupancy issued to the appellant in 2012. Premised on the foregoing therefore, it is crystal clear on the authority of Rinco Construction Co. V. Veepee Ind. Ltd. (supra) that the illuminating facts of this case, as borne out of the Record of Appeal demonstrably set out facts constituting infraction of the appellant's legal rights and the failure of the 1st and 2nd respondents to fulfill their obligations in such a way that if there is no proper defence (as evident in the instant case), the appellant will and ought to succeed in the reliefs or remedy it seeks from this noble Court.

Again, the appellant commenced development of the land in dispute by erecting a completed fence on same. I refer you to the legal definition of the word "development" at page 482 of the Black's Law Dictionary, Eighth Edition thus:

"A human - created change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filing, grading, paving, excavating, and drilling. An activity, action, or alteration that changes undeveloped property into developed property."

See the provision of Section 51 of the Land Use Act which defines "developed land" as:-

"Land where there exists any physical improvement in the nature of road, development services, water, electricity, drainage, building, structure or such improvement that may enhance the value of land for industrial, agricultural or residential purposes."

In this regard, this Court in Dapialong V. Dariye (2007) 8 NWLR (Pt.1036) P.332 held as follows:-

"Where words or expressions in the provisions of a statute have been legally or judicially defined or determined, their ordinary meanings will definitely give way to their legally or judicially defined meanings. See also ACME BUILDERS V. K.S.W.B. (1999) 2 NWLR (Pt.590) 288."

Clearly, Suit No. HAD/05/2017 which culminated in the present appeal disclosed a reasonable cause of action upon which the trial Court can adjudicate and it is not difficult to see why.

On the provision of the Constitution, Sections 235 and 287 thereof on the paramountcy of decisions of the Supreme Court in relation to Courts below, I shall quote for effect thus:-

235 "Without prejudice to the powers of the President or of the Governor of a State with respect to prerogative of mercy, no appeal shall lie to any other body or person from any determination of the Supreme Court."

287 (1)"The decisions of the Supreme Court shall be enforced in any part of the Federation by all authorities and persons, and by Courts with subordinate jurisdiction to that of the Supreme Court."

See also Odedo V. Oguebego (2015) 13 NWLR (Pt.1476) 229. See also the decision of this Court in Okonji V. Mudiaga (1985) 10 SC 263 on the doctrine of juridical precedent.

Against the backdrop of the above, this Court in the recent case of Napoleon Orianzi V. A.G., Rivers State (2017) 6 NWLR (pt.1561) P.224 at 296, Paras, B-C, held instructively as follows:-

"Revocation of the right of occupancy or title to landed property is not just a mere executive or administrative act that can be done in secret or in any surreptitious manner and later conveyed in official government Gazette. The title holder is NOT ONLY ENTITLED to the notice of the proposed revocation with the public purpose for the revocation clearly spelt out therein, HE IS ALSO ENTITLED TO BE HEARD ON THE PROPOSED REVOCATION OF THIS TITLE." (Underlining and block letters supplied for Emphasis).

Flowing from the decision of this Court in Orianzi V. A.G., Rivers State (supra), the germane and decisive questions to be posed, with a view to determining the validity vel non of a revocation of a Right of Occupancy under the Land Use Act are no longer limited to:

1. Whether the title holder was served with a notice of revocation of his right of occupancy?

2. Whether the public purpose or overriding public interest for such revocation was spelt out in the notice thereof?

3. Did the acquiring authority revoke the holder's title in the land, and thereupon, reallocated same to a private individual or private entity?

4. Whether the revocation signified under the hand of a public officer was duly authorized in that behalf by the Governor?

The fifth question that must inescapably be posed in addition to the above is: was the title holder in this case, the appellant heard on the proposed revocation of its title? Save for question number 3 which must be answered in the negative to render a revocation of a right of occupancy valid, if the answer to any of questions 1, 2, 4 and 5 is in the negative, such revocation, I posit becomes invalid, ineffectual, null and void. In the case at hand, it is opined that while the answer to question number 3 is in the affirmative, the answers to questions 1. 2. 3 and 5 are all in the Negative.

It is submitted that the jurisprudential basis for the decision of this Court in Orianzi V. A.G., Rivers State (supra) and the requirement of strict compliance with the provisions of the Land Use Act relating to revocation is that expropriatory statutes such as the Land Use Act which encroach on a person's proprietary rights must be construed as penal laws that is, strictly against the acquiring authority but liberally and sympathetically in favour of the citizen whose proprietary rights are being deprived. Accordingly, in the words of Onu, JSC in Nangibo V. Okafor (2003) 14 NWLR (Pt.839) P.78 at 106, para. E.

"Where a statute confers a power and particularly one which may be used to deprive the subject of proprietary rights, the Courts confine those exercising the power to the strict letter of the statute."

See also Procter & Gamble Co. V. Global Soap and Detergent Industries (2013) 1 NWLR (pt.1336) P.409 at Pp.451-452; Okotie-Eboh V. Manager (2004) 18 NWLR (Pt.905) P.242 at P.282, para A, per Edozie JSC; Provost Lagos State College of Education V. Edun (2004) 6 NWLR (Pt.870) P.476 at P.509, paras. D-E, per Tobi JSC, Abioye V. Yakubu (1991) 5 NWLR (Pt.190) P.130.

Further to the above, on the inapplicability of Section 2 (a) of Public Officers (Protection) Act to actions founded on land, the appellant drew the attention of the Court below to the decision of this Court in Mulima V. Usman (2014) 16 NWLR (Pt.1432) 160 at 212, paras. C-E, wherein this Court held that:

"Section 2 (a) of the Public Officers Protection Act does not apply in cases of recovery of land."

Similarly, the appellant also drew the attention of the Lower Court to the decision of this Honourable Court in A.G., Rivers State V. A.G., Bayelsa State (2013) 3 NWLR (pt.1340) 123 at 150, wherein this Court held thus:

"The protection afforded public officers under the Public Officers (Protection) Act does not apply in cases of recovery of land..."

This Court also held at page 148, per Galadima, JSC that:

"The Public Officers (Protection) Act is intended as much as within the limits of the law to protect a public officer from distraction and unnecessary litigation, but never intended to deprive a party of legal capacity to ventilate his grievance in the face of stark injustice."

Despite the foregoing final and unassailable decisions of this Court, the lower Court in grave error failed to follow and be bound by these decisions of the Supreme Court which represent the current state of the law on the issues presented before the Lower Court for determination.

Not only did the lower Court allegedly fail to follow the above decision of this apex Court, the Court below clearly reviewed same and held that it does not apply where a right of occupancy was revoked on ground of breach of the terms contained in the Certificate of Occupancy. Contrary to the holden of the Court below, the case of Osho V. Foreign Finance Corporation (supra) did not decide that revocation of a Right of Occupancy for alleged breach of the terms and conditions contained in a Certificate of Occupancy entitles the Governor to thereupon re-allocate the same land to another individual or private entity, such as the 4th respondent herein. For the avoidance of any shred of doubt and consistent with the case of Orianzi V. A.G., Rivers State (supra) which decided that a title holder must be heard on the proposed revocation of his title before the actual revocation can be validly carried out, this Court held in Osho V. Foreign Finance Corporation (supra) per Obaseki, JSC at page 188 as follows:-

"Prudence and the law demand that a Governor revoking a right of occupancy for public purpose or for any purpose should accord all those aggrieved by the revocation fair hearing as provided by Section 33 (1) of the 1979 Constitution if the revocation is for breaches of terms of the Certificate of Occupancy. There is no ground for withholding information as to the public purpose for which the land is acquired from the holder of the right of occupancy and the pubic if there is no secrecy about the public purpose."

His Lordship, Obaseki, JSC held further at page 195 thus:

"The words of Section 28 of the Land Use Act are clear and unambiguous as to what constitutes lawful revocation. Subsection 1 of Section 28 reads:

"It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest."

"Overriding public interest has been defined in Subsection 2 (b) in the case of Statutory Right of Occupancy to include "public purpose" within the State and in Subsection 3 (a) in the case of Customary Right of Occupancy to include public purpose within the State. To revoke a statutory right of occupancy for public purpose, the letter and spirit of the laws must be adhered to. Since revocation of a grant deprives the holder of his proprietary right, the term must be strictly complied with and strict construction of the provisions made. See Bello V. Diocesan Synod of Lagos & Ors. (1973) 3 SC P.131... Any other purpose for revocation of a right of occupancy not specified as public purpose in Section 28 of the Land Use Act cannot be lawful purpose under the act."

See THE ADMINISTRATORS/EXECUTORS OF THE ESTATE OF GEN. SANI ABACHA V. SAMUEL EKE-SPIFF (2009) 7 NWLR (Pt.1139) P.97 at Pp.130, paras. A-E; 131, paras. E-F; 132, paras. A-B, wherein Aderemi, JSC while delivering the Lead Judgment stated the law in the following flawless words:

"The 1st and 2nd defendants- the allocating authority, have woefully failed to comply with provisions of the Land Use Act, and consequently, they transferred nothing to Major General Sani Abacha. Even if the 3rd defendant had been a proper party in law to this case, would he have in the face of the materials before the Court, had the case of the plaintiffs dismissed? I think not. The 1st and 2nd defendants - the allocating authority, failed to comply with provisions of Sections 28 (2) and (6) of the Land Use Act which enact that revocation of land by the government must be for nothing other than for overriding public interest and that notice of the revocation, must be served in accordance with the provisions of Sub-section (6) of the Act. In the instant case, the 1st respondent's right of occupancy was revoked and the same land re-allocated to Major General Sani Abacha, certainly, the re-allocation of the land to Major General Sani Abacha cannot be assimilated to an action taken in the overall public interest.

MAJOR GENERAL SANI ABACHA, THE PERSON TO WHOM THE LAND WAS LATER RE-ALLOCATED, WAS AN ORDINARY CITIZEN AND A WEIGHTY MAN OF AUTHORITY." (Underlining mine).

See Sections 235 and 287 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) the combined effect of which makes the decision of this Court final. See also the case of: ODEDO V. OGUEBEGO (2015) 13 NWLR (pt.1476) 229 at 271, paras C-E, wherein the Supreme Court per Kekere-Ekun, JSC aptly held as follows:-

"The Supreme Court is the highest Court in the land. By virtue of Section 235 of the Constitution of the Federal Republic of Nigeria, 1999, its decisions are final. In other words, a decision of the Supreme Court settles the position of the law in respect of a particular issue and becomes a binding precedent for all other Courts of record in Nigeria. It is wrong to ignore decisions of the Supreme Court and seek to perpetuate a position that has already been pronounced upon." See Blessing V. F.R.N (2015) 13 NWLR (Pt.1475) 1.

Similarly, in Ogunsola V. NICON (2010) 13 NWLR (1211) 225 at Pp.236, paras. G-H; 241, paras. E-F, Ogbuagu and Adekeye, JJSC stated the law thus:-

"In the hierarchy of the Courts in Nigeria, as in all other free common law countries, however learned a lower Court considers itself to be and however contemptuous of the higher Court, that lower Court is still bound by the decisions, orders or directives of a High Court, especially the Supreme Court. In the instant case, the Court of Appeal rightly invoked the principle of judicial precedent to refuse the application of the appellant for leave to file and argue additional grounds of appeal and amend the appellant's brief of argument, as being contrary to the express directive or order of the Supreme Court."

There is no ignoring the fact that the lower Court's decision discountenancing the appellant's reply brief of argument and failing to consider same in determining the appeal was a clear denial of the appellant's inviolable constitutional right to fair hearing. See Kalu V. State (2001) 4 NWLR (1238) 429 at 448, para. F; Bamgboye V. University of Ilorin (1999) 10 NWLR (Pt.622) 290; Garba V. University of Maiduguri (1986) 1 NWLR (Pt.18) 550. In the recent decision of this noble Court in Zenith Plastic Ind. Ltd. V. Samotech Ltd. (2018) 8 NWLR (Pt.1620) P.165 at 178, Nweze JSC held as follows:

"An appellant's case includes not only the points canvassed in the main brief, but also points in the appellant's reply brief to the points of law in the respondent's brief. Consequently, a trial Court that excludes an appellant from replying to the respondent's points of law, denies the appellant of the right to fair hearing. Kalu V. State (2017) 14 NWLR (Pt.1586) 522."

Similarly, Eko JSC, concurring with the Lead Judgment in Zenith Plastics Ind. Ltd V. Samotech Ltd. (supra) held at P.181 thus:-

"When a breach of the right to fair hearing is established, miscarriage of justice is implied. This presumption imposes on the beneficiary of judgment or decision, the onus of establishing that there was in fact no miscarriage of justice. In this case, the error was substantial and the respondent did not discharge the burden of proving that there was no miscarriage of justice."

Assuming, but without conceding that one or few paragraph(s) of the appellant's reply briefs filed in the lower Court constitute a re-argument of the appeal, the law is trite that the lower Court ought to have discountenanced only such offending paragraph(s) and not the entire Reply Brief of Argument. See also the case of UKWUYOK V. OGBULU (2010) 5 NWLR (Pt.1187) 316, paras. F-G; AFONJA COMM. BANK (NIG.) LTD. V. AKPAN (2002) 16 NWLR (Pt.792) 154. The principle of "audi alteram partem" connotes inter alia that:

(a) a Court or tribunal, in the hearing and determination of the case presented before it must give equal treatment, equal opportunity and equal consideration to all concerned;

(b) having regard to all the circumstances in every material decision in the case, justice must not only be done, but must manifestly and undoubtedly seen to have been done.

See IKA L.G.A. V. MBA (2007) 12 NWLR (Pt.1049) 674; R. V. SUSSEX JUSTICES, EXPARTE McCarthy (1924) 1 KB 256 259.

By failing to consider the appellant's Reply Briefs, the Court below shut the appellant out and denied it level playing ground and equal footing in the presentation of its case viz-a-viz the respondents, as per the issues contested by the parties in the appeal. See Olaseni V. Olaseni (2010) 5 NWLR (Pt.1187) 225 at 252, where it was held that:

"A decision is always better arrived at when both parties are placed on equal footing to put forward their cases before the Court." See also Ekpeto V. Wanogho (2004) 18 NWLR (Pt.905) 394.

The effect of the failure to consider the Reply Brief are thus:-

i. The appellant's Reply Briefs of Argument filed in the lower Court on 06/04/2018 specifically and directly replied to identified paragraphs of the respondent's Briefs of argument without repeating, re- arguing or regurgitating the arguments already canvassed in the appellant's Brief of Argument.

ii. The points canvassed in the appellant's reply briefs of argument as responses/rejoinder to the new issues arising from the respondent's briefs of argument are salient and germane to the just determination of the appeal before the lower Court.

Also the question regarding the failure of the Court below to consider and determine Issues 4, 5 and 6 of the appellant's brief of argument cannot but be answered, positively to mean that the right of the appellant was compromised by that failure and this can be seen in the holding of the trial Court which had gone into the substantive matter at the Preliminary Objection stage thus:-

"It is important to point out that the defendant/applicant has been able to prove that claimant/respondent was served with Notice of Revocation despite its denial of same. The claimant/respondent has not been able to prove that he has paid a dine (sic) as ground rent for any part of the period of the validity of Certificate of Occupancy before it was revoked. The claimant/respondent has also failed to show that he has any plan to develop the land as required in the certificate of occupancy by showing that he had drawn up a building plan for the Five Star Hotel within two years or at all. All these point to no other conclusion that (sic) the claimant/respondent has no reasonable cause of action disclosed by his statement of claim. From all indication, the claimant/respondent's action is incompetent. Application succeeds. The claimants claim is hereby struck out for lack of competence."

In view of the facts set out before the trial Court, the appellant and the respondents filed affidavits and counter affidavits by which they joined issues that are materially in conflict, and proffered submissions on issues with respect to the aforementioned Exhibits which issues cannot be conveniently determined in limine or at an interlocutory stage in the absence of oral evidence led by parties, particularly as the suit leading to the present appeal was commenced by way of Writ of Summons, it is my humble opinion that the trial Court ought to have declined to make findings or take decisions at that stage on the basis of the respondent's preliminary objections when oral evidence had not been called in the substantive suit.

Having made positive and far reaching pronouncements on the substance of the matter, even before evidence was led and arguments of counsel marshaled on the substantive suit, the trial Court thereby prejudged and determined the entire case in limine and/or at an interlocutory state. I call in aid, the cases of Onyesoh V. Nnebedun (1992) 3 SCNJ 129; Bakare V. Bakare (2012) 16 NWLR 29 at 49-50, paras H-D; Nigerian Civil Service Union V. Essien (1985) 3 NWLR (Pt.12) 306 at 316.

This unacceptable judicial attitude informed the words of Garba, JCA in L. M. Ericsson Nig. Ltd. V. Aqua Oil Nig. Ltd. (2011) LPELR-8807 at 42 which I adopt for my purpose here and it is thus:-

"The law is similarly now common knowledge that a Court is required to avoid making pronouncements or deciding issues at the preliminary stage which would touch or decide on the issues to be decided in the substantive suit. The cases cited by the learned SAN on the principle of law and more have clearly established the position such that there is no need for me to cite more at this point. All the authorities are to the effect that a Court should refrain from, avoid and should not decide or determine the substantive matter while considering or dealing with issues at the preliminary or interlocutory stage of the case. I am tempted to cite the cases of NNPC v FAMFA OIL LTD. (2009) 6 MJSC (Pt.2) P.30; Okafor v Bendel Newspapers Corporation (1991) 7 NWLR (pt.206) 651.

See also the English case of: AMERICAN CYANAMID CO. V. ETHICON LTD. (1975) 1 AER 504 at 510 where Lord Diplock had this to say:

"It is no part of the Court's function at this stage of litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature deliberations. These are matters to be dealt with at the trial."

See Ebebi & Ors V. Denwigwe & Ors. (2011) LPELR-4909 per Ejembi Eko, JCA (now JSC) at pages 45 & 46, where it was held as follows:-

"The effect of this unacceptable practice of the Court making positive pronouncements touching on the substantive issue in the suit while deciding or determining interlocutory matters is that it prejudges the real matter even before evidence and argument of counsel are marshaled on the substantive suit... I agree, as submitted by Dr. Izinyon SAN for the appellant, that this unacceptable practice breaches the right to fair hearing of the party adversely affected... it is the duty of the trial Court, when dealing with interlocutory matters to avoid making statements giving the impression that it has made up its mind on the substantive issue on trial before it. Justice must not only be done but it must be seen to have been done."

See also R V. SUSSEX JUSTICES, EX PARTE McCarthy (1924) 1 KB 256 at 259. In OGBONNAYA & SONS. V. ADAPALM NIGERIA LTD. (1993) LPELR-2288 (SC), a case where, as in the instant case, the learned trial judge made similar pronouncements on the substance of the case at an interlocutory stage, this noble Court, per Kutigi, JSC held thus:-

"This being in interlocutory appeal, I have to confine myself to those issues necessary for disposing of the appeal and make no pronouncement on anything that will tend to prejudge the main issues at the trial. The learned trial Judge committed the same error when he held that the effect of Exhibit A was to extinguish the rights of the appellants in the land. I think the Court of Appeal rightly dealt with that issue when it stated that that kind of positive pronouncement ought not to have been made at that stage and consequently transferred the substantive suit for trial by another Judge."

Getting to the meat of the matter is the concurrent findings of the two Courts below and whether or not this Court should enter into an interference thereof to upset what those earlier Courts did. In this case, I see no way out of disturbing those earlier findings of the two Courts below in the light of the presentations and having been guided by decisions of this Court, a few of which I shall lean onto in aid.

See Adesina V. People of Lagos State (2019) LPELR-46403 (SC) wherein I had the privilege to say:-

"The Supreme Court has indeed in a Plethora of cases stated what should first be available for the Court or even the Apex Court to disturb concurrent findings. Any of those happenings that could make the appellate reverse such findings are stated hereunder thus: (1) The findings of those Courts are perverse. (2) The findings have not been founded on legal evidence before the trial Court. (3) Where it is shown that the lower Courts relied upon or took into account extraneous matters which ought not to have been taken into account. (4) Where miscarriage of justice has been occasioned. See Babatunde v State (2013) 4 WRN 1 at 22; Atolagbe v Shorun (1985) 1 NWLR (Pt.2) 360; (1985) 45 SC 250; Adimora v Ajufo (1988) 3 NWLR (Pt.80) 1; Okulate v Awosanya (2000) 1 WRN 65; Enang v Adu (1981) 11-12 SC 25." Per PETER- ODILI, JSC (Pp.18-19, paras, F-D).

See also NYESOM V. PETERSIDE (2016) ALL FWLR (Pt.842) 1573 SC wherein this Court held as follows:-

"The evaluation of evidence and ascription of probative value thereto are the primary duties of the trial Court which had the singular opportunity of seeing and hearing the witnesses testify and an appellate Court would ordinarily not interfere. In the instant case, where the findings of the trial Court and affirmation by the Court of appeal were not based on proper evaluation of evidence before it, the Supreme Court set same aside."

"The Supreme Court will not interfere with concurrent findings of fact by two lower Courts, unless it is shown that the findings are perverse, or not dispassionate appraisal of the evidence, or that there is an error either of law of fact, which has occasioned a miscarriage of justice."

Manifestly those exceptions or special circumstances which this Court envisage to impel the Court's interfering and setting aside the earlier findings of fact are very much present in the instant case hence my intervention to disturb those findings which came about in ways that have miscarried justice and a lot has been said above to support my position.

In the light of the foregoing and the better articulated lead judgment, I do not hesitate in allowing this appeal and setting aside the decision of the Court of Appeal which had affirmed the decision of the trial High Court.

Appeal allowed as I abide by the consequential orders made.

**CHIMA CENTUS NWEZE, J.S.C.:**

I had the advantage of reading, before now, the Draft of the leading judgment which my Lord, Eko, JSC, delivered now.

I agree with the leading judgment that the scope of the Public Officers' Protection Act does not extend to actions founded on breach of contract. Indeed, in Wema Securities and Finance Plc V. NAIC (2015) LPELR- 24833 (SC) 64 - 65; A, this Court held that:

...actions on simple contract are not included enumerated in those items above, (the Court was dealing with the jurisdiction of the Federal High Court under Section 251 of the Constitution of Nigeria, 1999, as amended), Adelekan V. Ecu-line NV. (2006) 12 NWLR (pt. 993) 33, 52, F-N; as such, the Court cannot arrogate to itself a jurisdiction only exercisable by the trial Court (High Court of the FCT) or a State High Court, PDP and Anor V. Sylva and Ors (2012) LPELR-7814 (SC) 52-53, G-E; NNPC and Ors V. Orhiowasele and Ors (supra) on such simple contractual matters as the one which the appellant tabled before the trial Court. (per Nweze, JSC at pages 64 - 65; paragraph A).

It is for these, and the more elaborate, reasons in the leading judgment that I too, shall allow this appeal. I abide by the consequential orders in the leading judgment.

**AMINA ADAMU AUGIE, J.S.C.:**

I had a preview of the lead judgment just delivered by my learned brother, Ejembi Eko, JSC. He dealt extensively and decisively with the Issues raised in the Appeal and it is without any hesitation that I adopt his reasoning and conclusion, which represent my views.

Thus, I also allow the Appeal and abide by the consequential Orders he made in the lead Judgment, including the Order on costs.