**GOD BLESS EZENWATA NIGERIA LIMITED**

**V.**

**SUNDAY ODIOKU AND OTHERS**

IN THE COURT OF APPEAL OF NIGERIA

THE 6TH DAY OF FEBRUARY, 2015

CA/B/275/2010

**LEX (2015) - CA/B/275/2010**

OTHER CITATIONS

2PLR/2015/53 (CA)

(2015) LPELR-24438(CA)

**BEFORE THEIR LORDSHIPS**

PHILOMENA MBUA EKPE, JCA

HAMMA AKAWU BARKA, JCA

UGOCHUKWU ANTHONY OGAKWU, JCA

**BETWEEN**

GOD BLESS EZENWATA NIGERIA LIMITED - Appellant(s)

AND

1. SUNDAY ODIOKU

2. DELTA STATE GOVERNMENT#

3. DIRECT LABOUR AGENCY OF DELTA STATE - Respondent(s)

**ORIGINATING COURT**

HIGH COURT OF DELTA STATE

**REPRESENTATION**

T. O. EZIKE (for M. C. EFOBI, Esq.) - For Appellant

AND

A. O. ORHORHORO, Esq. (Asst. Director, Dept. of Civil Litigation, Ministry of Justice Delta State) - For Respondent

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

ADMINISTRATION AND GOVERNMENT LAW - STATUTE OF LIMITATION:- When two limitation laws apply to a cause of action - Where a specific legislation and a general legislation both apply to a cause of action – Whether a specific law made on an issue overrides general law made on same issue

ADMINISTRATION AND GOVERNMENT LAW - STATUTE OF LIMITATION: – Public Officers Protection Law – What the court looks at in ascertaining whether an action is statute barred or not

TORT AND PERSONAL INJURY LAW:- Motor accident – Claim for special and general damages

TRANSPORTATION LAW AND MOTOR VEHICLE LAW:- Transport operator’s bus involved in an accident with a Diesel Truck – Claim for special and general damages for the loss occasioned – How treated

**PRACTICE AND PROCEDURE ISSUES**

ACTION - CAUSE & RIGHT OF ACTION: Definitions - Distinction between a cause of action and a right of action - - Right of action as a remedial right - Statute of limitation and its effect in removing a right of action leaving a plaintiff with a bare and empty cause of action which he cannot enforce - Whether determination of whether an action is caught by the statute of limitation is a matter of calculation of raw figures which a court of law has no discretion over

ACTION- LIMITATION LAW - PERIOD OF LIMITATION:- Action commenced after the expiration period within which an action must be brought – Effect thereof – whether legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period in a limitation law

INTERPRETATION OF STATUTE - CRIMINAL CODE ACT/ CUSTOM AND EXCISE ACT:- Settled law that ignorance of the law is not a defence – How the rule applies to the Criminal Code Act as distinct from the Custom and Excise Act – Whether the provision of the Criminal Code as to ignorance of the law not being a defence, contained as it is, in a general legislation, could be invoked in relation to the shift of onus of proof contained in Section 168 of the Customs and Excise Management Act.

INTERPRETATION OF STATUTE - LEGISLATION - SPECIFIC LEGISLATION- STATUTE OF LIMITATION: When two limitation laws apply to a cause of action - When a specific legislation, id est, the Direct Labour Agency Law, as opposed to the general legislation, id est, the Public Officers Protection Law both apply – Whether a specific law made on an issue overrides general law made on same issue - What the court looks at in ascertaining whether an action is statute barred or not

**MAIN JUDGMENT**

UGOCHUKWU ANTHONY OGAKWU, J.C.A. (DELIVERING THE LEADING JUDGMENT):

The Appellant herein, which was the Plaintiff at the Lower Court is in the transportation business. The Appellant is the owner of a Toyota Hiace vehicle with Registration number XP 621 LND which it uses to transport fare paying passengers. On 26th, April 2007,the Appellant's said Hiace vehicle was travelling between Lagos and Onitsha, when at Agbor along the Benin-Onitsha Expressway it was involved in an accident with a MAN Diesel Truck belonging to the 3rd Respondent and which was at the material time driven by the 1st Respondent. The Appellant's Toyota Hiace vehicle was damaged. On 21st April 2008, the Appellant instituted proceedings against the Respondents claiming special and general damages for the damage and loss occasioned.

Upon being served with the originating processes, the 3rd Respondent entered a conditional appearance and further filed a preliminary objection challenging the competence of the action and the jurisdiction of the Lower Court to entertain the same. The said preliminary objection was duly argued and in a considered Ruling delivered on 17th June 2009 the Lower Court upheld the preliminary objection and struck out the action against the 3rd Respondent on the ground that the action was statute barred by virtue of the provisions of Section 2 (a) of the Public Officers Protection Law, Cap. 137 Laws of the Defunct Bendel State as applicable to Delta State. The Ruling of the Lower Court is at pages 53 - 61 of the Records.

The Appellant being dissatisfied with the said Ruling appealed against the same. The Notice of Appeal is at pages 62 - 66 of the Records. The Records of Appeal having been complied and transmitted, the parties filed and exchanged briefs of argument.

The Appellant's Brief of Argument is dated 4th November 2010 but filed on 19th November 2010. The Appellant also filed a Reply Brief which is dated and filed on 11th November 2013. The Respondents Brief of Argument is dated 28th October 2013, filed on 24th October 2013 and deemed as properly filed and served on 28th October 2013. The Appellant distilled two issues as arising for determination as follows:

*"(1) Whether the Provision of the Public Officers Protection Act, Laws of the Federation is applicable to the Public Officers of the state of Delta State even when the Delta State Legislature have taken care of the Provision by enacting laws on public officers protection.*

*(2) Whether the twelve months statutory period created for the commencement of action against the Direct Labour Agency of Delta State as provided in Section 20 of the Delta State Direct Labour Agency Laws 1999 as it affects the Direct Labour Agency of Delta State alone supercedes the provision of the statutory period of three months provided in the Public Officers Protection Law Cap 137 Laws of the defunct Bendel State as applicable now in Delta State as it applies to Direct Labour Agency of Delta State alone as a public officer."*

The Respondent distilled a sole issue for determination, namely:

*"Whether the Learned Trial Judge was not justified in Law and in the circumstances of the case to hold that the Appellant's action against the 3rd Respondent was statute-barred and the Appellants right of action against her extinguished."*

At the hearing of the appeal, Ms T. O. Ezike,counselwho appeared for the Appellant adopted the submissions in the Appellant's Briefs, which were both settled by Maurice C. Efobi, Esq., and she urged the Court to allow the appeal. In the same vein, A. O. Orhorhoro, Esq., Assistant Director, Department of Civil Litigation, Ministry of Justice, Delta State who appeared for the Respondents adopted the submissions in the Respondents' Brief of Argument and he urged the Court to dismiss the appeal.

I have insightfully considered the Records of Appeal and the Briefs of Argument filed by the parties and I am of the informed view that the issues for determination as distilled by the Respondents bring out more clearly the pith of the issue arising for determination in this appeal. Accordingly it is on the basis of the issue as distilled by the Respondents that I will consider the submissions of learned counsel and resolve this appeal.

**ISSUE FOR DETERMINATION**

*Whether the Learned trial judge was not justified in Law and in the circumstances of the case to hold that the Appellant's action against the 3rd Respondent was statute-barred and the Appellant's right of action against her extinguished.*

**SUBMISSIONS OF COUNSEL**

The Appellant submits that the Public Officers Protection Law, Cap. 137 Laws of the defunct Bendel State applicable to Delta State is a general provision on limitation of actions against all public officers in Delta State, made by the then Bendel State House of Assembly. It was stated that the law establishing the 3rd Respondent, the Direct Labour Agency Law of Delta State, was enacted by the Delta State House of Assembly. It was then posited that if the same organ of government makes two laws relating to one and the same issue and there are inconsistencies in the laws, or where there is an enactment providing for how things shall be done and a later enactment is made making a contrary provision, the latter enactment shall prevail since it is apparently intended that the latter enactment repeals the earlier one. The cases of IKIME vs. EDJERODE (2002) FWLR (PT.82) 1775 at 1799 - 1880, EDINBURGH RAILWAY CO. vs. WAUCHOPE (1842) 8 E. R. 279 and LEE vs. BUDE AND TORRINGTON JUNCTION RAILWAY CO. (1871) 6 LRCP 576 were referred to. It was thus submitted that the Public Officers Protection Law of the defunct Bendel State as applicable in Delta State was repealed only to the extent as it applies to the Direct Labour Agency of Delta State since there was inconsistency in the provision in both laws. The case of KRAUS THOMPSON ORGANISATION vs. NATIONAL INSTITUTE FOR POLICY AND STRATEGIC STUDIES (2004) ALL FWLR (PT.218) 797 or (2004) 5 SCNJ 71 at 81 lines 5 - 20 was cited in support.

It is the further submission of the Appellant that based on the canon of interpretation of statutes the maxim is "generalia specialibus non-derogant"; general things do not derogate from special things. It was therefore contended that any specific provision excludes the general one and that in the circumstances of this matter the Public Officers Protection Law makes a general provision on limitation of action against all Public Officers while Section 20 of the Direct Labour Agency Law of Delta State makes special provision on limitation of action against the Direct Labour Agency (the 3rd Respondent) and is the law to be followed to determine whether the action is statute barred. The cases of KRAUS THOMPSON ORGANISATION vs. NATIONAL INSTITUTE FOR POLICY AND STRATEGIC STUDIES (supra), JACK vs. UNIVERSITY OF AGRICULTURE MAKURDI (2004) ALL FWLR (PT.200) 1506 at 1521, BAKER vs. EDGAR (1987) AC 748 and ABU vs. ODUGBO (2001) 7 SCNJ 262 at 288 - 289were relied upon.

Conclusively, the Appellant urged the Court to hold that the twelve month statutory period created for commencement of action against the 3rd Respondent as provided in Section 20 of the Direct Labour Agency Law of Delta State, 1999 supersedes the provision of the statutory period of three months in the Public Officers Protection Law.

In reply, the Respondents submit that the Appellant's action was statute barred by virtue of Section 2(a) of the Public Officers Protection Law, Cap. 137, Volume V. Laws of the defunct Bendel State, 1976, applicable to Delta State. The case of IBRAHIM vs. JUDICIAL SERVICE COMMITTEE KADUNA STATE (1999) 64 LRCN 5044 or (1998) 14 NWLR (PT 584) 1 was relied upon. The Respondent maintained that the Appellant's cause of action arose on 26th April, 2007 and that the action having been filed on 21st April, 2008 was filed well after eleven months of accrual of the cause of action, which is over and above the three months provided by the Public Officers Protection Law. It was therefore posited that the Lower Court was justified in reaching the decision that the Appellant's Suit against the 3rd Respondent was statute-barred and that the Appellant's right of action against the 3rd Respondent had been extinguished. The cases of ADEKOYA vs. FEDERAL HOUSING AUTHORITY (2008) ALL FWLR (PT 434) 1452 at 1463 G - H and,1464 A - C and EBOIGBE vs. NNPC (1994) 5 NWLR (Pt.347) 649 at 659 D - F were relied upon.

**RESOLUTION OF ISSUE**

This appeal falls within a very narrow compass. There is no disceptation on the facts. It is agreed on all sides that the accident on which the Appellant predicates its cause of action occurred on 26th April, 2007. (See paragraphs 7-16 and 18 of the Statement of Claim on pages 5 - 6 of the Records).

The law is now firmly established beyond peradventure that the Public Officers Protection Law applies to natural as well as artificial persons. See IBRAHIM vs. JSC (1981) 14 NWLR (PT.584) 1. So the said law would enure to the benefit of the 3rd Respondent. It has not been disputed that the Appellant instituted the action at the Lower Court on 21st April, 2008, which is five days short of twelve months from the date of accrual of the cause of action.

While the Public Officers Protection Law provides for a limitation period of three months, the Direct Labour Agency Law of Delta State provides for a limitation period of twelve months. The crux of this matter therefore is whether it is the three month limitation period stipulated in the Public Officers Protection Law or the twelve month limitation period stipulated in Section 20 of the Direct Page 9 of 16 Labour Agency Law that is applicable. It is rudimentary that if the applicable limitation statute is the Public Officers Protection Law then the Appellants action would be statute barred having been filed more than three months after the cause of action accrued. Conversely, if the limitation statute to govern the action is the Direct Labour Agency Law, then the Appellant's action would have been instituted within the twelve month period stipulated in the statute.

Totidem verbis, in ascertaining whether an action is statute barred, the Court looks at the date when the action was instituted and the date when the cause of action arose.

Now, a cause of action is the operative fact or facts (the factual situation) which give rise to a right of action. In simple terms, the cause of action arises the moment a wrong is done to the plaintiff by the defendant. See EGBE vs. ADEFARASIN (1987) 1 NWLR (PT 47) 1 at 20 and ADEKOYA vs. F.H.A. (2008) 11 NWLR (PT.1099) 539 at 551 and 557. The determination of whether an action is caught by the statute of limitation is a matter of calculation of raw figures and a court of law has no discretion in the matter: ADEKOYA vs. F.H.A. (supra) at 557.

A cause of action is to be distinguished from a right of action. A right of action is the right to enforce presently a cause of action. A right of action is a remedial right. A statute of limitation however removes the right and leaves a plaintiff with a bare and empty cause of action which he cannot enforce. See EGBE vs. ADEFARASIN (supra) at 20.

In EBOIGBE vs. NNPC (supra) at 659, the Supreme Court held that:

"Where an action is statute barred, a plaintiff who might have had a cause of action loses the right to enforce the cause of action by judicial process because the period of limitation laid down by the limitation law for instituting such an action has elapsed. See ODUBEKO v. FOWLER (1993) 7 NWLR (PT.308) 637. An action commenced after the expiration of the period, within which an action must be brought, stipulated in a statute of limitation is not maintainable. See EKEOGU as. ALIRI (1991) 3 NWLR (PT.179) 258. In short, when the statute of limitation in question prescribes a period, within which an action must be brought, legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period. See SANDA vs. KUKAWA LOCAL GOVT (1991) 2 NWLR (PT.174) 379."

See also P. N. UDDOH TRADING CO. LTD vs. ABERE (2001) 11 NWLR (PT.723) 114 or (2001) 24 WRN 1.

The pristine question remains the applicable limitation statute, whether the Public Officers Protection Law or the Direct Labour Agency Law. It seems to me that the functions and duties of the 3rd Respondent are as contained in the Direct Labour Agency Law 1999, it is therefore a special legislation dealing with and governing the activities of the 3rd Respondent. Doubtless, the Public Officers Protection Law has made general provisions with regard to the institution of action against all Public Officers generally.

In BOARD OF CUSTOMS & EXCISE vs. BARAU (1982) LPELR (786) 1 at 65 - 66, Eso, JSC stated thus:

"Ignorance of the law cannot be a defence. The Customs and Excise Management Act 1958 is, in everyway, a special legislation whereas the Criminal Code Act which permits the defence of ignorance of the law in certain cases is a general legislation. The Customs and Excise Management Act, 1958, is an Act subsequent to the Criminal Code Act. It is an accepted canon of construction that a general enactment is pro tanto avoided by an express provision in a subsequent enactment which is entirely inconsistent with the general enactment... The special enactment in a subsequent statute is however not a repeal of the provision of the previous general statute. Once the subsequent special enactment is contrariant to the previous general enactment the general provision does not apply to the special enactment although the general provision will remain in force...

To my mind, the provision of the Criminal Code as to ignorance of the law being a defence, contained as if is, in a general legislation, could not be used to avoid the provision about the shift of onus of proof as contained in Section 168 of the Customs and Excise Management Act". (Underlining supplied)

I kowtow to this dictum. The provision of Section 20 of the Direct Labour Agency Law on a limitation period of twelve months is contrary to the three month limitation period in the Public Officers Protection Law. The accepted canon of construction is that the express provision of twelve months in the Direct Labour Agency Law which is later in time avoids the three month period in the Public Officers Protection Law such that the provisions of the Public Officers Protection Law will not be applicable to an action against the 3rd Respondent.

It seems that the law is settled that in circumstances such as this, it is the specific legislation, id est, the Direct Labour Agency Law, as opposed to the general legislation, id est, the Public Officers Protection Law that would apply. Indeed in circumstances that are not entirely dissimilar, this Court per Ogunwunmiju, JCA in INTEGRATED DATA SERVICES LTD vs. ADEWUMI (2013) LPELR (21032) 1 at 14 held as follows:

"On the applicable limitation law in the circumstances of this case, I am of the view that a specific law made on an issue overrides general law made on same issue. See NDIC as. Okem Enterprises Ltd. & Anor (2004) 4 SCNJ 244. Thus where there is a specific provision as in this case, it prevails over general provision on the same subject matter.

S. 2(a) of the Limitation Act Laws of the Federation which is a provision of general application cannot be applicable in the face of Section 12 (a) of the NNPA (NNPC) Act which specifically provides a limitation period to institute a suit against the corporation whereas the general law provides a limitation period of three month, the specific legislation applicable to the corporation provides for a limitation period of twelve months."

I cannot agree more. It seems to be hornbook law that it is the stipulation of the specific legislation that would be resorted to in ascertaining whether the action is statute barred. Put differently, it is the provisions of Section 20 of the Direct Labour Agency Law which provides a limitation period of twelve months that applies and not Section 2 (a) of the Public Officers Protection Law.

In summation, since that Appellant instituted the action within twelve months of accrual of the cause of action, the action is not statute barred. The Appellant's right of action to enforce the cause of action remains alive since the action was not statute barred. Consequently, the issue for determination must be resolved in favour of the Appellant. The Lower Court was not justified in holding that the Appellant's action against the 3rd Respondent was statute barred and that the Appellant's right of action had extinguished. Accordingly, this appeal has merit and it is allowed. The decision of the Lower Court, Coram: Ogadi, J. in Suit No.AG/15/2008, delivered on 17th June 2009 is hereby set aside. The case is remitted to the Lower Court for hearing on the merits by another judge, not being Ogadi, J. The Appellant is entitled to the costs of this appeal which I assess and fix at N50,000.00.

**PHILOMENA MBUA EKPE, J.C.A.:**

I have had the privilege of reading the draft judgment just delivered by my learned brother U. A. Ogakwu, JCA.  
He has painstakingly dealt with the sole issue for determination in this appeal and I am in total agreement with his reasoning and conclusion that what applies here is the provisions of Section 20 of the Direct Labour Agency Law which provides a limitation period of 12 months and not the Public Officers Protection Law (S.219).

I subscribe to the fact that the appellant's right of action to enforce the cause remains alive.

I too agree that the Lower Court was not justified in holding that the appellant's action against the 3rd Respondent was statute barred. I too agree that this appeal is meritorious and is hereby allowed.

The decision of the Lower Court in suit No.AG/15/2008 per Ogadi J. is hereby set aside. The case is remitted to the Lower Court for hearing by another Judge.

I abide by his Lordship's order as to cost.

**HAMMA AKAWU BARKA, J.C.A.:**

I had the singular advantage of reading in draft the judgment of my brother Lord, Ugochukwu Anthony Ogakwu, JCA just delivered in draft. I agree with the reasoning and conclusion reached therein. I abide by all consequential orders made in the judgment as well as to order on costs.