



The Legal Luminary

In-house E-Newsletter of the Legal Department

Volume 1, Issue 4

March 2011

Editorial Board

- Mr. B. A. Taribo. :
Editor-in-Chief
- Mrs. Nkessa
Cookey-gam: Vice
Editor-in-Chief
- Chioma N. Momah
Editor
- Aisha Isa Ahmed
- Joe Embugushiki
- Talatu Akhidime

Inside this issue

Editor:

Chioma Momah

Q & A:

Aisha Isa Ahmed

Social Diary:

Talatu Akhidime

Understanding the Public Officers Protection Act—
Panshak Haggai.

All great things are simple, and many can be expressed in a single word: Freedom, Justice, Honor, Duty, Mercy, Hope. Winston Churchill



News Update

Japans death toll from March 11 quake and tsunami 2,414 and 3118 people are missing.

Privatisation Bureau ask reserve bidder to take over Nitel.

CBN warns bureau de change operators on timely reporting.

NBA Abuja meets on the first Friday of every month by 4pm at Blakes Resort, Garki, Abuja.

From the Editor!

Welcome to the fourth edition of "The Legal Luminary". We appreciate all the time taken by our readers to respond to all our past editions.

In this edition, we conclude our feature article which we had commenced from the last edition "Understanding the Public Officers protection Act: Are Officers of NDIC protected?" We also have our Q & A section as well as the other regular features. Please let us have your

UNDERSTANDING THE PUBLIC OFFICERS PROTECTION ACT: ARE OFFICERS OF NDIC PROTECTED?

Continued from last month.....

The purport of this provision is that no legal proceeding arising from the discharge of a valid public function can be instituted against a public officer after three months of the act, or default complained of. To further buttress this point, it was held in the case of *Ibrahim v. Judicial Service Committee, Kaduna State* (1998) 14 N.W.L.R. (Pt. 584) p1, that where a statute provides for the institution of an action within a prescribed period, proceedings shall not be brought after the time prescribed by such statute. Any action that is commenced after the prescribed period will be statute-barred. The initial burden of proving that the plaintiff's action is statute-barred by virtue of Section 2(a) of the Public Officer's Protection Act, 2004 is on the defendant relying on the Act. Thereafter, the Burden shifts to the plaintiff who is to justify that he is not caught by the Act of Limitation. Once the plaintiff discharges this burden, it reverts to the defendant. See: *Philip Isaiah Idiok, CSP v. Inspector General of Police & Others* (FHC/ABJ/CS/377/2005)

Government agencies also include some form of protection or indemnity for directors and officers in their enabling Laws, in addition to the provisions of the Public Officers Protection Act. It is noteworthy to state that the NDIC Act, 2006 provides under Section 55 that:

"The Corporation or any of its directors, officers or agents shall not be subject to any action, claim or demand by or liability to any person in respect of anything done or omitted to be done in good faith in pursuance or in execution of in connection with the execution of any power conferred on the Corporation, director, officer or agent."

This provision expressly confers immunity on all directors, officers and agents of the Corporation for any legal claim or action arising from any official duty discharged in good faith. This provision aims at encouraging directors, officers and agents of the Corporation to discharge their official duties without being intimidated by the fear of unwarranted intimidation and unnecessary

Q & A

Q WHAT IS THE DIFFERENCE BETWEEN A SOLICITOR AND A BARRISTER?

A. In Nigeria there is no distinction between a Barrister and a Solicitor. Once a person has been called to the Nigerian Bar he is entitled to practice as a Barrister and a Solicitor of the Supreme Court of Nigeria.

However in the UK where most of our Common law practices were derived there are

noteworthy differences between the work done by solicitors and barristers. Namely; While a solicitor handles legal matters outside of advocacy in court, a barrister handles legal matters involving advocacy in a court.

A solicitor is a person who provides legal advice to clients and one who prepares legal arguments. A barrister takes up the case before the judge. However, solicitors in the UK can appear as advocates in some lower courts. Solicitors are the ones who usually brief barristers for court cases.

lawsuits. Furthermore, the productivity and efficiency of directors, officers and agents will be greatly affected if there is no statutory protection against such legal proceedings and in the long run, the integrity of the Corporation as a deposit insurer and regulator in the financial sector will be undermined of the Public Officers Protection Act.

Exceptions to Public Officer Protection

The provisions have been subject to various cases of misinterpretation and abuse by persons who intend to frustrate the legal proceedings instituted against them in court, by hiding under the immunity provisions of the Act. As a result of this situation, the courts, have formulated certain exceptions to the applicability of the Act. For instance, it was held in the case of *Nigerian Ports Authority v. Construzioni General Far-sura Cogefar Spa & Another* (1974) 1 All NLR, 463, that An action for breach of contract does not fall within the contemplation of Section 2(a) of the Public Officer (Protection) Law. The Act was not meant to operate in breach of existing contracts of employment or disrupt generally accepted conditions of service. The Act does not cover any Act of a public officer that is not done in good faith.

Similarly, it was reiterated in *Osun State Government v. Dalami Nigeria Limited* (Suit no: SC. 277/2002) and *Salako v. L.E.D.B. and Another* (20 N.L.R., 169) that the Public Officers Protection Act does not apply in cases of recovery of land, breaches of contract, claims for work and labour done, etc. The provisions of the Act do not extend to the *ultra vires* acts of public officers or the organizations they represent. The protection and immunity offered by the provision of Section 2(a) of the Public Officers Protection Act will only apply when the public officer is acting within the confines of his statutory duty.

Section 2(b) of the Public Officers Protection Act provides that whenever a judgment is given by a court of competent jurisdiction in favor of the defendant during the cause of action, the defendant is entitled to recover from the plaintiff all costs he incurred while defending such action.

Once the public officer steps outside the bounds

of their public authority and are acting outside the colour of their statutory or constitutional duty, they automatically loose the protection of the law. A public officer can be sued outside the limitation period of three (3) months if at all times material to the commission of the act complained of, he was acting outside the colour of his office or outside his statutory or constitutional duty.

Conclusion

It is apparent that directors, officers and agents of the Corporation are protected from any legal action by way of civil claim which may arise in the course of discharging their statutory duties, provided that such a duty is carried out in the normal course of business and in good faith.

Social Diary

Growth and change are necessary for the progress of any Organisation, two additional units were created in the legal department namely, the Board Secretariat Unit and the Admin Unit.

The Corporation has once again received a boost with the appointment of a new Executive Director of Operations in the person of Mr. Erzdwiwa and the recruitment of about over a hundred new staff. Bon anniversaire to Safiga of the Legal Department who added another gear on the 21st of February.

REPLY BRIEF

Nice one.

I think the publication is much better in PDF.

Keep up the good work. Regards,
Ade Oyawoye (ITD)