

CHAPTER 146

STATE PROCEEDINGS LAW

Arrangement of sections

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CHAPTER 146

STATE PROCEEDINGS LAW

A Law relating to suits by or against the State or public officers, and matters connected thereto.

ANSL
Cap. 131

[27th August 1991]

1. This Law may be cited as State Proceedings Law. Short title
2. In this Law—
"Attorney-General" means Attorney-General of the Suite. "Consolidated fund" includes fund formed In the public revenue and incomes of the State: Interpretation
"damage" means harm resulting from tortuous act or omission; "injury" has the same meaning as damage;
"Governor" means Governor of the State;
"public officer" means an officer engaged in the service of the State in a civil capacity;

"servant" includes a public officer:
"State" means Enugu State of Nigeria;

3. The State may maintain all claims in contract and in tort against any person as if it were a private person of full age and capacity.

Action maintainable by state in contract and in tort

4. (1) Subject to the provisions of this law, the State shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject, in respect of torts committed by its servants or agents to their capacity and within the scope of their authority as such servants or agents:

Liability of the state for tort

Provided that nothing herein contained shall be construed as affecting any written law from time to time in force in the State which limits the liability of the State in matters specified therein.

(2) Where the State is bound by a statutory duty which is binding also upon persons other than the State and its officers, then subject to the provisions of this Law the State shall, in respect of failure to comply with that duty, be subject to all those liabilities in tort (if any) to which it would be so subject if it were a private person of full age and capacity.

5. Notwithstanding the provisions of section 4 of this Law, no action in tort shall be brought —

- (a) against the Governor of the State in his private capacity;
- (b) against the State by virtue of section 4 of this Law in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of judicial nature vested in him, or any responsibilities which he has in connection with the execution of a judicial process.
- (c) against the State for tort committed by any servant of the State in discharge of his duties unless such officer has been appointed directly or indirectly by the Civil Service Commission of the State or receives his salary out of the Consolidation Fund of the State.

No action against the Governor in his private capacity

For the purposes of this section the onus shall be on the plaintiff to show that such officer of the State for whose tortious act or omission he seeks to sue the State, has so been employed, or so receive his salary, as the case may be. A certificate from the Ministry of Establishments or any other appropriate Government Department shall be final and conclusive evidence of facts stated therein in respect thereof and shall be receivable by any court:

Provided that nothing in this subsection shall prevent an action in tort being taken against any public officer in his own name for an alleged tort committed by him in the performance of his public duties.

6. Subject to any law in force in the State any civil proceedings as aforesaid may be instituted—

- (a) on behalf of the State by the Attorney-General;
- (b) against the State, against the Attorney-General:

Action for or against the state

Claim against the State in contract and equity

7. Any claim in contract or in equity against the State which would if such claim had arisen against a person other than the State be the ground of an action in any competent court shall be cognizable by the said court against the State.

Provided that no claim in contract shall lie against the State where another remedy is provided by a written law in force in the State Provided further that nothing in this section shall be construed to affect the law relating to arbitration-

8. (1) Subject to subsection (2) of section 11 of this Law, action by any public officer against the State in respect of any issue whatsoever arising from his employment or contract of service with the State shall be commenced by directing a petition in respect of his claim to the Attorney-General with a request that a fiat be granted him to prosecute such claim.

Commencement of action by public officer

(2) This Attorney-General on receipt of such petition shall, within a reasonable time but in any event not later than sixty days from the receipt of such petition, grant such fiat to the petitioner unless in the meantime a settlement of the claim acceptable to the petitioner has been made.

(3) Where the Attorney-General grants a fiat in accordance with the provisions of subsection (2) of this section, the petitioner may institute an action by ordinary writ of summons and subject to the provisions of this Law, the court in which such action is brought shall follow the normal rules of procedure obtaining in such court.

(4) Nothing in this section shall be construed to preclude any person who has left the public service of the State from suing the State for any alleged claim arising from his employment or contract of service with the State where such claim subsists after that person has left the service.

9. (1) The Attorney-General, on behalf of the State, may appear as a party in any civil proceedings —

Attorney-General as a party

- a) where the State is a claimant
- b) where a right of the public is at stake, although no material interest of the State is involved;
- c) where an interest is purely public;
- d) where the State undertakes the defense of a suit against a public officer for any alleged act, neglect or default while acting within the scope of his duties.

Provided that the case of paragraph (d) of this section, the Attorney-General shall not be considered a party to the suit for purposes of costs.

(2) For the purposes of this section and subject to the provisions of any written law, the Attorney-General may appear—

- (a) in person; or
- (b) through any law officer or State Counsel acting under and in accordance with the general or special instructions of the Attorney-General; or
- (c) through a legal practitioner duly authorized in that behalf by the Attorney-General.

Practice and procedure to be followed

10. Subject to section 8 of this Law, when an action is commenced against the State or against a public officer, as the case may be, for an alleged act, neglect or default, the

action shall be instituted by ordinary writ of summons and. subject to the provisions of this Law, the court in which such action is brought shall follow the normal rules of procedure obtaining in such court

Limitation
of time and
notice of
action

11. (1) No action or proceeding shall lie or be instituted under this Law unless it is commenced within twelve months next after the act, neglect or default complained of or, in the ease of a continuing damage or injury, within twelve months next alter the ceasing thereof:

Provided that if the action or proceeding he at the instance of any person for a cause arising while such a person was a Convict prisoner, it may be commenced within twelve months after the discharge of such person from prison or, in the case of a continuing damage or injury, within twelve months next after the ceasing thereof, whichever shall last occur.

Notice
to
precede
action

(2) No action shall be instituted —

- (a) against the State; or
(b) against a public officer in respect of any act done in pursuance of execution nr intended execution of. any written law, or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law', duty or authority,

until the expiration of a period or three months after notice in writing has been, in the ease of the State delivered to the Secretary to the Government, and, in the case of a public officer, delivered to him, stating the cause of action, the name, description and place of residence of the proposed plaintiff and the relief which he claims; and the plaint when eventually prepared shall contain a statement that such notice has been so delivered and the date on which it was delivered:

Provided that nothing herein contained shall be construed as affecting the provisions of any law which limits the liability of the Government or any department thereof in respect of any act or omission of its servants.

12. A defendant sued under the provisions of this Law shall not be liable to arrest nor his property to attachment otherwise than in accordance with the order of court.

Defendant not
liable for
arrest

13. (1) Wherever in any such action a decree shall he made against the State, no execution shall issue thereon, but a copy of such decree under the seal of the court shall he transmitted by the court to the Attorney-General, and the Attorney-General, unless he shall have directed that any competent appeal be entered and prosecuted against any decree shall-

Execution of
judgment
and award of
cost

- (a) in the ease of a decree for the payment of money, send the sealed copy thereof to the Commissioner for finance, who shall cause the amount awarded by such decree to be paid; or
(b) in the case of any other decree, send the sealed copy thereof to the appropriate Commissioner, who shall take such steps as may' he necessary to cause the same to be carried into effect.

- (2) Whenever in such action a judgment is obtained by the defendant, it shall carry the right to recover from the plaintiff all the costs which the defendant has properly incurred in defending

Costs

such action, subject however to the provisions of subsection (1) of this section concerning execution.

14. (1) When the proceedings in an action for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other defence, be pleaded. Tender
of
amends

(2) If the action was commenced after the tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiffs claim and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment and the defendant shall be entitled, as from the time of tender or payment, to all costs which he has properly incurred in defending such action but this provision shall not affect costs or any injunction in the action.