DEAD END OF PUBLIC OFFICERS PROTECTION ACT IN A CONTRACT OF SERVICE: RESPITE FOR EMPLOYEES IN NIGERIA?

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Abstract

The Public Officer Protection Act (POPA) 1893 seems to have occasioned different forms of injustice in Nigeria. POPA has shielded a number of public officers and public institutions from liability arising from various civil wrongs thereby precluding and denying deserving litigants of legal reliefs. The escapist route provided by POPA for persons in the public offices leaves so much to be desired. The relic of this colonial law has caused untold hardship in the Nigerian jurisprudential sphere. Little wonder why most counsel place heavy reliance on POPA to extricate public officers even in the face of blatant commission of civil wrongs. POPA has been canvassed as a statutory bar even in employment relationship. However, it is heartwarming that the Supreme Court (in its recent decision) has affirmed the inapplicability of section 2a of POPA to contract of service. This decision has brought great respite to a number of aggrieved employees who could have fallen victim to the injustice occasioned by the continuous application

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of POPA. This work examines the Supreme Court decision in National Revenue Mobilization Allocation and Fiscal Commission v. Ajibola Johnson & 10 Ors and a number of other case laws that have dealt a serious blow to the application of POPA in a contract of service. Primary and Secondary materials were consulted in this work. The work concludes that an outright repeal of POPA is not only desirable in employment relationship but also in other similar commercial transactions which involve public officers and governmental agencies.

Keywords: Public Officer Protection Act, Employment, Contract of Service, Employee, Workers

1. Introduction

The Public Officer Protection Act 1893 (herein referred to as POPA) is a vestige of colonial legislation. This Legislation seems to have done more harm than good especially for former employees seeking to claim some legal reliefs from their erstwhile employers.[1] POPA was enacted to provide protection against actions of public officers and institutions acting in the execution of public duties by entrenching a three-month limitation period for action against public officers in the performance of their obligations.[2] However, many meritorious cases have been lost technically because of the continued application of POPA[3]. In the past, employees who were even in a contract of service had no legal remedy because they

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1 *Olugbenga Jay Oguntawase v. University of Lagos*, Unreported Suit No. NICN/LA/499/2017

2 See POPA, Cap P. 41LFN, 2004, S 2(a); See also *Ekeogu v. Aliri* (1991) 3 NWLR (Pt. 179) 258

were caught up by the statutory bar foisted by POPA.[4] Although the rationale behind the retention of POPA is beneficial as it protects public officers from being harassed by frivolous litigation by ensuring that parties who claim to have suffered legal injury act timeously.[5] But it has been observed that on some occasions, grave injustice is melted on litigants including employees who though have genuine causes of action, are left without remedies, even in cases where the delay was not intentional.[6] The POPA seems to be providing an undeserved shield for public officers against ordinary citizens thereby depriving the citizenry of the opportunity to ventilate their grievances particularly in cases of infraction of their entitlement and constitutional right.[7] This position still stood even in cases of master-servant employment relationship.[8]

But thankfully the Supreme Court has impeached this position in respect of employment relationship which has all the indices of contract of services.[9] This work is divided into five parts. Part I is a general introduction. Part II explores the cardinal distinctions between contract of service and contract for service by reiterating some legal theories. Part III examines the recent onslaught on

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3 *Ekeogu v. Aliri* (supra); See also *Adigun v. Ayinde* (1991) 8 NWLR (PT. 313)516

4 *Adigun v. Ayinde* (supra)

5 A. Odusote, 'The Nigerian Public Officers Protection Act; An Anachronistic Legislation Yearning for Reforms' (2019) 9(1) *Journal of Public Administration & Government*

6 Ibid

7 See the opinion of Denton-West JCA in *Nwaka v. Head of Service, Ebonyi State* (2008) 3 NWLR (pt. 1073) 156 at 163

8 See *Adigun v. Ayinde* (supra); See also *Olugbenga Jay Oguntuwase v. University of Lagos* (supra)

9 *National Revenue Mobilization Allocation & Fiscal Commission v. Johnson* (2019) 2.N.W.L.R. (pt. 1656) 193 at 247

POPA by the Supreme Court especially as it relates to non applicability of POPA to the contract of service. Part IV discusses the injustice and statutory exceptions of POPA. Part V is a general conclusion and recommendation.

2. Cardinal Distinctions between Contract of Service and Contract for Service

In modern time, employment relationship arises from a contract, that is, an enforceable agreement between one person who offers his services or labour to another in return for payment. It has been observed that distinct relationships could arise in an employment sphere.[10] In cases where the essential features of an employer-employee relationship exist, it is easy to categorize such relationship as a contract of service. Some fundamental characteristics of a contract of service include: an obligation by the employer to employ a man and to pay him an agreed or proper wage[11], a right to control his services and the manner in which he performs them and to dismiss him if reasonable cause is shown.[12] From the workman's perspective, he must comply with all reasonable instructions, present himself for work at an agreed hour[13] and must also continue to work for the agreed period and will be guilty of breach of contract if he refuses to perform these obligations.[14]

There may be challenges when the features which establish a contract of service are absent. In such case, one may be tempted to

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10 E.E. Uvieghara, *Labour Law in Nigeria* (Malthouse Press Limited, 2001) p. 3-11

11 See the Labour Act, 1974; S.15

12 Ibid; S. 11(1)(5)

13 Ibid; S. 13

14 Per Romer L.J. in *Denham v. Midland Employers Mutual Assurance Ltd*. (1955) 2QB437,446

classify such condition as a contract for service. There seems to be a slight difference between a contract of service and contract for service. In most contract for service, the employee is generally entitled to some social welfare scheme (such as pension, gratuity, insurance and paid annual leave) but person under a contract for service may not be entitled to them. A number of tests[15] have been propounded to determine whether a person is under a contract of service or a contract for service. It has been suggested that the 'Control Test' is most suitable in reaching a decision as to whether the employment is a contract of service or a contract for service.[16] This opinion is no longer tenable as it is possible for an employer to exercise control over his employee, yet the employee may not be under a contract of service. As such, the inadequacy of the control test led to the development of other relevant tests such as: the Organization or Integration test[17]; the Multiple test which is also referred to as the 'mixed' test[18]. The multiple test was adopted by Mackenna J. in *Ready Mixed Concrete (South East) ltd. v. Min. of Pension and National Insurance*[19] where the learned Judge posited thus:

> A contract of service exists if the following three conditions are fulfilled:

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15 See E.E. Uvieghara, (n.10)

16 S. Jain, 'Contract of Service and Contract for Service' (2003) 8(2) *SCC Journal*

17 This test seeks to ascertain whether the workman is employed as part of the business, and whether his work is an integral part of the business or it is only an accessory to it. If the work is integral, then it is a contract of service; otherwise it is a contract for service (if it is only an accessory to the main work)

18 See C.K. Agomo, *Nigerian Employment and Labour Relations Law and Practice* (Concept Publications Limited, 2011) pp. 61-67

19 [1968] 1 All E.R. 433

(i) the servant agrees that in consideration for a wage or other remuneration, he will provide his work and skill in the performance of some service for his master,

(ii) he agrees expressly or impliedly, that in performance of that service, he will be subject to the other's control in a sufficient degree to make that other master;

(iii) the other provisions of the contract are consistent with it being a contract of service.[20]

In spite of the foregoing, the multiple test still as its own inadequacy. On the challenge pose by differentiating between a contract of service and a contract for service[21], a revered Jurist[22] clearly observed that 'it is often easy to recognized a contract of service when you see it but difficult to say wherein the difference lies.' In enunciating the core distinctions between a contract of service and a contract for service, the Nigerian Supreme Court in *Shena Security Ltd. v. Afropak (Nig.) Ltd. and 2 Ors*,[23] postulated that:

> Where there is a dispute as to which kind of contract the parties enter, there are factors which usually guide a court to arrive at a right conclusion. For instance:
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> (a) If payments are made by way of "wage" or "salaries", this is indicative that the contract

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20 Supra(n. 19)

21 Contract for service are often referred to as an independent contractor

22 See Denning L.J. in *Stevenson, Jordan & Harrison Ltd. v. Macdonald and Evans* [1952] 1 T.L.R. 101

23 (2008) 6CLRNI

is one of service. If it is for service, the independent contractor gets his payment by way of "fees". In a like manner, where payment is by way of commission only or on the completion of the job that indicates that the contract is for service.

(b) Where the employer supplies the tools and other capital equipment, there is a strong likelihood that the contract is that of employment or of service. But where the person engaged has to invest and provide capital for the work to progress that indicates that it is a contract for service.

(c) In a contract of service/employment, it is inconsistent for an employee to delegate his duties under the contract. Thus, where the contract allows a person to delegate his duties thereunder, it becomes a contract for service.

(d) Where the hours of work are not fixed, it is not a contract of employment/of service.

(e) It is fatal to the existence of a contract of employment/of service that the work is not carried out on the employer's premises. However, a contract which allows the work to be carried outside the employer's premises is more likely to be a contract for service.

> (f) Where an office accommodation and a secretary are provided by the employer, it is a contract of service/of employment.[24]

These factors itemized by the learned Justices of the apex court, appear to constitute the different tests usually applied to distinguish between a contract for service and a contract of service. It is submitted that there is no universally acceptable 'single' test that will suffice for all situations.[25] As such, the fact of each case, the intention of the parties goes a long way in determining whether a contract is of service or for service.

3. Injustice Occasioned by POPA on Employees under Contract of Service

Before examining the extent of injustice occasioned by POPA on workers under a contract of service, it is apposite that I briefly discuss the scope and rationale of POPA in Nigeria. Section 2(a) of POPA 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 or 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- 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

[24] *Shena Security Ltd. v. Afropak (Nig.) Ltd. and 2 Ors* (supra)

[25] See C.K. Agomo, (n.18)

> damage or injury, within three months next after the ceasing thereof.

The phrase 'any person' referred to in the section above connotes artificial and natural persons.[26] In other words, the provisions of POPA do not only apply to public officers but also to public institutions, ministries, departments and agencies.[27] In *Asogwa v. Chukwu*[28], the court observed that 'The term Public Officer referred to in the Interpretation Act Cap 149 LFN 1990 can only be described to be referable to those enjoying employments with statutory flavor as reflected in section 318(1) of the 1999 Constitution'. One of rationales behind POPA is predicated on the belief that public institutions may be severely handicapped by having to retain records for longer periods than necessary.[29] So the public policy for the retention of POPA includes among others; storage of documents, records, the management of public officers that are prone to transfers and high turn-over due to disengagement from the civil/public service and the burden of being able to produce documents and personnel to effectively defend "stale claims" commenced against the government.[30] Elucidating clearly on the rationale behind POPA, the Supreme Court in *Ekeogu v. Aliri*[31] held:

> The Act is designed to protect a public officer against any action, prosecution or other proceeding;

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26 *C.B.N. v. Adedeji* (2004) 13 NWLR (pt. 890) pg 226 at 245

27 Ibid

28 [2003] 4 NWLR (pt. 811) 540 at 551 per Aboki JCA (CA)

29 *Rawal v. Rawal* [1990] KLR 275

30 O. Oyewo, "Sounding the Death Knell of the Public Officer Protection Act/Law in Nigeria" (2016) 4(1) *International Journal of Liberal Arts and Social Science*, 92-106

31 (1991) 3NWLR (pt. 179) 258

> and for any act done in pursuance of or execution of any law, public duty, or authority; or for any alleged neglect or default in the execution of any law, duty or authority, though, it does not afford protection for conduct that is criminal or acts done outside the scope of employment.[32]

A number of cases will now be considered to illustrate the extent of gross injustice perpetrated by POPA particularly as it relates to employees under contract of service. In *Ibrahim v. Judicial Service Commission, Kaduna State*[33], the plaintiff, an Upper Area Court Judge in Kaduna was wrongfully retired from office on 8/02/1985. He sued the Judicial Service Committee of Kaduna State for the wrongful retirement at the Kaduna State High Court. The defendants (that is, the Judicial Service Commission) raised a preliminary objection that the case was statute barred. The plaintiff in response contended that the Public Officer Protection Act applies only to public officers and it did not protect a public institution (Judicial Service Committee of Kaduna State). This argument was rejected and the court held that the case was statute-barred. The plaintiff appealed to the Court of Appeal and the Court dismissed the matter on the ground that it was statute-barred. He further appealed to the Supreme Court and the apex court equally rejected the argument that the Public Officers Protection Act applies only to public officers. The apex court held that the POPA applies, to both a public officer and public institution. As such, the plaintiff's case was conclusively dismissed as being statute barred.[34]

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[32] Supra(n. 31); See also *Yabugbe v. C.O.P*. (1992) 4NWLR (Pt. 234) 152

[33] (1998) 12 S.C.N.J 255 at 272

[34] See *University of Jos v. Ikegwuoh* (2013) 9NWLR (Pt. 160) 478; See also *Kolo v. A.G. Federation* [2002] 45WRN 53 at 66-67 per Oduyemi JCA (CA)

In *Adigun v. Ayinde*[35], the hardship and injustice that arose from a rigid and legalistic interpretation of the outdated POPA was extremely disturbing. In this instant case, the Appellant who was a civil servant with the Federal Ministry of Agriculture had an automobile accident and sustained very serious injuries in the course of a trip on an official assignment; in an official car driven by the first Respondent who was a driver in the Ministry. The Appellant was rushed to the University Teaching Hospital in Ibadan, where he spent eighteen (18) months, and was further referred to a hospital in Edinburgh in the United Kingdom for treatment. He was paralyzed from the waist downwards owing to damage done to his spinal cord. He spent about three (3) years from the date of the accident, moving from one hospital to the other in search of medical treatment. His disability upon final discharge from hospital was assessed at 100%. On the 21st of January, 1981 (a period of about three years) he commenced his action against the first Respondent and his employers, the Federal Ministry of Agriculture before the High Court. The Respondent objected to the hearing of the suit based on the provision of the Public Officers Protection Act. Consequently, the trial court upheld the objection and dismissed the suit as being statute-barred. Both the Court of Appeal and the Supreme Court affirmed the decision of the trial Court. Gladly, the Supreme Court observed the injustice in the statute but regrettably, it adopted the literal and plain interpretation of the Act and held that the action was statue-barred nonetheless.[36]

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[35] (1993) 8 NWLR (Pt. 313) 516

[36] See also the case of *Inspector Dominic Ibo v. Nigerian Police Force* Unreported Judgment of the National Industrial Court, Calabar Division in Suit No. NICN/CA/39/2014

Having recognized the manifest injustice occasioned by POPA, their Lordships should have taken a bold initiative to recommend the repeal of POPA. Sadly, aside from the emotional sympathy shown by the learned Justices, the Appellant got no legal remedy due to the technical application of POPA.

Employees under contract of service and litigants in general, should however have some respite and reprieve under the law when the delay is not due to their fault. The observation of Justice Denton-West, JCA (as he then was) in *Nwaka v. Head of Service, Ebonyin State*[37] seems very instructive in this regard. In the case above, His Lordship with a rare effrontery pointedly observed that:

> ….the Public Officers Protection Act is providing an undeserved shield for public officers against ordinary citizens who as it were, may be ignorant of the provisions of the Act. It is my humble view that laws should operate to enhance the lives of the citizens and not to deprive the citizenry the opportunity to ventilate his grievances especially where there is an infraction of their entitlement and constitutional right.[38]

The remark above is heartwarming but much more important is an urgent step to reform POPA so as to curtail its injustice. Interestingly, some States in Nigeria have removed the three months limitation period and make the limitation period the same with private individuals.[39] In *Uduma v. Attorney-General of*

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[37] (2008) 3NWLR(Pt. 1073(156 at 163

[38] Supra

[39] For instance, see the Limitation Law of Abia State, Cap. 24 of 2001; Ss. 42, 44; See also the Public Officers Protection and Limitation Law, Cap 102, 2009 of Eboyin State; Ss. 42 and 44

Ebonyin State[40], the Plaintiff was the Chief Accountant of the Ebonyin State Civil Service. His appointment was dismissed in a letter dated 20/05/2009 headed 'Dismissal' and signed by the Permanent Secretary Eboyin State Civil Service. The Lower Court struck out the suit on the ground that the action was statute-barred as it did not comply with the provision of section 2(a) of the Public Officers Protection Law of 1963, whereas the Plaintiff relied on the provisions of sections 42 and 44 of the Ebonyin State Limitation Law, Cap. 102 of 2009. On appeal, the Court of Appeal upheld the provisions of sections 42 and 44 of the Limitation Law of Ebonyin State and made the necessary orders for a retrial.

The new Limitation Law of Ebonyin State has dealt a serious blow to section 2(a) of POPA. This new legislation and the approach of the Court of Appeal in the *Uduma*'s case have effectively mitigated the hardship, injustice previously suffered by employees under contract of service.

4. Reflection on Recent Supreme Court's Judgment and the Dead-end of POPA for Employees under Contract of Service

The crux of this work is to ascertain whether the recent Supreme Court's decision in *National Revenue Mobilization Allocation & Fiscal Commission v. Ajibola Johnson & 10 Ors* [41] has effectively

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[40] (2013) LPELR 21267 (CA)

[41] (2019) 2 NWLR (Pt. 1656) 247 at 270 – 271. In that case, Per Ariwoola JSC held inter alia that section 2(a) of the Public Officers Protection Act does not apply to contract of Service. His Lordship went on that the appellants in that case are not covered by the provisions of section 2(a) of the Public Officers Protection Act neither do they enjoy the umbrella of that Act in the contract of service involving the respondents as to render the respondents' action statute-barred. See also paragraph 44 of the recent decision of the apex Court

extinguished the application of POPA to employees under contract of service. The fact of this case is first considered before any other analysis. In this instant case, the respondents were amongst those invited for employment as staff of the 1st appellant, a commission of the Federal Government of Nigeria. The respondents were later offered appointment by the 1st appellant via exhibits 2, 2(a), 2(b), 2(c), 2(d), 2(e) and 2(f). By their respective letter of appointment, the respondents were each required to submit medical certificate of fitness given by a government medical officer. Upon acceptance of the offer of appointment, each of the respondents was required to sign and return the duplicate copy of the letter of appointment attached to the said letter.

When the respondents reported for work after accepting their offer of appointment they were addressed by the Director of Personnel of the 1st appellant. The respondents continued to report at the headquarters of the 1st appellant until they were orally asked to stay away from work as there was said to be a directive from the then new government to stop all appointments made in the month of May, 1999. Consequent upon the said directive, the 1st appellant wrote to the respondents to withdraw their appointments. The letters of withdrawal were exhibited. In the trial court, one of the prayers of the respondents was for an order directing the defendants to pay the plaintiffs all their salaries, emoluments and other entitlements due from 1st June, 1999 to date. As both parties were still dissatisfied with the Court of Appeal decision, they appealed to the Supreme Court. The Supreme Court among other things considered the provisions of section 2(a) of the Public Officers Protection Act especially in respect of a contract of employment (contract of service). While the appellant was of the view that the

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delivered on 19th September, 2019.

respondents' suit was statute-barred having been brought outside the time limit stipulated under POPA, the respondents however contended that their suit was not caught up by the statute of limitation because the employees were under a contract of service. Their Lordships carefully observed that the respondents were on contract of service. The apex court rightly affirmed that the appellants did not enjoy the umbrella of Public Officers Protection Law in the contract of service involving the respondents. Their Lordships also averred that 'It is now settled law that section 2 of the Public Officers Protection Act does not apply to cases of contract.[42]

This aspect of the judgment which emphatically pronounced that section 2(a) of the POPA is not applicable to contract of service deserves enormous commendation because it has shaped and transformed the face of employment law in Nigeria. Arising from this decision is the assumption that section 2(a) of POPA cannot exonerate employers from liability whenever they wrongfully violate the terms enshrined in the employment contract of their former employees. Aggrieved employees under a contract of service now have legal remedy for their long years of service. In *Prof. Sinyeofori A. Brown v. University of Port Harcourt & 2 Ors*[43], the National Industrial Court in Port Harcourt held among other decisions that:

> The current position of this Court on the provision of the Public Officers' Protection Act is that section 2(a) of this Act no longer applies to employment

[42] See *Osun State Government v. Dalami Nigeria Ltd*. (2007) 9 NWLR (Pt. 1038) 66; See also *Nigerian Ports Authority v. Construzioni General, Farsura Cagefar Spa & Anor* (1974) 1. All NLR (Pt. 2)

[43] Unreported Suit No. NICN/PHC/02/2017

> matters by virtue of the recent decision of the Supreme Court on the case of *National Revenue Mobilization Allocation and Fiscal Commission & 2 Ors. v. Ajibola Johnson & 10 Ors.*[44]

In *Prof. Sinyeofori's* case, a retired employee was able to obtain all his entitlements and his Professorial status was equally restored as the Court overruled the preliminary objection of the defendants who sought to frustrate the claimant's reliefs by relying on the much touted POPA. Gladly, the sound judgment of the apex court in *National Revenue Mobilization & Fiscal Commission & 2 Ors*, came to the aid of the Claimant thereby pronouncing a dead-end for POPA in employment matters especially under the purview of contract of service. Similarly, in the case of *Mr. Alukwe Okpara v. AG. Rivers State & Anor*,[45] Hon. Justice F.I. Kola-Olalere while drawing inspiration from the case of *National Revenue Mobilization Allocation & Fiscal Commission & 2 Ors*. held:

> In the light of these case law positions on the application of the Act to contract of employment, I hold that section 2(a) of the Public Officers Protection Act is not applicable to the case at hand. Therefore, I further hold that the respondent's case is not barred by the provision of section 2(a) of the Public Officers Protection Act.

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[44] Supra (n. 41)

[45] Unreported Suit N. NICN/PHC/87/2017 Ruling delivered on 14th October, 2019. See also *Mr. Ibiwari Lovde Jack v. Niger-Delta Development Commission (NDDC) & Anor*. Unreported Suit N. NICN/YEN/82/2016 Available at, https://www.nicnadr.gov/judgment/details.php?id=3313 Accessed 10th September, 2020.

It is noteworthy that section 16 of the Limitation Law of Rivers State has enlarged the limitation period to five years instead of the short duration of three months enshrined under POPA. For the avoidance of doubt, the said section clearly provides "No action founded on contract, tort or any other action not specifically provided for in Parts I and II of this Law shall be brought after the expiration of five years from the date on which the cause of action accrued."[46]

The above statutory provision is highly commendable as it will significantly mitigate the hardship and injustice that an employee might have suffered if he had instituted his action outside three months (time frame) as stipulated in section 2(a) of the POPA. It is important to state that the POPA also provides for some recognized exceptions. In effect, there are different instances where a public officer is not immuned from litigation under POPA. Some of the exceptions under the POPA include; cases of continuance of injury[47]; commission of criminal action outside the public officers' duties do not exonerate the public officer from liability[48]; cases of recovery of land and land disputes[49]; breaches of contract and claims for work and labour done. This work considers it necessary to briefly discuss the exception of breach of contract under POPA. It has long been settled that an action for breach of contract does not fall within the purview of section 2(a) of POPA. Emphasizing

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46 See the Limitation Law of Rivers State, Cap; 80 of 1990

47 *Adigun v. Ayinde* (supra)

48 See the case of *Kwara State Pilgrims Welfare Board v. Jimoh Baba* (2018) LPELR 43912 (SC) where the Supreme Court held that POPA will not apply where there is evidence of bad faith on the part of the public officer.

49 See the opinion of His Lordship, Galadima J.S.C. in *Attorney General of Rivers State v. Attorney-General of Bayelsa State & Anor*. (2013) 3 NWLR (Pt. 1340) 123

on this exception, Mohammed (JSC) clearly observed in the case of *FGN v. Zebra Energy Ltd*. [50] thus:

> The provisions of the Public Officers Protection Law are not absolute. The provisions do not apply in actions for recovery of land, breaches of contract, claims for work and labour done. See *Okeke v. Baba* (2000) 3 *Soule v. L.E.D.B*. (1965) LIR 118. The Public Officers Protection Act was not intended by the Legislature to apply to contract …

The exception of POPA on ground of breach of contract deserves a lot of commendation because it enables litigants or contractors claim the reliefs entrenched in a contract in case a public officer contravenes his contractual obligation and decides to plead POPA, such argument will not be tenable any more. The hardship and injustice on commercial world is better imagined than felt assuming public officers were shielded from contractual breaches, there would have been great chaos in commercial agreements in Nigeria.

The other striking exception relevant to this discourse is the exemption that permits claims for work and labour done. It is also settled law that section 2 of the Public Officers (protection) Act does not apply to claims in respect of work and labour done and cases of contract[51]. In the case of *Nigerian Ports Authority v. Construzioni General Farsura Cogefar Spa & Anor*[52], the Court

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[50] (2002) 18 NWLR (Pt. 798) 162 at 196

[51] A. Odusote, 'The Nigerian Public Officers Protection Act: An Anachronistic Legislation Yearning for Reforms' (2019) 9(1) *Journal of Public Administration and Governance* 219 - 235

[52] (1974) 1 ALL N.L.R. 463 at pp. 476 6o 477

expressly noted that POPA does not apply to cases of contract. In reaching this conclusion, the Court made reference to the case of *Salako v. L.E.D.B. and Anor*[53], where de Commarmond S.P.J. interpreted the provisions of S. 2 of the Public Officers Protection Ordinance which is nearly similar to section 97 of Nigeria Ports Authority, Act. Their Lordships affirmed the law as follows:

> I am of the opinion that section 2 of the Public Officers Protection Ordinance does not apply in cases of recovery of land, breaches of contract, claims for work and labour done, etc. We too are of the opinion that de Commarmond S.P.J. has quite rightly stated the law in the passage of his judgment cited above. It seems to us that an enactment of this kind, i.e. S. 97 of the Ports Act is not intended by the Legislature to apply to specific contracts.

The above decision is sound in law and extremely beneficial to the commercial world in Nigeria. Assuming public officers were also shielded from any claims for work and labour, it could have been catastrophic for business concerns and survival. Besides, if workers were debarred from making claims for work done and labour rendered, as a result of Public Officers Protection Act, it could have created and promoted a system of exploitation. This would have been a clear breach of section 34 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).[54] This could have also amounted to a serious infraction of the Labour Act, 1974.[55] Suppose a labourer/employee after completing his work under a

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[53] 20 NLR 169

[54] 1999 CFRN (as amended) guarantees dignity of human person and prohibits torture or inhuman or degrading treatment.

[55] See the Labour Act, Cap. L LFN, 2004;s. 46.

contract was denied his just wages by an employer who refuses to honour claims for work and labour done on the basis of statutory bar stated under POPA, it would have been unconscionable and generated great hardship particularly for the employee. In an outright objection to neglect or ill-treatment of workers, the Labour Act provides:

> (1) Any employer who neglects or ill-treats any worker whom he has contracted to employ in accordance with this part of this Act shall be guilty of an offence, and on conviction shall be liable to a fine not exceeding ₦500.00 or to imprisonment for a term not exceeding one year, or to both.

While the above provision is commendable for entrenching dignity of labour but imposing a fine of ₦500.00 in this modern age for maltreatment of workers by employers is not a sufficient deterrent. A major reform is required under the Labour Act. The dead end of POPA is a relief to employees under contract of service because such employee can now seek redress in court and may be granted all their entitlement and obtain justice despite the statutory bar enshrined in POPA.[56] One of the legal implications of this line of thought is that preliminary objections which rigidly insist on the application POPA to a contract of service may be fruitless as the position has now changed especially in respect of employees under contract of service.[57]

5. Recommendations

[56] See POPA; s. 2(a); See also the case of *National Revenue Mobilization Allocation & Fiscal Commission v. Ajibola Johnson & 10 Ors* (supra)

[57] *Prof. Sinyeofori A. Brown v. University of Port Harcourt & 2 Ors* (supra)

From the arrays of judicial authorities considered what seem discernable is that most litigants who pleaded POPA, succeeded on the ground of technicality under section 2(a) of POPA. This has often led to great dissatisfaction, injustice and hardship for employees who had no legal remedy due to the anachronistic provision of POPA. It is recommended that the (time frame) limitation period of three months be enlarged to five or six years so that an aggrieved employee can have ample time to ventilate his grievances. The Rivers State Limitation Law which expanded the Limitation period to five years is highly commendable. It is also suggested that POPA should be holistically reviewed so as to make it attuned with current trend in Nigerian legal system as well as international best practices. It is submitted that POPA has outlived its usefulness because its outdated provision has been a clog in the wheel of justice. Accordingly, I think it is high time that the National Assembly repealed POPA in its entirety. On the part of the |Justices in the temple of justice, it is recommended that judicial activism and substantial justice should be applied so as to whittle the devastating impact of section 2(a) of POPA in deserving cases.

5.1 Conclusion

The recent decision of the Supreme Court in *National Revenue Mobilization Allocation & Fiscal Commission & 2 Ors* is a watershed in the annals of employment law in Nigeria. This judgment has effectively pronounced a dead end to the application of POPA especially as it relates to employees under contract of service. The death knell to POPA in this aspect of law has now brought tremendous respite to employees who could have borne devastating emotional trauma had the Supreme Court allowed the application of POPA to contract of service. It seems however those

workers under contract for service do not enjoy this rare privilege accorded to statutory flavour employment.