**INDEPENDENT ELECTORAL COMMISSION (INEC)**

**V.**

**CHIEF FELIX ONOWAKPOKO AND OTHERS**

SUPREME COURT OF NIGERIA

7TH DAY OF APRIL 2017

SC. 704/2015

**LEX (2017) - SC. 704/2015**

OTHER CITATIONS

3PLR/2017/151 (SC)

**BEFORE THEIR LORDSHIP**

MUSA DATTIJO MUHAMMAD, JSC

KUDIRAT M. O. KEKERE-EKUN, JSC

EJEMBI EKO, JSC

SIDI DAUDA BAGE, JSC (Read the Lead Judgment)

**BETWEEN**

INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) – Appellant

AND

1. CHIEF FELIX ONOWAKPOKO

2. HON. FRIDAY FERIFE

3. DR. PETER EMAZIYE

4. MR. RICHARD ISAGBA – Respondent

**ORIGINATING COURT**

1. COURT OF APPEAL, BENIN JUDICIAL DIVISION

2. FEDERAL HIGH COURT WARRI

**REPRESENTATION/LAWYERS**

S.O. IBRAHIM with ALHASSAN A. UMAR, OKECHUKWU OKEKE, and BASHIR M. ABUBAKAR - for the Appellant.

E. L. AKPOFURE, SAN with JOHN OKORIKO, V. O.IDIAPHO, E . K. OKOKO and E. M. KPUWHARA - for the Respondents.

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

ADMINITRATIVE AND GOVERNMENT LAW - PUBLIC OFFICER PROTECTION ACT, CAP. P41, LAWS OF THE FEDERATION OF NIGERIA, 2004, SECTION 2:- Purport of - When would not avail a public officer.

CONSTITUTIONAL LAW – REPRESENTATION:- Claim based on Sections 6, 36, 91 and 112 of the Constitution of the Federal Republic of Nigeria, 1999 and other enabling laws – Contention that the constitution of Delta State House of Assembly (29) being less than 3 or 4 times the number of seats which Delta State has in the National Assembly is unconstitutional for not properly constituted - Power of the Independent National Electoral Commission to suppress an existing Constituency approved by the National Assembly – Jurisdiction of the trial court to entertain same

ELECTORAL MATTERS – MEMBERSHIP SIZE OF A STATE HOUSE OF ASSEMBLY:- Power to reduce or increase same – Claim for injunctive relief against the Independent National Electoral Commission in relation thereto – How treated

**PRACTICE AND PROCEDURE ISSUES**

ACTION - CAUSE OF ACTION - Onus on party to pursue with reasonable diligence.

ACTION - LIMITATION OF ACTION - CAUSE OF ACTION:- Onus on party to pursue with reasonable diligence.

ACTION - LIMITATION OF ACTION - CONTINUANCE OF INJURY:– Meaning of.

ACTION - LIMITATION OF ACTION - STATUTE BARRED ACTION:- Cause of action - When would be deemed to be statute barred - How determined.

ACTION - LIMITATION OF ACTION - LIMITATION LAW:- Effect and purport of – Computation of time - When would begin to run for purposes of determining if a cause of action is statute barred.

WORDS AND PHRASES – “CONTINUANCE OF INJURY”:– Meaning of.

WORDS AND PHRASES – “SUPPRESS”:- Meaning of.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The respondents were the plaintiffs in the Federal High Court, Delta State where they sought declaration and injunctive relief to the effect that by virtue of sections 6, 36, 91 and 112 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended), and other enabling laws in that behalf, the Delta State House of Assembly presently consisting of 29 members which is less than 3 or 4 times the number of seats which Delta State has in the National Assembly is not properly constituted; the appellant does not have any power and/or discretion whatsoever to suppress the existing Isoko North State Constituency 1 in the Delta State House of Assembly lawfully created and approved by the National Assembly by failing to include the constituency in the approved list of state constituencies previously suppressed; the appellant’s failure to restore the constituency is unlawful, null and void and contrary to sections 91 and 112 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended). They prayed for order directing and compelling the appellant to conduct election into the Isoko North State Constituency 1 for the purpose of bringing the composition and numbers of the declinated constituencies in Delta State House of Assembly in compliance with the above stated provisions and perpetual injunction restraining the appellant from further suppressing the constituency. The appellant filed a preliminary objection challenging the jurisdiction of the trial court and that the action was statute-barred.

The trial court dismissed the preliminary objection and granted all reliefs sought. Dissatisfied, the appellant appealed to the Court of Appeal where the appeal was dismissed.

Aggrieved still, the appellant appealed further to the Supreme Court contending that the lower court erred in holding that section 2(a) of Public Officers Protection Act was not applicable in the instant case.

**DECISION(S) APPEALED AGAINST**

The Court of Appeal entered judgment, affirming the decision of the trial court that dismissed the appellant’s preliminary objection that the trial court lacked jurisdiction since the suit had become statute barred having been caught by section 2(a) of the Public Officers Protection Act. Dissatisfied, the Appellant appealed to the Supreme Court.

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

*BY APPELLANT:*

Issue No 1.

Whether the appellant is not protected by section 2(a) of the Public Officers Protection Act, Cap. P. 41, Laws of the Federation of Nigeria, 2004, having regard to the circumstances of this case.

Issue No. 2

Whether the Court of Appeal was right in the circumstances of this case in holding that there is no further need nor is it necessary for the appellant restoring the suppressed constituency to resort to section 115 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended) dealing with the alteration of state constituency boundaries in accordance with section 114 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended).

Issue No. 3

Whether the Court of Appeal was right in relying on its judgment in the case of Oju Local Government v. I.N.E.C. (2007) 14 NWLR (Pt. 1054) 242, having regard to the circumstance of this case.

Issue No. 4

Whether the Court of Appeal was right on ascribing probative values to exhibits 3, 4 and 5 and in holding that the constituency under consideration had been in existence along with other constituencies with election held therein prior to the year 1999 when appellant excised the respondent and refused to conduct elections into the constituency.

*BY RESPONDENTS:*

[The respondents formulated same issues with the appellant].

**MAIN JUDGMENT**

BAGE JSC (DELIVERING THE LEAD JUDGMENT):

This appeal is against the judgment of the Court of Appeal, Benin Division delivered on 28 May 2015 which affirmed the judgment of the Federal High Court Warri, suit No. FHC/WR/CS/60/2014, delivered on 31 October 2014. The Court of Appeal upheld the decision of the trial court and dismissed the appellant’s appeal.

The lower court held inter alia, that the trial court had jurisdiction to entertain the suit and that the respondents’ cause of action at the trial court was not statute barred, and that there is continuance in the suppression of Isoko North State Constituency 1.

Aggrieved by the decision of the court below, the appellant filed a notice of appeal dated 14 August 2015, containing four (4) grounds of appeal.

The facts that gave rise to this appeal is that, the respondents commenced the action at the Federal High Court Warri on 16 May 2014 against the appellant. The respondents raised four (4) questions and claimed the following reliefs:

“1. A declaration that by virtue of the mandatory provisions of sections 6, 36, 91, 112 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended) and other enabling laws in that behalf, the Delta State House of Assembly presently consisting of twenty-nine (29) members which is less than three (3) or four (4) times the number of seats which Delta State has in the National Assembly is not properly constituted or composed.

2. A declaration that the appellant does not have any power and/or discretion whatsoever to suppress the existing Isoko North State Constituency 1 with constituency code No. SC/17/DT in the Delta State House of Assembly lawfully created and approved by the National Assembly (as contained in the National Electoral Commission Delta State Voters and Candidate Education, know your senatorial districts, federal and state constituencies and electoral wards in Delta State House of Assembly - 1st assembly with specific reference to No. 4 and 23 thereof) by omitting, failing, refusing and/or neglecting to include the Isoko North State Constituency 1 with constituency code No. SC/17/DT in the approved list of state constituencies previously suppressed as attached to the appellant’s letter date of 2 June 2004 and addressed to the clerk of the National Assembly, National Assembly Complex, Abuja.

3. A declaration that the appellant’s omission, failure, refusal and/or neglect to restore and recognize the Isoko North State Constituency 1 with constituency code No. SC.17/DT by including it in the approved list of state constituencies previously suppressed as attached to the appellant’s letter dated 2 June 2004 and addressed to the clerk of the National Assembly, National Assembly Complex, Abuja is unlawful, illegal, null, void and contrary to the mandatory, clear and express provisions of sections 91, 112 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended); thereby constituting a flagrant violation of the constitutional rights of the good people of Ozoro 1, Ozoro 2, Ozoro 3, Ofagbe/Ovrode, Okpe/Oyede, Ellu/Aradhe Tows (that is Ozoro 1, Ozoro 2, Ozoro 3, Ofagbe/Ovrode, Okpe/Oyede, Ellu/Aradhe) comprising the Isoko North - State constituency 1 with constituency code SC/17/DT to be adequately represented in the Delta State House of Assembly.

4. A declaration that the appellant is enjoined by the mandatory provisions of sections 6, 36, 91 and 112 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended) and other enabling laws in that behalf, to restore forthwith the long – suppressed Isoko North State Constituency 1 with code No. SC.17/DT in the Delta State House of Assembly and conduct election into the said Isoko North State Constituency 1 with constituency code No. SC/17/DT in the Delta State House of Assembly... No. SC.17/DT in the Delta State House of Assembly in Isoko North Local Government Area of Delta State of Nigeria comprising the Ozoro 1, Ozoro 2, Ozoro 3, Ofagbe/Ovrode, Okpe/Oyede, Ellu/Aradhe towns (that is Ozoro 1, Ozoro 2, Ozoro 3, Ofagbe/Ovrode, Okpe/Oyede, Ellu/Aradhe) so as to bring the composition and numbers of the created, delineated and delimited constituencies in the Delta State House of Assembly in compliance with the mandatory provisions of sections 91 and 112 of the Constitution of the Federal Republic of Nigeria and other enabling laws in that behalf.

7. An order directing and compelling the appellant either by herself, agent, servants, prives, surrogates, staff or any person acting through the appellant and/or on the instruction or directive of the appellant to conduct election forthwith into the Isoko North State Constituency 1 with constituency code No. SC17/DT in the Delta House of Assembly for the purpose of electing the member representing the Isoko North State constituency 1 with constituency code No. SC17/DT. In the Delta State House of Assembly and bring the composition and numbers of the created, delineated and delimited constituencies in the Delta State House of Assembly in compliance with the mandatory provisions of sections 91 and 112 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended) and other enabling laws in that behalf.

8. A perpetual injunction restraining the appellant either by herself, agent, servants, prives, surrogates, staff or any person acting through the appellant and/or on the instruction or directive of the appellant from suppressing or further suppressing the Isoko North State Constituency 1 with constituency code No. SC/17/DT in the Delta State House of Assembly in Isoko North Local Government Area of Delta State of Nigeria comprising the Ozoro 1, Ozoro 2, Ozoro 3, Ofagbe/Ovrode, Okpe/Oyede, Ellu/Aradhe) or doing anything howsoever that will have the adverse effect of suppressing and/or undermining the Isoko North Constituency 1 with constituency code No. SC.17/DT with a view to depriving the good people of Isoko North State Constituency 1, with constituency code No. SC.17/DT adequate representation in the Delta State House of Assembly or any other elections whatsoever in the Federal Republic of Nigeria.”

The originating summons was supported by a 57-paragraphed affidavit and a number of documents. The appellant, in reaction to the respondent’s originating processes, filed a notice of preliminary objection wherein it contended that the jurisdiction of the trial court to entertain the suit was statute-barred, having not been instituted within three months after the accrual of the cause of action. It is contended therefore that the suit was incompetent.

In his consolidated judgment of 31 October 2010, the learned trial judge dismissed the appellant’s preliminary objection and held that the complaints of the respondents is a continuous act which removes the protection granted by section 2(a) of the Public Officers Protection Act. The court further granted all the reliefs except prayer 8 sought by the respondents.

Aggrieved by the judgment of the learned trial judge, the appellant filed a notice of appeal dated 4 December 2014 containing four (4) grounds of appeal.

After hearing the argument from both parties, the Court of Appeal delivered its judgment on 28 May 2015, wherein it affirmed the decision of the trial court and dismissed the appellant’s appeal.

Dissatisfied, the appellant has further appealed to this court vide a notice of appeal dated 14 August 2015, containing four (4) grounds of appeal.

In his brief of argument, the learned counsel for the appellant formulated the following issues for determination:

Issue No 1.

Whether the appellant is not protected by section 2(a) of the Public Officers Protection Act, Cap. P. 41, Laws of the Federation of Nigeria, 2004, having regard to the circumstances of this case (Ground 1)

Issue No. 2

Whether the Court of Appeal was right in the circumstances of this case in holding that there is no further need nor is it necessary for the appellant restoring the suppressed constituency to resort to section 115 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended) dealing with the alteration of state constituency boundaries in accordance with section 114 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended) (Ground 2).

Issue No. 3

Whether the Court of Appeal was right in relying on its judgment in the case of Oju Local Government v. I.N.E.C. (2007) 14 NWLR (Pt. 1054) 242, having regard to the circumstance of this case (Ground 3).

Issue No. 4

Whether the Court of Appeal was right on ascribing probative values to exhibits 3, 4 and 5 and in holding that the constituency under consideration had been in existence along with other constituencies with election held therein prior to the year 1999 when appellant excised the respondent and refused to conduct elections into the constituency (Ground 4).

On the other hand, the respondents in their brief formulated the same four issues with that of appellant. Issue No. 1 as raised by the appellant herein challenges the competence of respondents’ suit, which the appellant has contended that by virtue of section 2 (a) of the Public Officers Protection Act, Cap. P. 41, Laws of the Federation of Nigeria, 2004, the respondents’ suit is statute-barred. The learned counsel for the appellant contended that the court hearing found that the difference between the time the Isoko North State Constituency I was excised and suppressed and the time of coming-in to life of the action was about 15 years period in excess of the three months the Act allocated for commencement for any act against the public officer, the lower court for this fact alone should not have proceeded to hold that there is continuance in the suppression of the said Isoko North State Constituency.

In other words, it is the contention of the appellant that the court below having found that the respondents commenced their joint action against the appellant months in excess of the 3 months the Act allowed for commencement of action, neglect or default against any wrong doing, the court ought to have dismissed the suit of the respondents.

He urged that this court in the case of Ajayi v. Adebiyi (2012) All FWLR (Pt. 634) 1, (2012) LPELR-7811, (2012) 11 NWLR (Pt. 1310) 137 at 169 per Adekeye JSC, has this to say on the essence of statute of limitation:

“The essence of limitation law is that the legal right to enforce an action is not a perpetual right but a right generally limited by statute where a statute of limitation prescribes a period within which an action should be brought, legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period. Therefore a cause of action is statute-barred if legal proceedings cannot be commenced in respect of same because the period laid down by the limitation law had elapsed. An action which is not brought within the prescribed period offends the provisions of the law and does not give rise to a cause of action.

The yardsticks to determine whether an action is statute barred are:

(a) The date when the cause of action accrued;

(b) The date of commencement of the suit as indicated in the writ of summons; and,

(c) Period of time prescribed for bringing an action to be ascertained from the statute in question. Time begins to run for the purposes of limitation law from the date the cause of action accrues - reliance was put on Sulgrave Holdings Inc. v. Federal Government of Nigeria (2012) 17 NWLR (Pt. 1329) 309, (2013) All FWLR (Pt. 659) 1050.

The learned counsel has submitted that the decision of the lower court on this threshold issue of statute of limitation applicable to the respondents’ suit has completely defeated the purpose and intendment of section 2 (a) of the Public Officers Protection Act, 2004. The respondents’ suit ex facie was premised on a spent cause of action while the decision of the lower court on this issue is contrary to the binding decision of this court on such issue. In Ajayi v. Adebiyi (2012) All FWLR (Pt. 634) 1, (2012) LPELR-7811, (2012) 11 NWLR (Pt. 1310) 137 at pages 196-197, this court has this to say:

“On the strong position of the appellant that the action was statute-barred and could not really take off, I will want to recapture the essence of a statute of limitation as per Tobi JSC (as he then was) states in Merchantile Bank (Nig.) Ltd v. Feteco (Nig.) Ltd (1998) 3 NWLR (Pt. 540) 143 at 156, paragraphs GH as follows:

A statute of limitation of action designed to stop or avoid situation, where a plaintiff can commence action anytime he feels like doing so, even when humans’ memory would have normally faded and therefore failed. Putting it in another language, by the statute of limitation, a plaintiff has no freedom of air to sleep or slumber and wake up at his own time to commence an action against the defendant.

The different statutes of limitation which are essentially founded on the principle of equity and fair play will not avail such a sleeping or slumbering plaintiff”.

The learned counsel for the respondents on this issue submitted that the court below correctly held that the time for the institution of the action by the respondents had not elapsed or expired as this could only expire on the cessation of the alleged wrong, that is, the suppression of Isoko North State Constituency 1, he submitted that since 1998 till 2011, the appellant has been conducting her general elections into Delta State House of Assembly without the Isoko North State Constituency 1. He submitted that the appellant’s act of excising, suppressing the Isoko North State House of Assembly which is the cause of action still continues and subsists till date. It has not ceased at all. He relied on the provision of section 2 (a) of Public Officers Protection Act where the section provided for an exception in case of continuance of damage or injury, the action shall be within three months next after the ceasing thereof.

The learned counsel urged this court not to disturb the concurrent findings of facts of the two lower courts below. The learned counsel further submitted that where a public officer acted in bad faith and with no semblance of legal justification in the performance of his public duty, he cannot enjoy the protection under section 2(a) of the Public Officers Protection Act. He argued that the appellant’s act of excising the Isoko North State Constituency is unlawful, illegal and unconstitutional. There is no law which empowers or authorizes the appellant to excise, suppress and abandon the Isoko North Constituency 1. He put reliance on the case of C.B.N. v. Okojie (2004) 10 NWLR (Pt. 882) 488 at 523, paragraphs B-D.

The question here is whether the respondents have not failed to bring their action within the time stipulated by law. They are confronted by section 2(a) of the Public Officers Protection Act, Cap. P14, Laws of the Federation of Nigeria, 2004, it states:

“Where any action, prosecution or other proceedings is commenced against any person for any act done in pursuance or execution or intended execution of any act or law or of any public duty or authority or in respect of any alleged right or default in the execution of any such act, law, duty or authority, the following provision shall have effect:

1. The action, prosecution or proceeding shall not lie or be instituted unless it is commenced within three months, next after the act, neglect or default, complained of or in a case of continuance of damage or injury within three months next after ceasing thereof”.

It is the contention of the appellant that the respondents suit is statute-barred by virtue of section 2(a) of the foregoing law.

The court below in its judgment at pages 204- 205 of the record stated that the simplest interpretation that anybody can give to the action of the defendants/respondents in relation to this section is that the action is a continuous one and has not ceased. This is so because since the restoration of constitutional democracy in the country in 1999 and elections into various constituencies is a continuous process. The act of suppressing Isoko North State Constituency 1 by the defendant cannot be said to have been closed or ceased but must be seen as live issue, I so hold.

With respect to the decision of the trial judge above, his opinion is entirely in contradiction with the decision of this court in INEC v. Ogbadibo Local Government (2016) 3 NWLR (Pt. 1498) 175, where the court held that:

“Continuance of injury or damage means continuance of the legal injury and not merely continuance of the injurious effects of a legal injury. In this case, the legal injury complained of by the respondents was the excision of Otukpa State Constituency in 1996.

The act was completed in 1996. The fact that the respondents have since the excision, not been represented in their State House of Assembly constitutes the effect of the legal injury they allegedly suffered by that singular act. The legal injury occurred once. What the trial court and the Court of Appeal relied on to give judgment in favour of the respondents was the continuance of the injurious effect of the legal injury. In the circumstances, both courts were wrong when they respectively held that section 2 (a) of the Public Officers Protection Act did not apply to the respondents’ suit”.

The issue is very well illustrated by the dictum of Dickson J., in Michael Obiefuna v. Alexander Okoye (1961) 1 All NLR 357 at 360 and 362, (1961) 1 SCNLR 144.

“Continuance of injury or damage means continuance of legal injury, and not merely continuance of the injurious effect of a legal injury. The continuance of the injurious effect of an accident is not a continuance of the injury or damage within the meaning of the Public Authorities Protection Act 1993”.

See also on this: Rawlings v. Gillingham (1932) 146 LT 486; Freeborn v. Leeming (1926) 1 KB 160 and Curey v. Metropolitan Borough of Bermondsey (67 JP) 447.

In the case at hand, the excision of Isoko North State Constituency 1 for the elections conducted between 1999 till date was the effect of the excision by the appellant in 1999. The court having found that the constituency was excised in 1999 and, without any further affidavit evidence on record, disclosing continuous legal damage, failed to be guided by a number of judicial authorities of this court on statute of limitation thereby arriving at a perverse decision on this issue.

Similarly this court in INEC v. Ogbadibo Local Government (supra) stated that:

“The essence or effect of section 2 (a) of the Public Officers Protection Act is that an action against a public officer in respect of any Act done in pursuance or execution of any Act or Law or of a public duty or default of same can only be commenced within three months next after the act, neglect or default complained of except in case of continuance of damage or injury in which case, the person aggrieved must institute the action within three months next after the cessation of the damage or injury complained of. In other words, the section extinguishes the cause of action if it is commenced after three months except where there is continuance of injury or damage for which a fresh cause of action arises from time to time as often as damage or injury occurs. In this case, the respondents stated in their affidavit that the appellant excised and suppressed the Otukpa State Constituency in 1996 but they commenced their suit in 2011; that is, 15 years in excess of the three months the Act allows for commencement of proceedings. The respondents, however, did not present evidence that there was continuance of damage or injury to them. In the circumstance, the respondents’ cause of action was statute-barred”.

Paragraph 29 of the respondents affidavit in support of the originating summons discloses in plain terms that it was in 1999 the Isoko North Constituency 1 was excised and suppressed, but the respondents commenced their action on 16 May 2014, that is 15 years in excess of three months the Act allows for commencement of proceedings of this nature.

The limitation law does generally either of two things; it either bars the remedy without extinguishing the right or bars the remedy and at the same time extinguishes the right. Whichever effect it has will depend on the particular statute. However, there is a general consensus that all limitation laws have the effect of closing the doors of the court against the plaintiff.

In Olaosebikan v. R. A. Williams (1996) 5 NWLR (Pt. 449) 437, the Court of Appeal in trying to explain what amounts to continuance of damage or injury under section 2 (a) of Public Officers Protection Act, stated that:

“What the University of Ibadan or any other University might do as a result of the letters the respondents sent to them does not amount to continuance of damage or injury of the respondent defamatory publication concerning the appellant. It is only a concomitant effect of the action of the respondent”.

The essence or effect of the Public Officers Protection Act herein, is to extinguish the cause of action if it is commended after the stipulated period, which is three months, subject to the exception provided for in section 2 (a) of the Act. Thus where there has been a continuance injury or damage, a fresh cause of action arises from time to time, as often as damage or injury is caused; see Aremo II v. Adekanye (2004) All FWLR (Pt. 224) 2113 at 2132, (2004) 13 NWLR (Pt. 891) 572.

It is submitted by the respondents’ counsel that the lower court after examing carefully the exception in the limitation law, correctly stated that there is continuance of suppression of Isoko North State Constituency 1 and that at the time of commencement of the action by the respondents, it has not elapsed. This position taken by the respondent cannot be correct in view of the various facts averred in paragraph 29 of the respondents’ affidavit in support of the originating summons. See also I.N.E.C. v. Ogbadibo Local Government (supra). In Atunrase v. Sunmola (1985) 1 NWLR (Pt. 1) 105 at 120, this court giving reasons why persons with good causes of action should pursue them with reasonable diligence, stated thus:

“In all action, suits and other proceedings at law and in equity, the diligent and careful actor or suitor is favoured to the prejudice to him who is careless and slothful, who sleeps over his rights. The law may therefore deny relief to a party who by his conduct has acquiesced or assented to the infraction of his right, or has led the opposite party responsible for or guilty of such infringement to believe that he has lived (sic) or abandoned his right”.

In the case of Board of Trade v. Cayser Irvine & Co. Ltd (1927) A.C. 610 at 628, Lord Atkinson said:

“The whole purpose of this Limitation Act is to apply to persons who have good causes of action which they could if so disposed, enforce, and to deprive them of power of enforcing them after they have lain by for the number of years respectively and omitted to enforce them. They are thus deprived of the remedy which they have omitted to use”.

This court, in the case of Ajayi v. Adebiyi (2012) All FWLR (Pt. 634) 1, (2012) LPELR-7811, (2012) 11 NWLR (Pt. 1310) 137, page 169, paragraphs B-E on the essence of statute of limitation stated as follows:

The essence of a limitation law is that the legal right to enforce an action is not a perpetual right but a right generally limited by statute, where a statute of limitation prescribes a period within which an action should be brought, legal proceedings cannot be properly validly instituted after the expiration of the prescribed period. Therefore a cause of action is statute-barred if legal proceedings cannot be commenced in respect of same because the period laid down by the limitation law had passed. An action which is not brought within the prescribed period, offends the provision of the law and does not give rise to a cause of action. The yardstick to determine whether an action is statute-barred are:

(a) The date when the cause of action accrued.

(b) The date of commencement of the suit as indicated in the writ of summons.

(c) Period of time prescribed to bringing an action to be ascertained from the statute in question.

Time begins to run for the purposes of the limitation law from the date the cause of action accrues.

In Amadi v. Independent National Electoral Commission (INEC) (2012) All FWLR (Pt. 621) 1415, (2012) 2 SCNJ 163, (2013) 4 NWLR (Pt. 1345) 595, this court held that:

“The conspicuous effect of a limitation law is that legal proceedings cannot be properly validly instituted after the expiration of the prescribed period. Also, the court is divested of its jurisdiction in the matter as it is no longer a live issue. It is dead in substance and in form. In the instant case, the Court of Appeal was under a statutory obligation and duty to hear and determine the appellant’s appeal before it within the time prescribed by section 285 (7) of the Constitution of the Federal Republic of Nigeria, 1999, (as amended).”

See again on this: Osun State Government v. Dalami (Nig.) Ltd (2007) All FWLR (Pt. 365) 438, (2007) LPELR - 2817 (SC) 13, (2007) 6 MJSC 187, (2007) 9 NWLR (Pt. 1038) 66; Chigbu v. Tonimas (Nig.) Ltd (2006) All FWLR (Pt. 320) 984, (2006) 9 NWLR (Pt. 984) 189; Shettima v. Goni (2011) LPELR 417 (SC), (2011) 18 NWLR (Pt. 1279) 413, (2012) All FWLR (Pt. 609) 1007; P.D.P. v. C.P.C. (2011) 17 NWLR (Pt. 1277) 485.

Further in Hassan v. Aliyu (2010) All FWLR (Pt. 539) 1007, (2010) 17 NWLR (Pt. 1223) 547, this court held that:

“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 provision of section 2 (a) of the Public Officers Protection Act as to three months time limit for commencement of action against him.

In this case, however, the exceptions did not avail the appellant”.

See again on this Lagos City Council v. Ogunbiyi (1969) 1 All NLR 297; C.B.N. v. Okojie (2004) 10 NWLR (Pt. 882) 488; Nwakere v. Adewunmi (1966) 1 All NLR 129, (1996) NMLR 45, (1966) 1 SCNLR 356; Offoboche v. Ogoja Local Government (2001) FWLR (Pt. 68) 1051, (2001) 16 NWLR (Pt. 739) 458.

In the case at hand, there is nothing to show that in acting the way the appellant did, it acted in bad faith, maliciously or that its act was devoid of any legal justification. It is therefore clear that with the accrual of the cause of action in 1999 and the institution of the action on 12 May 2014, a period of more than three months from the accrual of the cause of action, the action so instituted was caught by the provisions of section 2 (a) of the Public Officers Protection Act and therefore incompetent.

In the light of the foregoing, I resolve the issue in favour of the appellant, and set aside the findings of the two courts below on this issue, and allow the appeal and accordingly strike out the suit for being statute barred.

**ONNOGHEN CJN:**

I have had the benefit of reading in draft, the lead judgment of my learned brother, Bage JSC, just delivered. I agree with his reasoning and conclusion that the appeal is meritorious and should be allowed.

It is very clear from the record that the cause of action was the suppression of the constituency in question by statute, in 1996 following the promulgation of the Civil Rule (Political Programme) Decree, No. 1, 1996. The instant suit was filed on 16 May 2014. Between 1996 when the cause of action arose and 2014 when the action was filed is little over 18 years, which by the provisions of section 2(a) of the Public Officers (Protection) Act renders the action so commenced outside the statutory period of three months statute barred.

I therefore allow the appeal and strike out the suit at the trial court for being incompetent and abide by the other consequential orders made in the said lead judgment including the order as to costs.

**MUHAMMAD JSC:**

On reading in draft, the lead judgment of my learned brother, Bage JSC just delivered, I agree with the reasoning and conclusion therein that this appeal is bereft of merit and that same be dismissed. In stating it in my words, purely for emphasis, I rely on the summary of the facts of the case that brought about the appeal provided in the lead judgment.

The most worthwhile issue to consider in the determination of the appeal is appellant’s 1st issue which reads:

“1. Whether the appellant is not protected by section 2 (a) of the Public Officers Protection Act, Cap. P. 41, Laws of the Federation of Nigeria, 2004 having regard to the circumstances of this case (ground 1).”

Appellant’s argument in this appeal is that the injury, if any, they caused the respondents is not continuous to entitle them to the lower court’s favourable decision. The law, it is argued, only removes the protection section 2 (a) of the Public Officers Protection Act confers on the appellant if the injury, not the effect of the said injury, the respondents make the basis of their suit persists. Learned appellant’s counsel insists and correctly too, that the lower court is wrong to have removed the protection the law conferred on the appellant where the respondents’ complaint, as established, is on the continuous effect of the injury. In Obiefuna v. Okoye (1961) 1 All NLR 357 at 360, (1961) 1 SCNLR 144, this court stated as follows:

“Continuance of injury or damage means continuance of the legal injury and not merely continuance of the injurious effects of a legal injury.”

In the case at hand, the respondents’ action coming fifteen years after the Isoko North State Constituency was excised, learned appellant is right, given the protection appellant enjoys under section 2(a) of the Public Officers Protection Act, is not maintainable. It is not about the continuous effects of the excision.

Time begins to run, for the purpose of any suit the respondents are to pursue, from the date of the excision of the constituency by the appellant and not on account of the continued suppression of the right of the people of the constituency to representation. Unless the respondents’ action is commenced within the three months allowed by the statute, their right of action runs out by effluxion of time. See Egbe v. Adefarasin (No. 2) (1987) 1 NSCC (Vol. 18) 1, (1987) 1 NWLR (Pt. 47) 1 and INEC v. Ogbadibo Local Government (2016) 3 NWLR (Pt. 1498) 175 at 208. Accordingly, respondents action commenced outside the time allow by the limitation section is incompetent.

Both courts are wrong to have found otherwise.

It is for the foregoing and more so, the fuller reasons in the lead judgment that I allow the meritorious appeal. I abide by the consequential judgments contained in the lead judgment.

**KEKERE-EKUN JSC:**

This appeal is against the judgment of the Court of Appeal, Benin Division delivered on 28 May 2015, affirming the judgment of the Federal High Court, Warri, delivered on 31 October 2014. By an originating summons filed on 16 May 2014, the respondents as plaintiffs sought the determination of four questions and claimed eight reliefs including reliefs 1, 4, 6 and 7 to wit:

“1. A declaration that by virtue of the mandatory provisions of sections 6, 36, 91, 112 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended), and other enabling laws in that behalf, the Delta State House of Assembly presently consisting of twenty-nine (29) members (which is less than three (3) or four (4) times the number of seats which Delta State has in the National Assembly) is not properly constituted or composed.

4. A declaration that the defendant is enjoined by the mandatory provisions of sections 6, 36, 91, 112 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended) and other enabling laws in that behalf, to restore forthwith the long-suppressed IsokoNorth State Constituency 1 with constituency code No. SC/17/DT in the Delta State House of Assembly and conduct election into the said Isoko-North State Constituency 1 with constituency code No. SC/17/DT for the purpose of electing the member representing the Isoko-North State Constituency 1 with constituency code No. SC/17/DT in the Delta State House of Assembly.

6. An order directing and compelling the defendant either by herself, agents, servants, privies, surrogates, staff or any person acting through the defendant and/or on the instruction or directive of the defendant to restore, forthwith, the Isoko-North State Constituency 1 with constituency code No. SC/17/DT in the Delta State House of Assembly in Isoko-North Local Government Area of Delta State of Nigeria comprising the Ozoro, Ofagbe/Ovrode, Okpe/Oyede, Ellu/Aradhe towns (that is, Ozoro 1, Ozorro 11, Ozorro 111, Ofagbe/Ovrode, Okpe/Oyede, Ellu/Aradhe) so as to bring the composition and numbers of the created, delineated and delimited constituencies in the Delta State House of Assembly in compliance with the mandatory provisions of sections 91 and 112 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended) and other enabling laws in that behalf.

7. An order directing and compelling the defendant either by herself, agents, servants, privies, surrogates, staff or any person acting through the defendant and/or on the instruction or directive of the defendant to conduct election, forthwith into the Isoko-North State Constituency 1 with constituency code No. SC/17/DT in the Delta State House of Assembly for the purpose of electing the member representing the Isoko-North State Constituency 1 with constituency code No. SC/17/DT in the Delta State House of Assembly so as to fill the vacancy in the Delta State House of Assembly and bring the composition and members of the created, delineated and delimited constituencies in the Delta State House of Assembly in compliance with the mandatory provisions of sections 91 and 112 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended) and other enabling laws in that behalf.”

It was supported by a 57- paragraph affidavit with several exhibits attached thereto. The appellant filed a preliminary objection thereto challenging the jurisdiction of the court to entertain the suit on the ground that the suit was statute-barred having not been instituted within three months after the accrual of the cause of action.

The trial court dismissed the objection on the ground that the action, which forms the basis of the respondents’ complaint is a continuing act and therefore the provision of section 2 (a) of the Public Officers’ (Protection) Act is not applicable. All the respondents’ relief except relief 8 were granted. The lower court, as stated earlier affirmed the decision. The appellant is still dissatisfied and has further appealed to this court.

The respondents’ case as reflected particularly in paragraphs 24-30 of the affidavit in support of the originating summons is as follows:

That by virtue of sections 91 and 112 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended), the appellant, INEC is mandated to delineate, delimit and divide every state of the federation including Delta State into such numbers of state constituencies, as is equal to 3 or 4 times the number of federal constituencies within the state. That Delta State consists of 10 federal constituencies and therefore the Delta State House of Assembly can only be properly constituted if it consists of a minimum of 30 or maximum of 40 state constituencies and that each state constituency is entitled to return one member who shall be directly elected to the Delta State House of Assembly. That at the inception of Delta State in 1998 or thereabout, INEC inherited the state and federal electoral constituencies which included Isoko-North State Constituency I with constituency code No. SC/17/DT, which was created sometime in 1991 by the now defunct National Electoral Commission (NEC). That Isoko-North Constituency 1 remained in existence until sometime in 1998 when it was excised and suppressed by the appellant.

That in the general election conducted into the Delta State House of Assembly in 1991, Isoko-North Constituencies I and II were merged into one state constituency. That in the general elections of 1999, 2003, 2007 and 2011 and to date, the Isoko-North State Constituency I was continually suppressed while those who emerged in each election as representing Isoko-North State Constituency were from Isoko-North State Constituency II with constituency code No. SC/18/DT. The 1st plaintiff averred that he is desirous of being elected as the honourable member representing Isoko-North Constituency I with constituency code SC/17/DT, hence the need for the court to grant his reliefs.

Both the trial court and the court below were of the opinion that the injury complained of by the respondents is a continuing one and therefore section 2 (a) of the Public Officers (Protection) Act Cap. P. 41, Laws of the Federation of Nigeria, 2004 is not applicable and that the preliminary objection of the appellant was not sustainable. In other words, that the action was not statute-barred. On further appeal to this court, the appellant has raised 4 issues for determination as follows:

“1. Whether the appellant is not protected by section 2(a) of the Public Officers Protection Act, Cap. P. 41, Laws of the Federation of Nigeria, 2004 having regard to the circumstances of this case. (Ground 1)

2. Whether the Court of Appeal was right in the circumstances of this case in holding that there is no further need nor is it necessary for the appellant restoring the suppressed constituency to resort to section 115 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended) dealing with the alteration of state constituency boundaries in accordance with section 114 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended). (Ground 2).

3. Whether the Court of Appeal was right in relying on its judgment in the case of Oju Local Government v. I.N.E.C. (2007) 14 NWLR (Pt. 1054) 242 having regard to the circumstances of this case. (Ground 3).

4. Whether the Court of Appeal was right in ascribing probative values to exhibits 3, 4 and 5 and in holding that the constituency under consideration had been in existence along with other constituencies with election held therein prior to the year 1999 when appellant excised the respondents and refused to conduct elections into the constituency. (Ground 4)

At this juncture, I must state that before now, my learned brother, Sidi Dauda Bage JSC, had obliged me with a copy of the judgment just delivered. I am in complete agreement with his reasoning and conclusion that the appeal is meritorious and should be allowed. My comments hereunder are in demonstration of my support of the lead judgment and for emphasis. They are in respect of issue 1.

Learned counsel for the appellant submitted that from decided authorities, in order to determine whether an action is statute-barred, the court will look at the writ of summons and statement of claim to determine when the wrong which gave rise to the plaintiff’s cause of action was committed, and compare it with the date of filing of the writ of summons or originating summons, as the case may be. That in the instant case, the Isoko-North State Constituency I was excised and suppressed in 1998 while the action was not filed until 16 May 2014, well over 15 years after the cause of action accrued. Relying on Sylva v. Independent National Electoral Commission (2015) All FWLR (Pt. 810) 1121, (2015) 16 NWLR (Pt. 1486) 576 at 630; Ajayi v. Adebiyi (2012) All FWLR (Pt. 634) 1, (2012) LPELR-7811, (2012) 11 NWLR (Pt. 1310) 137; he submitted that the respondents’ suit filed many months outside the 3 months provided for in section 2 (a) of the Public Officers (Protection) Act, was statute-barred and therefore incompetent. He argued that the finding of the court below to the effect that the injury complained of was a continuous act in respect of which time did not run, has the effect of defeating the essence of the limitation provided for under section 2 (a) of the Public Officers (Protection) Act. He argued that the respondents’ cause of action was spent, as the Isoko-North State Constituency I was extinguished pursuant to section 2 of the Transition to Civil Rule (Political Programme) Decree No 1 of 1996. He submitted that the suppression occurred once in 1998 and that non-conduct of election into the constituency in subsequent elections cannot be said to amount to continuous suppression. He referred to the recent decision of this court in INEC v. Ogbadibo Local Government & Ors. now reported in (2016) 3 NWLR (Pt. 1498) 175 at 205, paragraphs B-G in urging the court to hold that the suit is statute-barred and to strike out same.

In response, learned counsel for the respondents contends that the act of excising, suppressing and abandoning Isoko-North State Constituency No. 1 with constituency code No. SC/17/DT in the conduct of elections into the Delta State House of Assembly still continues and subsists till date. He submitted that in the circumstances section 2(a) of the Public Officers (Protection) Act does not avail the appellant. He urged the court to uphold the concurrent findings of fact by the two lower courts to the effect that the averments in paragraphs 26, 27, 28, 29 and 30 of the affidavit in support of the originating summons disclose the continuous suppression of the constituency in dispute. He argued that the findings have not been shown to be perverse and should not be disturbed by this court.

He sought to distinguish the facts of INEC v. Ogbadibo Local Government & Ors. (supra) from the facts of this case on the ground that in the instant case, the respondents had specifically disposed to facts showing that the suppression of the constituency continues till date. He submitted that in Ogbadibo’s case there were no averments showing the continued suppression of the constituency. He also noted that the court held that where there is continuance of injury or damage, a fresh cause of action arises from time to time as often as damage or injury is caused. That in Ogbadibo’s case this court found that in the absence of evidence of continuous damage, the cause of action had long ceased since 1996 when the Otukpa State Constituency was excised, the suit filed on 25 October 2011 and was therefore statute-barred.

He submitted further, the Public Officers (Protection) Act will not apply where the public officer acted in bad faith and without legal justification, as in this case. He relied on several authorities including: Egbe v. Alhaji (1990) 1 NWLR (Pt. 128) 546, (1990) SCNJ 41 at 68; C.B.N. v. Okojie (2004) 10 NWLR (Pt. 882) 488 at 523, paragraphs B-D; Offoboche v. Ogoja Local Government (2001) FWLR (Pt. 68) 1051, (2001) 16 NWLR (Pt. 739) 458 at 485, paragraphs A-D.

Section 2(a) of the Public Officers (Protection) Act provides:

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

(a) Limitation of time: The action, prosecution or proceeding shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of, or in the case of a continuance of damage or injury, within three months next after the ceasing thereof.”

The effect of the above provisions as with any other limitation laws is to foreclose the right of action of a litigant if his claim is not initiated within the stipulated time. In other words, although he might have a competent cause of action, his right to ventilate his grievance before a court of law may be curtailed by the provisions of a statute of limitation such as the Public Officers (Protection) Act. See: Aremo II v. Adekanye (2004) All FWLR (Pt. 224) 2113, (2004) 13 NWLR (Pt. 891) 572; Ekeogu v. Aliri (1991) 3 NWLR (Pt. 179) 258; Egbe v. Adefarasin (No. 2) (1987) 1 NSCC (Vol. 18) 1, (1987) 1 NWLR (Pt. 47) 1; Ibrahim v. Lawal & Ors. (2015) All FWLR (Pt. 799) 990, (2015) 17 NWLR (Pt. 1489) 490.

It is settled law that for the purpose of the limitation of action, time begins from the moment the cause of action arose or accrued. Time begins to run from the time when there is in existence a person who can be sued and all facts have happened which are material to be proved to entitle the plaintiff to succeed.

See: Hassan v. Aliyu (2010) All FWLR (Pt. 539) 1007, (2010) 17 NWLR (Pt. 1223) 547. In paragraph 25 of the affidavit in support of the originating summons, it is averred as follows:

“The Isoko-North State Constituency 1 with constituency code No. SC17/DT created by the defendant’s predecessor - National Electoral Commission (NEC) has been existing intact alongside other constituencies in the Delta State House of Assembly. It was in 1998 or thereabout when the defendant was preparing to conduct the general election into the Delta State House of Assembly that the Isoko-North State Constituency Code No. SC/17/DT was excised and suppressed by the defendant.”

(Italicizing mine) *It is clear from the averment above that in 1998 when the Isoko-North State Constituency 1 was excised or suppressed, there was in existence a person who could be sued (the appellant herein) and all the facts had happened that were material to be proved to entitle the respondents to pursue their grievance in court. They failed or neglected to take any steps to redress the wrong allegedly done to them until 16 May 2014, more than 15 years after the cause of action accrued.*

It is correct, as submitted by learned counsel for the respondents that the continuance of the damage or injury constitutes an exception to the general rule. See: Obiefuna v. Okoye (1961) 1 All NLR 357 at 360, (1961) 1 SCNLR 144; Olaosebikan v. Williams (1996) 5 NWLR (Pt. 449) 437 at 456- 457, paragraphs D-H. The issue is whether such continuation of injury has been established in the circumstances of this case.

In my concurring opinion in the recent decision of this court in INEC v. Ogbadibo Local Government (2016) 3 NWLR (Pt. 1498) 175 at 205, paragraphs B-G, I stated as follows:

“The continuance of the damage or injury constitutes an exception to the general rule. It was held in Obiefuna v. Okoye (1961) 1 All NLR 357 at 360, (1961) 1 SCNLR 144 that: ‘continuance of injury or damage means continuance of the legal injury and not merely continuance of the injurious effects of a legal injury.’ See also Olaosebikan v. Williams (1996) 5 NWLR (Pt. 449) 437 at 456-457, paragraphs D-H.

Two salient facts are not in dispute. The first, as averred in paragraph 3(c) of the affidavit in support of the originating summons is that the Otukpa State constituency was excised in 1996. The second is that the originating summons was filed on 25 October 2011, fifteen years later. The legal injury complained of by the respondents was the excision of Otukpa State Constituency in 1996. The act was complete in 1996. The fact that the respondents have since the excision not been represented in their States House of Assembly constitutes the effect of the legal injury they allegedly suffered by that singular act. The legal injury occurred once. The respondents therefore ought to have instituted their action within three months of the excision. Having slept over their rights for fifteen years, by virtue of section 2 (a) of the Public Officers Protection Act, they lost the right to enforce their cause of action by judicial process.

The suit was statute-barred and the trial court lacked jurisdiction to entertain it. Similarly, the lower court lacked jurisdiction to entertain the appeal arising from the incompetent proceedings.”

(Italicizing mine)

*The respondents before us have sought to distinguish the facts of INEC v. Ogbadibo Local Government (supra) from the facts of this case on the ground, inter alia, that facts alluding to the continuation of the injury were deposed to, as opposed to Ogbadibo’s case where there was no evidence of the continuing injury. I adopt and rely on my finding in Ogbadibo’s case reproduced above in respect of the instant appeal. Although the respondents averred that the Isoko-North State Constituency 1 was continuously suppressed in 1999, 2003, 2007, 2011 and till date, the fact of the matter is that the excision occurred only once in 1998 and they took no steps to seek redress at the time.*

The act was complete in 1998. I am therefore of the considered view that the exception to section 2 (a) of the Public Officers (Protection) Act did not avail them. The effect of the failure of the respondents to institute their action at the trial court within three months of the excision or suppression of Isoko-North State Constituency 1 with state constituency code SC/17/DT is that they lost their right to judicial relief. The suit filed on 16 December 2014, more than 15 years after the cause of action accrued was statute-barred and the trial court had no jurisdiction to entertain it.

This is therefore a proper situation in which to interfere with the concurrent findings of the two lower courts. For these and the more elaborate reasons advanced in the lead judgment of my learned brother, Bage JSC, I hold that the appeal is meritorious and is accordingly allowed by me.

I abide by the consequential orders made in the lead judgment including the order for costs.

**EKO JSC:**

I read in draft, the judgment just delivered in this appeal by my learned brother, Sidi Dauda Bage JSC. I am in agreement with the judgment. I wish to add few comments in support of the judgment. The case of the respondents, as the plaintiffs at the trial court, is that their Isoko North State Constituency - constituency code No. SC/17/DT existed until it was suppressed by the Civil Rule (Political Programme) Decree No. 1, 1996, that the appellant, Independent National Electoral Commission (INEC), since 1999 consistently refused to acknowledge the existence of the constituency for the purpose of conducting elections to elect a member representing the constituency into the Delta State House of Assembly. And consequently, that the Delta State House of Assembly (DTHA), because no election has been conducted in the suppressed constituencies in the state, has not been properly constituted, as required by section 91 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended) which provides thus:

“91. Subject to the provisions of this Constitution, a House of Assembly of a State shall consist of three or four times the number of seats that state has in the House of Representatives divided in a way to reflect, as far as possible, nearly equal population:

Provided a House of Assembly of a State shall consist of not less than twenty-four and not more than forty members”.

It was averred at the trial court that presently, Delta State House of Assembly (DTHA) has only 29 members instead of 30 members, and that Delta State with 10 federal constituencies should have a minimum of 30 members. On this ground they posited that the Delta State House of Assembly, by dint of section 91 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended), is not properly constituted because of the suppression of their constituency.

INEC, the only defendant at the trial court, had invoked the provisions of section 2(a) of the Public Officers (Protection) Act, 2004 and raised its preliminary objection to the competency of the suit. Their contention was that the suit was thereby statute barred. The trial court overruled the objection. At pages 204 and 205 of the record of appeal, the trial court held that the act of suppressing the constituency could not be said to have been closed or ceased, but one to be seen as a continuing injury and therefore a live issue. It accordingly dismissed the preliminary objection. The appeal of INEC to the Court of Appeal was on 28 May 2015, dismissed. The decision of the trial court, delivered on 31 October 2014, was affirmed, hence the further appeal to this court.

The cause of action was the suppression of the Constitution by the 1996 statute. Since then the constituency had remained suppressed. My understanding of the verb “suppress” is that it means putting a stop to, or prohibiting or preventing (something) from being seen, heard of, known or discussed. See Black’s Law Dictionary 9th Edition; Oxford Advanced Learner’s Dictionary. Thus as admitted by the respondents, as the plaintiffs, their constituency was forcefully, by statute, prevented or prohibited from existing since 1996, and since then it has never existed. I should think that what the legislature did in 1996 was a once-for-all-action act or action that stopped, prevented and/or prohibited the existence or further existence of the constituency. The statutory act of the suppression of the constituency has produced the resultant or existing situation whereby the constituency that hitherto existed, no longer exists.

The effect is the now non-existence of the constituency. It was the enactment of the 1996 statute that was the cause of the present effect. It appears to me that the two courts below had confused the continuance of legal effect with continuance of legal injury.

The court below had, at pages 652-653 of the record of appeal, alluded to the continuation of the legal effect of the statutory suppression of the constituency and held that it has resulted in the under-representation of the plaintiffs/respondents and the improper constitution of the Delta State House of Assembly. It also offered its panacea thus:

“The cure to this lapse is simple, it is for the appellant to employ the provisions of section 112 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended) and to comply with the mandatory provisions stipulated therein”.

This treatment or panacea does not address the issue: whether the suit as constituted was statute-barred? The suit in my firm view is statute-barred.

The cause of action was the suppression of the constituency by statute. It arose in 1996 at the promulgation of the Civil Rule (Political Programme) Decree, No 1, 1996. The legal effect was/is the immediate prohibition, prevention and/or ceasation of this constituency that, hitherto the promulgation of the Decree, existed. Section 2 (a) of the Public Officers (Protection) Act provides:

“Where an action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any act or law or of any public duty or authority or in respect of any such act or law, duty or authority, the action, prosecution or proceeding shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of or in case of continuance of damage or injury within three months next after the ceasing thereof”.

There being no ambiguity in those clear provisions of the limitation statute, the courts below were in error when they failed, refused or neglected to hold that the suit of the respondents, as plaintiffs at the trial court, was statute-barred.

Let me comment briefly on the attempted panacea offered by the court below. I had earlier reproduced section 91 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended). I shall now reproduce sections 112, 113, 114 and 115 of the same Constitution to show that the panacea offered by the court below was a mere scratch of an under dose. The sections provide:

“112. Subject to the provision of sections 91 and 113 of the Constitution, the Independent National Electoral Commission shall divide every state in the Federation into such number of state constituencies as is equal to three or four times the number of federal constituencies within the state.

113. The boundaries of each state constituency shall be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable.

114 (1) The Independent National Electoral Commission shall review the division of every state into constituencies at intervals of not less than ten years, and may alter such constituencies in accordance with the provisions of this section to such extent as it may consider desirable in the light of the review,

(2) The Independent National Electoral Commission may at any time carry out such a review and alter the constituencies in accordance with the provisions of this section to such extent as it considers necessary in consequence of any alteration of the boundaries of the state or by reason of the holding of a census of the population of Nigeria in pursuance of an Act of National Assembly.

115. Where the boundaries of any State Constituency established under section 112 of this Constitution are altered in accordance with the provisions of section 114 of this Constitution, that alteration shall come into effect after it has been approved by each House of the National Assembly and after the current life of the House of Assembly”.

It is therefore clear that INEC alone cannot alter the number of the existing state constituencies in each state without the concurrence of the National Assembly. What this means is that this suit against only the INEC, without the joinder of the National Assembly, would appear wrongly constituted.

Even if the respondents, as the plaintiffs, were aggrieved by the omission, failure, refusal and/or neglect of INEC to include this particular constituency in the list of suppressed constituencies it submitted to the National Assembly vide its letter dated 2 June 2004, I still remain resolute in my view that this action taken out on 16 May 2014, was statute-barred, the action not having been instituted within 3 months after the said letter of 2 June 2004. Reliefs 2,3,4,5,6,7 and 8 which are directly erected on the said omission, failure, refusal and/or neglect of INEC to include this particular constituency in the list of suppressed constituencies in 2 June 2004, to the National Assembly for its bi-cameral approval, are frontally caught by section 2(a) Public Officers (Protection) Act. And if that also is the cause of action there is no way the suit, including all the reliefs sought, can be saved from the purpose effect of the limitation provision of section 2(a) of the Public Officers (Protection) Act.

In the computation of the period of limitation, the court looks at the processes filed by the plaintiff, which include the writ of summons, statement of claim or statements of facts, to see therefrom when the wrong giving rise to the cause of action was allegedly committed and thereafter comparing it with the date on which the writ of summons was filed. If the period exceeds the period of imitation, then the suit is statute-barred.

See Fred Egbe v. Adefarasin (No. 2) (1987) 1 NSCC (Vol. 18) 1 at page 17, (1987) 1 NWLR (Pt. 47) 1. The instant suit is clearly statute-barred. The time, from the statutory suppression of the constituency in 1996 effected by Civil Rule (Political Programme) Decree No. 1, 1996 to 16 May 2014, is a period exceeding 18 years. The time, from 2 June 2004, when it is alleged that INEC refused, omitted or neglected to include the constituency in the list of suppressed constituency submitted to the National Assembly for approval of their reinstatement up to 16 May 2014, is a period exceeding 10 years. INEC had made no pretensions that, by virtue of its suppression no elections in 1999, 2007 and 2011, to elect constituency representative at the Delta State House of Assembly would be conducted in this suppressed constituency. From the date of the election in 2011 to the date the suit was filed is a period exceeding 3 months permitted by the Public Officers (Protection) Act. The suit is irredeemably statute-barred by operation of section 2(a) Public Officers (Protection) Act. The suit is accordingly struck out.

The trial court, and by extension the Court of Appeal, therefore acted ultra vires when they entertained the suit that clearly was statute-barred. I allow the appeal. The findings of the two courts below are hereby set aside.

Appeal allowed