



IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

ON THURSDAY, 1ST DAY OF JUNE, 2023

BEFORE HON. JUSTICE NJIDEKA K. NWOSU-IHEME

SUIT NO: FCT/HC/CV/2989/2022

BETWEEN:

- 1. PONTI-FISIANI LIMITED -----CLAIMANT**
- 2. EKANEM EKANEM**

AND

THE ASSOCIATION OF LOCAL GOVERNMENT OF NIGERIA--DEFENDANT

RULING

The defendant on the 3/3/2023 raised a preliminary objection challenging the jurisdiction of this honourable court to entertain this suit and praying this court to strike out this suit for lack of jurisdiction.

In support of this preliminary objection is a 12 paragraph affidavit deposed to by MRS EVAN ENEKWE Director, Legal Services of the defendant and a written address.

The affidavit deposed to the following;

- a. That the suit is founded on contract;
- b. The cause of action arose in the year 2002 via a contract dated 13th February, 2002 (Exhibit PFL3 attached to the originating summons);
- c. The suit was filed on 8th September, 2022 about 20 years after the statutory period of 6 years prescribed by the law.
- d. Clause 33 of the contract (exhibit PFL3) provides that disputes or difference arising from the contract be referred to arbitration;
- e. The suit was filed without recourse to clause 33;
- f. The court lacks jurisdiction to entertain this suit;
- g. Suit is statute barred.

The claimant did not file a counter affidavit or written address in response to the preliminary objection.

The defendant's written address; Samuel Ogala Esq. submitted a sole issue for determination to wit:

"Whether from the facts deposed to in the affidavit in support of the motion on notice the action of the claimants is competent?"

This court shall determine this objection on the issue as formulated by the defendant.

DEFENDANTS ARGUMENT ON SOLE ISSUE

Counsel submits that where parties to an agreement make provision for arbitration before an action can be instituted in a court of law, any aggrieved party must first seek remedy available in the arbitration. The court in which such an action is filed is bound to decline jurisdiction in the matter. Relying on **OYO STATE GOVT & ORS V MOGOKE VENTURES (NIG) LTD (2015) LPLER-41731 (CA)**.

Counsel argued further that claimants are bound by **clause 33 of exhibit PFL3** first and foremost to submit any grievance arising out of the contract to arbitration. Relying on **NISSAN (NIG) LTD V YOGANATHAN (2010) 4NWLR (PT 1183) 135 AT 157 PARA D**.

Paragraphs 11 and 12 of the affidavit in support of the motion on notice reveals that the cause of action arose in the year 2002 and **SECTION 7(4) OF THE LIMITATION ACT** provides that an action founded on contract shall not be brought under the expiration of six years from date on which cause of action arose. Relying on **DALICE PROPERTY DEVELOPMENT CO. LTD V ALUCON LTD & ORS (2017) LPLER – 43236 CA**. This suit was filed on 8th September, 2022 and it is statute barred because at time the suit was filed and court lacked jurisdiction to entertain same.

DECISION OF THE COURT

Whenever the issue of jurisdiction, which is both intrinsic and extrinsic to judicial proceedings, arises or is raised in the course of proceedings (at all stages or

steps of the judicial ladder), the court before which it arises or is raised has the duty and obligation to consider and determine it first before proceeding with other issues or taking further steps in the case. See **ADEYEMI V ACHIMU/NDIC (2023) PART 1866 1NWLR P. 583 @ P. 610 PARAS B-D.**

Jurisdiction is the life-wire of a court as no court can entertain a matter where it lacks jurisdiction. The issue of jurisdiction can be raised at any time. See apex decision of **DAIRO V UBN PLC (2007) 7 SC (PT II) PAGE 97 @ 111 paras 5-10.**

In the apex court decision of **AUDU V APC (2019) LPLER 48134 SC PAGE 12**, the court defined jurisdiction thus;

"Jurisdiction simply means "a Court's power to decide a case or issue" Black's Law Dictionary 9th Ed. Jurisdiction also refers to "the authority a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision" - Mobil Producing (Nig.) Unlimited V. LASEPA (2002) 18 NWLR (R. 798) 1 SC. Jurisdiction are of various types; substantive jurisdiction refers to matters over which the Court can adjudicate, and it is usually expressly provided by the Constitution or enabling statutes. PAGE 21PER AMINA AUGIE JSC held thus;

".... jurisdiction is the pillar under which the entire case stands, therefore, filing an action in a Court presupposes that the Court has jurisdiction. However, once the Defendant shows that the Court has no jurisdiction then the "foundation of the case is not only shaken but is broken. The case crumbles."

See Okolo V. UBN (2004) 3 NWLR (Pt. 859) 87, wherein Tobi, JSC, added;

"In effect, there is no case before the Court for adjudication. The Parties cannot be heard on the merit of the case. That is the end of the litigation."

Due to the decisive nature of jurisdiction, it cannot be conferred on or taken away from any court because the parties have agreed or consented to do so. See **DAIRO V UBN PLC (2007) SUPRA @ 111 PARAS 10-15 and ADEYEMI V ACHIMU/NDIC (supra) P. 618 paras B-C.**

Flowing from the position of the law on jurisdiction, there are conditions which must be satisfied before this court can exercise jurisdiction.

In the recent decision of **PEOPLES DEMOCRATIC PARTY v. CHIEF NDUKA EDEDE & ANOR (2022) LPELR-57480(CA) (Pp. 28-29, paras. E-B)**, court held;

"I also agree with the learned counsel, that going by the parameters set by Madukolu vs. Nkemdilim (1962) SCNLR 341, and followed in Salati vs. Shehu (1986) INWLR (pt. 15) 198 @ 218, that a Court of law can only have and properly exercise its jurisdiction to hear and to determine a case before it where it is satisfied that:

- (i.) The proper parties are before the Court.**
- (ii.) The Court's properly constituted as to its membership and qualification.**
- (iii.) Where the subject matter of the case is within the jurisdiction and there are no features in the case which prevent the court from exercising jurisdiction. iv. Where the case comes before the Court initiated by due process of the law, and upon fulfillment of any condition precedent to the assumption of jurisdiction."**

In **EKWEOZOR V REGISTERED TRUSTEES OF THE SAVIOURS APOSTLE CHURCH 2020 SC LPLER 49568 PAGE 16** the apex court held thus;

"the jurisdiction of a Court including the trial Court is determined by the plaintiff's claim as disclosed in the writ of summons and/or endorsed in the statement of claim. However, when evidence has been taken before the raising of the issue of jurisdiction, the Court may refer to any part thereof necessary. In this instance a reference to the plaintiff's pleadings becomes necessary to clarify any grey areas. See Tukur v Government of Gongola State (NO. 2)

(1989) 4 NWLR (Pt. 117) P. 517; Mustapha v Government Lagos State (1987) 2 NWLR (Pt.58) 539

Looking at the exhibit PFL3 referred to in paragraph 8 of the Affidavit in support of the originating summons, paragraph 7 of the statement of claim, the clause in contention states;

33. Arbitration

33.1 Provided always that in case any dispute or difference shall arise between the Employer or the Project Supervisor on his behalf and the Contractor, either during the progress or after the completion or abandonment of the works, as to the procurement of this contract or as to any matter or thing of whatsoever nature arising thereunder or in connection therewith (including any matter or thing left by this contract to the discretion of the Project Supervisor or the withholding by the Project Supervisor of any certificate to which the Contractor may claim to be entitled or the measurement and valuation of these conditions), then such dispute or difference shall be referred to arbitration and the final decision of a person to be agreed between the parties, or failing agreement, a person to be appointed in accordance with the Arbitration and Conciliation Act cap 19 of the Laws of the Federation of Nigeria, 1990, or any statutory modification thereto.

In the case of **OKONKWO V CCB (NIG.) PLC (2003) 8NWLR (PT. 822) P. 382 PARAS D-E** the court put it succinctly:

“it is trite law that persons of full age and sound mind are bound by an agreement lawfully entered into by them.”

Emphasis Mine

In the case of **JADESIMI V EGBE (2003) 10 NWLR (PART 827) P. 30 PARAS. H-A, P. 31 PARAS E-G** the Court held thus;

“... I will apply the doctrine of equity “pactasuntservanda” which means that agreements voluntarily entered into must be honoured in

good faith for equity will not allow the law to be used as an engine of fraud. See Hart v T.S.K.J. (Nig) Ltd (1998) 12 NWLR (part 578) 372..."
Emphasis Mine

In the case of **N.I.C.N V POWER IND. ENG. CO. LTD (1986) 1NWLR (PART 14) 1 AT 29, Aniagolu J.S.C** had this to say;

"Equity as well all know, inclines itself to conscience reason and good faith and implies, system of law disposed to a just regulation of mutual rights and duties of men, in a civilized society.

Hence, in Earl of Oxford's case (1615), REP CHD, 20 Digest (Rep) 252 it is stated thus:

"Equity looks at the intent rather than the form and will impute an intention to fulfill that the appellant, far from scuttling away from its valid obligation to the respondent, will fulfill its agreement entered in January 1978, to indemnify the respondent from its loss."

Emphasis Mine

Flowing from the above, this court is bound to respect and honour the agreement entered into by the parties.

In **BCC TROPICAL (NIG) LTD V. GOVERNMENT OF YOBE STATE OF NIGERIA & ANOR (2011) LPELR-9230(CA) (PP. 13 PARAS. D)** The court of appeal held;

"An arbitration clause is a clause inserted in a contract providing for compulsory arbitration in case of dispute as to rights and liabilities under such contract. The purpose of that clause is to avoid having to litigate disputes that might arise" See the case of M.V. LUPEX V. N.O.C. AND SHIPPING LTD. (2003) 15 NWLR PART 844 PAGE 469."

It is clear that the parties intended to resort to arbitration in the event of a dispute hence the presence of Clause 33 in their agreement and this court cannot shut its eyes from same and I so hold.

On the 2nd leg of the objection which deals with the limitation of action, counsel referred to section **7(4) OF THE LIMITATION ACT** and relied on the case of **DALICE PROPERTY DEVELOPMENT CO. LTD V. J. ALUCON LTD & ORS (SUPRA)**. However, the section relied on deals with tort and not contract and the case of **DALICE PROPERTY DEVELOPMENT CO. LTD V. J. ALUCON LTD & ORS (SUPRA)** dealt with tort and not contract therefore, the case of **DALICE PROPERTY DEVELOPMENT CO. LTD V. J. ALUCON LTD & ORS (SUPRA)** not being on all fours with the case at hand will not avail the defendant in this instant.

It is trite law that when an action is caught by limitation law such an action is said to be statute barred. A cause of action would be said to be statute barred if proceedings are unable to be brought because the period set down by the limitation law has elapsed. In considering whether an action to enforce a legal right is statute barred, the court should confine itself to the averments in the writ of summons and the statement of claim which allege the factual situation that gave rise to the cause of action. See **DALICE PROPERTY DEVELOPMENT CO. LTD V. J. ALUCON LTD & ORS (SUPRA)** page 18-19

in ascertaining when time begins to run for the applicability of the statute of limitation, the Supreme Court in **FADARE V. ATTORNEY GENERAL OYO STATE 1982 SC 1** Page 30 held thus;

"Time begins to run when there is in existence a person who can sue and another who can be sued and all facts have happened which are material to be proved to entitle the plaintiff to succeed."

The issue before this court is whether or not the claimants suit is statute barred in view of **SECTION 7(1) LIMITATION ACT, CAP 522 LFN (ABUJA) 1990**. From the relief sought it is clear that the claimant's suit is based on contract.

SECTION 7 OF THE LIMITATION ACT PROVIDES;

"(1) the following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued.

(a) Actions founded on simple contract..."

In **ALHAJI JIBRIN BALA HASSAN v. DR. MU AZU BABANGIDA ALIYU & ORS (2010) LPELR-1357(SC) p. 24-26** the apex court held;

"... It is the accrual of the cause of action that confers on the appellant the right to institute an action to enforce the cause of action or right to a judicial relief.

Now the effect of a statute of limitation... on both cause of action and right of action is that it bars the right of action and not the cause of action. The cause of action refers to the facts or combination of facts which the plaintiff must adduce to entitle him to the relief(s) claimed while action or right to institute the action remains the means or medium affording the plaintiff the opportunity to ventilate his grievances - cause of action or bundle of facts, as variously described by the Courts over the years. The effect of a statute of limitation on the action of a plaintiff therefore is that it takes away the right of the plaintiff to institute the action but leaves him with his cause of action intact, though, without the right to enforce same or right to judicial relief.

When an issue of limitation of time to institute an action is raised, it is a preliminary issue touching on the competence of not only the action, but of the Court before which the action pends. It is long settled that an issue of jurisdiction is a periphery matter which must be resolved before proceeding to determine the merits of the case, where the issue is found not to have any merit.

It is glaring from the originating process filed in the court that the claimant is praying for the following relief;

1. An order of the honourable Court entering summary judgement against the defendant in the sum of N5,592,000,000 (Five Billion, Five Hundred and Ninety Two Million Naira) only being the contract sum executed by the 1st claimant to the defendant in the year 2002.

Some salient paragraphs of the affidavit in support of the originating summons are captured below;

- h. That following the above offer and acceptance, the claimants and defendant executed an agreement on the 13th day of February, 2002, the letter of the agreement is hereby pleaded and marked as exhibit "PFL3".
- i. That the contract was executed within the tenor of the contract agreed by the parties; the 1st claimant used one of his properties valued then at about N2, 700,000,000 (Two Billion, Seven Hundred Million Naira) only to secure bank guarantee for advance payment with Continental Bank Limited then, the bank that was acquired by UBA Plc some years back, the bank guarantee for the advance payment form is hereby pleaded and marked as exhibit "PFL4".
11. That upon the completion of the above contract the defendant refused to pay the claimant the consideration agreed upon despite several oral and written demands.
12. That since 2002 to date, the claimant did not collect a dime from the defendant at all under the guise of the then operation of the joint account system which is no longer in operation, the conversation between the claimant, the defendant and the Honourable Minister Ministry of Finance are hereby pleaded and marked as exhibit "PFL7", "PFL8" and "PFL9" respectively.
- Underlining mine.

It is clear that the cause of action accrued in 2002 as can be garnered from the paragraphs of the affidavit in support of the originating summons reproduced above. This court cannot delve further into this suit it is not only bound by an arbitration clause, it is statute barred. The claimant having slept on his right cannot now seek to revive same by filing this suit on the 8th day of September, 2022.

I answer the sole question for determination in this objection in the negative and in favour of the defendant.

In conclusion, I hold that the claimants suit which is based on contract is statute barred having been instituted more than 6 years after the cause of action accrued and same is hereby dismissed.

HON. JUSTICE NJIDEKA K. NWOSU-IHEME
[JUDGE]

APPEARANCE OF COUNSEL:

1. Femi MotojesiEsqholding brief of Samuel Ogalafor the Defendant/Applicant.
2. Claimant/respondent absent and unrepresented