LIABILITY OF STATE AGENCIES AND PUBLIC OFFICERS VIS-A-VIS SOVEREIGN IMMUNITY AND LIMITATION OF ACTIONS UNDER NIGERIAN LAW

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DECLARATION

I hereby declare that this has been produced by me and is a record of my own research work. It has not been present in any previous application for a higher degree by any body. All quotations and references are indicated in, and sources of information are especially acknowledged by means of list of reference

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DEDICATION

This work is dedicated to the weak, the orphans, the oppressed and the destitute of the human race who were never avail any immunity in the affairs of this world.

CERTIFICATION

This thesis entitled: THE LIABILITY OF STATE AGENCIES AND PUBLIC OFFICERS VIS-À-VIS SOVEREIGN IMMUNITY AND LIMITATION OF ACTIONS UNDER NIGERIAN LAW written by Aliyu Ahmad Liman meets the regulation governing the award of the degree of MASTER OF LAWS of Ahmadu Bello University Zaria and is approved for its contribution to knowledge and literary presentation.

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TABLE OF CONTENTS

		Page
Title Page		
Declaration		i
Dedication.....		ii
Certification		iii
Acknowledgement		iv
Table of Contents		v
Table of Cases		vii
Abbreviations.....		viii
Abstract		ix
CHAPTER ONE:		
INTRODUCTION.....		1
1.1	Historical Background	1
1.2	Objectives of the Research	4
1.3	Natures and Scope of the Research	5
1.4	Research Methodology	6
1.5	Structural Outline	7
1.6	Definition of Terms	8
	References.....	12
CHAPTER – TWO		
SOVEREIGN IMMUNITY		13
2.1	The Doctrine of Sovereign/State Immunity and its Historical Development in Nigeria	13
2.2	Operation of the Doctrine of State Immunity in Nigeria with Reference to State Agencies and Public Officers...	19
2.3	Other Forms of Immunity and their Application in Nigeria.....	23

2.3.1 Legislative Immunity 24
2.3.2 Judicial Immunity..... 28
2.4 Operation of the Immunity on the Head of State / Governor..... 32
Reference 38

CHAPER – THREE

LIMITATION OF ACTIONS 39
3.1 The Doctrine of Limitation of Actions: Its Application and Historical Development in Nigeria ... 39
3.2 Period of Limitation 46
3.2 Operation of Ouster Clause in Nigeria Legislation 54
References 60

CHAPTER –FOUR

LIBILITY OF STATE AGENCIES AND PUBLIC OFFI.. 62
4.1 The concept of liability Under Nigeria Law 62
4.2 Historical Development 63
4.3 Liability of State Agencies..... 65
4.3.1 Liability of State Agencies in Torts 65
4.3.2 Liability of State Agencies in Contracts 68
4.4 Liability of Public Officers 71
4.4.1 Liability of Public Officer in Torts 71
4.4.2 Liability of Public Officer in contracts..... 72
References 75

CHAPTER – FIVE

CONCLUSION, OBSERVATIONS AND RECOMMENDATIONS.

76

5.1 Observations 76

Recommendations 81

Selected Bibliography 83

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19. Federal Tort Claims Act 1946
20. The Official Secrets Act
21. The Parliamentary paper Act.

ABBREVIATIONS

1.	ALL. E.R.	-	All England Report
2.	ALL. N.L.R.	-	All Nigeria Law Report
3.	C.S.C.D.	-	Current Supreme Court Digest
4.	HCNLR	-	High Court of Nigeria Law Report
5.	NCLR	-	Nigeria Constitutional Law Report
6.	NSCC	-	Nigeria Supreme Court Cases
7.	NWLR	-	Nigeria Weekly Law Report
8.	SCNJ	-	Supreme Court of Nigeria Judgment

ABSTRACT

For a long time under the common law the crown enjoyed absolute immunity against any legal proceedings. This principle originated from the philosophy of "Rex non potest pecans," which literally means "the king can do no wrong" and this had a justification under the principle of "divine Rights of the king."

However, with the movement from the "lessie faire" philosophy of government to welfarism, it became necessary for the state to intervene frequently in the lives of the citizens. This created the ground for making inroad into crown immunity. From 1946, the Federal Tort Claims Act came into force in the United States of America and in 1947. the Crown Proceedings Act followed suit in Britain. Both legislations abolished the immunity of the State/Crown from legal proceedings instituted by citizens. Consequently, at about the same time in Nigeria the doctrine of sovereign immunity was firmly in forced, thereby making the sovereign non-liable, even for the wrongs of its servants, both tortuously and contractually.

This research examined the background and development of these immunities, protections and their exceptions in Britain. United States and Nigeria. The study attempt to determine the scope of the statutory immunity and procedural defenses under statures of limitation in Nigeria, especially against the background of the 1970 and 1999 Constitutions and other relevant statutes.

CHAPTER ONE

INTRODUCTION

1.1 HISTORICAL BACKGROUND

This research centres primarily on exploring and analyzing evolutionary trends and development of doctrine of liability of State Agencies and Public Officers in respect of tortious and contractual matters, in Nigeria. In this context it is necessary that special reference to conceptual development of liability in Britain and America, especially the defenses available to public authorities and public officers against such liabilities, be made.

These defenses, in the form of protection were enshrined in the doctrines of sovereign immunity and limitation of actions under Nigeria Law. The doctrines of non-liability of State Agencies and Public Officers were enforced both in pre and post-independent Nigeria. The doctrine had at almost the same time been abolished in Britain and the United States. It is imperative therefore, the study will retrace the historical development of the doctrine in these two jurisdictions, while examining its parallel evolution in Nigeria.

Based on the concept of the principle of non- liability of the Crown even earlier on the Crown Servants) the King cannot be sued in his own Courts. There were famous decisions reached both in Britain and Nigeria Courts on this principle. For instance the case of CANTERBURY (VISCOUNT) Vs. ATTORNEY – GENERAL, where an unsuccessful petition of right by Viscount Canterbury in 1842 failed. Viscount had been a Speaker of the House of Commons in 1834 when some workers in the employment of the crown, were instructed to burn piles of old tallies from the Exchequer. In the course of doing the job, they succeeded in

burning down both House of Parliament and the Speaker's house that was situated thereby. The Speaker's claim by way of petition, against the Crown for the value of his house hold goods was rejected on the ground that the negligence of the workers could not be imputed to the Crown either directly or indirectly. In nutshell, neither the crown nor its Servants were held liable for their negligence.

However, about one hundred and forty years after Viscount Canterbury's case, the principle of non-liability of the State was maintained by the Court as applicable doctrine in Nigeria. The case of RANSOME-KUTI and OTHERS Vs. ATTORNEY – GENERAL OF THE FEDERATION and OTHERS, clearly established this position. In this case, the trial commenced at High court and went on appeal up to the Supreme Court. Both the trial and appellate courts unanimously maintained the application of Common Law principle of Rex non potest peccare (the King can do no wrong) the State or Crown enjoys immunity from legal action and could not be impleaded in its own courts for the tortious acts of its Servants. Rather the Servants or Agents would be held liable personally, and such was the position, until the coming into force of the 1979 Constitution.

This research intends to examine not only the historical application of the doctrines of liability and defenses in tortious and contractual claims against State Agencies and Public Officers but also the conception of the principles. Since the basis of incepting tortious liability, for instance on torts committed by servants of the State/Crown, derived its origin to the application of ancient Bracton's theory: lex non debt easse sub homine sed sub deo et sub lege, quia lex facit regem', meaning that, "the King must not be under man but under God and under the Law, because it is the Law that makes the King". This theory made the Crown Servants and the Crown itself subject to Law, and not above the Law.

Furthermore, another old Common Law principle, similarly reinforcing the same position. The maxim "Rex non potest peccare' is to the effect that the King has no legal power to do wrong. Its exposition was stated in the following words, that "Its true meaning is that the King has no legal power to do wrong. His legal position, the powers and prerogatives which distinguish him from an ordinary subject is given to him by the Law, and the Law gives him no authority to transgress.

Based on these old Common Law principle it can be shown that, there was never a time when Law declares a Crown to be above the Law, despite the early times when the Crown or its Servants were made to be non-liable for acts of the Crown Servants. The time when Crown were made to be liable tortiously, a public officer was made personally liable as a tort feasor even when the public officer was acting within the confines of his authority. Remarkably the Crown/State was made to be expressly liable only with the enactment of Crown Proceedings Act 1947 and Federal Tort Claims Act 1946 in Britain and America respectively. For instance in America, the 1946 Act was enacted at the time when there were calls for reforms. It was the time when even the American judiciary had to pushed the process of reforms. This act significantly compelled the American legislature to not only restrained but to abolish the sovereign immunity, though not in toto. However, unlike in America, the British legislature with its parliamentary sovereignty facilitated the reform when they passed the Crown Proceedings Act 1947. It is intended to examine in greater detail the main features of this doctrine under the two jurisdictions.

In Nigeria the principle of tortious immunity of the State remained firmly inforce. The position was maintained even with the attainment of independence. The successive 1960 and 1963 Constitutions did not alter the position, until the 1979 Constitution abolished the principle. And that 1999 Constitution followed suit. Further, it is equally important to note that even before the constitutional landmark reform, the State Agencies and Public Officers enjoyed some form of statutory protection under various Public Officers Protection Laws and Limitation Statutes.

The Nigerian position in respect of the application of this principle seems to be fluid depending upon the constitution that was in force. Part of the examination of the issues in the research is to unearth these differences, if any, of the legal position between the different constitutions since independence suffice to say at this juncture that the 1960 Constitution was a grant of the imperial legislature of Britain and will no doubt retained without doubt most, if not all, of these doctrines which the English people may hold dear, e.g. the Queen of England still remained the H.O.S. of Nigeria. The 1963 Republican Constitution only slightly departed from the 1960 Constitution. However, the 1979 Constitution brought entirely new innovation on so many principles and doctrines since it was based on the United States experience. It is intended to examine these changes, their scope and efficacy vis-à-vis the famous position.

1.2 OBJECTIVES OF THE RESEARCH

This research intends to unearth the controversies surrounding the liability of State Agencies and Public Officers in Nigeria, through the examination of application of Sovereign Immunity and Limitation of actions under Nigeria Laws. The examination of the issues will be made against the background of the application of the principles in Britain and America.

The research will also consider the inadequacies associated with legal interpretations of key concepts, such as Sovereign immunity, Public Officers, etc. State Agencies being Statutory Creatures could either be extra-Governmental Central, Local or Public Institutions and authorities.

Ultimately, the research delves in extenso to analyse the position of both past and existing literature in respect of liability of State Agencies and Public Officers contractually as well as tortiously, and examine the available defenses that may avail the State Agencies, Public Officers and Public Servants by way of protection, against the liabilities under Nigerian case and Statutory Laws.

1.3 NATURE AND SCOPE OF THE RESEARCH

The approach employed in this research is rather analytical in its perspective. The adoption of this singular approach facilitates the delineation of parameters upon which the scope of this research may be mapped out. These parameters are anchored mainly on the position that, State Agencies and Public Officers may be tortiously and contractually liable. In essence, the analysis is confined to numerous questions of liability in torts and contracts, without necessarily delving into criminal responsibility of State Agencies and Public Officers.

The study evaluates the application of Crown Proceedings Act 1947 and Federal Tort Claims Act 1946 in both Britain and America respectively. Similarly a comparison is to be drawn to the operation of the 1979 and 1999 Constitutions as it involved the question of abolition of governmental immunity in torts and contract. However, it is along this line of analysis that, the study sets to review the

history, development and operation of the doctrines of Sovereign Immunity and Limitation of actions, with reference to Nigeria Law.

The scope of this research was clearly demarcated to a comprehensive question of liability and immunity of State Agencies and Public Officers. However, linking the aspect of ouster clause goes along way to re-defining the question of immunity under Nigerian Law.

And finally, the research is to be steered not only to examine the overall questions of liability and immunity but to provide working solutions under Nigeria Law.

1.4 RESEARCH METHODOLOGY

In undertaking this research, we have to explore a number of research materials which consists of Statutory Books, Law Reports, Journals and Authoritative Text Books.

The research, even though is a review of key concepts such as Sovereign Immunity and Limitation of Action under Nigeria Law, is on the main, analytical. All efforts were to be put to analyse the development of the doctrines of tortious and contractual liabilities of public officers and State Agencies mirrored through the application of defenses of Sovereign Immunity and Limitation of Actions Under Nigeria Law. Similarly were are to examine the extent of the application of these defenses as they involve public officers and State Agencies, and not without considering the nature of such protection provided under Statutes. In nutshell, the essence is really to analyse the operation of the doctrines of Sovereign Immunity as per tortious and contractual liabilities of the duo under the repealed previous

legislation and to study changes that ensued under the operation of the existing relevant legislation in Nigeria.

However, the study is to maintain the same trend in analysing the operation of the doctrine of limitation of actions under Nigeria Law. Mainly emphasising on the impact of legislative changes or amendments that followed the said legislation.

1.5 STRUCTURAL OUTLINE

This research is divided into various segments which consists of five principle Chapters. In the foremost, Chapter one, which is an introduction, elaborates on all the essentials of a research thesis. Also, the historical background of the concepts/doctrines, the analysis of the nature and scope to the objectives of the research, and methodology to be adopted for the research.

However, what follows is the question of defenses available to State Agencies, Public Officers and Public Servants under Nigerian Law. This theme formed the basis and discourse for Chapters two and three. While Chapter two concentrates mainly on the operation and historical development of the doctrine of Sovereign Immunity with reference to developments in both Britain and American jurisdictions respectively. The Chapter delves further in a considerable measure to examine other forms of immunities, i.e., legislative and judicial, as they are applicable exclusively to certain classes of public servants, by virtue of their functions or offices.

Chapter three, however, seeks to examines the operation and historical development of the doctrine of limitation of actions in Nigeria. Referring also to history and application of ouster clauses in Nigerian Legislation.

Chapter four deals with the doctrine of liability, its historical background and development. Focusing on tortious and contractual liabilities of State Agencies and Public Officers under past and existing position of the literature.

Finally, Chapter five is the conclusion, which consist of observations and recommendations with a view to calling for a reform as per the question of liability and immunity as it involved public officers and authorities, in Nigeria.

1.6 DEFINITION OF PUBLIC OFFICERS, SOVEREIGN IMMUNITY AND LIMITATION OF ACTIONS

The analysis in this research is anchored on key legal terms. In the course of reviewing the current positions of literature, we explore the plethora of authorities to find out what definitions were assigned to each concept and discover any inadequacy that might have been associated with any or all the relevant statutes which constitute the centre piece of this study. For instance, the expressions 'Public Officer', in the Public Officers Protection Act was not defined. However, some other concepts are yet to be statutorily define or yet to be judicially interpreted upon. In any case, the emphasis herein, is on pronounced terminologies.

(a) Public Officer

In the case of EKEMODE Vs, ALAUSA[1] , Charles, J. in pronouncing on the status of public officer under the Public Officers Protection Act, stated that;

> The words 'any person' in section 2 are at least wide enough to cover any person whose employment requires him to act pursuant to or in execution or intended execution of any Ordinance or of any Public duty or authority, whatever his Status or Grade... (As) the Legislature has given no guide as to how such a distinction (between officers of the authority and others of a

> lower status) is to be drawn, it is to be presumed that (the distinction) was not intended because it would create an absurd position that, while an officer who, in good faith, directed a wrongful act to be done in discharge of a Statutory duty could be protected, his subordinates who did the act but who did not have the status of officers, such as labourers, perhaps, would not be protected.

However, the Supreme Court in a unreported case of MOMOH Vs. OKEWALE and LAGOS CITY COUNCIL[2], had rather expounded the meaning of the expression, based on Section 18 of the Interpretation Act to incorporate all levels of Public Officers. This definition as propounded by the Supreme Court, was later re-enacted in the provisions of Section 277 of the 1979 Constitution. However, in the said decision, Udoma, J.S.C. held that a Public Officer is one who is appointed by the Public Service Commission of the Federation, or by the Public Service Commission of a State, and such an officer serves either the Federal or the State Public Service. Further, in recent Supreme Court decision, in HON. JUSTICE KALU ANYAH and OTHERS Vs. DR. FESTUS IYAYI[3], Karibi-Whyte J.S.C. in a lead judgment, re-echoed a similar point, thus;

> A Public Officer is a person who holds or has held any public office on or after 31st December, 1983 within the definition of that phrase in Section 277 (1) of the Constitution 1979. Public Service of the Federation means the Service of the Federation in any capacity in respect of the Government of the Federation.

It is not clear in the entire decision, why the Supreme Court has to limit the application of the definition to a date certain, 31st December, 1983 when the constitution itself came into force on the 1st October, 1979. Be that as it may, the definition as propounded in the decision, similarly incorporate all levels of the public officers in the service of the federation or State.

The above decisions however, demonstrate the differences that altogether formed the basis of inconsistencies in judicial authorities, which were to be unified only after coming into force of the 1979 Constitution. I submit that the decision in the Supreme Court Judgment in KALU ANYAH (Supra) even though was decided based on the provisions of the 1979 Constitutions, was rather incomprehensive as also the earlier decisions reached, prior to the 1979 Constitution. And this position was canvassed by the recent decisions that demarcated between public officers and those other officials under public service of the Federation or State.

The controversy extended further, and the expression 'Public Officer' was equally expounded to be exclusive of 'Judicial Officer'. A most recent decision emphasised on natural persons who hold public offices and not public service. Thus, in the Court of Appeal decision in NWAKANMI Vs. MILITARY ADMINISTRATIOR ABIA STATE, the court unanimously held that;

> A High Court Judge of a State, though serves the Public Service of the State, is not a Public Officer of the State but a Judicial Officer as defined in the 1979 Constitution.

However, the definition of the expression 'Public Officer' was not only narrowed down to be exclusive of judicial officer but that a Governor or President, etc, was taken to be outside the definition of a Public Officer therefore, they were not entitle to any protection under the law protecting public officers. In the case of ONYIA Vs. GOVERNOR-IN-COUNCIL [5], it was stated that;

> Neither the Governor nor the Governor –In-Council is 'Public Officer' within the meaning ascribed to that term in the W.N. Public Officer Protection Law, and the Protection afforded to Public Officers by Section 2 of the Law does not apply to them.

(b) **Sovereign Immunity**

The phrase Sovereign Immunity as popular an expression as it is, has not been clearly defined either in Nigeria statutes or in judicial authorities. This situation rather expressed the inadequacy associated with the position of the existing literature in this area of research.

The word sovereign was defined as 'a chief or supreme person'. Sovereign power or sovereignty as power in a state to which none other is superior[6]. While immunity is defined literally to mean 'exemption'. "An immunity is an exemption from having legal relation changed by another"[7]. Subsequently the Black's Law Dictionary defined Sovereign Immunity as "a judicial doctrine which preclude, bringing suit against the government without its consent. Founded on the ancient principle that; "the King can do no wrong" it bars holding the Government or its political sub-divisions liable for the torts of its Officers or Agents unless such immunity is expressly waived by status or by necessary inference from legislative enactment"

(c) **Limitation Of Actions**

This is a doctrine by operation of which certain classes of actions are declared statute-barred when the actions were instituted outside statutory limitation period. Limitation of actions operates based on the provisions of limitation status.

However, Limitation Statutes are defined as;

> Statutes of the Federal Government and various States maximum time periods during which certain actions can be brought or rights enforced. After the time period set out in the applicable statute of limitations has run, no legal action can be brought regardless of whether any cause of action ever existed.
>
> A Statute prescribing limitations to the right of action on certain described causes of action or criminal prosecutions, that is, declaring that no suit shall be maintained on such cause of action, nor any criminal charge be made, unless brought within a specified period of time after the right accrued"[8].

While the Supreme Court in sharing the same perspective, stated in the case of EGBE Vs. YUSUF[9]. That;

> Prima Facie, any statute which imposes a limitation of time on existing right of action is properly a statute of limitations. It is necessary therefore, in each case to look at the particular statute and
> see what its effect is. In the instant case, the public officers protection Law is a Statute of Limitation.

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3. (1993) 9 S. C. N.J., 53 at Page 70

4. (1995) 4 N.W.L.R., 185 at Page 189

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CHAPTER TWO

SOVEREIGN IMMUNITY

2.1 THE DOCTRINE OF SOVEREIGN STATE IMMUNITY AND ITS HISTORICAL DEVELOPMENT IN NIGERIA

From the on set it has to be clarified that the term 'Immunity' is not being used in the research in isolation from its qualifier be it 'Sovereign', 'legislative', etc., it is being used in its wider legal sense to cover not only state immunity but legislative and judicial immunities. In defining the key word 'Immunity' it is rather appropriate to adopt the broader definition recently used and profounded in the strict legal sense as per Obaseki J.S.C. in UWAIFO Vs. ATTORNEY – GENERAL, BENDEL STATE, in the following words thus;

> Immunity is a right and it is preserved by section 6(1)(c) of the Interpretation Act. The learned author of Salmond on Juris-prudence 12th Edition dealing with Legal Right in a wider sense of the term said page 231: – 475951
>
> In this generic sense a legal right may be defined as any advantage or benefit conferred upon a person by a rule of law. Of rights in this sense there are four distinct kinds.
>
> 1. Rights (in the strict sense)
> 2. Liberties
> 3. Powers, and
> 4. Immunities
>
> And at page 231, he says:
>
> The term 'right' is used in the fourth sense to mean an immunity from the legal power of some other person. Just as a power is a legal ability

> to change relations so an immunity is an exemption from having legal relation changed by another. The right of a peer to be tried by his peers for example was neither a right in the strict sense nor a liberty, nor a power. It was an exemption from trial by jury-an immunity from the power of the ordinary criminal courts.

The doctrine of sovereign Immunity by which a state, its agents or agency was immured from liability either tortiously or contractually or otherwise, derived is origin from the old feudal structure of England. The evolution of the archaic principle of 'the king can do no wrong'–signifies that no action could be taken against the sovereign or its servants in its own courts. Later on, when the sovereign deemed that certain legal actions could be allowed to commence against the King or his agents, based on the principle of 'fiat justicia'-that, let justice be done, the sovereign then effected a partial lift of the immunity from certain classes of actions only. The sovereign however, succumbed to inevitable reforms only when it was no longer possible to immunize itself entirely and its teeming servants for wrongful acts committed by the servants as observed by an author that;

> Under the British legal system, until about 1946, existed this obvious unjust legal fiction that the King could not be sued for the torts of his servants. Perhaps it should be pointed out that before 1947, in England, an action could be brought against civil servants as a nominal defendant on the understanding that the Government would satisfy any judgment against him. A Royal Commission submitted as draft Bill of Reform in 1927 but the Bill did not become Law. When in 1946, the House of Lords refused to uphold the fiction of the nominal defendant it became clear that reform was inevitable. What followed was the Crown Proceedings Act, 1947, which subjected the King to private law with some reservations though[3].

The reformation ultimately Proceeded with the enactment of Crown Proceedings Act 1947, which served as the gateway to cause of actions against the Crown and its servants, with few exemptions. The immunity afforded Crown and its servants was, even though not entirely abolished but was virtually removed in that the Crown was subject to suit in the same capacity as a private citizen.

In the United States of America the doctrine of sovereign immunity applied with full force though amidst criticism and condemnation from both bar and bench. Typical in the application of the doctrine is the American Supreme Court decision in DALEHITE Vs. UNITED STATES (supra). The application of the doctrine was stringently maintained to a point that, neither the Government nor its negligent servant might be held liable. That the situation was so devastating that the only redress available to a victim was a congressional exercise of authority through enacting a private legislation to compensate for losses caused by such acts of Government or its agents.

This situation led to call for reform even by such bodies as American Bar Association but without meaningful response, until when the American Judiciary had to intervene that the much needed change ensued despite the enactment and application of Federal Torts Claims Act of 1946. However, there was an observation made by Justice Jackson of the American Supreme Court in a dissenting judgment in DALEHITE Vs. UNITED STATES (supra) to the effect that Government should not be immured from liability where in the course of exercising its discretionary authority does so negligently in circumstances where a private person could be liable. And to so immunize Government or its agents would only result in "the ancient and discredited doctrine that; 'the King can do no Wrong' has not been uprooted; it has been amended to read, 'The King can do only little wrongs'[4].

However, another instance was where a highest court in the state of California pushed a landmark reform in granting a tortious liability claim against the state and its agents in the case of MUSKOPF Vs. CORNING HOSPITAL DISTRICT, where it held that; "the rule of government immunity from tort liability.... must be discarded as mistaken and unjust. Sovereign Immunity in tort is an anachronism, without rational basis and has existed only by the Force of inertia"[5]. Infact there were several number of judicial authorities that sought to regulate the application of the doctrine of sovereign immunity in the United States of America. That by the turn of the Century, the operation of the doctrine of sovereign immunity was under serious attacks and discredited to the point that even the immunity availed the highest public office-holder in the country was questioned on the strength of solid democratic principles and the rule of law. Notably, the Nixon's Watergate case, whereby the Supreme Court of America lifted the defense of executive privilege against President Richard Nixon. The Court compelled the production of tapes (subject matter of the dispute) before the Court despite resistance from the White House. That the order was against the national security interest of the United States. But the Court stood its ground. Ultimately Nixon had to resign from the Presidency.

In America today, neither the American President nor any other public office holder, such as a Supreme Court Justice, a congressional member, etc., is absolutely immuned from liability or from court actions and usually in both private and official capacities. The recently much publicised Monica Lewingsky Saga is instructive in this respect. And of more significance however, is a recent decision of supreme court of America in PAULA JONES Vs. CLINTON, in respect of which case it was reported that:

> The Supreme Court last week ruled that....(trial) could start while Clinton is still in the oval office. The Justices decided 9-0 that a siting President has no immunity against civil suits involving his non official actions, and so a trial of Jones' allegations of sexual harassment by Clinton when he was Governor of Arkansas need not be delayed until after Clinton's terms as President has ended[6].

However, in Nigeria, the position was somewhat different, in terms of both evolution and development of the doctrine as in Britain and America. Since the English Common Law doctrine of sovereign immunity applied in Nigeria like other received English law principle or statute. Since Nigeria was a former British Colony and it was a Common Law jurisdiction. The doctrine applied in Nigeria just as it applied, hook, line and sinker in Britain. This was best illustrated in the light of some famous Nigeria judicial authorities, in the case of RANSOME – KUTI Vs. ATTORNEY – GENERAL OF THE FEDERATION. While at the High Court, Dosunmu, J. even referred to privy Council decision in JAUNDOO Vs. ATTORNEY – GENERAL OF GUYANA, showing that, Crown/State Immunity is a feature of Common Law jurisdictions and, thus, sealed the position, with the following words; "It is clear therefore, that the immunity which the Crown in England enjoyed at Common Law from a claim in tort is imported into Nigeria, even after she has assumed a 'Republican Status""[7]. Subsequently, the same Supreme Court of Nigeria, reached a similar decision and even referred to the aforesaid RANSOME-KUTI's in the case of ADINGUN Vs. AYINDE (supra) and accordingly held as per Karibi-Whyte, J.S.C. that:

> The law governing a case is the law as at the time in force. Before 1st October, 1979 by virtue of section 28 of High Court Law of Niger

> state the Crown/State in our circumstances enjoyed immunity from legal action and could not be impleaded in its own court for the tortious acts of its servants. This common law rule was automatically part of the Common law of Nigeria as a colony and on independence. It was not altered by the nominal change to a Republican Constitution in 1963.

Right from her majesty's reign, the doctrine of Crown/State Immunity maintained its strict application when Nigeria attained its republican status. The 1963 Federal Republican Constitution with its republican spirit, did not alleviate the operation of, nor abolish the doctrine. Until the coming of the 1979 Constitution, which abolished the doctrine by making the public officer, state and its agencies, liable when they breach the civil rights and obligations of a citizen. The precise interpretation of the relevant provisions of the 1979 Constitution was perfectly captured in the case of ADINGUN Vs, AYINDE (supra),as per onu, J.S.C.thus,

> When the case of Mrs. Olufunmilayo Ransome-Kuti and 6 others Vs. Attorney- General of the Federation (1985) 6 S.C. 246 came up, for consideration, the Supreme Court dismissed the appeal of the appellants therein on the 'technical ground that when the cause of action arose in 1978, the Constitution applicable to Nigeria was the Constitution of the Federal Republic of Nigeria 1979, which by the combined operation of its sections 6(6)(b) and 236 invested in the citizen the enforcement of his civil right and obligations vis-à-vis the government had not come into force[9].

However, the same provision were precisely retained in section 6 of the existing 1999 Constitution. This position significantly shows how the doctrine of sovereign immunity were consistently laid to rest, in Nigeria not withstanding the temporary immunity provided for President, Governors etc under Section 308 of the same 1999 Constitution.

Unlike the harrowing experiences, and criticisms, even from the bench, that the doctrine went through in both Britain and America, in Nigeria however, the courts adopted a more austinian positivist attitudes in their interpretations of the application of the doctrine, as evidenced by the above judicial authority.

It is further to be noted that, the only piece of legislation that may be likened to either Crown Proceedings Act or Federal Tort Claims Act, once passed in the Nigeria with a view to regulating the operation of the doctrine, was Petitions of Right Act Cap 149, which was since repealed.

2.2 OPERATION OF THE DOCTRINE OF STATE IMMUNITY IN NIGERIA WITH REFERENCE TO STATE AGENCIES AND PUBLIC OFFICERS

Generally the problem of obtaining redress against State, State Agencies and Public Officers by ordinary citizens, is one that is essentially unsettled for a long time especially in system based on Common Law, like Nigeria. Because of the historical origin of the English Common Law doctrine of Crown Immunity.

Even though we must not neglect the fact that Common Law principles like this one only applied to Nigeria based on the authority derived from local

enactments, e.g., Interpretation Act, Cap 89 Laws of the Federation and various High Courts Laws of State in the Nigerian Federation.

The operation of the doctrine of Crown/State Immunity dated back to pre-independence era, during the reign of Her Majesty in Nigeria and the doctrine continued its operation even after independence, when the Nigeria territory attained its Republican Status, as a Sovereign and Independent State. Now, during this sojourn a number of legislation were passed or enacted, which either maintained or only restrained the operation of State Immunity doctrine. Typical was the Petitions of Right Act, Cap. 149 Laws

of the Federation 1958. This Act, admittedly provided the Nigerian Citizen with power to make claims against government, its agencies and public officers, as provided in section 3 of the Act, that;

> "All claims against the government of the Federation or against any Ministry or Department thereof, being of the same nature as claims which before the commencement of the Crown Proceedings Act 1947 of the Parliament of the United Kingdom might in England have been preferred against the Crown by Petition, manifestation or plea of right may, with the consent of the Attorney- General of the Federation, be preferred in a High Court having original jurisdiction in respect thereof or if the Supreme Court has such jurisdiction, in that court, in a suit instituted by the claimant as plaintiff against such person as the said Attorney-General designate as defendant, for the purpose.[10]

Undoubtedly, this Act did not in any way stall the operation of the doctrine of State immunity rather it only restrained its application.

However, the other relevant enactment were successive Federal Republic of Nigeria Constitutions, essentially the 1963 and 1979 Constitutions which were tested and interpreted upon widely. The 1963 Constitution virtually had not tempered nor interfered with the application of state immunity. More so the 1963 Constitution did not enshrined a similar proviso like the one in Section 6(6) of the 1979 Constitution, which vest Nigerian Courts with powers to question/entertain claims against state, its agents and agencies. The existence then and operation of the Petition of Rights Act, Cap. 149 alongside the 1963 Constitution notwithstanding. Since, the application of Cap. 149 did not abolished the doctrine of state

immunity, as it was decided in the case of RANSOME-KUTI Vs. ATTORNEY – GENERAL OF THE FEDERATION[11] (supra).

Similarly the same position was re-echoed when considering whether or not the doctrine applied after the promulgation of the 1963 Constitution in a subsequent decision in ADINGUN Vs. AYINDE (supra) as per Karibi-Whyte, J.S.C., that;

> The 1963 Constitution made no alteration in substance. It merely substituted the President for the Governor- General, who continued to enjoy the doctrine of the sovereign's immunity from suit derived from the English Common Law. There were no words in any of the Sections of the 1963 Constitution which could even by implication be construed as abrogating the Common Law doctrine of the immunity of the Crown. The provisions of section 6(6)(b) and 236 (1) of the Constitution 1979 are not in the 1963 Constitution. The Common Law rule of the immunity of the Crown was therefore, properly applicable in 1978 when the cause of action arose.[12].

The foregoing was the position under the 1963 Constitution however, with the coming into force of the 1979 constitution a new landscape has been marked, i.e., immense stripping of governmental immunity and making the Constitution itself as the supreme instead of Head of State or President, who was akin to 'Crown, etc. This dispensation re-echoed the doctrine of separation of powers and that powers of the three arms of government were adequately defined and demarcated. And to avoid going out of the context we limit our analysis meanwhile to judicial power, which are most operative and so central to the question of State Immunity and further it is by such judicial power that the erstwhile doctrine, under the Constitutions was completely restrained.

By Section 6 under both the 1979 and 1999 Constitutions, judicial powers were vested in the courts, which powers extend to all matters between persons, or between government or authority and any person in

Nigeria... and these powers are exercisable in respect of not only the parties stated but also in respect of "all actions and proceedings" relating to the said parties and equally for the determination of any question as to civil rights and obligations of persons. However, even though several military regimes enacted 'ouster clause' to oust jurisdictions of regular courts and vests same into tribunals, that notwithstanding. However, it was the 1979Constitution which made it categorically clear that the sovereignty resides neither in any arm of the government nor in the government itself, but rather in the people of Nigeria. Therefore, the arms of the government and/or government or any of its servants are thus, subject to cause of action. This singular aspect put a question mark on Sovereign/State Immunity in Nigeria. However, the temporary immunity

exclusively placed on certain public officer – holders, like President, Governors, etc. is not absolute, it is subject to certain conditions, i.e., they cannot be sued in their personal capacity while in office but they can be made to answer for anything done in their personal capacities while in office after vacating the office. Such public office –holders are suable however, in their official capacities.

It is to be noted that, when considering the doctrine of State Immunity, the attention were usually focused on liability in torts, and it is in respect of which, the large legal battles between state and its agencies on the one hand and citizenry on the other, were fought, as against the liability in contracts, which even the common Law itself settled by making the state directly responsible for any contractual breach on its part.

2.3 OTHER FORMS OF IMMUNITY AND THEIR APPLICATION IN NIGERIA.

It is to be noted that, the reason why judicial and Legislative immunities were not given too much prominence in the study is because, the judicial immunity covers judicial officers alone who, by judicial authorities were not considered to be public officers.

In the case of legislative immunity, its application is restrictive to a narrow but special class of public servants just like judicial officers. However, in a review of Sovereign Immunity its only right, if apart from 'executive/state' immunity, other forms of immunities in other arms, that compliment the executive function are examined. Even though these immunities are applicable exclusively to certain public servants by virtue of their offices and functions.

LEGISLATIVE IMMUNITY.

The doctrine of separation of powers provides for arms of government viz; executive legislative, and judicial. Each of these arms has its own unique form of immunity. So far we have discussed, executive/state immunity. What remained are legislative and judicial immunities, which are essentially similar to each other in terms of operation.

The two separate immunities operates or apply to certain special classes of persons and under certain narrowly defined circumstances in the course of performing legislative or judicial functions alone. For instance, legislative function being so functionally limited is therefore, practically narrow, unlike state immunity which has a widely assorted officers to cover, regardless of level, role or function within the executive realm.

The Nigeria by its political history also being a former British colony, and after attaining a Republican status had its own independent executive and legislative arm, etc. Formerly, the Nigerian polity was running a parliamentary form of government more or less like British parliamentary system. Under the British legislative system, legislative immunities and privileges were more prominent than in the presidential system of government such as that of United States of America. This is because under the latter the constitution is the supreme which usually inclined towards the broader interest of the citizenry than their representatives. A parliamentary or a presidential system of legislature evolves and develop under a safe and secure atmosphere. The legislative members should be protected from liability which may arise from their acts or omission in the lawful discharge of their legislative functions, as provided under the law. This position informed the provision of Legislative Powers and Immunities Act which

the National Assembly are entitle to pass as a Law, and same was guaranteed under the Constitution.

The main statutory duty of legislative members for which immunity shall be provided is seemingly their exclusive powers not only to make or unmake laws but to repeal, confirm, amend or change laws in the overall interest of the nation. Legislative immunity relates not only to the main legislative duty but it extend to all incidental functions relating thereto, such as statement made by members in the House, Publication of House proceedings, freedom from arrest and prosecution for such official acts, etc.

However, whereas the application of legislative immunity as covered under various parliamentary legislation in Britain such as Bill of Right, 1688, the Official Secrets Act, The parliamentary Papers Act, etc. In the United States however, it's the American Constitution that cover legislative, immunity for congressional members. But in Nigeria the application of legislative immunity is covered by a single statute, i.e., Legislative House (Powers and Privileges) Act, that was retained as Cap 208 under Laws of the Federation 1990 and to date no any other Act was re-enacted in that respect.

Notably also is the fact that, the Legislative House (Powers and Privileges) Act, had been in operation even before the 1963 Constitution came into force; under which the Nigeria operated Parliamentary System of government. The Act however, maintained its application even when the subsequent 1979 Constitution came into being. Except for some provisions of the Act, which were declared null and void for inconsistency with the provisions of the said Constitution. For the proper application of Legislative Immunity in Nigeria we shall however, consider relevant functions in respect of which legislative members may require protection, in order to perform effectively. For instance freedom of speech, which is covered under the provision of section 3 of the Act, reads as follows:-

No civil or criminal proceedings may be instituted against any member of a Legislative House:

(a) In respect of words spoken before that House or a committee thereof; or

(b) In respect of words written in a report to that House or to any committee thereof or in any Petition, Bill, Resolution, Motion or question brought or introduced by him therein.

However, from the wordings of the above provision, it appeared that members were free to deliberate on issues without any fear of contravening any law, as they were free from fear of being held liable for defamation of character of any citizen or from committing any offence by their spoken or written words. But as the honourable members continued to enjoy their immunity unchallenged, the Nigeria judicial authority disturbed the status quo. The legislative immunity was questioned through legal actions by alleging contravention of constitutional provisions and Constitutional rights, the question arise as to whether the Constitutional provisions prevail over the legislative immunity or vice-versa?

In the famous decision in ATTORNEY-GENERAL BENDEL STATE Vs. ATTORNEY-GENERAL OF THE FEDERATION and OTHERS,[14] there was an action brought under the original jurisdiction of the Supreme Court by virtue of section 212 of the Constitution, 1979. The National Assembly purporting to act under section 149(3) of the Constitution has enacted the Allocation of Revenue (Federation Account, etc). Act Number 1 of 1982, the purpose of which was to prescribe a basis for distribution of Revenue accruing to the Federation Account between the Federal, State and Local Government; and a formula for the distribution among the States inter se: the proportion of the total revenue of each State to be contributed to the State Joint Local Government Account, etc.

Section 2(1) of the Act Number 1, 1982 provided for the fund to be administered by the Federal Government for the amelioration of ecological problems in any part of Nigeria; "while subsection two thereunder, provided for a fund to be administered by the Federal Government for the development of mineral producing areas in Nigeria", and Section 6(1) of the Act provided for the establishment of a joint Local Government Account Allocation Committee for each State.

By various letters in that behalf, the plaintiff sought a meeting with the 1st defendant for the purpose of the ratification of those aspects of Act Number 1, 1982 which it considered unconstitutional, and failing, the plaintiff commenced this action, seeking a declaration that Section 2(1) of the Act, in so far as it provide, for a fund to be administered by the Government for the amelioration of ecological problems was unconstitutional; equally it was unconstitutional for the Act to make provision for a fund to be administered by the Federal Government for the development of mineral producing areas- Section 2(2) of the Act Number 1 of 1982. That in so far as Section 6(1) of the Act Number 1, 1982 provides for the establishment of a joint Local Government Account Allocation committee for each State it was also unconstitutional and void.

The plaintiff's attacks on Section 6(1) of the Act Number 1, 1982 mentioned above was on the basis that it imposed duties on State functionaries in which the plaintiff thought, the National Assembly could not validly do.

The Supreme Court held inter alia that the National Assembly in creating the funds under Act Number 1 of 1982 purported to act under Section 149(3) of the 1979 Constitution but did not prescribe a formula for distribution as contemplated by that section. Therefore, the creation of both funds and the authorization of the Federal Government to administer them are ultra vires the National Assembly and therefore, void. Further, that Section 6(1) of the Act Number 1 of 1982 is

Constitutional and valid since the National Assembly has the power to make the enactment by virtue of the provisions of Section 149(4) and (6) of the Constitution.

The court went further to decide as par Irikefe, J.S.C. that; "Laudable therefor, as the intention to appropriate funds for agencies may be, this cannot justify the exercise by the National Assembly of Powers it does not have under the Constitution".

Obviously therefore, the powers and immunities of a Legislature in Nigeria are not absolute. They are without doubt subject to Constitution and those rights enshrined thereunder. Thus the Nigeria judicial authority did not stay put in declaring the Legislative House Proceedings the encroached upon the constitutional rights of citizens, as unconstitutional, null and void.

However, these Courts were not vested with powers to interfere in the internal business of Legislative Houses. Therefore, the Courts were enjoined to safe-guard Legislative immunity. In the case of SENATE OF NATIONAL ASSEMBLY Vs. MOMOH, it was decided that; "the judicial powers vested in the court under the constitution do not entitle them to interfere in the internal affairs of the legislative Houses including the conduct of their business". 14 A

2.3.2 JUDICIAL IMMUNITY

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In Britain just like in any other English Law jurisdiction elsewhere, Judges in Court of Law are entitled to special immunity from certain actions, which aggrieved or resulted in injury to litigants or other interested parties, depending the circumstance under which the judges acted or conducted themselves in the proceeding. H.R.W. Wade elaborates on judicial immunity especially in torts that;

> Judges in court of law enjoy immunity from actions in tort. The obeject is to strenghten their independence, so that their decisions may not be wraped by fear of personal liability...

> The fact that the Judge may have exceeded his jurisdiction is irrelevant. But Judge may be liable in damages, like any other judicial officer, if in bad faith he does what he knows he has no power to do15

It is however, to be noted that the same immunity were later extended to cover even Magistrates and justices of Peace in respect of acts done within jurisdiction. Though the immunity were not so extended to cover administrative Tribunals and Panels but some form of statutory protection may avail them under a given statute being that their 'function is basically administrative16

Furthermore, in England what seemed to be the main determinant factor is based on a premise whether an act of a Judge is a judicial function done in a judicial capacity in essence whether its an act coram non Judice.

However, if the act was not coram non judice, the judge or judicial officer has no protection at all. And this has been illustrated in the dictum of Buckley, L.J. in SIRROS Vs. MOORE quoted and referred to by Karibi-Whyte, J.S.C. in a lead judgement delivered in the case of EGBE Vs JUSTICE ADEFARASIN and ANOR, as follows;

> In my judgement, it should now be taken as settled both on authority and on principle that a judge of the High Court is absolutely immune from personal civil liability in respect of any judicial act which he does in his capacity as judge of that court. He enjoys no such immunity, however, in respect of any act not done in his capacity as a judge.17

However, in Nigeria the most relevant legislation that governs judicial immunity are various High Court Laws of the States in the Federation and Magistrates/District Courts Laws. In addition, Federal Constitution 1979, which allows an aggrieved litigant to refer any verdict wrongly reached to Judicial Service Commission/Judicial Advisory Council then. Both the High Court and District Courts Laws immunized a judge or a magistrate from liability for act done

or ordered to be done by him in the discharge of his judicial function, when the act were done within jurisdiction. And the protection still remained when act were done though outside jurisdiction but on bonafide belief that he was acting within jurisdiction. This is in line with the dictum of Hon. Nnaemeka Agu, J.C.A. (as he was then) in the case of ONITIRI Vs. OJOMO, thus,

> It is clear from the wording of the Section that the Judge is fully immune from liability from any act done or ordered to be done by him in the discharge of his judicial duty when he acts within his jurisdiction. He is also fully protected when he acts outside jurisdiction if he believed, in good faith that, he was acting within his jurisdiction... the good or bad faith relates to his belief and not necessarily to his act.18

Now for the purpose of clarity we consider the provision of Section 83 (3) of the District Courts Law of Sokoto State which is similar to all other provisions in the various District laws of States of the Federation, thus ,

> No district judge shall be liable for any act done or ordered to be done by him in the course of any proceeding before him whether or not within the limits of his jurisdiction provided that at the time he, in good faith, believed himself to have jurisdiction to do or order to be done the act complained of 9.

In Nigeria unlike in Britain the emphasis notably is on Judicial officer acting within jurisdiction and if outside his jurisdiction acts in good faith and a mistaken but honest belief that he was performing his judicial function within jurisdiction, he is thus, entitle to protection.

The legislation were adequately pronounced upon by Nigerian Superior Courts. For instance in EGBE Vs ADEFARASIN (Supra), the Supreme Court of Nigeria held, inter alia, that;

> Once a Judge assumes jurisdiction properly and the matters complained or were done within his jurisdiction neither malice nor corruption or bias can render such conduct liable in an action, that is the law. However, the remedy of the aggrieved lies in the appeal to an appellate court exercising supervisory jurisdiction, or on extreme cases resort to public opinion and removal under section 256 of the constitution 1979. Except where the judge acts without jurisdiction can an action lie then he will not be acting in coram judice. But once the judge is within jurisdiction, bad faith, collusion, etc., perse will not deprive him of immunity under section 88(1) [20]''.

The judicial immunity however, is a form of protection provided for judicial officers, meant to ' strengthen their independence, so that their decisions may not be warped by fear of personal liability'. This being the rational behind judicial immunity in Britain, it is not dissimilar however, with the position in Nigeria, as rightly concurred by Karibi- Whyte, J.S.C that;

> It appears to be most necessary that a judge administering justice shall be liable to answer for acts done judicially by him, by the way of action or prosecution; they are only answerable for their judicial conduct in the high court of parliament; and without the existence of this principle, it is utterly impossible that there will be such a dispensation of justice, as would have the effect of protecting the lives or property of the subject.[21]

2.4 OPERATION OF THE IMMUNITY ON THE HEAD OF STATE/ GOVERNORS.

The operation of the state immunity on the Head of State or Governor, who are special class of public office- Holders derived from Constitution. The doctrine has since been in operation from the pre-independence era when it applied to Her Majesty, as a Sovereign Head of colony. Those powers and prerogatives, which among others include power to make laws and sovereign immunity, previously enjoyed by Her Majesty reverted on independence to Nigerian top public-office holders such as president, governors, etc. the position remained unchanged up till date. There is no better way of explaining this aspect, than to reproduce the provision of section 276 of the 1979 Constitution which were reproduced verbatim as section 317 of the 1999 Constitution , thus;

1. Without prejudice to the generality of section 274 of this Constitution, any property, right, liability or obligation which immediately before the date when this section comes in to force was vested in, exercisable or enforceable by or against;

(a). the former authority of federation as representative or trustees for the benefit of the federation;

(b). any former authority of a state as a representative or trustee for the benefit of the state, shall on the date when this section comes into force and without further assurance than the provisions here of Vest in, or become exercisable or enforceable by or against the President and Government of the Federation, and the Governor and Government of the state, as the case may be.

2. For the purposes of this section:

(a) The president and Government of the Federation, and the Governor

And Government of the state shall be deemed respectively, to be successors to the said former authority of the state in question.

The rights conferred in the aforementioned provision, by necessary implication includes state immunity. However, the 1963 Republican Constitution, even though maintained the immunity the doctrine of non-liability of the state and its agents, retained the immunity of both president and Governors, etc. in their private capacity only. It is submitted that the president and Governors succeeded to all the rights, powers and liabilities formerly enjoyed by the Crown.

However, the 1979 and then 1999 Constitution which is the existing legislation that deals with the operation of immunity in relation to President and Governor, etc. The relevant provisions regarding the operation of the State immunity could be found under Section 6 and 308 of the 1999 Constitution. Section 6 removes immunity, in respect of "all matters between persons or between governments or authority and any person in Nigeria, and all actions and proceedings relating thereto, for the determination of any question as to civil rights and obligations of that person". Section 308, however, clothes the President and Governors with partial immunity, as long as they are holding these prestigious positions. The provision is hereby reproduced as follows;

1. Not withstanding anything to the contrary in this constitution but subject to sub-Section (2) of this Section.

a. No civil or criminal proceedings shall be instituted or continued against a person to whom this Section applies during his period of office.

b. A person to whom this Section applies shall not be arrested or imprisoned during that period either in pursuance of the process of any court or otherwise; and

c. No process of any court requiring or compelling the appearance of such a person shall be applied for or issued;

Provided that in ascertaining whether any period of limitation has expired for the purpose of any proceeding against a person to whom this section applies no account shall be taken of this period of office.

2. The provision of sub-Section (1) of this section shall not apply to civil proceedings against a person whom this section applies in his official capacity or to civil or criminal proceedings in which such a person is only a nominal party.

3. This section applies to a persons holding the office of the President or Vice President, Governor or Deputy Governor, and the reference in this section to "period of office" is a reference to the period during which the person holding such office is required to perform the functions of the office.

It is hereby submitted that the above provision is positive in the sense that not only are the President, Vice-President, Governors and Deputy Governors immuned both from civil and criminal proceedings but that no court process would issue against them, while in office. It follows therefore, that on vacating the office they may be held liable for civil or criminal act/omission. The trend that unfolds around the world irrespective of jurisdictional and jurisprudential differences, is differences, is amazing. Whereby past Presidents were called back to answer in law courts for their past misdeeds and lawlessness while in office, underlined the

role of immunity accorded these public office holders. If anything it is seemingly a conditional or partial immunity only. Vitually these class of officials are open to litigation, civil or criminal on vacating the office for past acts/omissions which may be initiated by the incumbent government, provided the past or defunct officials fell out of favour with the incumbent regime. The rationale we submit behind the protection provided under Section 308 of the 1999 Constitution may be that a President and Governors are provided with sufficient possibilities and liberties to enable them undertake their lawful duties without fear of repercussion. Considering their unfettered powers and discretionary authority, this partial immunity will serve as a check..

However, these public officer-holders would not be liable in their official capacities, except as a nominal party. And it has long been argued that; "as a matter of public policy, the principle of personal non-liability of the holders of the offices of the Head of State and State Governors during their tenures is perfectly consistent with long standing traditions all over the world" [22]

Furthermore, not only were Constitutional protection enough, but that they could not enjoy any other statutory protection under Nigerian Law. These class of Public Servants, are not public officers, therefore, could not enjoy protection provided under Public Officers (Protection) Acts/Laws. This position was similarly re-echoed in a case of ONYIA Vs. GOVERNOR-IN-COUNCIL and OTHERS. the ratio reads, as follows; Neither the Governor nor the Governor -In-Council is a 'Public Officer' within the meaning ascribed to that term in the W.N. Public Officer Protection Law, and the protection afforded to Public Officers by Section 2 of that law does NOT apply to them" [23]

In this suit, the defence pleaded that, the action against the 1st defendant is statute-barred by virtue of the provisions of the Public Officers Protection Law Cap. 106 of the Laws of Western Nigeria. Even though the Court dismissed the

action, still held that the action is not statute-barred. QUASHIE-IDUN, CJ, further stated in his judgement that;

> I now come to the question as to whether the action is Statute barred by virtue of the Public Officers Protection Law Cap. 106. I would refer to the definition of the term 'Public Officer' as contained in the Interpretation Law, Cap. 51 of the Laws of the Western Region. it is defined as extending and 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 Region or not. This definition implies that the Governor is a different entity from a public officer.
>
> The term 'Governor-In Council' is also defined in the Interpretation Law as meaning the Executive council, which also indicates that it is also a different entity from a public officer although it must be conceded that they all perform public functions. It is my considered opinion that as the Public Officers Protection Law does not expressly mention the Governor-In-Council as coming within its competence, it must be deemed that the Governor-In-Council is not a Public Officer. In the case of Lambert Vs. Taylor, 107 E.R. Page 1010 at Page 1016 it was held that the Crown was not within the operation of the Statute of limitation[24].

Similarly, however, the position was maintained even by a recent Court of Appeal decision in NWAKANMI Vs. MILITARY ADMINISTRATOR, ABIA STATE and OTHERS (Supra), where public officials like Military Administrator, Attorney-General, High Court Judge etc., were not taken to be public officers but public servants rather and thus, not entitled to protection under Public Officers Protection Law. The ratio reads as follows;

> The protection offered by Section 2(a) of the Public Officers (protection) Law applies only to natural persons and individuals who hold public offices.

It does not apply to institutions or offices. In the instant case, the respondents not being persons but institutions created by Statute are not covered by the law[25]

The application of state immunity on President, or Head of State and Governor, etc., is essentially different from all other forms of protection, even though this provisional immunity as comprehensive as it is protects the aforesaid top public office-holders against any civil/criminal proceedings and processes in their personal capacities while in the prestigious offices, but same ceases immediately they vacate the offices.

Although no civil or criminal proceedings shall take against President or Governors. The protection does not extend to investigation that may be initiated either by legislature or Police. A recent Court of Appeal decision fully illustrated the position. In an unreported case of CHIEF GANI FAWEHINWI Vs INSPECTOR-GENERAL OF POLICE and OTHERS, where appellant/applicant sought for an order of mandamus against the respondents to investigate Bola Ahmed Tinubu (the Governor of Lagos State) for criminal allegations of forgery and perjury.

The case commenced at the Federal High Court, Lagos and went on appeal before the Court of Appeal, Lagos Division. The Appeal Court in upholding the appeal that the Governor is not above probe held as per Amiru Sanusi J.C.A., that; "that Section 308 does not shield or protect the persons covered under section 308(3) from Police Investigation"[26].

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CHAPTER - THREE

LIMITATION OF ACTIONS

3.1 THE DOCTRINE OF LIMITATION OF ACTIONS: ITS APPLICATION AND HISTORICAL DEVELOPMENT IN NIGERIA

Limitation of action is a form of protection devised by Law to protect Public Officers and other public authorities and sometimes even a private citizen, against an action instituted, sought to be instituted or purportedly taken against them, outside the statutory period of limitation prescribed under relevant statutes or instrument which creates and/or governs such public officer, public authority or agency, etc. Each of these relevant statutes of limitation provides a period of limitation within which an action shall commence against the aforesaid parties otherwise it would be deemed statute-barred. Statute of Limitation is thus, defined by the Supreme Court of Nigeria as; "Prima facie, any Statute which imposes a limitation of time on existing right of action is properly a Statute of Limitations. It is necessary therefore, in each case to look at the particular Statute and see what its effect is. In the instant case, the Public Officers Protection Law is Statute of Limitation"[1].

However, the general principle in Limitation of actions is to the effect that, time does not run against the State, as derived from English Law Maxim, "nullum tempus occurit republican" - time does not run against the State, unless a Statute so provides. It follows therefore that even the State is required to abide by period of limitation where statutes so provides. Interestingly it has to be noted that, for the

purposes of limitation of actions, legal proceedings can commence by or against the State, its agents or agency unless where the Statutes expressly excluded the actions. Notwithstanding the fact that the rule applies so as to ensure the supremacy of the State over its subjects, there are however, Statutory exceptions in both criminal and civil actions. For instance the offence of Sedition under Nigerian Criminal Law, would not be prosecuted by State after the lapse of six months limitation period. However, for any criminal act outside those Statutory exceptions a public officer can be prosecuted accordingly as rightly decided in EGBE Vs. YUSUF (Supra) that; "There is no time limit for prosecuting an officer for crime even if that crime was committed in the course of public duty"[2].

As a matter of application Statutes of Limitation operates against private citizens, organisations and public servants. It applies when commencing an action against public officer and in some respect, State agencies if such action was taken outside the prescribed time-limit, 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.

It is however, important to note that these Statutes of Limitation apply to Public Officers on a different frequency as it operates on a number of State Agencies. For instance, the Public Officers (Protection) Law, applies to natural persons alone as against artificial persons. This

is very well in line with the view expressed by Court of Appeal of Nigeria in the case of **NWAKANMI** Vs. **MILITARY ADMINISTRATOR, ABIA STATE** and OTHERS (supra) that;

> The Protection offered by Section 2 (a) of the Public Officers (Protection) Law applies only to natural persons and individuals who hold public offices. It does not apply to institutions or offices. In the instant case, the respondents not being persons but institutions created by Statute are not covered by the Law.

475951

However, Nigerian Courts outlined certain considerations paramount to the application of Statutes of Limitation in Nigeria. In **SOLANKE** Vs. **OGUNBANWO,** it was decided that; "The Law on Protection for public officers is not absolute. To be applicable, the public officer must be in the execution of any law, duty or authority. It does not protect a person who knows he is doing a wrongful act and does not act in good faith in the execution or intended execution of his public duty but for his own benefit in knowingly committing a crime by using his office to extort money"[4].

The above decision painstakingly elaborates as to what necessitate the application of Statutes of Limitation in Nigeria. Essentially, the public officer must be acting within the confines of his public duty or authority.

In Nigeria, Statutes of Limitation comprised a number of legislations aimed at protecting public officers and State Agencies through limitation period for bringing an action against the aforesaid parties. These legislations has variant periods of limitation in respect of various causes of action covered under the legislations. These legislations ranged from State Edicts to Federal Enactments. Prior to 1966 with possible exception of Public Officers Protection Act there was

no indigenous Statutes of Limitation, rather, we applied the English Limiting Statutes, which were then of general application. Thereafter, however, Limitation Decree Number 88 of 1966 were enacted. This legislation repealed the English Statutes and commenced operation. The Limitation Decree Number 88 preserved the three months Limitation period so provided to public officers under the Public Officers Protection Act. However, Section 2 of Public Officers (Protection) Act, which has similar effect to section 4 of the Limitation Decree, provides as follows:

> "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 Ordinance or Law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Ordinace, 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...."[5]

It is hereby submitted, that Section 2 of the Public Officers Protection Act, was similar to a provision under Limitation Decree Number 88. Both Provided for a limitation period of three months, irrespective of the nature of cause of action. The position therefore, differ profoundly with what obtained now-a-days whereby the limitation period varies based on the variety of causes of action under various limitation Statutes of the States of the Federation. There are varying periods for a different causes of action, under various State Limitation Laws. The position in Sokoto State may be different with that of Kaduna State.

However, in Britain the Limitation of actions was since in operation, a very long time ago from the beginning of 17th Century as it applied by "various Statutes, of which the first was the Limitation Act 1623"[6], while all other Statutes of Limitation followed there from, with their variant periods for various causes of action.

Furthermore, the operation of State Immunity clauses contained in various Statutes and Constitution of the Federation does not temper with, nor prejudiced the application of Limitation Statutes in Nigeria. Evidently, this was the position because of the "Public policy that there should be an end to litigation and that Stale demands should be suppressed for it would be unfair to a person to allow claims to be made upon him after a long period during which he may have lost the evidence formerly available to him necessary to rebut the claim"[7]. Similarly, this was the position in Britain where even with the application of the Crown proceedings Act 1947, the Limitation Act of 1939 had been in operation and will bound the Crown.

Another interesting aspect of the application of these Statutes of Limitation in Britain unlike in Nigeria is the fact that, in certain situation its the enforcement of the right that is barred, while in other situation it is the remedy rather that is barred, as enunciated by the authors of Jowitt's Dictionary that;

> Limitatiom, as a measure of time prescribed by Statute within which proceedings to enforce a right must be taken, is of two kinds, namely;
>
> (1) where on the expiration of the time the **right itself is barred,** as in the case of a person who has been out of possession of

land for twelve years (Limitation Act 1939, Section 16), although he may be ignorant of the fact that another is in possession...

(2) where on the expiration of the time **the remedy is barred,** but not the right; thus, in the case of a simple contract debt which has remained unpaid and unacknowledged for six years. the creditor's right to bring an action to recover it is gone (Limitation Act 1939, Section 2(i), but the debt exists for other purposes: hence he can exercise a right of lien to recover it, but not a set-off or counter-claim, because that is in the nature of a cross-action[8].

However, in Nigeria the Statutes of Limitation simply operates without any distinction and it only makes an action Statute-barred. Thus, the enforcement of any court order in the form of right/remedy cannot be secured once the special defence of limitation of action is successfully pleaded and upheld as decided in **SOLANKE Vs OGUNBANWO,** that; " A special defence under the public officers Protection Law must be specially pleaded. It must also state in whose favour the defence is raised"[9].

The doctrine of limitation of actions is of general application unless where exceptions were provided by the Statutes. These exceptions were usually in the form of disabilities or a given conduct of Public Officers. But if a Public Officer establishes an unanswerable plea of protection under the existing Public Officers Protection Laws, of States of the Federation, imputing malice unto the conduct of a Public Officer may be irrelevant in the context. We may be rightly guided by the

Court of Appeal decision in **NWAKANMI Vs. MILITARY ADMINISTRATOR, ABIA STATE** (Supra) the Court in considering the provisions of Public Officers Protection Law, held that;

> Where a Public Officer has raised an unanswerable plea of Protection under the Public Officers (Protection) Law, there is no basis for prying into the conduct of such a Public Officer which gave rise to the action. The issue is limited to whether the action is maintainable and so malice is irrelevant.[10]

This decision out-lined among other things the scope of application of limitation of action in Nigeria. There is however , a catalogue of Nigerian authorities which out –lined conditions for the operation of the doctrine of limitation of action in Nigeria. These conditions were properly enunciated in **NWAKANMI Vs. MILITARY ADMINISTRATOR, ABIA STATE** (Supra) as follows;

> For section 2(a) of the Public Officers (Protection) Law to operate in a particular case:
>
> (a) it must be established that the person against whom the action is instituted is a Public Officer;
>
> (b) the person seeking to rely on it must have pleaded it in his statement of defence.

However, a decision of the same Court of Appeal in the case of **EKEOGU** Vs. **ALIRI,** provided that; "Section 2 of the Public Officers Protection Law gives cover to a Public Officer who has acted within the confines of his public duty. Once the Public Officer steps outside the bounds of his public authority, he is open to Litigation. In other words, such Public Officer can be sued outside the Limitation period of three months"[12].

From the foregoing decisions it is manifestly clear that for a Public Officer or authority to enjoy the protection of Statutes of Limitation they must have acted within the scope of their public duty. Otherwise the action against Public Officer must succeed even if the special defence was adequately pleaded in the proceedings. However, this kind of protection is not only limited to Public Officers but is of general application.

3.2 PERIOD OF LIMITATION

That in any legal proceedings involving the doctrine of limitation of actions, a legal action is not ordinarily maintainable where such action is commenced or has been commenced outside the prescribed limiting period stipulated in the applicable Statute of Limitations. However, before considering factors, based upon which period of limitation is predicated it is essential to consider the decision of the Court of Appeal in respect of the significance of period of Limitation in the following words;

> The Legislature has prescribed certain periods of Limitation for instituting certain actions. This is based on public policy that there should be an end to litigation and that stale demands should be suppressed for it would be unfair to a person to allow claims to be made upon him after a long period during which he may have lost the evidence formerly available to him necessary to rebut the claim[13].

However, there are two vital issues, on which period of limitation is predicated upon, they are; (1) Length of period prescribed under Statutes of Limitation for instituting legal actions; and (2) Time, as to when period of limitation begins to run, for the purpose of commencement of legal proceedings against public officers and public authorities.

The position however, is that, apart from the various State Limitation Laws/Edicts which may be the principal legislation that deals in Statutory period for bringing an action, there may be other relevant provisions contained in a number of Federal legislation or State edicts that limit the period within which an action may be taken or maintained against public officer and authority. In addition, legislation that governs State Agencies may equally provides certain limited period within which such actions could only be taken. However, before we proceed to examine those relevant provisions, its pertinent to consider the effect of failure to comply with a stipulated period of limitation under a Statute by party sovereign. And the following case will shed light in that respect. In **ADIGUN** Vs. **AYINDE** (Supra) as par Karibi-Whyte J.S.C., the Supreme Court of Nigeria, unequivocally made it clear that no action under such Statutes could be maintainable once commenced outside period of limitation;

> The defence provided in the Section is that actions cought by the provision must be commenced within three months next after cause of action arose. This is consistent with the general principle that where the Law provides for the bringing of an action in respect of a cause of action accruing to the plaintiff within a prescribed period, proceedings shall not be brought after the time prescribed in the statute. The action brought in respect of the cause of action outside the prescribed period offends against the provision and does not give rise to any cause of action. In other wards, the action is Statute-barred[14].

However, this position has been the established Law on this issue. In celebrated case of **EGBE** Vs. **ADEFARASIN** and **ANOR** (Supra) as par Karibi-Whyte, J.S.C., that; "The Law is that where a Statute provides for the bringing of actions within a prescribed period in respect of a cause of action accruing to the plaintiff, proceedings shall not be brought after the time prescribed by the Statute see Obiefuna Vs. Okoye (1961). All N.L.R. 357. An action brought outside the

prescribed period offends against the provision of the Section and does not give rise to a cause of action[15].

The main Limitation Law preserved limitation periods contained in other limitation Statutes. In addition other enabling Statutes which creates State Agencies, may contained limitation periods within which certain causes of action may be taken against them. In Limitation Law, Cap.80, Section 41, provides as follows;

> Notwithstanding anything contained in any other enactment or rule of Law to the contrary all actions to which this Edict applies howsoever rising against the State or against any State Public authority, or officer thereof or any person acting in the stead of such public authority or officer thereof, for anything done or intended or omitted to be done in pursuance or execution of any such act, duty or authority or in respect of any neglect or default in the execution of any such act, duty to authority shall be commenced within the same period of time after the cause of action arose as if such action were brought by or against a private individual[16].

It is submitted that Section 41 of Cap.80 is not only forlorn in its form but also ambiguous in its substance. The failure of the draftsman to specify the limitation periods in respect of causes of action that may accrue under the edict, may confound the application of the provision.

The Public Officers Protection Act, Cap.379 Laws of the Federation of Nigeria 1990 in Section 2 Provides, thus;

> 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 of any Public duty or Authority, or in respect of any alleged neglect or default in the execution of any such Act, Law, Duty or Authority, the following provisions shall have effect:

(a) the action, prosecution, or 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 proceeding be at the instance of any person for cause arising while such person was a convict prisoner, it may be commenced within three months after the discharge of such person from prison[17].

Section 2 of Cap.379 is not dissimilar to the provisions under Public Officers (Protection) Act, Laws of the Federation of Nigeria 1990 both in terms of Limitation period and essential elements of the limitation of actions for the purpose of commencement of action against public officers.

However, the enabling statutes of State Agencies contains special provisions which have the effect of ensuring protection either to themselves as public bodies or to their employees as public officers. For instance, Section 12 of the Nigeria National Petroleum Corporation Act 1977 Cap.320, provides as follows;

(1) Notwithstanding anything in any other enactment, no suit against the Corporation, a member of the Board or any employee of the Corporation for any act done in pursuance or execution of any enactment or law, or of any public duties or authority, or in respect of any alleged neglect or default in the execution of such enactment or law, duties or authority, shall lie or be instituted in any court unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuance of damage or injury, within twelve months next after the

ceasing thereof[18].

Similarly in the Nigeria Railway Corporation Act, Cap.323 in Section 83 provides;

> (1) No suit against the Corporation or any Servant of the Corporation 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 or Law, Duty or Authority, shall lie or be instituted in any Court unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuance of damage or injury, within twelve months next after the ceasing thereof:
>
> Provided that, in the case of a claim for a refund of an overcharge in respect of goods accepted by the Corporation for carriage, or for compensation in respect of loss, damage, deviation, misdelivery, delay or detention of or to any goods so accepted, the cause of action shall be deemed to have arisen on the day of such acceptance[19].

It is further to be noted that it is not every Statutory Corporation that has a limitation clause in its Statute aimed at protecting or restricting proceedings against it or its employees for act, neglect or default done in the execution or intended execution of any Law, or duty thereof. Such Corporation/Agency includes Nigeria Postal Services Department, Nigerian Mining Corporation, etc. for instance Nigeria Mining Corporation Act Cap.317, provides in Section 16 as follows;

> Where in the exercise of any function under this Act, certain rights are affected, the provision of the Act shall not be construed so as to exclude:
>
> (a) the payment of compensation in respect of any loss or damage that may have been suffered in consequence of the operation of the provisions of this Act;

> (b) the determination of any right or interest in any property acquired or possessed by the Corporation, and the amount of compensation payable pursuant to this Section, by any Court of competent jurisdiction[20].

It follows therefore, that no any protection is accorded to the Corporation or its employees for their act, neglect when same were done in pursuance or execution of any Law or Public Duty, as provided for some other State Agencies accordingly.

The other vital issue crucial to the aspect of period of limitation is thus, when time begins to run for the purposes of Statute of

Limitation or for commencement of, or maintenance of legal proceedings against public officers and authorities. This is crucial to limitation of actions as a whole with a view to signifying the fact that, it is not enough that an action shall be commenced within Limitation period but that, when could it be taken an action is maintainable or unmmaitainable because at the very instance the action was first instituted, the time has already ran out. In other words, for the purpose of limitation of actions, time begins to run from the date on, when the cause of action accrued, up to the last date of the period provided for institution of such action under the Limitation law. This is an issue, which is determined only through judicial process. Therefore, the phrase was elaborated upon, based on exposition of judicial authorities. In **ADIGUN** Vs. **AYINDE** (Supra), the Supreme Court of Nigeria, stated that; "Time begins to run when the cause of action arises, i.e., when there is in existence a person who can sue and another who can be sued and when all the facts have happened which are material to be proved to entitle the plaintiff to

succeed... It is a futile argument that the cause of action did not fully arise until the appellant's injury and/or damage which was continuous had ceased"[21].

The Court of Appeal on the other hand enunciated inter alia that even if there was no court within the jurisdiction to entertain the claim still would not make the action maintainable in law when taken after the Limitation period, thus, in the case of **SHELL PETROLEUM DEVELOPMENT COMPANY** Vs **FARAH** (Supra), the Court decided that; "the period of Limitation begins to run from the date on which the cause of action accrued. It is immaterial that party was absent from jurisdiction or that there was no court within the jurisdiction to entertain the claim. Similarly, illiteracy will also not avail a plaintiff because ignorance of the Law is no excuse"[22].

However, there is an important distinction, worthy of mention where the period of limitation involves a cause of action for torts and an action for breach of contract. The question of when time begins to run for the purposes of the two distinct causes of actions, even though may accrue at; "the moment an act is done or an event happens and/or a default or neglect in holding something which in each case gives the plaintiff the right of action"[23], but the manner the concept of period of limitation works on both separate actions differs just as much as the two causes of action varies in themselves. In the Supreme Court of Nigeria decision in **SANDA** Vs. **KUKAWA LOCAL GOVERNMENT,** the Court unanimously held that; "In actions for breach of contract, the cause of action accrues for the plaintiff's benefit from the time the breach of the contract is committed and not when the damage is suffered. It is immaterial that the effects of the plaintiff's financial and other losses may continue a infinitum. That will simply enhance the quantum of compensation"[24].

However, the Court of Appeal, held in another case, par **EDOZIE, J.C.A.,** that; "when in respect of a cause of action for tort the period of limitation once commences to run, it is not broken by any subsequently accruing disability. As stated in Clerk and Lindsell on Torts 13 Edition article 617 at P.324, the mere fact that a person possessing a right of action was unable to sue by reason of his ignorance of his right was not in the Courts of Common Law answer to a plea of the Statutes of Limitation, except where there has been a fraudulent concealment which itself furnished a cause of action..."[25].

From the above ratio and dicta, it can safely be inferred that, even though cause of action in contract cases accrues the moment a breach occurs, in an action for tort however, a cause of action arisen, the moment a damage or injury is suffered as a result of an act, neglect or default complained of, took place. This position was similarly canvassed in the case of **ADIGUN** Vs. **AYINDE** (Supra).

It is pertinent also to consider at this juncture, the significance and relevance of the ancillary phrase, "continuance of injury or damage", for the purposes of limitation of actions. It must first be appreciated that, no cause of action accrues, where the damage or injury is of such a continuous nature, until the ceasing thereof, as clearly provided under various limitation Statutes. Now, this pharse were not defined in the said Limitation Statutes, but Nigerian Court in the course of interpretations, defined its meaning in one singular phraseology. Thus, in **SOLANKE** Vs. **OGUNBANWO,** it was stated that; "Continuance of injury or damage' means continuance of the legal injury and not merely continuance of the injurious effects of a legal injury. Therefore, in this case, the plaintiff ought to have commence Proceedings within three months after the date of the accident and not after the date of his final discharge from hospital: (Obiefuna Vs. Okoye (1961) All NRL 357, applied and followed). All and more, the Supreme Court of Nigeria, re-

echoed similar view in the decision of **ADIGUN** Vs. **AYINDE** (Supra), as par Onu, J.S.C., that; "the continence of injury or damage means continuance of the legal injury, and not continuance of the injurious effects of a legal injury"[26].

3.3 OPERATION OF OUSTER CLAUSE IN NIGERIAN LEGISLATION

It is not in dispute that ouster/exclusionary clauses were and still are part of our Statutes not only in Nigeria, but in most other Common law jurisdictions. In Nigeria, there is a strong presumption that by virtue of Section 6 of the 1999 constitution that a Superior Court of record has jurisdiction to entertain all matters brought before it unless where the jurisdiction is expressly limited or excluded therefrom.

Such restriction or exclusion has to be direct and unequivocal. In this light, a Court was vested with an inherent jurisdiction (even where its jurisdiction was ousted or purported to be ousted), to determine whether or not it has power or competence to determine a matter brought before it. By this role the Courts are *only exercising supervisory jurisdiction. The existence of jurisdiction or lacks of it* is conferred by legislation and thus, the courts has inherent jurisdiction to determine the actual existence or non-existence of such jurisdiction, as profoundly observed that;

> From the premise that jurisdiction rests upon specific conferment by Law, it follows that it can also be withheld, denied or limited by Law. A Law could provide that nothing done or purported to be done under it is to be questioned in any Court of Law. Under such a provision the power of the Courts to review the validity of acts done under the Law in question would have been effectively taken away. However, the denial or restriction of jurisdiction through the exercise of the ordinary legislative power depends on whether the jurisdiction is conferred specifically by the constitution. A jurisdiction

> conferred by the Constitution cannot be taken away or restricted by ordinary legislation but only by a valid amendment of the Constitution[27].

Ouster clauses operate in Nigerian Legislation with a view to putting up prevention by executive against judicial or any other arm from inquiring into its acts or Laws, as rightly pointed out that, "Ouster or finality clauses provide means by which the executive arm of the Government attempts to oust the intervention of jurisdiction of the Courts whenever any member of the public wants to question certain actions of the executive in areas which the Government may regard as sensitive. Ouster clauses are not new or the preserve of any particular government"[28A].

The operation of ouster clauses in Nigeria is not without some historical antecedent. Before the Military introduced its application, through decrees various Nigerian Constitutions used the clause in a refined and limited sense[28B]. Further, when there were Military 'revolutions' in Nigeria, various Military regimes did in fact used ouster clauses in decrees only to safeguard their legal existence without

challenges but also to validate their actions or intended actions. For instance, the 'revolution' in January, 1966; July, 1975, December, 1983 or even November, 1993, the usual Constitution (suspension and Modification) Decrees, followed which in themselves served as gateways to decrees with exclusionary or ouster provisions. All these steps however, were executive measures taken by the Military regimes to avail themselves immunity from legal actions that an injured or aggrieved party may take against such administrations.

In analysing operation of ouster clause in Nigerian, legislation it might be illustrative to refer to decision of the Supreme Court in **UWAIFO** Vs. **ATTORNEY GENERAL BENDEL STATE,** as per Irikefe, J.S.C, in the following words:

> Under the 1963 Constitution particularly under Section 161 thereof, ouster of the Court's Jurisdiction was limited to persons holding the office of President or Governor of a Region as well as the Chieftaincy matters. But with the advent of a Military regime in the Country, the exclusion clause found its way into several legislation, three of which are relevant to this appeal, namely;
>
> **Decree Number 37**
>
> The Investigation of Assets (Public Officers and Other Persons) Decree, 1968.
>
> **Decree Number 10**
>
> Public Officers (Special Provisions) Decree 1976.
>
> **Decree Number 18**
>
> Tribunals or Inquiries (Validation) Decree 1977.
>
> Under Decree Number 37 of 1968, the courts jurisdiction is ousted under Section 12; under Decree Number 10 of 1976 the ouster clause is to be found in Section 6 while under Decree Number 18 it is to be found in Section 1 (2) and 3 (2). The wording of the exclusion clause is almost identical in each case.
>
> It seems to me that there was a deliberate and conscious effort on the part of the Military regime to exclude access to the Court in a number of their legislation. It could not therefore, have been an act of dereliction of duty that the appellant herein did not seek to assert his rights while the Military were in power. If he had chosen to go to Court in the face of the clear prohibition spelt out in the Decrees

above, his efforts would have yielded no beneficial results. This must explain why he had to wait until one day after the 1979 Constitution came into force before filing this action.

> Section 4 (8)of the 1979 Constitution provides against ouster of the Court's jurisdiction. It reads;
>
> > Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of Courts of Law and of judicial tribunals established by law; any and accordingly, the National Assembly or a House of Assembly shall not enact any Law that ousts or purports to oust the jurisdiction of a Court of Law or of a Judicial Tribunal established by Law[29].

Remarkably, it is also settled that, ouster has to be in clear and unambiguous words, incapable of admitting more than one interpretation, otherwise it confers what it sought to deprive. To this, I agree absolutely with, a view expressed by professor Nwabueze, that;

> The Court's jurisdiction cannot be taken away except by clear and explicit words. Ouster or exclusionary clauses are therefore, to be construed strictly; accordingly, if they are not clear, if they are capable of having two meanings, that meaning shall be taken which preserves the jurisdiction of the Court[30].

Furthermore, there is no any other way of saying it better than how the Supreme Court of Nigeria stated in **AHYAH** Vs. **IYAYI** and others (Supra), that;

> Any Statute ousting the jurisdiction of the Courts is to be construed very strictly to ensure that the jurisdiction existing is not withdrawn without very clear words to that effect[31].

Ouster clause operates in various dimension. Either to oust jurisdiction from inquiry in prospective/retrospective manner, or validate legislative judgment or even validate what otherwise was regarded as invalid/nullity constitutionally, and thus, give same the force of Law. For instance, Investigation of Assets (Public Officers and other persons) Decree Number 37, oust the jurisdiction of any Court of Law from entertaining any matter in respect of act done or purported to be done by any person under the Decree. Just like the way Land Use Decree of 1978 ousted the jurisdiction of Court of Law, as par the aspect of land trusteeship, etc. while Tribunal or Inquiries (Validation) Decree Number 18, validated the Institution and Constitution to Tribunals or Inquiries (however, described or constituted) and validated forfeiture orders and at the same time ousted the jurisdiction of Courts of Law from inquiring into the acts or conduct of such tribunals. However, to enunciate precisely the above position, we refer to some typical exclusionary/ouster provision, thus;

> No civil proceedings shall lie or be instituted in any Court for or on account of any or in respect of any act, matter or thing done or purported to be done by any person under this Decree and if any such proceeding has been or is instituted before or after the commencement of the Decree, the proceedings shall abate, be discharged and made void".

The above provision is very much similar to provisions of Section 6(1) of Public Officers (Special Provisions) Decree Number 10 of 1976. While Section 3 of Decree Number 18 stated that;

> The question whether any Edict or subsidiary instrument or any act or thing to which sub-Section (1) of this Section relates was validly made or done shall not be inquired into in any Court; and if any action or other proceeding whatsoever has been or is instituted in any court in respect of any such Edict or subsidiary instrument or act or thing, the action shall be void".

Therefore, the overall effect of ouster clause in Nigerian legislation is to limit the exercise of judicial power vested in Nigeria Law courts that its supervisory jurisdiction notwithstanding and thereby restrict or deprive an aggrieved citizen from exercising his constitutional right to seek redress for any legal injury suffered as a result of the operation of any piece of legislation in Nigeria, considering the way and manner ouster clause were being employed and applied in certain Nigeria legislation, especially by the Military administrations.

However, it must not be construed that ouster/exclusionary clauses are wholly or cumulatively bad in themselves. It has now been established that the enactment and employment of the clauses in legislation was and still is an acceptable law-making process in Nigeria.

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CHAPTER FOUR

LIABILITY OF STATE AGENCIES AND PUBLIC OFFICERS

4.1 THE CONCEPT OF LIABILITY UNDER NIGERIAN LAW.

The term, Liability is defined generally to mean, "the condition of being actually or potentially subject to an obligations, either generally, as including every kind of obligation, or in a more special sense, to denote inchoate, future, unascertained or imperfect obligations, as opposed to debts, the essence of which is that they are ascertained and certain"[1].

By the definition of liability, the concept operates under Nigerian Law based on its contextual function in various Nigerian Legislations that borders on liability of Government, and public authorities that includes State Agencies and Public Officers. We are however, to examine operative parts of relevant legislation with a view to finding out, who is subject to an obligation and in what situation within the scope of this research.

The concept of liability is not covered by one particular legislation in Nigeria. The concept as it relates to this study signifies the liability of State Agencies and Public Officers either tortiously or contractually. And the relevant statutes, inter alia are the Nigerian Constitutions 1979 and 1999 which makes the government, or raises the possibility that its agents and agencies are liable for their acts or omissions. And others are Law Reform (Contracts) Act 1961, Law Reform (Torts) Act 1961. Then Statute of Limitations such as Public Officers protection Act/Laws, Public Authorities Protection Law, and the repealed Petitions of Right

Act 1958, etc. All these legislations actually and/or historically sought to regulate the respective contractual and tortious liabilities of State Agencies and Public Officers in Nigeria.

4.2 HISTORICAL DEVELOPMENT:

The State and earlier on, its agents and agencies cannot be held liable for their acts or omissions. In essence, no action then could be commenced against Crown/State, its agents and agencies. And there were famous decisions reached, based on the old doctrine of non-liability of the State and its agents, in both English Law and subsequently Nigerian jurisdictions. For instance, the case of CANTERBURY (VISCOUNT) Vs. ATTORNEY-GENERAL[2] (Supra).

The aforesaid situation remained to the end of the 19th Century. At which time the Crown/State could not be held liable for its acts but its agents and agencies were held to be liable especially in torts. The State/Crown pay damages/costs, awarded against agents tort feasor. The position remained that, Public Authorities, generally were held to be liable to an extent of being; "subject to the ordinary Law of Master and Servant, by which the employer is liable for torts committed by the employee in the course of his employment, the employee also being personally liable"[4].

However, about the mid 20th Century, the position became altered in various jurisdictions around the world. For instance, in England, the Crown Proceedings Act 1947 were enacted and earlier on in 1946, the United States passed Federal Tort Claims Act, both to the effect that Crown/State and their Servants or agents were made liable in certain classes of torts. In Nigeria, however, the former position of non-liability of the State remained intact and fully applicable, as

confirmed by the Supreme Court of Nigeria, in the case of RANSOME-KUTI (Supra), that; "Although the common Law Principle of State Immunity from tortuous Liability has been abolished in England by Section-2 of the Crown Proceedings Act 1947, this is not so in Nigeria, because the 1947 Act does not apply in Nigeria. On the contrary, the Petition of Right Act Cap. 149, as amended in 1964, Section-3, has further given the stamp of statutory authority to the Common Law Principle in Nigeria"[5]. However, when the 1979 Federal Constitution came into force, the former position of non-liability of the state changed, as evidenced by the provisions of Section-6 and based also on decisions decided thereafter or prior thereto. The Supreme Court in RANSOME-KUTI (Supra), stated that;

475951

> Prior to the 1979 Constitution none of the earlier Nigerian Constitutions, including the 1963 Republican Constitution contained provision which could be construed as annulling the Common Law Principle of the State's immunity from tortious liability. However, Section-6(6) of the 1979 Constitution (though not applicable in the present case) which vests judicial power of the state in the courts has removed and abolished the Common Law doctrine of State immunity from tortious liability in Nigeria"[6].

It is hereby submitted that, the combined effect of both constitutional provision and judicial authorities cited above, was to remove the immunity of public officers especially in torts. However, some public office holders, such as President, Governors, etc., were treated altogether different from other public officers. Based on successive constitutional provisions from both 1963 and 1979

Constitutions, no proceedings shall lie against President, Vice-President, Governors, Deputy-Governors, in their private capacity. This can be likened to immunity provided to Sovereign/Crown under the Crown Proceedings Act.

The 1999 Federal Constitution in the combined effect of Sections 6 and 308 respectively defined, clearly, the aspect of liability as it affects both State Agencies and Public Officers and therefore, made them liable for their acts. While Section-6 removed the immunity enjoyed by State and its agents and agencies and subject same to proceedings in law courts. Section-308 only immunized the serving President and Governors in their private capacity only. Significantly these unique provisions were formerly enacted and in the previous 1963 and 1979 Constitutions. The doctrine of Liability of State Agencies and Public Officers seemingly came to stay in Nigeria.

4.3 LIABILITY OF STATE AGENCIES

4.3.1 Liability of State Agencies in Torts

Tortious liability cannot be committed directly by State Agencies, but by their employees in the course of performing their duties as directed by the employers. I am in agreement with Wade, when he asserted that;

> Public Authorities including Ministers of Crown enjoy no dispensation from the ordinary law of tort and contract, except in so far as statute gives it to them. Unless acting within their powers, they are liable like any other person for trespass, nuisance, negligence and so forth. Similarly, they are subject to the ordinary Law of Master and Servant, by which the employer is liable for torts committed by the

employee in the course of his employment, the employee also being personally liable"[7].

The above position notwithstanding, being that there are inherent difficulties associated with maintaining Vicarious liability by State Agencies for tortious acts committed by its employees. More so, the tortious acts that can establish liability against State Agencies borders on statutory duties as provided under various enactments, for instance a common duty of care to instill and maintain safe system of work in a given State Agency and where there was failure to maintain this standard duty of care the only party that may be liable is the State Agency employer and no agent employee is to be held so responsible and this negate the principle of vicarious liability.

Furthermore, the Law Reform (Torts) Act 1961, which were in operation in the Federal Territory of Lagos, infact did little to alleviate or resolve the impasse. Leaving the State Agencies liable only when it comes to failure to observe these common duty of care. It is no surprising that it was observed and rightly that; "The Law Reform (Torts) Act 1961 appears to be very restrictive in its scope because it covers only aspects of occupier's liability for breach of duty of care whereas the Crown proceedings Act 1947, covers, all aspects of tortious acts committed by Public Officers in the performance of their duties"[8].

Therefore liability in torts more or less partakes of tortious acts committed by servants or agents of employers, and they are usually considered personally liable as against their employers who may be state or its agencies.

And this is not to say that the State Agencies involved are not vicariously liable. Indeed both the agent tort feasor and state agencies are to be held tortiously

liable for such tortious acts of agent/servant. For instance in the case of ADIGUN Vs. AYINDE and OTHERS[9], the appellant was injured in a motor accident while he was travelling in the course of his work as a civil servant. The motor vehicle belonged to the Federal Ministry of Agriculture and it was driven by the 1st defendant, a driver in the employ of the Federal Government in the course of his duty.

The accident occurred on 10th February, 1978 and the plaintiff instituted an action in which he claimed damages for the injuries he sustained, on 17th August, 1981; as a result of alleged negligent driving of the first defendant.

The High Court in limine, following a preliminary objection ruled that, the action was not maintainable and that it was statute-barred by virtue of the application of the Public Officers Protection Law of Niger State, that provided for a three-month period of limitation. The High Court consequently dismissed the action. The Court of Appeal and later the Supreme Court, affirmed the judgment and held inter alia that; "Under the provisions of the 1963 Constitution the State is not liable in tort and the plaintiff is caught by the doctrine of State immunity".

It is my humble submission that, under the 1963 Republican Constitution, no similar provision was enshrined as that provided under Section-6 of the 1979 Federal Constitution or even 1999 Constitution, which abolished the doctrine of State immunity. Therefore, Public Officers or Servants of State Agencies can be held liable for their tortious acts committed in the course of their official duty, unless covered within the application and competence of defence available under Public Officers (Protection) Act.

It is equally interesting to note that, in some jurisdictions like Britain, a public officer may have an independent statutory liability by virtue of his office/designation, his acts may not necessarily make a State Agency/Public Authority under whose employment the said public officer is serving, liable therefore. And to illustrate the practice in Britain it has been observed that; "there are some situations where an officer of Central or Local Government has an independent statutory liability by virtue of his office, because the statute imposes duties upon him as a designated officer rather than on the public authority which appoints him. In that case the employee only will be liable. Thus, an action failed against a local authority when their inspector of animals had seized supposedly infected sheep in a market, since the statutory order empowered the inspector but not the local authority to seize infected animals; and it made no difference that the local authority had a statutory duty to appoint the inspector and power to dismiss him. But if the duties of the designated officer are in fact carried out by employees of the local authority, that authority may be liable in the same way as for its other employees"[10].

However, in Nigeria the position is not as particularized as in Britain. For in Nigeria, the practice is to bring an action against both a designated officer, his public authority employer and Attorney-General, being he Chief Law Officer of State/Federation depending the cause of action.

4.3.2 LIABILITY OF STATE AGENCIES IN CONTRACTS

In Nigeria just like its former colonial master, there were no standard legislation which governed public authorities contracts, rather those contracts were governed by ordinary Common Law principles of contracts and enabling statutes,

rules and bye-laws tailored in the same direction. For Britain, it has been observed that;

> English Law, unlike that of France and other countries, has no special system of rules governing contracts made by public authorities. Formerly the crown had a special legal position, and to some extent it still has; but... it has for most practical purposes been put into the same position as an ordinary litigant by the Crown Proceedings Act 1947. Central Government departments normally make contracts in their own names but as agents of the crown, so that the enforcement of such contracts is governed by the Act. Other governmental bodies such as local authorities are subject to the ordinary Law of contracts, which applies to them in the same way as to private individuals and corporations. They are, as also are government departments, restricted in certain ways by rules of administrative law, such as the rules, which prevent their contracts from faltering their discretionary powers... But there is no special body of Law governing their contracts other than that which governs contracts generally [11].

However, the general position under common Law in England is captured more in the following words, that "At Common Law a contract could be made by a corporate body, such as a local authority, only under its common seal. No binding obligation could arise for either party from the mere resolution of a meeting or from an agent's transaction, unless under seal"[12].

In Nigeria, the ordinary principles applied subject to legislation under which transactions were undertaken and those Laws creating state Agencies. For instance Companies and Allied Matters Act 1990, provides both corporate and incorporate

bodies with powers of a natural person and an independent legal personality of their own. Similarly the various statutes creating State Agencies provides modalities in respect of contracts' performance and breaches, which issues also entails question of liability respecting such contracts. For instance, under section 61 of the Nigerian Broadcasting Corporation Act, Cap. 133, that any claim against the corporation must be prosecuted within twelve months next after the act, neglect or default complained of or, in the case of a continuance of damage or injury, within twelve months next after ceasing thereof.

Furthermore, under section 3 of the repealed Petition of Right Act, a claimant could institute an action against state or its agencies in contract, subject to fiat being applied and had from Attorney-General of the Federation. I submit further that, the requirement is no longer in operation. All a claimant seeking to enforce a contractual right against State/Agency, need do, is to scrutinize a piece of statute/legislation creating a particular State Agency and then commences an action, provided all other prerequisites were duly complied with.

Conversely, the liability of state Agencies in contracts is something altogether different from tortious liability of State Agencies. Since the state Agencies even though are at liberty to breach a contract concluded between them and others it is not without considerable consequence. In other words, the state Agencies or mainly the state can be contractually liable for breach of contract occasioned thereof. However, the public officer here, unlike in tortious liability is not in any way liable for breach of such contracts. Being that in Law he is not a party to such contract and his performing an administrative function on behalf of the state or its agencies notwithstanding. It is trite both under Common Law and Statutes that the state/crown is directly responsible for both performance or breach of contracts entered into and concluded on its behalf by public officer. The enactment of the Law Reform (contracts) Act 1961 further reinforced the common Law position statutorily. For instance, section 8 of the Act focused on Frustration

and Enforcement of contracts, stated thus; "This part of this Act shall bind the crown". In essence the state is directly liable and not its agents that contracted on its behalf.

It is important to acknowledged that both Law Reform (Torts) Act 1961 and Law Reform (contracts) Act 1961 during the previous revision of Laws of the Federation of Nigeria 1990, were however, omitted and their applications were confined to Lagos State.

However, the position remained that, by virtue of constitutional provision of liability of the state, its agents and agencies under section 6(6) of the 1999 Constitution that State Agencies or state itself can be held liable for breach of contracts entered into on its behalf by public officers, and without the latter being necessarily liable thereof.

4.4 LIABILITY OF PUBLIC OFFICERS

4.4.1 Liability of Public officers In Torts

In examining the liability of public officer in torts two vital questions are crucial; whether a public officer is liable at all in torts? And whether the public officer tort feasor is personally liable for torts committed in discharge of his official functions? A public officer not only can be held liable for torts committed in the execution of his official or public duties, but that public officer both under common Law and statutes was and is being held to be personally liable in torts.

Whenever the tortious liability of public officer is being determined the personal liability of the officer readily comes to the fore as was initially profounded under the English Common Law. Since the common Law is based on the principle that "Rex Non-Potest Peccare". Therefore, if the king can do no

wrong and similarly nor can the king be sued in his own court, how then can a wronged or aggrieved victim get redressed from the state/king? Hence, the public officer who committed the tortious acts though acting within the scope of his authority and in the execution of his official functions, was to be held liable in his private capacity to his victim, and the crown/state was only to discharge the damages/cost awarded against the public officer tort feasor.

However, the Common Law position was applied in Nigeria, right from the time, the local legislation that established the reception of the Common Law, operated. Both the legislation and Nigerian judicial pronouncements culminated into reinforcing the application of the principle of personal liability of public officer in torts. In RANSOME-KUTI Vs. ATTORNEY-GENERAL OF THE FEDERATION (Supra), the supreme court of Nigeria, held unanimously that; "At Common Law, under the principle of 'Rex Non-Potest' (the King can do no wrong), the State (or Crown) enjoys immunity from legal action and could not be impleaded in its own court for the tortious acts of its servants. Thus, if the state did wrong it could not be sued, it was the agent or servant who committed that wrong on behalf of the state that would be liable personally"[14].

It is to be noted that, even when the doctrine of personal liability of public officer was in operation, it is not without exceptions. That the protection accorded public officer can be lifted, when he acts either ultravires his power, or acted in bad faith or when injunctive/prerogative remedy was awarded against him.

4.4.2 **Liability of Public Officers in Contracts**

Generally speaking, a contract entered into by Public Officer being an agent of, or on behalf of his employers, be it state or any of its agencies he is deemed not

liable but his principal rather is directly responsible. This has been and still is the position in Britain as observed at length by wade, thus;

> The Crown Servant or Agent who actually makes the contract for examples, a War Office Official who orders boots for the army – is not in Law a party to the contract, and is not liable on it personally. He is merely the Crown's agent, and the ordinary Law is that where a contract is made through an authorized agent the principal is liable but the agent is not. The agent is merely a mechanism for bringing about a contract between his principal and the other contracting party. Thus, if the boots are ordered from a manufacturing company the parties to the contract are the Crown and the Company. If a Minister in his official capacity takes lease of land, the parties to the contract are the lessor and the Crown, and the Crown become, the tenant. The agents on either side are not personally liable on the contract. It has long been clear that Crown Servants, acting in their official capacity are as immune as any other agents; in 1786 it was decided that the Governor of Quebec could not be sued on promises made by him to pay for supplies for the army in Canada...
>
> Where a contract is made through an agent duly authorized, the principal is liable but not the agent. Where the agent is unauthorized, the agent is liable but not the principal... Crown agent appear to have a privileged position and to enjoy an anomalous personal immunity in making contracts on behalf of the Crown. If they exceed their authority, therefore, neither the crown nor its agent is liable, and the Law fails to provide the remedy which justice demands [16].

475951

However, in Nigeria, the position notably is not as elaborate as it used to be in Britain, even though the same Common Law principles applied in Nigeria. The crux of the issue was and still is: the issue of performance and breaches of contracts entered into by public officer on behalf of the state. And this issue is central to question of liability of public officer in contracts. Now, a public officer under Nigerian law is not personally liable for breach of contract entered into by him, on behalf of the state or its agencies, provided the public officer is acting within the scope of his authority, and acted in his official capacity.

Moreover, the Common Law position were subsequently re-enacted or adapted into the provisions of Law Reform (Contracts) Act 1961. The application of the Act, even though were now restricted to Lagos State, made it clear that, State Government alone is responsible for performance and breaches of contracts entered into by public officers on behalf of the state or its agencies. This is equally the practice in the states of the Federation where Law Reform (Contracts) Act/Law does not applies.

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CHAPTER FIVE
CONCLUSIONS, AND RECOMMENDATIONS

5.1 OBSERVATIONS

The research explores the inadequacies associated with phrase 'Public Officer' which was not defined even under the legislation that sought to protect the public officer. Until the judicial authority intervened and supplied an interpretative definition for public officer, which was subsequently made adoptive in the Constitutions (especially the 1979 Constitution). Similarly, State Agencies which are simply Statutory entities with power to sue and be sued, are not specifically defined, but that aspect presented less problem, since they are govern more or less by statutes that created them.

The study examines the concept and development of Sovereign Immunity. The doctrine of sovereign immunity derived its origin from the feudal structure of England, it was also employed in other jurisdictions to immunize, a sovereign, a public officer-holder or public officer, etc. It was applied in pre-independent Nigeria to immunize the Crown, just the way it operated in Britain. It had also applied in post-independent Nigeria, until the 1979 Constitution came into force, which virtually abolished the doctrine of State Immunity.

However, prior to coming into force of the 1979 Constitution, all the previous Constitutions did not restrained nor abrogate the doctrine. Since none of those Constitutions contained the abrogating principle enshrined in section 6 of the 1979 and 1999 Constitutions, which outlined the judicial power to adjudicate between persons and governments or its agents and agencies in Nigeria.

Despite the partial abolition of State Immunity however, the judicial and legislative immunities being essentially different both in their nature and application, still applies in Nigeria. And what remain of the executive immunity only applies to protect, President, Vice-President, Governors and Deputy-Governors, within the limit of Constitutional protection. These public servants have their statutory protections enshrined in the Constitution alone. The protection is only available in respect of private acts and operates during the official tenure of a particular public servant. And the immunity ceases once they vacate such prestigious offices. Thereby marking the immunity to be temporary.

While legislative immunity on the other hand, either under parliamentary or presidential system of government is essential to safe and stable polity. For the legislature to undertake the primary function of law-making, repeals or amendments and other incidental functions it has to be protected. The only limitations to this immunity are legal rights, and powers guaranteed under the constitution. However, judicial immunity was founded not only to protect judicial officers but to strengthen independence of the judiciary, so that decisions may be reached without fear of incurring personal liability provided that an act of a judicial officer is judicial function done in a judicial capacity within his/her jurisdiction.

The change in Britain came with the enactment of the Crown Proceedings Act 1947, at which time the principle of tortious immunity of the State remained in forced in Nigeria even with the attainment of independence.

Before the constitutional landmark changes in Nigeria both Public Officers and State Agencies were not without protections provided by the ordinary Laws of the land.

The exposition of the doctrine of Sovereign Immunity is not centered in Nigerian Jurisdiction alone, but the application and historical development of the doctrine in both Britain and American jurisdictions were also considered. The research further explores the hurdles that accompany its operation, especially in the United State s, where there was no Crown and the Sovereign Power lies with the people. Consequently, the worst form of criticism and condemnation came from the bar and bench. Especially, the latter which was and still is considered the most powerful strongly entrenched court-system in the world, known as 'Government by Judge' gave several judgements against the state and its agencies in that directions. The end-result however, was passing of the Federal Tort Claims Act 1946, by which piece of legislation the congress, altered the 'unquestioned immunity from suit. The Federal Tort Claims Act 1946 was likened in spirit to Crown Proceedings Act 1947, which was more liberal and effective in its letter and spirit. Also, parallel was drawn in terms of the operation of the doctrine of Sovereign Immunity in Nigeria and United States of America, the glaring difference was demonstrated with the Nigerian Courts positivist approach is its application and interpretation of statutes. Though in Nigeria there was no singular piece of legislation which may be likened to the two aforementioned legislation. But the coming into force of the 1979 Constitution dealt a heavy blow to the doctrine of Sovereign Immunity and the subsequent Constitutions further laid the doctrine to rest.

However, the doctrine of Limitation of Actions, on the other hand operates on a sound public policy basis with a view to availing protection to public officers and state agencies in respect of actions taken against them outside the period of limitations. The main plank of this doctrine is inter alia, the period of limitation within which an actions against public officer or state agency can be instituted.

Similarly the time when period of limitation begins to run for the purposes of accrual of cause of action, is a vital parameter in determining the competence or otherwise of such cause of action. Despite, the wide range of periods provided for instituting causes of action under statutes of limitation, yet no time-limit is however, provided for prosecuting a public officer for a crime, even if committed in the course of a public duty. This form of protection is only available, on the one hand to public officers under Public Officers (Protection) Laws and also available to State Agencies under various Limitation Statutes. Statutes of Limitation are of general application unless where exceptions were provided by the Statutes.

Another vital issue worthy of consideration in the research, is ouster/exclusionary clauses and their operation in Nigerian Legislation. Despite the existence and application of section 6(6) of the 1979 and 1999 Constitution, ouster clause still operate in Nigerian Legislation, just as it exists in various decrees enacted by the Military Governments However, the crux is inherent jurisdiction of a court of law to determine the actual existence or non –existence of such jurisdiction. By this function a court is only exercising a supervisory jurisdiction. Ousters clauses are not the preserve of either Military Regime of Civilian Administration alone, even though, they were more often employed by the former. However, the backbone to the application of ouster is based on its clarity in its context.

And the question of liability of both state agencies and public officers is considered extensively. The aforesaid liability is predicated on tort and contract, de-emphasizing the aspect of criminal liability of both public officers and state

agencies. Since a public officer cannot be immunized from criminal liability. However, after exploring at length as to who was a public officer, being the central figure in the study, we finally settled on the definition supplied by the 1979 Constitution.

The doctrine of liability of State Agencies and public officers was founded on the archaic English Common law principle of non-liability of the Crown and Crown Servants. This principle was applied in Britain and United States before it was enforced in Nigeria. Before its abolition in the two foreign jurisdiction and latter in Nigeria, the end-result was manifest injustice on citizenry, especially in torts committed by public officers. The position remained, up and until 1979 Constitution come in to force. And the reformed was still maintained under the existing 1999 Constitution of Nigeria. And the study proceeded to consider the contractual liability of public officer and state agencies, within the realm of Nigerian administrative law. Also, not without aid from the positions of other foreign jurisdictions like Britain and United States of America.

The study also establishes that, apart from power and authority of both State Agencies and Public Officers to contract on behalf of the state, the former has equally an implied capacity to enter and conclude a contract by themselves. However, both State Agencies and public officers are not contractually liable for any breach occasioned by the government, since the government is directly responsible for the performance of breach thereof, and not withstanding the state Agents/ Agencies 'administrative function in that respect. However, where a State Agency acting on its implied capacity to enter and conclude a contract for its own benefit, or where a public officer without due authority, enter and conclude a contract on behalf of the

government, both the State Agency and such public officer would be responsible. The theory of making the Government and not its agents/agencies, directly liable in contract was perfectly founded based on common Law principles and later reinforced statutory in Nigeria, by Law Reform (Contracts) Act.

In analyzing the question of tortious liability, the study trace the history back to ancient period when crown could not be sued or be held liable for the torts of its servants based on the principle, 'Rex non potest peccare; that the King can do no wrong; But with advent of reforms, the Crown was made to be liable as a tort feasor even when the crown was acting within the confines of its authority.

RECOMMENDATIONS:

The worst ailment that affects Nigeria as a developing nation is lawlessness, especially executive lawlessness. Even though, there are laws in both Constitution and statutes to check such excesses, their application was hampered by top public officer holders, Though the 1979 and now the 1999 Constitution has provided elaborate protection to such public servants, but more weight was placed on the rights of the citizenry, which are considered fundamental and inalienable in their nature.

Its our humble suggestion that this trend has to be maintained with emphasis on strict and just implementation of the 1999 constitution, which equally enshrined the doctrine of liability of state, its agents and agencies and abolishes the notion of unquestioned immunity from legal actions,

However, in a relentless journey to a prosperous and law- abiding Nigerian nation, cue has to be taken from both developed nations, around the world. For instance the South- Korean trial and conviction of its two former presidents, for corruption committed long before vacating the offices. Similarly, the trial and conviction of former Zimbabwean President for sexual Offences, committed, while in office. Another turning-point is the recent American supreme court ruling directing or allowing trial of the incumbent president Bill Clinton, while in office for alleged wrongful acts committed, while he was a Governor of Arkansas, etc. This will go along way to strengthen the rule of law and ensure the notion of equality before the law.

Furthermore, the Nigerian law-makers and interpreters, should further redefined the liability of honest and dutiful public officers when acting in good-faith and within the scope of their authority, but made to be liable, simply because the action was instituted against such public officers, within the period of limitation prescribed under the Statutes of Limitations. However, of less importance is a call for stream-lining the application of ouster in Nigerian legislation. The proliferation of such vast number of draculian exclusionary clauses in whatever, ramifications, has to be restructured and their strict application should also be restrained, in order to ensure independence of the judiciary, in Nigeria.

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