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SCAN ARTICLE

An Analysis of the Public Officers Protection Act: A Critical Examination of Immunity, Accountability and Governance

Oteyi Kpomasiruchi* & Great Simeon Kinikachi**

Abstract

This comprehensive study delves into the complexities of the Public Officers Protection Act, a legislation that has far-reaching implications for governance, accountability, and the rule of law. The research undertakes a critical examination of the Act's provisions, exploring the tensions between immunity and liability, and the consequences of this delicate balance for public officers, citizens, and the State. By investigating the theoretical underpinnings and practical applications of the Act, this study aims to contribute to a nuanced understanding of the challenges and opportunities presented by this legislation. The research explores the historical context and evolution of the Public Officers Protection Act, tracing its development and amendments over time. It then examines the Act's key provisions, including the scope of immunity, the exceptions to immunity, and the procedures for invoking immunity. The study also investigates the impact of the Act on various stakeholders, including public officers, citizens, and the judiciary. Furthermore, this research evaluates the effectiveness of the Public Officers Protection Act in achieving its intended objectives, including the promotion of good governance, accountability, and public trust. It identifies the strengths and weaknesses of the Act, highlighting areas for reform and improvement. The study's findings will inform policy and legislative reforms, ultimately contributing to the development of a more balanced and effective framework for public officers' liability that promotes accountability, transparency, and good governance.

Keywords: Public Officer, Immunity, Accountability, Governance

Introduction

The Public Officers Protection Act, is a landmark legislation in Nigeria's legal landscape, enacted to provide a protective shield for public officers from civil and criminal liabilities for actions taken in good faith while performing their official duties.¹ This legislation is a deliberate attempt to promote administrative efficiency and effectiveness, recognizing the critical role public officers play in governance and development of the nation. By shielding public officers from frivolous lawsuits and harassment, the Act aims to enhance their confidence and job satisfaction, ultimately leading to improved service delivery and good governance.

However, the Public Officers Protection Act (POPA) has sparked intense debates and controversies, with critics arguing that it has become a convenient tool for corrupt officials to escape accountability. The Act's provisions have been criticized for being overly broad and ambiguous, potentially creating a culture of impunity among public officers. This has raised concerns about the erosion of transparency, accountability, and the rule of law in Nigeria's public administration. The result is an avalanche of judicial authorities supporting the notion that the POPA should not be construed to shield public officers from criminal liability.²

Despite these criticisms, the POPA remains a significant piece of legislation, reflecting the complex dynamics of governance and administration in Nigeria. Its provisions and implications warrant a nuanced examination, considering the delicate balance between protecting public officers and ensuring accountability. This article attempts to provide a comprehensive understanding of the Public Officers Protection Act 2005, exploring its historical context, key provisions, and criticisms, as well as its impact on Nigeria's governance and public administration. Through a critical analysis of relevant literature, case laws, and expert opinions, this article discusses the intricacies of POPA, examining its strengths and weaknesses, and identifying areas for reform. By exploring the experiences of other jurisdictions, it draws lessons and best practices that can inform the refinement of the Act, ensuring that it serves its intended purpose without compromising accountability and transparency.

Ultimately, this article contributes to the ongoing discourse on governance, accountability, and the rule of law in Nigeria, providing insights and recommendations that can inform

¹*Egbe v Adefarasin*(1987)1 NWLR (Pt 3) 549 SC.

²*Yabugbe v COP* (1992)4 NWLR (Pt234)152 SC;*Egbe v Adefarasin* (supra), *Ekeogu v Aliri*(1991)3 NWLR (Pt 179) 258;*Egbe v Alhaji* (1990)1 NWLR (Pt 128) 546 SC;*Emuze v V.C. UniBen*(2003) 10 NWLR (Pt 828) 378 SC;*Candide-Johnson v Edigin* (1990)1 NWLR (Pt 129) 659 CA;*Ikonne v COP* (1986) 4 NWLR (Pt 36) 473.

policy reforms and improve the administration of justice. By examining the Public Officers Protection Act through a critical and nuanced lens, this article sheds light on the complex challenges and opportunities that lie at the intersection of governance, accountability, and public administration in Nigeria.

Broad Discourse of the Provisions of the Public Officers Protection Act

The Public Officers Protection Act is a Nigerian law that provides protection for public officers from civil liability for actions taken in good faith while performing their official duties. The protection offered by the POPA and the laws covers all public officers, that is, all civil servants in their individual capacity, and all government bodies, public institutions and agencies, ministries and departments, by whatever name called (whether corporate or unincorporated), by limiting their liability to a three month period from the date the cause of action arose or from the date the cause of action ceased, if it was a continuous act, except where any other statute had modified the position, such as by enlarging the limitation period. The court has held that “person” refers to both natural and artificial persons.³ Although, the Supreme Court had held that the POPA only protects individual public officers and not public bodies.⁴ However, the Supreme Court has held that this does not represent the law and cited the case of *Permanent Secretary Ministry of Works, Kwara State v Balogun*⁵ as representing the law;

Section 2 of the POPA provides as follows:

Where any action, prosecution, or other proceeding is commenced against any person for any act done in pursuance of 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.

Limitation of time

(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

³*Ibrahim v Judicial Service Commission*(1998)14 NWLR (Pt 584) 1 SC; *Adigun v Ayinde*(1993)8 NWLR (Pt 313) 570 SC.

⁴*Momoh v Okewale*(1977)11 NSCC 365.

⁵(1975)NSCC 365.

communicated within three months after the discharge of such person from prison.

Some key aspects of POPA as can be gleaned from this section which may need clarification are:

Definition of Public Officer:

Generally, a public officer is any person holding or acting in a public office, including government officials, civil servants, and elected officials. A public officer is a person who is holding office in the government, public service, or civil service.⁶ A civil servant is a public officer irrespective of his position or rank. Thus, a public officer is any person who is directly employed in government, public service, civil service, or any public agency. The identity of a public officer is settled beyond doubt by the provision of Code of Conduct for Public Officers which is published in the Fifth Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (CFRN).⁷ The Code of Conduct Bureau and Tribunal Act also defines the public officer to include the President of Nigeria, the Vice President, the President and Deputy President of the Senate, Speakers and Deputy Speakers of the House of Representatives and the Houses of Assembly of States, all members of staffs of legislative houses, Governors and their deputies, the Chief Justice of Nigeria and other judicial officers, ministers, Commissioners etc.

A public officer is, therefore, an individual who holds a position of authority and responsibility in a government agency, public institution, or organization. They are typically appointed or elected to perform specific duties and functions on behalf of the government or public entity. Public officers include:

1. Government ministers and officials
2. Civil servants (administrative, executive, and judicial)
3. Elected officials (Presidents, Governors, Mayors, Councillors, etc.)
4. Judges and magistrates
5. Law enforcement officers (Police, Immigration, Customs, etc.)
6. Public corporation employees (e.g., Utility companies, Transportation agencies)
7. Local government officials (Councillors, Chairmen, etc.)
8. Heads of government agencies and departments
9. Members of Boards, Commissions, and Committees
10. Diplomats and Ambassadors

⁶*Okomu Oil Palm Co. v Isherhienrhien* (2001)6 NWLR (Pt 710) 660 SC; *Eze v Okechukwu* (2002) 18 NWLR (Pt 799) 348 SC.

⁷CapC15 LFN 2004.

Public officers are expected to perform their duties in the public interest, with integrity, transparency, and accountability. They are also subject to various laws, regulations, and codes of conduct that govern their behaviour and decision-making. In the context of the Public Officers Protection Act, a public officer is anyone who falls within the categories listed above and is protected from civil and criminal liability for acts done in good faith and without negligence while performing their official duties.

Protection from Liability

POPA provides that a public officer shall not be personally liable for any act or omission done in good faith and without negligence while performing their official duties. The protection provided there under may sometimes operate as a limitation of action since it could render the action statute barred. However, the only protection it affords public officers is the limitation of the time frame within which to bring a suit against them; it does not shield them from liability. What this means is that public officers and authorities are liable in civil and criminal proceedings unless it is exempted by law and the exemption provided is as to time. Several cases have been decided where public officers were discharged of liabilities by reason of the time stipulated in the act. An example is the case of *Obiefunna v Okoye*, *Adigun v Ayinde* and *Egbe v Adefarasin*. In the same vein, it has also been decided that the POPA also bars action for damages, brought after the expiration of the time stipulated to bring actions.

Extent of the protection offered by POPA

The courts have held consistently that for a person to enjoy the protection provided under POPA, such person must be a "public officer" and the act done must be "in pursuance or execution of a law, public duty or authority". This was clearly stated in *Hassan v Aliyu & Ors*. Furthermore, in *NEPA v Olagunju*, the court held that it is not every corporate body created by statute that is entitled to take benefit from the provisions of the POPA, as the benefit is only applicable to public corporation specifically proved to be a public office under section 2(a) of the Act.

Consequently, a review of recent decisions of courts has shown that Nigerian courts have widened the net of the protection offered by POPA in some cases, while they have shrunk the net in others. These different approaches have resulted in discordant tones on the extent of the protection offered by the said Act as it relates to the "persons" who are entitled to the protection as well as the circumstance(s) that will warrant the protection.

Some of the recent developments in the interpretation of the POPA are to the effect that the immunity provided under the law applies to both civil and criminal matters. POPA grants

public officers' immunity from civil suits for actions taken in good faith, except where the court determines that the act was done with malice or gross negligence. It further provides that public officer shall not be criminally liable for an act or omission done in good faith and without negligence while performing their official duties, except where the act constitutes a criminal offence under the Nigerian law.

Limitation Period

POPA sets a three-month limitation period for instituting civil proceedings against a public officer, except where the court grants leave to extend the period. One basic lingering question will be how to determine the period of limitation. In Malemi's view, it is nothing complicated. Accordingly, he stated that "The answer is simple, by looking at the writ of summons and the statement of claim alleging when the wrong was committed, which gave the plaintiff a cause of action, and by comparing that date with the date the writ of summons was filed. This can be done without taking oral evidence from witnesses. If the time on the writ is beyond the period allowed by the limitation law, then the action is statute barred."⁸The next question which is necessary to be asked is "When does the time begin to run?" In the case of *Oseyemon v Ojo*,⁹ Ogundare JCA (as he then was) explained when the time begins to run thus, "*The period commences to run a day after the event that gave rise to the cause of action arose.*"¹⁰ Also, when suing a public authority or body, any pre-requisites for filing the action should be observed, such as service of pre action notice where it is required by the law establishing the statutory corporation to be sued as a defendant.

Exceptions to the Protection Under the Public Officers Protection Act

Criminal Proceedings

The POPA does not apply to cases involving corruption, embezzlement, or other serious crimes. Therefore, where a public officer is faced with criminal charges, he will not be able to invoke its provisions for protection in limitation of his liability.¹¹ This position was stated by the court in *Yabugbe v COP*¹² where Ephraim Akpate JSC explained the law thus; "*it cannot be said to be within the contemplation of the lawmakers to protect public officers against prosecution for crimes they may commit on the pretext or otherwise that such crimes were committed in the lawful execution of a public duty. It cannot be.*"

⁸E Malemi, *Administrative Law*, (Revised edition: Princeton and Associates Publishing Co. Ltd) 626.

⁹ (1993)6 NWLR (Pt 299) 344 CA.

¹⁰*Ibid*, 360; *Ntiero v NPA* (2008) 10 NWLR (Pt 1094) 129 SC.

¹¹E Malemi, *Administrative Law*, (Revised edition: Princeton and Associates Publishing Co.Ltd) 628.

¹² (supra) 152 SC.

The object of the POPA is to afford protection to public officers in respect of anything done in the execution or carrying out of their duty. A crime is outside the lawful performance of a public officer's duty, and the POPA will not apply to protect public officers from crimes committed, in the pretext of performing their duties. Expressing the law further, Uwais JSC noted;

"...it does not stand to common sense and reason that a public officer is free to commit any offence in the course of his duty so long as criminal prosecution is not brought against him within three months, it will be absurd and ridiculous."

Further on, Nnaemeka-AguJSC explained the law thus:

*"I shall put this in another way. It is against public policy for government to use its machinery to shield criminals from prosecution. If the above section is to be interpreted to cover public servants who commit crimes, rather than limiting the protection to civil wrongs committed in the execution of their lawful duties such an interpretation, in my view, falls foul to this public policy."*¹³

Thus, the protection offered under the POPA does not cover criminal proceedings and such public officers cannot enjoy the protection of the act with respect to criminal proceedings.

Constitutional Matters

The POPA does not apply to constitutional matters, including matters involving fundamental rights, and declaratory actions¹⁴. This is so, otherwise, the enforcement of the Constitution against the State and her public officers, in cases of violation would be virtually impossible, and thereby the constitution would be rendered worthless.

Fatal accident's laws, contracts, recovery of land and claim for work done

These classes of liabilities are not covered under POPA.¹⁵

Cases of continuance of damage or injury

In the interpretation of section 2 of POPA, the courts have held that where the act or omission of the public officer complained of is continuous in nature, the public officer cannot rely on the provisions of POPA to escape liability for such act or omission. The right to rely on POPA in cases of continuous damage will only crystallize where the affected individual fails to commence an action in court within 3 months from the date of the cessation of the

¹³E Malemi, *Administrative Law*, (Revised edition: Princeton and Associates Publishing Co. Ltd) 181.

¹⁴*Governor of Bendel State vObayuwana*(1983) 4 NCLR 96;*Akpomudje v Gov of Delta State* (2003) 9 NWLR (Pt 826) 561 CA.

¹⁵*Dyson v A.G* (1911) 1 KB 410;*Igbe v Governor of Bendel State* (1981) 1 NCLR 183.

continuous act. This position was emphasized in *RRBN v MHWUN & Anor*. However, it has been interpreted by the courts that the injury contemplated under section 2(a) of POPA is continuance of legal injury, and not merely continuance of the injurious effect of legal injury. This means that where a person is injured by a public officer, the right to file a case against such public officer arises on the date the injury was caused and not the date the pain or anguish suffered because of the injury stopped. The position was affirmed by the court in the case of *Michael Obiefuna v Alexander Okoye*.

Conclusion

Public Officers Protection Act is a crucial legislation that provides a necessary shield for public officers to perform their duties without fear of frivolous lawsuits or harassment. However, the POPA's provisions must be balanced with the need for accountability and transparency in governance. The exceptions to protection under the POPA ensure that public officers who engage in misconduct or wrongdoing are not shielded from consequences. Ultimately, the Act's effectiveness depends on its judicious application and interpretation by the courts. It is essential to strike a balance between protecting public officers and ensuring accountability, to maintain public trust and confidence in government institutions. By understanding the provisions and exceptions of the Public Officers Protection Act, we can promote a culture of responsible governance, where public officers can serve the public interest without fear of undue retribution, while also being held accountable for their actions.

Recommendations

This article makes some recommendations aimed at addressing the challenges and weaknesses identified in the research, promoting a more balanced and effective framework for public officer liability that supports good governance, accountability, and transparency. They are as follow:

Review and Reform of the Public Officers Protection Act

The POPA should be reviewed and reformed to strike a balance between immunity and accountability, ensuring that public officers are held responsible for their actions while protecting them from frivolous claims.

Clear Guidelines and Procedures

Establish clear guidelines and procedures for invoking immunity, ensuring transparency and consistency in its application.

Independent Oversight Mechanisms

Establish independent oversight mechanisms to monitor and investigate public officers' actions, ensuring accountability and transparency.

Public Awareness and Education

Educate the public on their rights and the provisions of the Act, promoting awareness and empowerment.

Judicial Training and Capacity Building

Provide training and capacity-building programs for judges and legal practitioners on the POPA's provisions and implications, thus ensuring effective implementation.

Whistleblower Protection

Strengthen whistle-blower protection laws and mechanisms, encouraging reporting of misconduct and wrongdoing by public officers.

Transparency and Accountability in Governance

Promote transparency and accountability in governance, ensuring that public officers are held responsible for their actions.

Regular Review and Evaluation

Regularly review and evaluate the effectiveness of the POPA and its implementation, making necessary reforms and adjustments.



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