

## LIMITATION OF ACTION AGAINST PUBLIC OFFICERS IN NIGERIA: PERSONAL INJURY CLAIMS IN PERSPECTIVE

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### Abstract

It is beyond doubt that personal injury results in severe adverse consequences on victims, including incapacitation and diminution of human frame, loss of earning capacity and most times, hospitalisation for an appreciable length of time to the extent that the victim gets shut out by limitation law from seeking redress by the time he becomes psychologically, emotionally and financially stable to commence legal proceedings against the tortfeasor. This legal impediment shields the tortfeasor from liability and disables the victim from seeking redress. This situation further compounds the victim's situation. This paper discusses the legal value of limitation law as it relates to personal injury claims, and posits that the law should be repealed, or amended to provide for extension of time for, or exception of personal injury cases from its application. In order to accommodate the exigencies of the period of recuperation, and take cognisance of window period for, of late manifestation of industrial diseases with particular reference to date of knowledge of the ailment or injury.

**Keywords:** Personal injury claims, limitation of action, action, incapacitation, redress.

### 1.1 Introduction:

Accidents and injuries can negatively impact on a person's life, and may result in permanent disability or loss of expectation of life, loss of amenities, loss of earning capacity and so forth. When a person's injury is the result of the fault of another person or agent, the injured party can institute legal proceedings for appropriate redress. However, an injured party may be hindered from commencing legal action against the tortfeasor immediately, due to prolonged medical treatment and the long term pain he suffers. It is apt to commence this discourse by having a conceptual overview of the operative words and concepts, namely; 'personal injury', 'action' and 'limitation of action'. The Black's Law Dictionary<sup>2</sup> defines the word 'action' as a civil or criminal proceedings, and the term 'civil action' embraces action both at law and in equity. It is important to note that the definition did not differentiate between civil and criminal action. The same Dictionary<sup>3</sup> defines 'personal injury' as any harm caused to a person such as a broken bone, a cut or a bruise, bodily injury. It also includes any harm (including a worsened pre-existing condition) that arises in the

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<sup>2</sup> Garner B.A., *Black's Law Dictionary*, 9<sup>th</sup> Edition (USA: West. a Thomson Reuters), 2009, p.32

<sup>3</sup> Garner B.A., *Black's Law Dictionary*, 9<sup>th</sup> Edition (USA: West. a Thomson Reuters), 2009

scope of employment. Serious bodily injury is the serious physical impairment of the human body, especially bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement or protracted loss or impairment of the functions of any body part or organ. Personal injury is also referred to as<sup>4</sup>:

...every kind of harm and disadvantage which flows from physical injury other than the loss of money or property. It therefore necessarily includes the loss or impairment of the integrity of the body; pain and suffering, both physical and mental loss of the pleasures of life, actual shortening of life and mere discomfort and inconvenience.

In this paper, personal injury shall be examined, in the light of its immediate and long term consequences on the victim and how these consequences impede his ability to seek redress within the time frame allowed by law. The concept of 'limitation of action' is statutory based. The period within which certain actions can be instituted is defined by statutes referred to as statutes of limitation. Time begins to run from the date of cause of action<sup>5</sup>. The applicable law for the purpose of computation of time is the law in force at the time the cause of action arose, and not the time the jurisdiction of the court is invoked<sup>6</sup>. This is determined by looking at the prescribed time frame in the relevant statute and viewing same against the date the tort was committed and the date the action was instituted, as gleaned from the writ of summons and statement of claim<sup>7</sup>.

In *Archianga v A-G AkwaIbom State*<sup>8</sup>, Garba J.C.A. of the court of Appeal said<sup>9</sup>:

In law, the period of limitation begins to run from the date on which the right or cause of action accrued to the party entitled to it and against another who is responsible for the grievance in respect of which the cause of action arises. To determine whether an action or cause of action is statute barred, all that is required for the court to do is to examine the writ of summons or other initiating process of the action and the statement of claim wherein the facts as to the date when the wrong complained of and giving rise to the cause of action was committed and then comparing it with the date on which the writ of summons or other process initiating the action was filed.

Any legal proceedings instituted after the specified time frame is statute barred and incompetent in law. Once an action is statute barred, a plaintiff who would otherwise have had

<sup>4</sup> Dennis Odigie, *Law of Torts (Text and cases)* (Benin City, Ambik Press Limited, (2008) at page 493

<sup>5</sup> Nwadialo Fidelis, *Civil Procedure in Nigeria*, Lagos, University of Lagos Press, 2<sup>nd</sup> Ed, 2000, p.29, See also *Lasisi v. A-G Oyo State* (1982) 4 S.C 1

<sup>6</sup> Nwadialo Fidelis, *Civil Procedure in Nigeria*, Lagos, University of Lagos Press, 2<sup>nd</sup> Ed, 2000, p.30

<sup>7</sup> *Min, F.C.T v Mononial Hotel Nig Ltd.* (2011) 9 NWLR (Pt.1252) 272

<sup>8</sup> (2015) 6 NWLR (Pt.1454) 1 at 55

<sup>9</sup> .At page 55

a cause of action loses the right to enforce it<sup>10</sup>. In *Attorney General, Rivers State v Attorney General, Bayelsa State*<sup>11</sup>, the court said;

The general principle of law is that where a statute provides for the institution of an action within a prescribed period, the action shall not be brought after the time prescribed by such statute. Any action that is instituted after the period stipulated by the statute is totally barred as the right of the plaintiff or the injured person to commence the action would have been extinguished by such law.

*Winfield and Jolowicz*<sup>12</sup> justified the rationale for the concept of limitation of action with a two prong explanation, first, that no one ought to be exposed to the risk of stale demands, of which he may be quite ignorant and which, owing to changed circumstances, he may be unable to satisfy. Second, that it may have become impossible or difficult, owing to the loss of documents or the death of witnesses, to establish a defence which would have negated the claim if it had been presented more promptly. Limitation of action provides a complete defence to the tortfeasor, against actions that would otherwise have been clearly sustainable on solid facts. In *Egbe v Adefarasin*<sup>13</sup>, the Supreme Court said that a statute of limitation removes the right of action, the right of enforcement, the right to judicial relief and leaves the plaintiff with a bare and empty cause of action which he cannot enforce<sup>14</sup>. In *Plateau Const. Ltd v Aware*<sup>15</sup>, the Court of Appeal said;

When a defendant contends that the action of the plaintiff is statute-barred, he is raising an issue of jurisdiction of the court concerned on point of law. This is because where an action is found to be statute-barred it means that courts has no jurisdiction to entertain it however meritorious the case maybe. The success of that point takes away the right of action from the plaintiff leaving him with an empty unenforceable cause of action.

In Nigeria, statutes of limitation are found in state laws. For instance, in Edo State, Section 4(1)(a) of the Limitation of Action Law provides; <sup>16</sup>

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-actions founded on simple contract and tort,

Beyond the generalised limitation caveat in State statutes, only a few states like Lagos<sup>17</sup> and the Federal Capital Territory<sup>18</sup> have specific statutory provisions on limitation of

<sup>10</sup> See: *Eboigbe v NNPC* (1994) 5 NWLR (pt.347) 649, *Odubeko v Fowler* (1993) 7 NWLR (pt.308) 637, *Sanda*

*v kukuwa Local Govt.* (1991) 2 NWLR (pt.174) 379, *Ekeogu v Aliri* (1991) 3 NWLR (pt.179) 258.

<sup>11</sup> (2013)3 NWLR (Pt.1340)123, Galadima J.S.C stated at page 144, para.F.

<sup>12</sup> *Winfield and Jolowicz on Tort*, London, Sweet and Maxwell Ltd, 1998, p.886

<sup>13</sup> (1987) 1 NWLR (pt.47)1

<sup>14</sup> *Hon. Minister, Federal Capital Territory v Mononia Hotel Nigeria Limited* (2011) 9 N.W.L.R.(Pt. 1252) 272

<sup>15</sup> (2014) 6 NWLR (part1404) 519 pp. 524 ratios 5, 6, 7

<sup>16</sup> Laws of Bendel State, Volume. 4, Cap.89, 1976, as applicable in Edo and Delta State.

action pertaining to personal injury. Under section 9(2) of the Lagos State Law, the time limit for personal injury actions is fixed at three years. However, section 35 of the same law exempt people without the requisite legal capacity, namely, mentally incapacitated persons from being caught by the three-year time frame. In respect of this class of litigants, the law time for them to become fit, or have legal representative to represent their interest even after the three-year period. Relevant statutory provisions on this subject are contained in sections 8, 34 and 35 of the statute of limitation law of the Federal Capital Territory, and sections 9, 35 and 36 of the Limitation Law of Lagos State. For ease of reference, we reproduce hereunder the aforementioned sections as follows:

Section 8 of the Limitation Act of the Federal Capital Territory<sup>19</sup> of Nigeria provides;

(1) This section applies to actions claiming damages for negligence, nuisance, or breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under an enactment or independently of a contract or of the provision), where the damages claimed by the plaintiff for the negligence, nuisance, or breach of duty consist of or include damages in respect of personal injuries to a person. -

(2) Subject to the provisions of this section, no action to which this section applies shall be brought after the expiration of three years from the date on which the cause of action accrued.

Sections 34 and 35 of the same Act provide for exceptions on grounds of disability as follows;

34(1) For the purposes of this Act, a person shall be under a disability while he is an infant or of unsound mind.

(2) For the purposes of subsection (1) of this section, but without prejudice to the generality thereof, a person shall be conclusively assumed to be of unsound mind while he is detained in pursuance of an enactment authorising the detention of persons of unsound mind or criminal lunatics.

35. If on the date when a right of action accrued for which limitation is fixed by this Act, the person to whom it is under a disability, the action may, subject to the subsequent provisions of this section, be brought at any time before the expiration of six years from the date when the person ceased to be under a disability or died whichever event first occurred, notwithstanding that the period of limitation has expired.

In the same vein, sections 9, 35 and 36 of the Lagos State Limitation Law provide;

Section 9. (1) This section applies to actions claiming damages for negligence, nuisance, or breach of duty (whether the duty exists by virtue

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<sup>17</sup> Limitation Law of Lagos State, Cap.L. 67, (Lagos), 2003.

<sup>18</sup> .Limitation Act, Cap.522, Laws of the Federal Capital Territory, Nigeria, 2007

<sup>19</sup> Cap.522, Laws of the Federal Capital Territory, Nigeria, 2007

of a contract or of a provision made by or under an enactment or independently of any contract or of any such provision), where the damages claimed by the plaintiff for the negligence, nuisance, or breach of duty consist of or include damages in respect of personal injuries to any person.

(2) Subject to the provisions of this section, no action to which this section applies shall be brought after the expiration of three years from the date on which the cause of action accrued.

Section 35 provides for exception of persons under legal disability, including infants and persons of unsound mind as follows:

(1) For the purposes of this Law, a person shall be under a disability while he is an infant, or of unsound mind.

(2) For the purposes of subsection (1) of this section but without prejudice to the generality thereof, a person shall be conclusively assumed to be of unsound mind while he is detained in pursuance of any enactment authorising the detention of persons of unsound mind or criminal lunatics.

Section 36 (1) (a) If on the date when any right of action accrued for which a period of limitation is fixed by this Law, the person to whom it accrued was under a disability, the action may subject to the subsequent provisions of this section, be brought at any time before the expiration of six years from the date when the person ceased to be under a disability or died, whichever event first occurred, notwithstanding that the period of limitation has expired;

A careful perusal of the above statutes reveals a clear absence of provisions relating to 'date of Knowledge of the injury' and 'guidelines for the exercise of discretion' as obtainable in the United States of America to allow personal injury claimants, who would have ordinarily been barred from seeking reparation on account of inability to commence legal action within the statutorily fixed time,

In the United Kingdom, the limitation period for personal injury claims is three years from the date the cause of action accrued, or the date of knowledge, whichever is later in time. The court also has wide discretionary powers under the statute<sup>20</sup>, to hear actions filed outside the limitation period<sup>21</sup>. The effort of the legislatures of Lagos State and the Federal Capital Territory in pioneering the enactment of laws on personal injury is quite commendable. Other States are admonished to incorporate similar provisions relating to period for bringing personal injury claims, and extension of three-year rule for claimants without the requisite mental capacity.

<sup>20</sup> Section 33 of the English Limitation Act of 1980

<sup>21</sup> Vivienne Harwood, *Principles of Tort law* 4<sup>th</sup> Edition, London, Cavendish Publishing Ltd, 2000, 467

## 2.1 Public Officers Protection Act and Personal Injury Claims in Nigeria.

In view of the clear absence of provisions for the three-year limitation period for personal injury actions in most Nigerian State limitation laws, a fall back is made to the Public Officer's Protection Act<sup>22</sup> (hereinafter referred to as POPA). The Act enjoins claimants to commence action against Public Officers or Public Institutions and Authorities within three months. The elasticity in the interpretation and application of the term 'public officer', and whether the Act should be invoked to protect public officers in every situation has given the Public Officers Protection Act (POPA) a controversial dimension. Judicial decisions on the subject show obvious incongruity on the circumstances under which the Act should continue to apply. While some legal authorities show that the public officer's 'motive' at the time the tort was committed is irrelevant, others consider the factor of as being relevant. Before an attempt is made at an examination of the aforesaid differentials, it is apposite to set out Section 2 of POPA which 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 law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such law, duty or authority, the following provisions shall have effect-

(a) 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 a continuance of damage or injury, within three months next after the ceasing thereof.

Provided that if the action, prosecution or proceedings be at the instance of any person for cause arising while such person was a convict prisoner, it may be commenced within three months next after the discharge of such person from prison.

Section 2 of the POPA is a *verbatim* replication of Section 1 of the English 'Public Authorities Protection Act',<sup>23</sup> except that while the English Law bears *Public Authorities Protection Act (PAPA)* the Nigerian Act bears *Public Officers Protection Act (POPA)*. Under the English Act, only Public Authorities are protected, to the exclusion of individuals in public service. In *Griffiths & Anor v Smith & Ors*<sup>24</sup>, Lord Porter said;

The wording of the section is in very general terms, but certain limitation by decisions, one at least of which is binding upon your Lordships' House. In the first place, though the word 'person' is used, not every person is protected. It is a 'Public Authorities Protection Act' and not a 'Persons Protection Act' and, therefore, the body to be protected must be a public authority.

<sup>22</sup> Hereinafter referred to as POPA

<sup>23</sup> Of 1863, Laws of England

<sup>24</sup> (1941) 1 ALL ER 66

It is submitted that the replacement of Authorities with Officers in the Nigerian Legislation is needless and infact designed to unduly, shield public officers from being answerable for their misdeeds. This is a clog in the wheel of justice. An amendment is suggested to replace 'Officers' with 'Authorities'

### 3.1. Who is a Public Officer under the Nigerian Limitation of Action Statutes?

The use of 'Public Officers' in the Nigerian statute in place of 'Public Authorities' in the English Statute makes the Nigerian statute broader in scope. This fact was judicially acknowledged in *Ibrahim v J.S.C*, where Wali J.S.C said<sup>25</sup>

I agree entirely that the provisions of our Public Officers (Protection) Law, 1963 are clearly broader in operation and patently cover a wide class of person, such as an authority, an artificial person would not and cannot include a natural person. This seems to me to explain the admittedly "vast difference" between the meaning of the words "any person" in the Public Officers (Protection) Law, 1963 as against their meaning in the English Public Authorities Protection Act, 1893. Whereas the words "any person" in the former law is referable to both natural and artificial persons, they only cover public authorities in the United Kingdom Act.

In the same judgment, Iguh J.S.C said<sup>26</sup>;

It seems to me that to hold that the Public Officers (Protection) Law only covers public officers as individuals or as natural persons only will tantamount to an amendment of the relevant law by the addition of the words "as individuals", after the words against "any person".

The Interpretation Act<sup>27</sup> defines 'person' as including any company or association of body or persons corporate or incorporate, while 'public officer' or 'public department' is defined as extending to or including every officer or department invested with or performing duties of a public nature, whether under the immediate control of the Governor General, or the Governor of a State. Section 3 of the Interpretation Law<sup>28</sup>, defines the word 'person' as including any company or association or body of persons corporate or incorporate. The same statute defines a public officer or public department as;

...extending to and including every officer or department invested with or performing duties of a public nature whether under the immediate control of the president or the Governor of Northern Nigeria.

The aforementioned intent and purpose of the statute were articulated by the Supreme Court in *Ekeogu v Aliri*<sup>29</sup>, where Uwais J.S.C commented on section 2 of the Public Officers Protection Law thus<sup>30</sup>;

<sup>25</sup> At page 46

<sup>26</sup> (1998)14 NWLR(Pt.584)1 at 45

<sup>27</sup> Section 3, Cap.I.23, Laws of the Federaton, 2004

<sup>28</sup> Cap 52, Laws of Northern Nigeria, 1963

<sup>29</sup> (1991) 3 NWLR (pt. 179) 258,

Giving the section its natural and ordinary meaning, it appears to me that it was designed to protect;

- a. A Public Officer
- b. against any action, prosecution or other proceeding and
- c. for any act done in pursuance or execution or intended execution of any law, or public duty or authority or
- d. for any alleged neglect or default in the execution or intended execution of any law, duty or authority.

In Nigeria, the Public Officers Protection Act is so widely applied that apart from providing protection to public officers, it covers government institutions, Ministries, Departments and Agencies. In *Okoh v The Nigerian Navy*<sup>31</sup>, Adekeye J.C.A of the Court of Appeal, said<sup>32</sup>;

The definition of any person in the Public Officers Protection Law cannot be read as meaning any person in any limited sense as referring to artificial person or human beings. It includes artificial person such as corporation sole, company or any body of persons/corporate or unincorporated. They extend to to public bodies, artificial institutions or persons cited by their official names or titles.

The Supreme Court aptly summarised the foregoing in *Adigun v Akande*<sup>33</sup>, where Karibi-Whyte J.S.C said

The words of this section appear to me unambiguous and clear, it relates to actions against public officers or authorities for acts done, or in respect of neglect or default in the execution of their duties. Applying the literal rule of statutory construction, the section applies to “any action against a public officer or authority, without exception as to who or in respect of who the action was instituted. The phrase ‘any action’ must be given its natural meaning.

For the provision of Section 2(a) of POPA to be successfully invoked by the court, the plaintiff must satisfy two condition precedents namely;

- i. It must be established that the person against whom the action is commenced is a public officer or a person acting in the execution of public duties within the meaning of the law;and
- ii. The act done by the person in respect of which the action is commenced must be an act done in pursuance or execution of any law, public duty or authority or in respect of an alleged neglect or default in the execution of any such law, duty or authority.

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<sup>30</sup> At page 273

<sup>31</sup> (2007)1FWLR (Pt.350),

<sup>32</sup> At page495-496,Para G-A

<sup>33</sup> (1993)8NWLR (Pt.313) 516 at 533

Thus, in *Ibrahim v J.S.C*<sup>34</sup>, the court said;

- i. The word 'person' when used in the legal parlance, such as in a legislation or statute connotes both a natural person and an artificial person such as corporation sole or public bodies, corporate or incorporate.
- ii. The word individual in appropriate cases, be construed in law as extending not only to natural persons but to artificial persons
- iii. Any person' in the Public Officers protection law cannot be read as meaning any person in any limited sense, that is to say, as referring only to natural persons or human beings. It admits and includes artificial persons such as company or any body of persons corporate or incorporate.

It is observed that the law on limitation of action against public officers in Nigeria is undoubtedly overbearing on litigants who may first be required to observe pre-litigation procedure and run the risk of having their claims struck out by the court on simple basis of being statute-barred, thereby suffering wrong without a remedy. It is submitted that variation as to time limit be introduced in the Public Officers Protection Act for various injuries resulting from acts or omissions of public officers. A leaf can be borrowed from New York where assaults are actionable within one year, wrongful death within two years, medical malpractice two and half years and ordinary negligence three years. This will instill some degree of calm and composure on the part of the plaintiffs and avoid a mad rush to beat time even when facts supporting their claims have not been fully ascertained<sup>35</sup>. In view of the inclusion of criminal and civil proceedings in the definition of 'action' by the Black's Law Dictionary, it is submitted that the only legal value the limitation law seems to have is that it constitutes a clog in the wheel of justice for the claimant. An outright repeal of the Limitation of action laws in Nigeria is advocated. It is further suggested that since the limitation of action law precludes access to court its purpose is against the spirit of the Constitution<sup>36</sup>. There should be no time bar for institution of civil proceedings, except election petitions which are *sui generis*<sup>37</sup>.

#### 4.1 Exceptions to the Application of the POPA

In the spirit of making the aforesaid law elastic, the Supreme Court has interpreted the Limitation of Action Law in a way that public officers can only be sued after three months, if they acted outside the colour of their office while committing the tort. In *Ibrahim v J.S.C*<sup>38</sup>, Iguh J.S.C said

<sup>34</sup> (1998) 14 NWLR (pt.584) 1 SC

<sup>35</sup> Kwaghkehe, I, 'The Benue State Internal Revenue Service Law 2010 and Fiscal Federalism in Nigeria: Emerging Legal Issues' (2012) *Benue State University Journal of Commercial and Property Law*, Vol.1, No.1, 163

<sup>36</sup> of the Federal Republic of Nigeria, 1999 (as amended)

<sup>37</sup> Iorember I.N, 'Limitation of Action in Respect of Contract, Tort, and Recovery of Land in Benue State: The Propriety of and the Lawyer's Duty', (2012) *Benue State University Law Journal*, Vol.4, No.1, 90

<sup>38</sup> *Supra*

It can therefore be said that section 2 of the public officers (protection Law 1963) gives full protection or cover to all public officers or persons engaged in the execution of public duties who at all material times acted within the confines of their public duty. Once they step outside the bounds of their public authority and are acting outside the colour of their office or employment or outside their constitutional duty, they automatically lose protection of that law. In other words, a public officer can be sued outside the limitation of three months if at all times material to the commission of the act complained of, he was acting outside the colour of his office or outside his statutory or constitutional duty. Where however he acted within the colour of his office, he can only lose protection of the limitation period if he is sued within three months of the act, neglect or default complained of.<sup>39</sup>

However, what constitutes 'acting outside the colour of office' was not defined by the court in the judgment under reference. The above definition is also absent from the Interpretation Act. It is apt to note that the definition of 'public officer' and the application of the POPA do not include subsidiaries of government Ministries, Agencies, and Departments, especially Limited Liability Companies<sup>40</sup>.

### 5.1 The Quest for the Legal Value of POPA

The rationale for the choice of the "three-month" time frame by the Nigerian legislature within which actions against public officers must be commenced is not clear. Since judges also make laws as decided in *Paul Ebe v Albert Nnamani*<sup>41</sup>, the courts appear to have provided a justification or rationale for the statute. In this connection, the courts have recognised certain situations to which the Act cannot apply. These include when the act complained of borders on recovery of land<sup>42</sup>, declaratory reliefs relating to derivative funds<sup>43</sup>, contract cases<sup>44</sup>, acting maliciously or outside the colour of office or outside the constitutional or statutory duty<sup>45</sup>, and when the act complained of borders on errors committed, or amounts to an infraction of the claimant in the performance of a judicial duty, such as the delivery of judgment by court or court martial<sup>46</sup>. The Supreme Court has held that the Act was not intended to vent injustice on

<sup>39</sup> See *Nwankwere v Adewunmi* (1967) NMLR 45 at 49, *Atiyaye v Perm. Sec, Min of L.G, Borno State* (1990) 1 NWLR (pt. 129) 728, *Ekeogu v Aliri* (1990) 1 MWLR (pt. 126) 345.

<sup>40</sup> *Federal Board of Inland Revenue v Integrated Data Services Limited* (2009) 8 NWLR (Pt. 1144) 615

<sup>41</sup> (1997) 7 NWLR (Pt. 513) 479, where Onalaja J.C.A (as he then was) cited the dictum of Lord Denning in *Packer v Packer* (1958) p.15 at 22 as follows; "What is the argument on the other side? Only this, that no case has been found in which it has been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before, we shall never get anywhere. The law will stand still whilst the rest of the world goes on and that will be bad for both".

<sup>42</sup> *Olateju v Comm. Lands and Housing, Kwara State* (2010) 14 NWLR (Pt. 1213) 297

<sup>43</sup> *A-G, Rivers State v A-G, Bayelsa State* (2013) 3 NWLR (1340) 123

<sup>44</sup> *F.G.N v Zebra Energy Ltd* (2002) 18 NWLR (Pt. 789) 162

<sup>45</sup> *Ezeani v Nigerian Railway Corporation* (2015) 3 NWLR (Pt. 1445) 139, See also *Lagos City Council v Ogunbiyi* (1969) 1 ALLNLR 297,

<sup>46</sup> *Nigerian Army v Yakubu* (2013) 8 NWLR (Pt. 1355) 1

claimants, but to protect Public Officers from distraction and unnecessary litigation. In *Sanni v Okene L.G*<sup>47</sup>, the court held;

The main purpose of the Limitation period is to protect a defendant from the injustice of having to face a stale claim in that if a claim is brought a long time after the events in question, there is a strong likelihood that evidence which was available earlier may have been lost, and the memories of witnesses may have faded.

Furthermore, in *Attorney General, Rivers State v Attorney General Bayelsa State*<sup>48</sup>, Galadima J.S.C said<sup>49</sup>:

The Act is intended as much as within the limits of the law to protect a public officer from distraction and unnecessary litigation but never to deprive a party of legal capacity to ventilate his grievance on the face of stark injustice.

The foregoing dictum lacks specificity in the sense that what constitutes ‘unnecessary litigation’ is not defined by the court. Furthermore, it is difficult to determine which litigation would be unnecessary when pleadings have not been exchanged, coupled with the fact that the necessity or otherwise of a case depends not on the time of filing, but whether there is a sustainable cause of action on the facts and circumstances of the case. In *National Insurance Commission v Aminu*<sup>50</sup>, Bada J.C.A of the Court of Appeal, said;

..section 2(a) of the Public Officers Protection Act gives full protection to all public officers who at the material times acted within the confines of their public duty. Once they step outside the colour of their office or outside their statutory or constitutional duty they automatically lose the protection of that law. Where however a public officer acted within the colour of his office, he can only lose protection of the limitation law if he is sued within three months of the act, neglect or default complained of.

In a similar vein, the courts in an attempt to exculpate errant public officers have found themselves in situations that seem to pre-empt matters even when no evidence had been led. Such pronouncements tend to save the defendant the trouble of being called upon to provide a defence to the claim against him. In *Godwin Nwankwere v Joseph Adewumi*<sup>51</sup>, Kolawole J.C.A (as he then was) said;

The law (i.e Public Officers Protection Law) is designed to protect the officer who acts in good faith and does not apply to acts done in abuse of office with no semblance of legal justification. If the plaintiff’s story was true, the defendant did not purport to be acting in the execution of any public duty.

<sup>47</sup> (2005) 14 NWLR (PT.944) 651

<sup>48</sup> (2013)3 NWLR(1340)123

<sup>49</sup> In page 148, paragraph F-G

<sup>50</sup> (2012) 8 NWLR(Pt.1302)330 at 355

<sup>51</sup> (1967) NMLR 45 at 49

The foregoing allusion evidently throws up a number of issues, namely that it would be difficult to ascertain whether the public officer acted outside the colour of his office without giving the claimant and the errant public officer the opportunity to file and exchange pleadings, or even testify irrespective of whether or not the claim was filed within three months. It is clear that the courts have indeed begged the question on the legal value of the Public Officers Protection Act. It is submitted that the crass legislative outlook of the statute which has constrained the courts to resort to judicial palliative and life-support effort to sustain its continued application deserves consolation, especially against the backdrop that “colour of office” or “malice” are not contained in the POPA. On the principle of literal interpretation of statutes therefore, the courts are guilty for the reason that they read into the Act what is not contained therein. It is submitted that the court should always adopt the golden rule in the interpretation of the wordings of POPA in line with the decision in *Ibrahim v J.S.C*<sup>52</sup> where Wali J.S.C said<sup>53</sup>.

Where the provision of a law is clear, words contained therein shall be ascribed their natural meaning. This is the golden rule of interpretation.

Once a strict application of the law is adopted, the courts would be faced with the reality of the fact that POPA works more injustice to litigants than justice, and deserves immediate amendment if not total repeal. There are situations that can keep a prospective claimant off the court, even against his wish within the three-month period. Where a victim, embarks on medical tourism outside Nigeria for better medical attention, or becomes bedridden or incapacitated and confined to one particular place for a time longer than the three month period, he would have been shut out forever due to no fault of his. In *Adigun v Ayinde & 2 others*<sup>54</sup>, the appellant was a staff of the Federal Ministry of Agriculture. On February 10, 1978 whilst on official duty in the Ministry’s vehicle driven by 1<sup>st</sup> respondent, also a staff of the same Ministry, the appellant sustained serious injuries following a serious accident involving the official vehicle along Mokwa/New Bussa Road, Niger State. The appellant aged 33 years at the time of the accident, was hospitalized at the University College Hospital, Ibadan for 18 months, before he was referred to Edinburgh for further treatment. He became paralysed from the waist down to his toes. His permanent disability was assessed at 100%. The appellant instituted an action against the respondents on the 21<sup>st</sup> of January 1981 (about 36 months after the incident) claiming damages for personal injuries. The trial court held that the action was statute barred by virtue of Section 2 of the Public Officers Protection Law of Niger State<sup>55</sup>. On appeal the action was held not maintainable against the respondents who were public officers. In his judgment, Kabiri-Whyte J.S.C said<sup>56</sup>,

The defendant has succeeded on technicality which is not only undeserved but also exposes the injustices in the protection of Public Officers. It is unconscionable that a public officer should be deprived of a remedy he ordinarily would have enjoyed merely because the injury was caused by

<sup>52</sup> (1998) 14 NWLR (Pt.584)1,

<sup>53</sup> .At page 50, para.F

<sup>54</sup> (1993) 8 NWLR (pt. 313) 516

<sup>55</sup> Cap.111, Laws of Niger State

<sup>56</sup> 536 at pages -537, paras. H-A

another public officer, where both of them were lawfully carrying out their duty. Again the public officer was unable to bring the action within the prescribed period because the defendants were undertaking his treatment in accordance with the conditions of service.

In the same judgment, Mohammed J.S.C said<sup>57</sup>,

The three months period provided in the Public Officers Protection Act, cap.379, Laws of the Federation of Nigeria, within which an action of persons acting in the execution of public duties is too short. Preparation for filing a suit nowadays, including the provision for expenses attached to litigation may be difficult to accomplish with three months.

A similar situation arose in *Ekeogu v Aliri*<sup>58</sup>, where the appellant who was the 1<sup>st</sup> defendant was a primary school teacher under the employment of the Imo State Government. On the 2<sup>nd</sup> of December 1985, the appellant flogged the respondent (a female pupil of the primary school) across the face. The canestruck the respondent's on her left eye, and she cried out in pain and anguish and collapsed. The injury blinded the respondent's left eye. On the 20<sup>th</sup> day of July 1987, the plaintiff/ appellant brought an action against the defendant. The defendant raised a defence that the action was statute barred. The trial court found the defendant liable. The trial court's decision was upheld by the Court of Appeal where Owolabi J.C.A said;

..the appellant's act in causing permanent injury to the left eye of the respondent is a felonious act and so the appellant, though a public officer, cannot take cover under the Public Officers' Protection Law, Cap.106.

However, on further appeal to the Supreme Court, the plaintiff's case as decided by the trial court was reversed. In his judgment, Kawu J.S.C said<sup>59</sup>;

After all what was in issue at that stage of the proceeding was not the liability of the appellant but whether the action was maintainable or not it is only after the action has been instituted that the appellant's conduct can be probed.

It is excruciatingly painful that a young girl of school age could lose an eye due to the negligent act of a teacher, leaving her to contend with pain and suffering, loss of the use of one eye and probably the attendant continuing medical expenses, only to be told she has no remedy against the tortfeasor on grounds of legal technicality. Obviously, if POPA had taken cognisance of such exigencies in personal injury claims, the cases of *Adigun v Ayinde*, and *Ekeogu v. Aliri* would have been decided differently. Similarly, if the court had leaned strenuously on the strict application of the POPA in *Lagos City Council v S.A.J.Ogunbiyi*<sup>60</sup> as it did in the aforementioned two cases, the plaintiff would have gone without a remedy. In *Lagos City Council v S.A.J.Ogunbiyi*<sup>61</sup> case, the conductress pressed the bell to signal the bus

<sup>57</sup> at page 537

<sup>58</sup> (1991) 3 NWLR (pt.179) 258,(S.C)

<sup>59</sup> at page 269

<sup>60</sup> (1969) 1 ALL .N.LR.297,

<sup>61</sup> (1969) 1 ALL .N.LR.297

driver to move even when she knew the claimant was standing at the door expecting her (conductress) to give him change, the claimant whose leg was crushed by defendant's bus in the process had to be amputated and was not strong enough to institute legal proceedings against the defendant until much later than three months, would have been shut out litigating the action by POPA. A careful consideration of the Act and the incursion of the extraneous terms of colour of office, malice by the courts reveal. It is an unnecessary piece of legislation. It only provides an escape route for Public Officers and Government Agencies to get away with wrongdoings. It is submitted that the courts should declare the statute a garb of technicality designed to ambush the unsuspecting claimant and unjustly insulate undeserving the Public Officer tortfeasor in the face of glaring and unassailable facts from liability, as shown in *Ekeogu v Aliri*<sup>62</sup>.

### 6.1 Limitation of Statute Laws in other Jurisdictions

Statutes of limitation are more developed in some foreign jurisdictions than in Nigeria. Some basic peculiarities in the relevant foreign statutes have claimant friendly provisions. For instance, cognisance is taken of date of knowledge and wide judicial discretionary powers that exists in favour of claimants. In the United States of America, the period of limitation for the institution of personal injury claims is localised to the various States. While some States failed to adopt the three-year benchmark period, other States have provisions for limitation periods, for personal injury claims. Notably the States of Maine, Missouri and North Dakota have six, five and six years respectively. Others like Florida, Nebraska, Utah and Wyoming have four years each as their limitation period<sup>63</sup>.

The limitation law of Ontario<sup>64</sup> recognises the 'factor of knowledge' in sections 4 and 5 as follows;

Section 4: unless this Act provides otherwise a proceeding shall not be commenced in respect of a claim after the second anniversary of the day on which the claim was discovered.

Section 5(1): A claim is discovered on the earlier of

- (a) The day on which the person with the claim first knew,
  - (i) That the injury, loss or damage occurred
  - (ii) That the injury loss or damage was caused by or contributed to by an act or omission
  - (iii) That the act or omission was that of the person against whom the claim was made, and
  - (iv) That having regard to the nature of the injury loss or damage, a proceeding would be an appropriate means to seek to remedy it.

Furthermore, section 15(2) of the same Statute provides:

<sup>62</sup> (1991)3NWL(R)Pt.179)258

<sup>63</sup> Chart: statutes of limitations in All 50 States, available at <http://www.nolo.com/legal-encyclopedia/statute-of-limitations-state-laws-chart-29941.html>, accessed on 14/1/2017.

<sup>64</sup> Chapter 24, Schedule B of 2002 as amended in 2016.

No proceeding shall be commenced in respect of any claim after the 15<sup>th</sup> anniversary of the day on which the act or omission on which the claim is based took place<sup>65</sup>.

The general standard time frame within which personal injury claims can be commenced is undoubtedly three years.<sup>66</sup>

## 6.2 Observation

It is observed that apart from Lagos State and the Federal Capital Territory, no other State in Nigeria made provisions for limitation period for personal injury cases. The example of the United States of America where the various States prescribed their period of limitation should be adopted by Nigerian States in the absence of the general accepted period of three years. Furthermore, the 'factor of knowledge' which is recognised in foreign jurisdictions is clearly absent in the Limitation Laws of Lagos State and the Federal Capital Territory. The implication is that factory workers who become ill as a result of industrial diseases (such as asbestosis) after a period of three years from the date of disengagement from the job in Lagos State and the Federal Capital Territory would have no cause of action against their former employers. The Lagos State and Federal Capital Territory limitation laws should be amended to accommodate the 'date of knowledge' and 'capacity to institute legal action' so as to conform to international standard best practices. In the same vein other states are enjoined to include the same vein, the other states are enjoined to include personal injury claims in their respective limitation laws.

### 7.1 The Factor of Date of Knowledge

The 'date of knowledge' is the date the claimant knew or ought to have known that he developed an injury as a result of the wrongdoing of others. Thus, if an accident or injury occurred on a specific date and some consequential injuries or diseases may take time to manifest, the date of knowledge will be the date the symptoms began. Equally, it could be the date the claimant suspected the injury to have developed, or the date that a medical diagnosis was made, or an opinion was given of the injury. If a claimant sought medical treatment following an accident and was advised that his injury was minor, and discovered at a later date that the injury was more serious all along, the three-year period would start from the date the symptoms manifested or the date the injury was linked to the accident which in the circumstances would constitute the date of knowledge<sup>67</sup>. In asbestos-related diseases, such as mesothelioma, asbestosis or asbestos related lung cancer which takes up to 20 years to manifest after the original exposure, the limitation period would begin not from the time the claimant was exposed to the asbestos, but the time the symptoms began to manifest or when the disease was diagnosed and linked to the exposure to hazardous, toxic, and chemical substances and fumes that could result in asthma, lung cancer, hearing loss, dermatitis, vibration, white finger.

<sup>65</sup> <https://www.ontario.ca/laws/statute/02124> assessed 14/1/2017

<sup>66</sup> <https://www.google.com/search?q=time+limits+for+personal+injury+compensation+claims&ie=utf-8&oe=utf-8&client=firefox-b&gfe>. Accessed on 14/1/2017

<sup>67</sup> <https://www.google.com/search?q=time+limits+for+personal+injury+compensation+claims&ie=utf-8&oe=utf-8&client=firefox-b&gfe>. Accessed on 14/1/2017

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## 8.1 Concluding Remarks

This work has provided an insight into the basic fundamentals of statutes of limitation and their impact on personal injury litigation against public officers in Nigeria. This paper has identified the inadequacies in existing Nigerian statutes on limitation of action in personal injury cases. It was suggested that the various state legislations should take a cue from the lead already set by Lagos State and the Federal Capital Territory, Abuja by enacting laws on limitation of action for personal injury. Second, it is important to include the concepts of date of knowledge and judicial discretion in our jurisprudence on personal injury. This would provide succour for personal injury victims. It was observed that some personal injury claimants lost out in seeking reparation against tortfeasors on account of the strict application of provisions of the Public Officers Protection Act, whereas this ugly trend would have been averted if all the states of Nigeria had comprehensive statutory provisions on personal injury litigation. The Nigerian legislatures are advised to enact relevant laws on the subject to provide for exceptional situations like date of knowledge and judicial discretion and period of recuperation. This would provide moratorium for litigants who were unable to commence legal action within the prescribed time-frame due to obvious and unavoidable impediments. The statute on public officers' protection should be amended to expand the exception granted by section 2 (2) to include minor, person of unsound mind, and cases of industrial disease. Statutory pre-action notices should be non-applicable to personal injury in cases involving where statutory bodies. It is suggested that the statute be amended to replace the word "Public Officers" with "Public Authorities" so that protection can be limited to public authorities, as obtainable in England where we copied from. An implementation of the foregoing suggestions would bring the legal regime on limitation of action against public officers in line with international best practices.