

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 18TH DAY FEBRUARY, 2021

BEFORE: HON. JUSTICE M. A. NASIR

COURT NO: 9

SUIT NO: CV/1184/2019

BETWEEN:

1. CHIEF ELOKA OKWUMUO
2. MACTEL NIGERIA LIMITED.

CLAIMANTS

AND

MR. ANDREW GWANI

DEFENDANT

RULING/JUDGMENT

The claimants commenced this suit under the Undefended List Procedure and claimed wherein he claims against the Defendant as follows:

1. The sum of N52,500,000= (Fifty Two Million, Five Hundred Thousand Naira) only being the total amount of money given to the Defendant by the Claimants to

facilitate land allocations for the Claimants within the Federal Capital Territory which the Defendant failed/neglected to facilitate and also refused/neglected to refund the above sum despite repeated demands for same by the Claimants.

2. Post judgment interest at the rate of 10% from the day of judgment till final liquidation of the judgment sum.

3. Cost of this suit

Upon service of the writ of Summons marked undefended, the Defendant filed his Notice of Intention to Defend together with a Notice of Preliminary Objection. On the 11th November, 2020, when the matter came up for hearing, parties moved and argued the two applications together i.e. the notice of Preliminary Objection and the substantive suit, and the Court adjourned to deliver a composite ruling.

By his Notice of Preliminary Objection dated 26th June, 2020 and filed on the 3rd July, 2020, the Defendant/Applicant is praying this Court for the following reliefs:

- a. “An order of this Honourable Court dismissing this action for want of jurisdiction same action having become statute barred.
- b. And for such order(s) as this Honourable Court may deem fit to make in the circumstances of this case”.

The grounds upon which the objection is based are as follows:

- a. “That the claimant’s complain being refund of money had and received is contractual in nature and same was commenced 12 years after the cause of action arose, thereby making same to be time barred.

b. The claimants having not approached the Court within the time allowed by law is precluded from bringing this present suit”.

The Preliminary Objection is supported by a 5 paragraphs affidavit duly deposed to by one Stephen Ojodomo, a Litigation Clerk in the Chambers of Inikpi Law Firm representing the Defendant/Applicant.

Isaac Okpanachi Esq. Counsel representing the Defendant/Applicant also filed a written address which was duly adopted by Israel Gabriel Abah Esq. In the written address, the applicant’s Counsel raised a sole issue for determination as follows:

“Whether or not the action of the claimants is statute barred same having been brought 12 years after this cause of action arose.”

Learned counsel submitted that by Section 7 of the Limitation Act, no action shall be brought after the

expiration of 6 years from the date the cause of action arose. Counsel submitted that the alleged cause of action in this case arose sometimes in 2008 as alleged by the Claimant/Respondent in their paragraph 3(b) of the affidavit in support of the undefended list, which is almost 12 years now.

Counsel further submitted that the law is clear on this that once an action is statute barred, a Court does not have jurisdiction to entertain such matter. He finally urged this Court to dismiss this action. Reference was made to the following cases.

1. Raleigh Ind. Ltd. vs. Nwaiwu (1994)4 NWLR (Part 341) page 760 at 772.
2. Nwaka vs. H.O.S. Ebonyi State (2008)3 NWLR (Part 1073) page 156 at 173.
3. Archianga vs. A.G. Akwa Ibom State (2015)6 NWLR (Part 1454) 1 at 55.

4. Ezeani vs. N.R.C. (2015) NWLR (Part 1445) 139 at 160.

In opposition, the Claimants/Respondents filed a 4 paragraphs Counter affidavit dated 14th July, 2020. The counter affidavit was sworn to by one John Ogbaije, a Litigation Secretary in the Chambers of C.K. Agu & Co. Counsel to the Claimants/Respondents. Attached to the counter affidavit is one document marked as exhibit 1. Counsel for the Claimants/Respondents also filed a written address which was duly adopted before this Court. In his written address, Learned Counsel formulated a lone issue for determination as follows:

“Whether the cause of action arose in 2008, and as such, can this suit be said to be caught up with statute of limitation?”

Counsel submitted that in determining whether or not the claimant’s action is statute barred, the Court is enjoined

to look at the Writ of Summons and Statement of Claim, because time begins to run for purpose of limitation law from the date of the accrual of the cause of action. In other words, time begins to run when there is in existence a person who can sue and another who can be sued and all the facts have happened which are material to be proved to entitle the claimant to succeed.

Counsel further submitted that the Defendant brought different land allocation at various times to the claimant. That it was only when the 1st Defendant went to the Land Registry that he was informed that the land documents were not genuine. The claimants never suspected any foul play because the Defendant/Applicant promised to replace the title documents. According to the Claimants/Respondents it was only after 2016 that the claimants realised that the Defendant was not forthcoming with the land allocation papers. Counsel referred this Court

to paragraphs 'b, 'e' and 'g' of the claimant's supporting affidavit attached to the Writ of Summons.

Further, at paragraph 5.01 of the written address, Counsel submitted that assuming without conceding that the cause of action arose in 2008, the acknowledgment of the debt of N52, 500,000= (Fifty Two Million, Five Hundred Thousand Naira) only by the Defendant as averred in paragraph 'i' of the claimant's supporting affidavit, revived the right of action to recover the debt and which indeed is the cause of action before this Court.

Counsel went on to submit that exhibit 1 which is an undertaking by the Defendant to refund the total Sum of N52,500,000= created a fresh contractual relationship, which follows that the claimants are still within time to institute this action. Counsel referred this Court to the following cases:

1. Ansa vs. Etim (2010)6 NWLR (Part 1189) page 151.

2. Ofili vs. C.S.C. (2008)2 NWLR (Part 1071) page. 253.

3. N.S.I.T.F.M.B. vs. Klifco Nig. Ltd. (2010)13 NWLR (Part 1211) page 329.

4. A.G. Adamawa State vs. A.G. Fed. (2014)14 NWLR (Part 1428) page 554 – 555.

Now, from the affidavit evidence filed by the parties and from submissions of Counsel across the divide, I observe that the issues raised by Counsel are almost similar, I will therefore adopt the Applicant's sole issue for determination.

“Whether or not the action of the claimants is statute barred same having been brought 12 years after this cause of action arose.”

It is trite that a cause of action means a combination of facts and circumstances giving rise to the right to file a claim in Court for a remedy. In simple terms, a cause of action arises the moment a wrong is done to the claimant

by the Defendant. See: Ansa vs. Etim (2010)6 NWLR (Part 1189) page 151, Egbe vs. Adefarasin (1987)1 NWLR (Part 47) 1 at 20.

It is settled that the manner in which to ascertain whether an action is statute barred is simple and straight forward. It is simple to examine the facts pleaded in the statement of claim to see what the cause of action is. In ascertaining whether an action is statute barred, the Court usually looks at the date when the action was instituted and the date when the cause of action arose simpliciter. See: Asuquo & Anor. vs. Omole & Anor. (2019) LPELR - 47867 (CA).

In the instant case, the Defendant/Applicant contended that the Claimant's complain being refund of money had and received is contractual in nature and the transaction happened sometimes in 2008 a period of 12 years prior to the institution of this action.

Section 7(1) of the Limitation Act, Cap 522 LFN, provide as follows:

“The following actions shall not be brought after the expiration of Six years from the date on which the cause of action accrued

a. Action founded on simple contract;

b. Action founded on quasi – contract.”

From the above provision it is clear that actions founded on simple contracts ought to have commenced within Six years from the date the cause of action accrued.

As stated earlier, in determining whether or not an action is statute barred, the Court is enjoined to look at the Writ of Summons and Statement of claim in this instance. Upon careful perusal of the supporting affidavit attached therein, it is clear from the annexure attached to the writ of Summons all the cheques issued by the Defendant/Applicant to the Claimant/Respondent were in

2008. However, the Defendant/Applicant wrote an Undertaking on the 11/09/2012 where he acknowledged owing the Claimants/Respondents. The said letter of Undertaking was attached by the Claimants/Respondent in both their Writ of Summons and counter affidavit to the instant application.

It has been contended that the said letter of Undertaking has revived the indebtedness of the Defendant/Applicant. The said letter of undertaking exhibit 13 reads as follows:

“I Andrew Gwani of plot No.277 FCDA QTRS Bwari Abuja have on this day 11/9/17 visited Bar. Paul in his office at Lungi Market with the promise to come back between 25–27 of September, 2017 with a reasonable amount of money as part of refund Chief Eluka’s I owe N52,500,000= (Fifty Two Million, Five Hundred Thousand Naira)only.”

By the Limitation law earlier cited actions founded on simple contract shall not be brought after the expiration of 6 years from the date the cause of action accrued. However, where there is acknowledgment of the debt in writing signed by the party that is liable, the right to recover the debt by action is revived.

A perusal of Exhibit 13 showed a clear unequivocal acknowledgment of the Defendants indebtedness to the Claimant. The case of N.S.I.T.F.M.B. vs. Klifo Nig. Ltd. (2010)13 NWLR (Part 1211) page 329, cited and referred to by learned counsel to the Claimants/Respondent is on point where the Supreme Court held:

“However where there is acknowledgment of the debt, the right to recover by action is revived and it is the Crux of the matter in this case. It must be noted that what constitute acknowledgment is a matter of fact depending on each case.”

In consequence thereof, I hold that exhibit 13 has taken the instant suit out of the Limitation Act. This action is not statute barred and I hold that the Court has jurisdiction to entertain same. In effect, the notice of preliminary objection filed by the Defendant is misconceived and same is hereby dismissed.

Now, coming back to the substantive suit, I have earlier stated that the Claimants filed their Writ of Summons under the undefended list procedure and claiming against the Defendant as follows:

“1. The sum of N52,500,000= (Fifty Two Million, Five Hundred Thousand Naira) only being the total amount of money given to the Defendant by the Claimants to facilitate land allocations for the Claimants within the Federal Capital Territory which the Defendant failed/neglected to facilitate and also

refused/neglected to refund the above sum despite repeated demands for same by the Claimants.

2. Post judgment interest at the rate of 10% from the day of judgment till final liquidation of the judgment sum.

3. Cost of this suit.”

The Claimants filed a 4 paragraphs affidavit deposed to by one Roseline Awa, a litigation secretary in the Chambers of C.K. Agu & Co., Counsel to the claimants. Several documents were attached to the Writ marked as exhibits 1 - 14. In opposition, the Defendant filed his notice of intention to defend with 15 paragraphs Counter affidavit.

The brief facts of the Claimant's case as contained in their supporting affidavit is that sometime in 2008, the Defendant who claimed to be a staff of the Department of Urban and Regional Planning of the Federal Capital Development Authority (FCDA) approached the 1st Claimant

and informed the 1st Claimant of his ability to secure land allocation. Based on the representation, the 1st and 2nd Claimants at different times gave the Defendant a total Sum of N52,500,000= (Fifty Two Million, Five Hundred Thousand Naira) only, for the facilitation of land allocations for the claimants and their partners.

The Claimants averred that, the Defendant thereafter gave the Claimants land allocation papers which upon confirmation at the land registry turned out not to be genuine.

The Defendant having failed to provide genuine land documents to the claimant's undertook to refund the entire money totaling N52,500,000= (Fifty Two Million, Five Hundred Thousand Naira) only. When the Defendant failed to honour the said undertaking to refund the money, the claimant filed the instant suit seeking for redress.

Generally, the law is settled that a claim under the undefended list, by the very nature thereof, is an action for liquidated sum, an amount agreed upon by the parties or which can be determined or ascertained from the terms of agreement thereof, with a view to enabling the claimant obtain summary judgment without necessarily proceeding to full trial. In essence an undefended list procedure is aimed at a quick disposal of usually uncontested cases. See: Abdullahi vs. Buhari (2004)7 NWLR (Part 902) 278, Wilson Obioha & Sons Ltd. & Anor. vs. Inamsco Multi Concepts Ltd. & Anor. (2017) LPELR - 42332 (CA).

In the instant case, the Claimants exhibited 7 copies of Cheques issued and acknowledged by the Defendant. The total amount on the said exhibits 1 - 7 is N23,000,000:00 (Twenty Three Million Naira) only. Further, the claimants averred that he made cash payment at various times to the

Defendant totaling N29,500,000:00 (Twenty Nine Million, Five Hundred Thousand Naira) only.

Furthermore, by Order 35 Rule 3(1), Rules of this Court, a Defendant is entitled, if he so wishes to contest the claim, to file a notice of intention to defend together with an affidavit disclosing a defence on the merit. The affidavit in support of the notice of intention to defend, should address the plaintiff's claim in materials particular, without prevarication or generalization.

The Defendant must establish in the supporting affidavit not only his intention to defend, but the further fact of a defence on the merit. Beyond disclosing an ex facie good defence to the claimant's action, the Defendant must supply full details of the actual defence he intend, if given leave to place before the Court. See: Ed – of Nig. Ltd. vs. Snig (Nig) Ltd. (2013) LPELR – 19888 (SC).

The question now is whether the Defendants affidavit in support of the notice of intention to defend disclosed triable issue to warrant the transfer of the suit to the general cause list for full trial. In Frank Muoboke vs. Nwigew (2000)1 NWLR (Part 642) 620 at 636, Fabiyi JCA (as he then was) had this to say as a triable issue.

“.....a triable issue is an uncontroverted material allegation contained in the affidavit in support of notice of intention to defend an action filed in the undefended list. Such material allegation requires further investigation by the Court to unearth the veracity or otherwise of the same.....”

A Defendant’s affidavit in support of notice of intention to defend raises a triable issue where the affidavit is such that the Plaintiff will be required to explain certain matters with regard to his claim or where the affidavit

throws a doubt on the Plaintiff's claim. See: U.B.A. Plc. vs. Jargaba (2007)11 NWLR (Part 1045) 242.

In this instance, the Defendant's affidavit in support of the notice of intention to defend did not establish reasonable grounds of defence. The law is settled that for an affidavit to constitute a defence on the merit, the Defendant must set out the defence in the affidavit and not simply say that he has a defence, he must show that there is some dispute between the parties requiring to be put to trial. See: Niger Aluminium Manufacturing Co. Ltd. & Anor. vs. Union Bank (2015) LPELR – 26010 (CA).

The claimant's paragraph 3 (i) which referred to the Undertaking made by the Defendant has not been denied nor controverted. The Defendant was categorical in stating that he is indebted to the claimants in the sum of N52,500,000.00 (Fifty Two Million, Five Hundred Thousand Naira).

It is settled law that once a debt is admitted, judgment should be entered for the sum admitted irrespective of other consideration that may crop up. See Nneji vs. Chukwu (1988)3 NWLR (Part 81) 184, Asaba Textile Mills Ltd. vs. Bona V. Textile Ltd. (2007)1 NWLR (Part 1015) 259, Ogunsola vs. Adeyemi (2008)14 WRN 96. In the case of Akaniwon vs. Nsirim (2008)9 NWLR (Part 1093) 439, the Court held that:

“An admission of debt is a solemn declaration of indebtedness of the Defendant to the Plaintiff in the sum admitted.”

It is my considered view that the Notice of Intention to Defend filed by the defendant has not disclosed a defence on the merit to warrant this Court to transfer the suit to the general cause list. I therefore proceed to enter judgment for the claimants pursuant to the provisions of Order 35 Rule 4 of the Rules of this Court.

- The defendant shall refund to the claimants the sum of N52,500,000.00 (Fifty Two Million, Five Hundred Thousand Naira) only being the total amount of money given to the defendant to facilitate land allocations within Federal Capital Territory.
- The claimants also claimed 10% interest post judgment. This Claim is apt and it is regulated by statute. Order 39 Rule 4 provides:

“The Court at the time of making any judgment or order or at any time afterwards, may direct the time within which the payment is to be made or other act is to be done, reckoned from the date of the judgment or order, or from some other point of time, as the Court may deem fit and may order interest at a rate not less than 10% per annum to be paid upon any judgment.”

Thus 10% interest is awarded on the judgment sum from today until the judgment sum is fully liquidated.

- Cost of N50,000.00 (Fifty Thousand Naira) awarded against the defendant, in favour of the claimants.

Hon. Justice M.A. Nasir

Appearances:

C.K. Agu Esq – for the claimant

I.G. Abah Esq – for the defendant

