**IN THE SUPERIOR COURT OF JUDICATURE**

**IN THE SUPREME COURT**

**ACCRA - A.D. 2022**

**CORAM: YEBOAH CJ (PRESIDING)**

**PWAMANG JSC**

**AMEGATCHER JSC**

**AMADU JSC**

**KULENDI JSC**

**CIVIL APPEAL**

**NO. J4/22/2022**

**30TH NOVEMBER, 2022**

INSP/SHITU WABI & 76 OTHERS …….. PLAINTIFFS/RESPONDENTS/APPELLANTS

VRS

1. INSPECTOR GENERAL OF POLICE
2. ATTORNEY GENERAL'S DEPARTMENT

DEFENDANTS/APPELLANTS/RESPONDENTS

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**JUDGMENT**

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**MAJORITY OPINION**

**PWAMANG JSC:-**

My Lords, critical to discharging our obligation to resolve the dispute between the parties to this appeal in accordance with law is the need to determine the nature of the case the plaintiffs/respondents/appellants (the plaintiffs) filed in the High Court. The Court of Appeal in their judgment dated 22nd October, 2020 held that the plaintiffs' action was statute barred as their claims were based on simple contracts of employment but the plaintiffs have refuted that vehemently before us.

The plaintiffs proffer two different causes of action as the basis for suing. In one breath, they contend that they sought by their suit to enforce judgment of the Supreme Court in the case of C.B. Bawuah & Ors v Attorney-General, dated 26th July, 1994 given against the Government of Ghana. (That case is reported as; **Yovuyibor and Anor v Attorney-General [1993-94] 2 GLR 343**). In that case, the Supreme Court declared that the Police Administration acted in violation of the Constitution, 1992 by compulsorily retiring three police officers from the service before they attained the ages of sixty years as provided by article 199(1) of the Constitution. The plaintiffs herein were also in the police service and were similarly compulsorily retired in 1993-94 at ages 55 for the men among them and 50 for the women. They therefore contend that the Supreme Court judgment equally applied to them.

In another breadth, the plaintiffs claim that since their premature retirement breached the Constitution, their suit in the High Court ought to be understood as an action to remedy a breach of the Constitution which the Supreme Court had already held had been contravened by the Police Administration. Basing on the two positions stated above, the plaintiffs submit before us that the provision of the **Limitations Act, 1972 (NRCD 54)** relating to actions in simple contract upon which the Court of Appeal decided the case against them is not applicable in this case. From the stand of the action being for the enforcement of the 1994 judgment, it is submitted that the relevant limitation period

under NRCD 54 is twelve years which applies to actions brought upon a judgment. It has alternatively been argued on behalf of the plaintiffs, that since their action was to vindicate the Constitution, then so long as their salaries for the period before they turned sixty years remained unpaid, the Government of Ghana was in continuing breach of the Constitution so their cause of action was recurring and no limitation period applied.

My Lords, to determine the nature of a case, a court takes into account all processes filed by the plaintiff including the nature of the reliefs claimed, the pleadings and the actual effect of granting the reliefs claimed, no matter the enactments referred to and the words used. In **Tait v Ghana Airways Corporation (1970) 2 G & G 527,** the plaintiff, a pilot, was employed by the defendant and while he was piloting the defendant's aircraft from Kumasi to Accra crashed in a field near Takoradi with a loss of a passenger. He was suspended "without prejudice" and an enquiry into the cause of the crash was held. The report of the enquiry was presented to the Government and his suspension was withdrawn. But in a subsequent letter signed by the managing director of the defendant, he was informed that his services with the defendant were no longer required and he was ordered to vacate his official bungalow. Aggrieved by the termination of his services, he invoked the original jurisdiction of the Supreme Court under article 106(1)(a) of the Constitution, 1969, (the equivalent of article 130(1)(a) of the Constitution, 1992) for:

"(a) A declaration that his dismissal from the employment of the defendant corporation communicated to the plaintiff by a letter dated 29 May 1970 purporting to be signed by the managing director of defendant corporation, is wrongful and invalid under the Constitution, 1969, in particular articles 138 and 140 thereof.

(b) Consequential relief."

Article 138 of the Constitution, 1969 dealt with the protection of public servants, while article 140 dealt with appointments of public officers. The Supreme Court dismissed the

case for the reason that the case was one of wrongful dismissal and not a constitutional case. At p 529 of the Report the court said that:

*"We have already held that on its construction and having regard to the issues settled, the plaintiffs action is essentially one of wrongful dismissal and does not, therefore, fall within the ambit of article 106(1)(a) ...It is an action for wrongful dismissal under the common law, which is part of the laws of Ghana... Since our original jurisdiction is limited to article 106, we are driven to the conclusion that this court is not seised with jurisdiction to try this suit as a court of first instance."*

Then, in the case of **Bimpong-Buta v General Legal Council & Ors [2003-2004] SCGLR 1200,** the plaintiff filed a case praying for interpretation and enforcement of articles 199(1), 199(4) and Schedule I sections 8(1) & 8(7) of the Transitional Provisions of the Constitution, 1992 in relation to his tenure of office as Director of Legal Education (Director of the Ghana School of Law) which had been terminated by the Chief Justice and Mr Kweku Ansah-Asare appointed in his place. The court held, that when his reliefs were taken together with his written submissions, his actual case was one of unlawful termination of his employment and not for interpretation and enforcement of the Constitution despite the several references to provisions of the Constitution in his pleadings. At p 1222 of the Report, Akuffo, JSC (as she then was) said as follows;

*"All in all, the reliefs claimed, the pleadings, and the submissions filed in this matter amply demonstrate that the plaintiff/s action is no more than an ordinary civil suit splendidly arrayed in constitutional clothing."*

Therefore, the fact that a plaintiff bases her claim on constitutional provisions does not necessarily make her case one for enforcement of the Constitution. Many ordinary civil causes of action can be traced to a provision of the Constitution. For instance, an ordinary action for damages for the tort of false imprisonment can be traced to the plaintiff's right to freedom of movement guaranteed under article 21(1)(g) of the Constitution, 1992.

Where a provision of the Constitution on any matter is clear and unambiguous, it can be applied as a rule of law by any court with jurisdiction in a case. Consequently, in **Aduamoa II v Twum II [1999-2000] 2 GLR 409**, the Supreme Court dismissed a chieftaincy dispute which was presented as a case for the enforcement of article 275 of the Constitution which provides among other things that a person who is convicted for an offence involving dishonesty and moral turpitude is disqualified from becoming a Chief.

The instant case was filed by the plaintiffs in the High Court and they were under no illusion that it is otherwise than an ordinary civil case and not a constitutional case, notwithstanding that reliance was placed on article 199(1) of the Constitution. Articles 199(1) and 190(1) are very clear and do not call for any interpretation. They are as follows;

**199(1) A public officer shall except as otherwise provided in this Constitution retire from the public service on attaining the age of sixty years.**

**190(1) The Public Services of Ghana shall include-**

**(a) …the Police Service.**

Now, let us begin a consideration of the appeal by tackling the contention by the plaintiffs that their action was to enforce the 1994 judgment of the Supreme Court. What relief was granted in that Supreme Court judgment? Amuah-Sakyi, JSC who delivered the judgment of the court concluded the judgment as follows;

**"From the above, I am of the opinion that as public officers holding pensionable appointments, the compulsory retiring age of the plaintiffs is 60 years and that their purported retirement from the Police Service at the age of 50 and 55 years is a breach of Article 199(1) and a nullity. I would grant them declarations to that effect and order that they are reinstated forthwith."**

In the first case, the plaintiffs herein were not parties to the 1994 judgment and the court did not grant a relief in favour of all police personnel who were in the class of the plaintiffs in the 1994 case. Therefore, the plaintiffs herein cannot be heard to say that they were praying for the enforcement of that judgment for their benefit. In any event, it is unlawful to seek to enforce a judgment of a court by commencing a fresh suit. You enforce a judgment through execution processes provided for. See **Tularley v Ababio [1962] 1 GLR 411**. The Supreme Court ordered reinstatement of the plaintiffs in that case and from the record, the order was complied with by the Police Administration recalling and re-training the officers involved and reinstating them into the service. There was no need for any execution proceedings in respect of that judgment.

The second question to consider is whether the reliefs the plaintiffs prayed for in this case were even in line with the relief awarded by the Supreme Court in the 1994 judgment. The reliefs the plaintiffs endorsed on their writ of summons were as follows;

a. **Their entitlements for the five (5) years or ten years (10) deprived period**
b. **The 1st Defendant be ordered to provide Counsel for the Plaintiffs the net entitlement of each of the plaintiffs to enable her to compute their final entitlement with interest on same.**
c. **Interest on the individual entitlements of Plaintiffs at the current bank rate.**
d. **Costs.**

The main ground on which the plaintiffs claimed the above reliefs was stated at paragraph 8 of their statement of claim as follows;

**"8) The Plaintiffs herein state that since the Supreme Court has already ruled that their compulsory retirement was in breach of the 1992 Constitution and therefore null and void,** ***they are entitled to their full remuneration for either ten (10) years (for the females) or five (5) years (for the males) of their working life that they were denied their***

***willingness to serve the nation and also interest on same to date of payment." [Emphasis supplied].***

From the above, it is plain that the plaintiffs here were not even praying for the enforcement of the relief granted to the plaintiffs in the 1994 Supreme Court judgment, for, whereas the Supreme Court ordered reinstatement in that case, the plaintiffs here claim for monetary compensation equivalent to all salaries they would have earned if they had not been wrongfully retired from the Police Service. Going by the plaintiffs' paragraph 8 above, an extremely benevolent construction of the nature of their claim is that of one for damages against the Government of Ghana for acting in violation of article 199(1) of the Constitution, 1992 in relation to them. This is where we do not strictly go by the authority of **Tait v Ghana Airways Corp (supra)** and **Bimpong-Buta v General Legal Council (supra)** and hold that the plaintiffs' case is one for unlawful termination of employment, a tort. It must be quickly pointed out, that as quantum of damages, the plaintiffs averred that "they are entitled to their full remuneration for either ten (10)…or five (5) years…" with interests. However, no point of law was pleaded as basis for the claim of "entitlement" to that quantum of compensation. Even if a party violates a provision of the Constitution in relation to a plaintiff, the violation may entitle the plaintiff to damages but the quantum of damages would have to be assessed by the court and the Supreme Court had occasion in the case of **Awuni v WEAC [2003-2004] SCGLR 471** to discuss the principles for assessing damages in cases of violation of the Constitution. There can be no automatic quantum payable to the plaintiffs just because a provision of the Constitution was violated in relation to them. The plaintiffs have argued before us as if in the 1994 judgment the Supreme Court awarded damages covering ten (10) and five (5) years full remuneration with interest but the Supreme Court never made any such order. I shall return this matter later in this delivery.

My Lords, it bears emphasing that the plaintiffs are completely wrong when they contend in this final appeal that the Government of Ghana denied them what they were held to be entitled to by the Supreme Court judgment of 1994. What the plaintiffs could, in a very liberal sense, claim to be entitled to on account of the Supreme Court judgment of 1994 was to be re-trained and reinstated into the Ghana Police Service to work and earn their salaries for their remaining years. That entitlement could only be claimed before each of the plaintiffs attained the biological age of sixty years, and provided they relinquished any retirement benefits they may have appropriated on their premature retirement. That means, that it was before 1998 for the men who were retired in 1993, and 2003 for the women, that they could claim the benefit of the Supreme Court order of reinstatement. This fact was not lost on the plaintiffs and their legal advisors so when they sued on 27th April 2006, as the plaintiffs were all by then aged above sixty years, they did not pray for the relief of reinstatement awarded by the Supreme Court in the 1994 judgment. Therefore, this case must be correctly understood as an independent suit by which the plaintiffs prayed for damages for the wrongful termination of their employment. Yes, it may not be accurate to construe their employment relationship with the Government of Ghana as one of simple contract since their employment was governed by statutes; the Police Service Act, 1970 (Act 350), the Police Service (Amendment) Decree, 1974 (NRCD 303) and the Police Service (Administration) Regulations, 1974 (LI 880), all existing laws prior to the coming into force of the Constitution, 1992. As stated by article 11(6) of the Constitution, these existing enactments were to be construed with any modifications necessary to bring them in conformity with the Constitution, including articles 190(1) and 199(1). As such, when it comes to limitation period for the plaintiffs to sue for breach of the terms of their employment, the applicable provision may not be that for an action in simple contract.

From the foregone discussion, this case is an ordinary civil action to which the Limitations Act applies. The doctrine of continuing breach does not come in here at all because the only violation of the Constitution in relation to the plaintiffs occurred when the Police Administration in 1993-94 compulsorily retired them when they had not attained sixty years. There is no provision of the Constitution which stated that where a public servant has been retired prematurely she shall be paid all salaries she would have earned if she stayed at post. If there were any provision to that effect, then the Government of Ghana could be accused of continuing breach of it by failing to pay the plaintiffs their salaries after prematurely retiring them. But, that is not the case here. The premature retirement of the plaintiffs in 1993-94 only gave them a right to sue, a chose in action, which they had a choice to pursue or opt to appropriate their retirement benefits and waive their right to sue. It is erroneous on the part of the plaintiffs to present their case as if their property was retained by the Government of Ghana following their premature retirement and so long as that property was not given to them, the Government was in breach of some provision of the Constitution. For that reason, the reference to the American case of **Bodner v Banque Pariba 114 F Supp. 2nd 117 (E.D.N.Y)** does not advance the case of the plaintiffs in any way. In that case, the defendant retained possession of some assets claimed to belong to the plaintiffs and it was held that the continuous retention of the plaintiffs' assets constituted a continuing violation of their rights to those assets. In this case, the Government of Ghana has not been charged with retaining possession of any assets or property of the plaintiffs after prematurely retiring them.

The policy of the law in setting limitation periods within which persons may take action to enforce their legal rights or forever hold their peace is a fundamental postulate of law that permeates all legal rights. Of course, as with all laws, exceptions are made in limitation statutes and by binding judicial decisions. This policy ensures that persons do not have liabilities hanging over them and creating uncertainties for extended periods.

The Constitution takes the lead in this by setting limitation period for presidential election petitions which has a time limitation of twenty one days as provided under article 64 (1). Limitation periods within which constitutional rights may be vindicated under the Constitution, 1992 are stated in a number of statutes. For example, section 13(2)(a) of the **Commission on Human Rights and Administrative Act, 1993 (Act 456)** provides as follows;

**2) The Commission may refuse to investigate or cease to investigate a complainant**

**(a) if the complaint relates to a decision, recommendation, an act or omission of which the complainant has had knowledge for more than twelve months before the complaint is received by the Commission,**

Furthermore, **Or 67 r 3** of the **High Court (Civil Procedure) Rules, 2004 (C.I.47)** on Enforcement of Fundamental Human Rights by the High Court has set six months from the occurrence of an alleged contravention, or three months from the applicant becoming aware of a contravention, within which an aggrieved person may sue to enforce her Fundamental Human Rights. Limitation periods for civil actions in general are provided for under the Limitations Act, 1972 (NRCD) 54. As has been discussed supra, this action of the plaintiff is an action for damages for breach of the terms of their employment provided in enactments and it would defy basic legal principles to contend, that on the facts in this case, the plaintiffs could go to sleep after becoming aware that their retirement was premature and wake up at any time and sue in court to claim monetary compensation with no limitation period binding on them. Their action is covered by Section 4(1)(f) of the Limitations Act, which is as follows;

**4. Actions barred after six years**

**(1) A person shall not bring an action after the expiration of six years from the date on which the cause of action accrued, in the case of;**

**f) an action to recover a sum of money recoverable by virtue of an enactment, other than an action to which sections 2 and 5 apply**.

The plaintiffs in paragraph 8 of their statement of claim base their case to be paid the sum of money they claimed on the pronouncement by the Supreme Court that retiring them before they attained sixty years was in violation of the Constitution. Article 199(1) of the Constitution reproduced above is so plain as to the retirement age in the public service and article 190 (1) boldly lists the Police Service as one of the Public Services of Ghana. In **Bimpong-Buta v General Legal Council (supra)** Akuffo, JSC at p 1221 of the Report said as follows concerning article 199(1);

*"With regard to the claim against the third defendant for alleged contravention of article 199(1) and (4) of the Constitution as amended by Act 527, their resolution would only require an ascertainment of the [plaintiff's] date of birth. Whatever follows that would be merely the application of the law. This is, therefore an activity that has absolutely nothing to do with the 1992 Constitution and may be performed by any trial court of competent jurisdiction."*

In the case of the plaintiffs before us, they even had the fortune of becoming aware of a declaration by the Supreme Court that their particular retirement was inconsistent with the Constitution. Hence, if we count their limitation period from 1994 when the Supreme Court handed down their decision, then their action was barred after year 2000. Coincidentally, the six years the Court of Appeal applied in relation to simple contract is the same length of limitation period for claims for money recoverable by virtue of an enactment, which applies in this case.

There was an attempt to argue for an exception for this period of six years not to apply in this case from the date of the Supreme Court decision on the ground of purported acknowledgments by the Government in 2006 and 2007. However, it appears the

plaintiffs failed to read the provisions on acknowledgment closely. Section 17 of NRCD 54 on acknowledgment is as follows;

**(1) For the purposes of this Act, the right of action accrued on, and not before, the date of the acknowledgement,**

**(a) where a right of action has accrued to recover a debt and the person liable for the debt has acknowledged the debt; or**

**(b) where the right of action of a mortgagee of land to recover the mortgage debt has accrued, and the person in possession of the land acknowledges the mortgagee's title to the land; or**

**(c) where a right of action has accrued to recover a claim to the movable estate of a deceased person or to a share or an interest in the estate, and the person accountable for that estate acknowledges the claim; or**

**(d) where the right of a mortgagee of land to bring an action to recover land has accrued, and the person in possession of the land or the person liable for the mortgage debt acknowledges the debt; or**

**(e) where there has accrued to a person, other than a mortgagee, a right of action to recover land, and the person in possession of the land acknowledges the title of the person to whom the right of action has accrued; or**

**(f) where the right of a mortgagee of land to bring an action to recover the land has accrued, and the person in possession of the land acknowledges the mortgagee's title to the land; or**

**(g) where the right of an encumbrancer of land to bring an action claiming a sale of the land has accrued, and the person in possession of the land or the person liable for the debt secured by the encumbrance acknowledges the debt; or**

**(h) where a mortgagee is by virtue of the mortgage in possession of a mortgaged land, and the mortgagee acknowledges the title of the mortgagor or the equity of redemption; or**

**(i) where a right of action has accrued in respect of a lien for money's worth in or over land for a limited period not exceeding life, or in respect of a right in the nature of that lien, namely a right of support or a right of residence, which is not an exclusive right of residence in or on a specified part of the land, and the person in possession of the land acknowledges the lien or other right.**

It must be noted that Section 17 of NRCD 54 on acknowledgment covers only specifically stated claims acknowledgment of which shall extend the limitation period and does not apply to all claims. The claims covered are; a right to recover a debt, a right to sue on a mortgage, a right to recover moveable estate of a deceased person, a right to sue for sale of encumbered land, and a right to recover a lien for money's worth in land. The section does not include the right to sue for compensation for wrongful termination of employment. From the evidence in this case, there was one communication between the Police Administration and the Ministry of Finance, and not the plaintiffs, but it was dated earlier than six years before the filing of this case so it is of no relevance to the issue of extension of the limitation period here. Next, there are verification letters tendered in evidence which the plaintiffs rely on as acknowledgments of their claim but they were not written by the Police Administration to acknowledge a debt owed to the plaintiffs as they contend in their statement of case. Those letters only verified the plaintiffs as being among the police personnel who were prematurely retired.

Ordinarily, the plaintiffs ought to have known and be able to prove their dates of birth and did not require the Police Administration to verify for them the ages at which they were retired in order to sue. However, in the apparent uncertainty about their dates of birth, the plaintiffs dissipated time chasing the Police Administration for those letters.

Besides, though there was mention of compensation in the verification letters, that was not a reference to a debt owed to the plaintiffs. In fact, at the time of filing their action, the plaintiffs did not know what amounts of compensation to claim against the Government so in their relief (b) they prayed the High Court to order the defendant to provide their lawyer information for calculating their claims. Therefore, since the Supreme Court in the 1994 judgment never ordered the Government to pay any stated amount as compensation to the police that were prematurely retired, there could not be talk of a debt owed the plaintiffs that was capable of being acknowledged under Section 17 (1)(a). At best, the plaintiffs made a claim for compensation for wrongful termination of their employment but this is not one of the liabilities covered under section 17(1) of NRCD 54 such that even if the Police Administration acknowledged that claim by the plaintiffs, the extension of the limitation period under section 17(1) of NRCD 54 would not arise. Consequently, no exception to the six years applies on the facts here and the claim of the plaintiffs was definitely statute barred after year 2000.

The seventy-seven plaintiffs in this case claimed for all remunerations for five and ten years for men and women respectively with interest for the only reason that article 199(1) was breached in relation to them. But, as stated earlier, no legal justification has been provided for this averment of "entitlement". The High Court judge swallowed this averment without giving thought to it and therefore granted the quantum claimed without any legal reasons assigned. Meanwhile, the trite learning is that a claim for substantial damages, as in this case, is always subject to strict proof. In **Delmas Agency Ghana Ltd vrs Food Distributors International Ltd [2007-2008] SCGLR 748** at page 760 the Supreme Court held as follows;

*"Where the plaintiff has suffered a properly quantifiable loss, he must plead specifically his loss and prove it strictly. If he does not, he is not entitled to anything unless general damages are also appropriate."*

In the case of **Awuni v WEAC (supra)** Date-Bah, JSC in his judgment from pp 576 to 581 of the Report discussed the award of damages for breaches of the Constitution which he described as a public law tort. He opined that common law principles on assessment of damages in private torts, including the principle of *restutitio in integrum,* ought to be adapted for application in cases of violations of the Constitution. As I have held that the plaintiffs action is statute barred, I will not examine in detail the principles that ought to apply in assessing the plaintiffs claim for monetary compensation. Nevertheless, it is worth pointing out that the plaintiffs did not lead any evidence of any pecuniary loss they suffered arising from their premature retirement that deserved to be restored to them. Being pensionable officers, as described in the Supreme Court judgment of 1994 under reference in this case, the plaintiffs were retired with Ghana Government Pension and I take judicial notice that they would have been paid a lump sum after which they receive monthly payments until death. As to how much these monies totaled and if the amount is less than the remuneration they were claiming, we are not told. In the absence of the above information, *restutitio in integrum* could not have been assessed by a court. In the **Awuni Case**, the Supreme Court held that the plaintiffs did not suffer any pecuniary loss from the breach of their constitutional right so only a token was awarded to them as damages.

What the High Court judge awarded the plaintiffs in this case was to have them paid twice for the same position by the same defendant, never mind that it is the Government. The plaintiffs get to keep their retirement benefits and at the same time they should be paid their salaries as if they are not on retirement. That award cannot be justified on any known principle of law on assessment of compensation and it ought to be set aside as made in error. Thus, even if the plaintiffs' action was maintainable, the High Court judge fell in grave error by ordering that they be paid their full salaries for the five and ten years they were on retirement and not working and with interest on top, at prevailing rate from

1st May, 2000 to date of payment. The plaintiffs were allowed to reprobate and approbate at the same time, a cardinal sin in law. To uphold the judgment of the High Court would be for this highest court to set a cancerous precedent that opens the floodgates for all manner of dead claims against the Government to be resurrected under the pretence of vindicating past violations of the Constitution.

In conclusion, the plaintiffs have not shown that they have been denied any entitlement and they did not establish that they suffered any miscarriage of justice that required remedy. Upon their premature retirement, they had a choice to sue to be reinstated so they could continue working and earning their salaries, or to appropriate their retirement payments and waive their right to be reinstated. Haven opted for the retirement with benefits out of money of the Government of Ghana, it is inconsistent with basic principles of law for the same government to pay them salaries with interest as though they were not on retirement. For the above reasons, I find no merits whatsoever in this appeal and same is dismissed.

**G. PWAMANG**

**(JUSTICE OF THE SUPREME COURT)**

**ANIN YEBOAH**

**(CHIEF JUSTICE)**

**E. YONNY KULENDI**

**(JUSTICE OF THE SUPREME COURT)**

**DISSENTING OPINION**

**AMEGATCHER JSC**:-

With regret, I am compelled to write this dissenting judgment to express my own opinion on this labour matter which has its solid foundation in the supremacy of the Constitution.

Prior to the coming into force of the 1992 Constitution, the conditions of service of members of the Ghana Police Service, then a Police Force, were governed by the Police Service Act, 1970 (Act 350), the Police Service (Amendment) Decree, 1974 (NRCD 303) and the Police Service (Administration) Regulations, 1974 (LI 880). Under Regulation 24(1) of LI 880, police officers retired compulsorily upon reaching the age of 50 years for females and 55 years for males.

When the 1992 Constitution was promulgated, Article 190 placed the Ghana Police Service within the Public Services of Ghana. Article 199(1) stated that the retirement age of public officers serving in the public services shall be 60 years for all, irrespective of gender.

Within the first two years after the Constitution, 1992 came into force on 7th January 1993, the Ghana Police Service retired approximately one thousand men and women of the Service who attained the ages of 50 for females and 55 for males. Three of the retired officers challenged the constitutionality of their retirement in the Supreme Court under articles 2(1) and 130 of the Constitution. The case of **Yovuyibor and Anor v Attorney-General [1993-94] 2 GLR 343** is the lead case from which all the affected officers draw inspiration**.** In that case, the plaintiff, Yovuyibor, was a superintendent of police, as was the plaintiff Bonuedi. They and others were compulsorily retired from the Police Service at the age of 55 years sometime after the coming into force of the Constitution, 1992. They

filed a suit in the Supreme Court for a declaration that as the compulsory retiring age for public officers under article 199(1) of the Constitution, 1992 was 60 years, the compulsory retiring age for members of the Police Service, who were part of the Public Service, was 60 years and not 55 years as was the case before the Constitution came into force; and as such, their premature retirement at the age of 55 years was wrongful and a breach of the provisions of Article 199(1) of the Constitution, 1992. In opposing the action by the plaintiffs, the Attorney-General contended that the Police Force continued to be governed by the Police Service Act, 1970 (Act 350), the Police Service (Amendment) Decree, 1974 (NRCD 303), and the Police Service Regulations, 1974 (LI 880), which required all police officers to retire at the age of 50 and 55 years and therefore, their retirement was constitutional.

The Supreme Court unanimously granted the reliefs of the plaintiffs and held per Amua-Sekyi JSC that:

**"From the above, I am of the opinion that as public officers holding pensionable appointments, the compulsory retiring age of the plaintiffs is 60 years and that their purported retirement from the Police Service at the age of 50 and 55 years is a breach of Article 199(1) and a nullity. I would grant them declarations to that effect and order that they are reinstated forthwith."**

It was then expected that after the judgment of the apex court declaring the Police authority's premature retirement of its officers unconstitutional, the management would comply with the Court's judgment and reinstate the affected officers, or failing to engage them, pay their salaries and benefits for the remaining duration of their tenure, they being deemed under the judgment to be still serving officers in the Ghana Police Service. The Police Administration however failed to comply fully with the orders of the Court. A few officers were recalled for training and reinstated but the majority were completely ignored. The explanation given was that in some cases, the Police Administration did not

have accurate records of all the Police personnel who were unlawfully retired; while in others, their positions in the service had already been filled and therefore there was no vacancy.

Not satisfied with this explanation, the retired officers grouped themselves and instituted class actions at the High Court based on the judgment and the orders of the Supreme Court on 26th July 1994. It was following these class actions and subsequent directives and orders by the High Court that the Police Administration was compelled to pay some of these officers their salaries and benefits with interest. These actions and payments brought smiles to those officers. But the plaintiffs in this suit and others were still ignored mainly because the Police Administration had failed to verify their names as officers affected by the premature retirement. It was not until 2005-2006 that the Police Administration finally wrote letters to the plaintiffs verifying their names. It is a fact that matters touching on the resources and finances of people penetrate deep into their minds and hearts. It was not surprising that the delay in finalising the administrative processes for payment to be made, resulted in exasperation and the frustration. Armed with these letters, the plaintiffs, (initially numbering 131 but later reduced to 77 by an amendment), under the inspiration of their leader Insp/Rsm Shitu Wabi instituted the current suit now on appeal to this Court for the following reliefs:

1. Entitlement for the five (5) or ten (10) years deprived.
2. Interest from 1993 or 1994 till date at the current bank rate.
3. Costs

The Attorney-General, representing the Ghana Police Service, admitted that the plaintiffs were retired at ages 50 and 55, but stated in paragraphs 8, 9, and 10 of the Amended Statement of Defence that there was no dispute between the parties to warrant recourse to the High Court, and that it was not necessary for the plaintiffs to come to the High Court to claim their entitlements, since the issue could be administratively handled. In

paragraph 4 of the amended defence, the defendants pleaded that it was the inordinate delay of the plaintiffs which made it impossible to reinstate them and therefore their action was statute-barred.

In a judgment dated 17th June 2014, the High Court, while acknowledging that a civil action was barred after six years from the date the cause of action arose, held that the Ghana Police Service had in a letter, Exhibit C, acknowledged the statute barred liability under section 17 of the Limitation Act of 1972, NRCD 54, and therefore plaintiffs' claim was not statute-barred. The High Court then concluded that by failing to pay plaintiffs, they had been discriminated against and ordered each of the plaintiffs to be paid their entitlements due them together with interest at the current bank rate from 1st May 2000 to the date of final payment.

The Attorney-General was dissatisfied with the judgment and appealed to the Court of Appeal. The plaintiffs also cross-appealed against the date awarded for the interest to run, arguing that it should have been awarded from 1993/1994.

On 22nd October 2020, the Court of Appeal allowed the appeal and set aside the judgment of the High Court. The Court of Appeal held that the plaintiffs' action was founded on a simple contract and as such, became barred after six years and therefore, not maintainable in law. The Court of Appeal then struck out the cross-appeal of the plaintiffs. This is how the Court put it at pages 663-664 of the proceedings:

"**The letter from the First Defendant, exhibit "C" was addressed to the Ministry of Finance and was not made to the Plaintiffs nor their agent and could not take advantage of same. From the evidence on record, the Plaintiffs were dismissed between 1993-1994 and their action being a simple contract should have been brought to court within six years if it was to recover payment of money. In the case of simple contracts such as compulsory retirement, dismissal or termination, the Act does not**

**make provision for extension of time and the Plaintiffs' action became statute barred after six years**."

The plaintiffs, are again, dissatisfied with the Court of Appeal judgment and have filed this appeal to this court on the following grounds:

a. The judgment is erroneous based on the Court's MISDIRECTION or MISCONSTRUCTION of the EXHIBITS on which it based its decision in relation to the LIMITATION DECREE 1972 (NRCD 54) which has occasioned a miscarriage of justice against Appellants.

PARTICULARS OF MISDIRECTION OR MISCONSTRUCTION

i. The Court completely misconstrued the essence of the letters described by Counsel as "Verification" letters given to the Appellants by the agents of the 1st Respondent with some copied to Counsel of the Appellants in 2005, 2006, and 2007 as to the Appellants' claim of an acknowledgment of the 1st Respondent's liability to them just as their colleagues who sued in 2003 and got Judgment against him and have been paid their entitlements since then.

ii. The Court completely misconstrued the essence of EXHIBIT C written by the 1st Respondent in 2000 requesting for money to satisfy the 1st Respondent's liability to the Appellants wrongfully compulsorily retired by the 1st Respondent.

iii. The Court completely ignored the evidence on record that the 1st Respondent invited Counsel while in Court to engage with his Pension's Department to sort out the true entitled officers from the 131 officers she originally sued on their behalf to have come to the present 77 officers whom the 1st Respondent acknowledged as entitled to the claim.

b. The Judgment is against the weight of the evidence adduced.

In their statement of case, plaintiffs submitted that their action had been saved by the acknowledgment of the statute barred liability by the Police Administration in various exhibits (C, F, G1-G20 series, H series, and J series), which the Court of Appeal ignored in their appraisal of the evidence on record. They also argued that the fact that the defendants did not lead any evidence at the trial should weigh against them when reviewing the evidence. Counsel for plaintiffs also spent time on the verification letters procured from the Police Administration by the plaintiffs which altered the original limitation period and gave plaintiffs a new limitation period calculated from the date of the letters.

Defendants on the other hand insisted that the exhibits, especially C, and the verification letters were no acknowledgments and could not alter the limitation period to give plaintiffs a new date for calculating their accrued rights. Defendant also spent time directing the court on how the courts have applied the Limitation Act in past decisions and stated that when an acknowledgment is advanced as a defence to a plea of the Limitation Act, 1972, it is used as a term of legal art which must not be understood as bearing its ordinary meaning or construed in its ordinary sense. The learned State Attorney further went on an exposition on what acknowledgment is in legal dictionaries and the Limitation Act. He concluded that the present action is statute barred and prayed for the dismissal of the meritless appeal with heavy costs.

Plaintiffs' writ of summons and statement of claim was filed on 27th April 2006. The basis of the claim of the plaintiffs is captured in paragraphs 4, 5, 6, and 8 of their claim as follows:

**4) The plaintiffs say that the 1st Defendant retired them compulsorily at the age of fifty (50) in the case of the females among them and fifty-five in the case of the Males in 1993 and 1994, contrary to the provision of the 1992 Constitution which raised the**

**retiring age of all personnel of public institutions including the Police Service to sixty (60) years age.**

**5) The Plaintiffs say that as per the Ruling of the Supreme Court of 26th July 1994 in the case of one of the officers who challenged this action of their employer entitled:**

**MR. C. B. BAWUAH**

**VRS**

**1 ATTORNEY-GENERAL**

**2 INSPECTOR GENERAL OF POLICE**

**The Supreme Court ruled that their purported compulsory retirement at fifty (50) years for females and fifty-five (55) years for males in 1993 and 1994 sinned or was in breach of ARTICLE 199(1) of the 1992 Constitution and therefore a nullity "we order that he be reinstated forthwith."**

**6) The Plaintiffs say that even though the 1st Defendant herein took some steps to reinstate some of the affected officers, by recalling them for training prior to their reinstatement, many of them were completely ignored,**

**8) The Plaintiffs herein state that since the Supreme Court has already ruled that their compulsory retirement was in breach of the 1992 Constitution and therefore null and void, they are entitled to their full remuneration for either ten (10) years (for the females) or five (5) years (for the males) of their working life that they were denied their willingness to serve the nation and also interest on same to date of payment."**

The pleadings above admit to no controversy. They portray an action brought upon on a judgment to compel the powers that be to comply with the constitutional provision. That

judgment was delivered by the Supreme Court on 26th July 1994, but the failure by the Police Administration to act on the directives given in the judgment compelled the affected persons such as the plaintiffs in this appeal to resort to the High Court to have the judgment complied with. The learned trial judge held that though the action was caught by section 4 of the Limitation Act, the liability was acknowledged by the Police Administration under Section 17 of the Limitation Act, making it an acknowledgment of a statute-barred liability. The Court of Appeal, on the other hand concluded that the claim was statute barred.

**WAS PLAINTIFFS CLAIM STATUTE OF LIMITATION**

Is there a basis for the statute of limitation to feature in this case? Statute of limitation provides expiry dates to legal claims. That is to say that they provide timelines within which legal claims or causes of actions may be pursued in the law court. Put slightly differently, statutes of limitation set the maximum period which a claimant can wait before filing a lawsuit. There are policy reasons in support of statutes of limitation. Suffice to mention just two. In one sense, statutes of limitation grant repose to potential defendants – a period after which they will have closure and forget about potential lawsuits that may be brought against them. In another sense, statutes of limitation ensure that there is an end to litigation, with the attendant policy reason of resource conservation for not just litigants but also the courts and, thereby, the taxpayer. To achieve these policy purposes, the limitation period starts counting from either the time that the cause of action accrues or when the claimant becomes aware of the violation. However, like many legal rules, statutes of limitations are not absolute. They, too, have exceptions or overriding doctrines. Often, these overriding doctrines or exceptions carry with them a weightier policy reason than the policy reasons on which statutes of limitations are based.

In this appeal even if one were to argue that the Limitation Act applies to this appeal, I am of the opinion that the relevant provision under which the plaintiffs' action should be considered is Section 5(2). It provides that:

**Section 5—Actions Barred after Twelve Years.**

**"(2) An action shall not be brought upon a judgment after the expiration of twelve years from the date on which the judgment became enforceable."**

As noted earlier, the judgment of the Supreme Court was delivered on 26th July 1994. The suit by the plaintiffs to enforce the judgment was filed on 27th April 2006. The twelve years limitation, if applicable at all, would have lapsed on 25th July 2006. Evidently, the plaintiffs were not out of time and therefore, the limitation was inapplicable in this action.

The defendants, who raised this line of defence acknowledged this fact when in paragraphs 8, 9, and 10 of their Amended Statement of Defence stated first that there was no dispute between the parties to warrant recourse to the High Court. Secondly, they pleaded that it was not necessary for the plaintiffs to come to the High Court to claim their entitlement, and thirdly, they asserted that the action between them and the plaintiffs could be handled administratively. The defendants were right and outright honest in this assertion because the matter had already been determined by the Supreme Court and what was left was the administrative processes to give effect to the judgment of the Court.

The findings by the High Court, in our opinion, were wrong and a misapplication of the limitation law. Equally so, the holding by the Court of Appeal that the action was founded on a simple contract in which time could not be extended was also wrong. The terms of employment and conditions of service of the appellants being ex-police officers

were governed by statute and not on a simple contract as is the case in the private sector. Different considerations and rules, therefore, apply, to public sector employees.

In **Kwapong v Ghana Cocoa Marketing Board; Frimpong-Attafuah v Ghana Cocoa Marketing Board; Amoh v Ghana Cocoa Marketing Board (Consolidated) [1984-86] 1 GLR 74,** the plaintiffs who were workers within the public services were compulsorily retired below the age of 50 years contrary to the provisions of the 1979 Constitution. Subsequent to their retirement, the plaintiffs collected their full entitlements from the service. They subsequently brought an action for, inter alia a declaration that their purported removal or retirement from office by the defendants was wrongful and without just cause and therefore asked to be reinstated. **Osei-Hwere JA** (as he then was) sitting as an additional Justice of the High Court, applied the provisions of the 1979 Constitution and case law and held at pages 88-89 as follows:

**"The concept of unfair dismissal which was introduced in the Constitution to protect the security of the tenure of office of public servants and the remedies based on it are purely statutory and not contractual. Article 1 (2) of the said Constitution, 1979 declared the Constitution as the supreme law of Ghana and that any other law found to be inconsistent with any provision of the Constitution shall, to the extent of the inconsistency, be void and of no effect. A fortiori no one can contract out of the express provisions of the Constitution. In other words, if a public servant has been dismissed without just cause and contrary to his constitutional protection the fact that he was offered, what is popularly called, a golden handshake which he accepted cannot be a waiver of this protection. This point is well made out by the following passage from the judgment of the Supreme Court in Tuffour v Attorney-General [1980] GLR 637 at 655-56, CA sitting as SC:**

**"Neither the Chief Justice nor any other person in authority can clothe himself with conduct which the Constitution has not mandated. To illustrate this point if the Judicial Council should write a letter of dismissal to a judge of the Superior Court of Judicature and that judge either through misinterpretation of the Constitution or indifference signifies acceptance of his dismissal, can it be said that he cannot subsequently resile from his own acceptance or that having accepted his dismissal, he is estopped by conduct or election from challenging the validity of the dismissal? This court certainly thinks not. This court does not think that any act or conduct which is contrary to the express or implied provisions of the Constitution can be validated by equitable doctrines of estoppel. No person can make lawful what the Constitution says is unlawful. No person can make unlawful what the Constitution says is lawful. The conduct must conform to due process of law as laid down in the fundamental law of the land or it is unlawful and invalid."**

Osei-Hwere JA, then concluded that:

**"The payment and acceptance of their full benefits cannot, therefore, defeat their action."**

See also **Ghana Airways Corporation v Addo [1992] 2 GLR 397, Benin J and** the case of **Sallah v Attorney-General [1970] CC 55**. I agree with the application of the constitutional provision and case law by Osei-Hwere JA (as he then was) and its correlation to public servants who were retired contrary to the Constitution and adopt his reasoning as my own. It is my opinion that the Court of Appeal erred in coming to that conclusion.

**APPLICATION OF STATUTE OF LIMITATION TO BREACHES OF THE CONSTITUTION**

I now turn my attention to the most important factor for consideration in this appeal i.e. whether the Statute of Limitation applies to acts involving breaches of the Constitution. Aside from the misapplication and misinterpretation of the relevant provisions of the Limitation Act already discussed, will an act which is unconstitutional be barred from any challenge in court after a period of years?

Article 2, under which the Yovuyibor and the Bawuah's writs were brought, gives the right to any person who alleges that an act or omission of any person is inconsistent with, or is in contravention of a provision of the Constitution, to bring an action in the Supreme Court for a declaration to that effect. The Supreme Court has the power to make any orders and give directions as it may consider appropriate for giving effect to the declaration so made. The effect of any orders made by the Supreme Court on the entire citizenry and the repercussions for disobedience are provided for in articles 2(3) & (4) as follows:

**"(3) Any person or group of persons of whom an order or direction is addressed under clause (2) of this article by the Supreme Court, shall duly obey and carry out the terms of the order or direction.**

**(4) Failure to obey or carry out the terms of an order or direction made or given under clause (2) of this article constitutes a high crime under this Constitution and shall, in the case of the President or the Vice-President, constitute a ground for removal from office under this Constitution."**

There is no doubt that under this sacred document which Ghanaians have crafted for themselves and approved in a referendum to guide all activities of the state, any orders made or directions given by the Supreme Court pursuant to Article 2, must be obeyed and complied with by all. This is evident by the use of the word 'shall', which under

section 42 of the Interpretation Act 2009, (Act 792) is mandatory. Being mandatory, one has no choice in deciding to obey or not to obey.

To show the binding nature of the Supreme Court orders or directions pursuant to Article 2, the punishment provided for failure or refusal to so obey or comply is equated to an offence of high crime, punishable by 10 years imprisonment without the option of a fine, disqualification from any elections and public office for 10 years from the end of the service of the prison term and in the case of the President or Vice-President, a ground for their removal from office under the Constitution.

Reading the provisions of article 2 as a whole, no person has a choice to fail and or refuse to comply with the orders or directions of the Supreme Court. Therefore, the Police Administration at the time should count themselves fortunate to have escaped the punishment for the unreasonable delay, and in the present appeal, failure to comply with the orders and direction of the Supreme Court given 28 years ago and mustering the courage to plead that the enforcement of the orders and directions have been caught by the statute of limitation.

Estoppel is one of the defences which will not fly against breaches of the Constitution. In the celebrated case of **Tuffuor v Attorney-General [1980] GLR 637**, article 127(8) of the 1979 Constitution provided that on the coming into force of that Constitution, all Justices of the Superior Court of Judicature holding offices as such shall be deemed to have been appointed from the date of the coming into force to hold office as such under the Constitution.

Prior to the coming into force of the Constitution, Justice Fred Kwasi Apaloo held the office as the incumbent Chief Justice of the Republic. After the Constitution came into force, the President purported to nominate Justice Fred Kwasi Apaloo as Chief Justice. This implies him going through Parliamentary approval i.e. to present himself to

Parliament to be vetted and approved as Chief Justice. Parliament vetted him and rejected him as Chief Justice.

The plaintiff brought an action under article 2 of the 1979 Constitution, which is equivalent to the provisions of the current Constitution, to declare the nomination by the President, Justice Apaloo's presentation of himself to Parliament for vetting, and Parliament vetting and rejecting him as Chief Justice, as all acts inconsistent with the Constitution and therefore void.

The Attorney-General contended that by the conduct of Justice Apaloo in accepting the nomination and presenting himself to Parliament for vetting, he should be deemed to have waived any immunity provided by the Constitution and, therefore, estopped from challenging the consequences of that conduct.

The Supreme Court held that since the Constitution is the supreme law of the land, it is the criterion by which all acts could be tested and their validity or otherwise established and therefore neither the Chief Justice nor any other person in authority could clothe himself with conduct which the Constitution had not mandated. In the words of Sowah JSC at page 656

**"The decision of Mr. Justice Apaloo to appear before Parliament cannot make any difference to the interpretation of the relevant article under consideration unless that decision is in accordance with the postulates of the Constitution. It is indeed the propriety of the decision which is under challenge. This court does not think that any act or conduct which is contrary to the express or implied provisions of the Constitution can be validated by equitable doctrines of estoppel. No person can make lawful what the Constitution says is unlawful. No person can make unlawful what the Constitution says is lawful. The conduct must conform to due process of law as laid down in the fundamental law of the land or it is unlawful and invalid."**

See also the cases of **Republic v High Court, Accra Ex Parte CHRAJ [2007-2008] SCGLR 213 Wood CJ,** and **Attorney-General v Faroe [2005-2006] SCGLR 271**

Another doctrine accepted in this jurisdiction and internationally which has a bearing on breaches of the Supreme Laws of the land is the continuing violation doctrine.

The continuing violation doctrine is one of such doctrines which statutes of limitation are incapable of overriding. Strictly speaking, the continuing violation doctrine is not exactly an exception to the statute of limitation. It is, in fact, consistent with the statute of limitation. It, indeed, acknowledges the limitations that a statute may place on the claim. It, however, looks at the totality of the wrongful behaviour complained of in determining whether the limitation that the statute places on the wrong is triggered. The basis of the doctrine is that the wrongful behaviour complained of or another similar wrongful behaviour which is consequent upon the initial wrongful behaviour complained of continues, even after the cause of action had fully accrued in respect of the initial wrongful behaviour. In such a case, a new cause of action is deemed to accrue every single day that the wrongful behaviour persists, thereby shifting the accrual date of the cause of action forward. It also means that until the wrongful behaviour abates, each new day becomes the beginning of a new cause of action to which the putative defendant may be liable.

Indeed, the continuing violation doctrine is not unknown to this Court. In the case of **Sumaila Bielbiel v Adamu Dramani [2011] 1 SCGLR 132**, the Defendant objected to the jurisdiction of this Court on grounds, among others, as held by the Court of Appeal that the plaintiff did not avail himself before the expiration of the limitation period of twenty-one days after Gazette publication within which to file a petition under the provisions of section 18 of the Representation of the People Act, 1992 (PNDCL 284). In effect, the period for challenging the election of the Defendant Member of Parliament had expired and the forum for appeals in the Court of Appeal was also exhausted. Gbadegbe, JSC, speaking

for and on behalf of the majority at pages 144-145 (in assuming jurisdiction over the case) applied the continuing violation doctrine to a breach of a constitutional provision in the following dictum:

**"The Plaintiff, in any event, is contending that Defendant continues to breach the provisions of the Constitution even after the decision of the Court of Appeal. In my view, the facts urged by the plaintiff are of a continuing nature like a nuisance; therefore, every moment that the Defendant continues to take his seat in Parliament, or exercises the functions of that office, he is in breach of the constitutional provisions and, as such, there is a new cause of action consequent upon any such breach. This being the case, I do not see any force in the contentions on this ground."**

Applying the continuous violation doctrine, the opinion by the Supreme Court in the Yevuyibor case that the retirement of Police Officers at ages 50 and 55 when the Constitution has prescribed the age of 60 years rendered the decision of the police authorities outright unlawful and, thus, void *ab initio*. It is as if the police administration had never laid the plaintiffs and their cohorts off at all. It also made the refusal of the police administration to re-instate the plaintiffs or, in lieu of such reinstatement, pay to them their entitlement, unlawful. But, even, most importantly, the police administration's refusal to comply with the decision of this Court was unlawful. Accordingly, each day that the police authorities withheld the plaintiffs' lawful entitlements constituted a new and fresh wrong – not only a violation of the Constitution but also a violation of the rights of the plaintiffs and their cohorts. In other words, the wrong which the police administration committed against the plaintiffs and their cohorts only began from the day they were each laid off. It, however, continued, unabated and continued to affect each of them from that day until the day that the police

administration would remedy it in respect of each of them. The plaintiffs are now here seeking that remedy that the police authorities have withheld from them for all this decades.

Indeed, the present case appears to be on all fours with the law in the common law legal tradition. Thus, in the case of **Bodner v. Banque Pariba 114 F. Supp. 2d 117 (E.D.N.Y. 2000)** the Plaintiff, Jews, brought an action in the year 2000 for the recovery of their assets and damages from the defendant bank. The basis of their claims is that the defendants have connived with the Nazi and the Vichy regimes during their World War II occupation of France to expropriate their private properties. The defendant pleaded the statute of limitation. The plaintiff, in turn, pleaded continuing violation, namely, that every single day that the defendant refused to return the properties or, in lieu of that, pay compensations to them, constitute a new and fresh violation. The Court held as follows:

**"Federal courts have found the statute of limitations must accrue from the date of the last wrongful act where there is a continuing wrong. Leonhard v. United States, 633 F.2d 599, 613 (2d Cir.1980). Thus, under the continuing violation doctrine, "the limitations period for a continuing offense does not begin until the offense is complete." United States v. Rivera-Ventura, 72 F.3d 277, 281 (2d Cir. 1995) …The nature of Plaintiffs claim is such that the continued denial of their assets, as well as facts and information relating thereto, if proven, constitutes a continuing violation …"**

Bringing the same reasoning to bear on the task before us, I am forced to the conclusion that since the doctrines of estoppel and continuing violation cannot be invoked to validate a breach of a constitutional provision, the Limitation Act cannot also be invoked as a shield or even used as a sword to override an act or conduct of any person which contravenes the Constitution. If an act is unconstitutional, the indolence or delay in challenging it will not be a bar on a person's right to mount a challenge in the future.

Regrettably, counsel for the plaintiffs in this action as well as the representative from the Attorney-General were of little assistance to the two lower courts and in their submissions in the present appeal in this court. They spent time and energy applying and interpreting sections 4 and 17 of the Limitation Act which were inapplicable in this action. I was not attracted at all to the counsel's line of argument.

In my view, the appeal should succeed. I would set aside the judgment of the Court of Appeal dated 22nd October 2020. In its place, I would enter judgment for the plaintiffs. I order as follows:

1. The 77 plaintiffs in this case and all officers affected by the 1993-94 premature retirement of police officers who were not reinstated in accordance with the judgment of the Supreme Court dated 26th July 1994, become unconditionally entitled to arrears of salary covering differential years in their retiring ages.
2. The arrears in salary shall attract interest from the date of the High Court's judgment, i.e. 2006, until the date of final payment. My choice of the year of the High Court judgment, 2006 is a balance between our duty to protect the public purse and the overriding rights of the citizenry.
3. For police officers affected who have passed on, their arrears should be paid to their administrators or executors as the case may be, upon production of a valid Letters of Administration or Probate for the benefit of the beneficiaries under their estate.
4. The Police Administration is ordered to complete all administrative and financial processes and pay the plaintiffs and all other affected officers their arrears of salaries, interest and all other service benefits not later than three months from the date of this judgment.

**N. A. AMEGATCHER**

**(JUSTICE OF THE SUPREME COURT)**

**AMADU JSC:-**

I have had the privilege of reading in advance the opinions of my brothers Pwamang JSC and Kulendi JSC for the majority as well as the minority opinion of my brother Amegatcher JSC. While I appreciate the drift in the reasoning of my brothers in the majority, I am unable to agree with their conclusion that the appeal be dismissed. On the contrary, I am in full agreement with the minority opinion that the appeal be allowed. In my view, the minority opinion not only articulates the fundamental rights of the Appellants, but frowns upon the continuous violation of their constitutional rights by the Respondents even where this court had made an earlier pronouncement with respect to those same rights for persons in the same class as the instant Appellants. That is why I agree that this appeal be allowed in terms of the orders set out in the minority opinion.

**I. O. TANKO AMADU**

**(JUSTICE OF THE SUPREME COURT)**

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