

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT JABI, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS**

**COURT:28**

**DATE: 30<sup>TH</sup> MARCH,2022**

**FCT/HC/CV/1084/21**

**BETWEEN:**

**LEADMEDIA LIMITED-----**

**PLAINTIFF**

**AND**

**KUJE AREA COUNCIL, KUJE ABUJA FCT-----**

**DEFENDANT**

## **JUDGMENT**

The Defendant/Applicant in this motion M/6247/2021 dated the 27<sup>th</sup> September, 2021 and filed on the 28<sup>th</sup> September, 2021 prays the Court for following:-

1. An order striking out in limine the suit of the Claimant/'Respondent as against the Defendant/Applicant for being incompetent and for want of jurisdiction of this Honourabler Court.
2. An order that the Claimant/Respondent's suit is an abuse of Court process and therefore incompetent for failure to comply with order 11 Rule 1 of the High Court of the FCT Abuja (Civil procedure) Rules 2018.
3. An order that the Claimant/Respondent's suit is incompetent for failure to serve the Defendant with the statutory pre-action notice under section 123 of the Local Government Act, Laws of FCT Nigeria vol. 3.

4. An order that the Claimant/Respondent's suit is statute barred under section 7 of the limitation Act, Cap 522, Laws of FCT Nigeria, vol. 3
5. And for such further or other orders as this Honourable Court may deem fit to make in the circumstance.

In support of this application the Defendant/Applicant filed a 10 paragraphed affidavit and a written address dated the 27<sup>th</sup> September, 2021.

The affidavit was deposed to by one Mr. Ayuba Josiah Gata and contains among others the following facts.

1. That the Claimant in its affidavit claims that the defendant sometimes in 2012, vide a contract award letter, awarded it a contract to supply 1000 numbers of white plastic chairs, 20 numbers of white plastic tables and a one conference table with 14 chairs at the cost of N5,256,900.
2. That the Defendant has failed, according to the affidavit, to pay for the supplied items since they were delivered to it and all entreaties by way of demand notices to make the Defendant pay the contract sum have been rebuffed by the Defendant.
3. That the alleged transaction, if any ever took place, became due and payable about 9 years.
4. That since the time the purported simple contract became due and payable there has been no communication between the Claimant and the Defendant in respect of same until the time a letter of demand for same was surprisingly served on the Defendant for the first time sometimes last year.

5. That exhibit C,D E attached to the Claimant's affidavit in support of writ of summons was never at any time served on the Defendant as same does not carry the official stamp of the defendant as could be seen on exhibit F.
6. That the Claimant did not file alongside its originating process in this suit, a statement of claim, the exhibits, the depositions of its witnesses and even a written address in support of this application for summary judgment.

In applicant's written address, Counsel raised two issues for determination as follows:-

1. Whether the failure of the Claimant to file alongside its originating process in this suit, its statement of claim, the exhibits, the deposition of its witnesses as provided for under order 11 Rule 1 of the High Court of the FCT Abuja (Civil Procedure) Rules 2018, an abuse of Court processes?
2. Whether this action is maintainable against the Defendants/Applicants in view of section 7 of the Limitation Act Cap 522, laws of the FCT Nigeria.

Counsel answered the first question in the affirmative while neglecting the second and relied upon a number of statutes and case law which will be looked at.

In response, Claimant/Respondent filed a counter affidavit and a written address dated the 8<sup>th</sup> November, 2021. The 17<sup>th</sup> paragraphed affidavit was deposed to by one Ogbonna Olenyi and contains among others the following facts.

1. That the depositions in paragraphs 1,2,3 and 4 (A) to (c) of the affidavit in support of the Defendant/Applicant's notice of preliminary objection are true.
2. That the depositions in paragraphs 5,6,7,8,9 and 10 of the Defendant/Applicant's affidavit in support of its preliminary objection herein are grossly misrepresented, misplaced and misleading.
3. That contrary to the affidavit, the debts sought to be recovered by the Claimant/Respondent in this suit is still running and owed the Claimant/Respondent and has not abated or ceased to attract computation of the time or be statute barred at all.
4. That the Claimant/Respondent claims in this suit is a liquidated money demand for payment of contract award owed the Claimant/Respondent for the purchase/supply of chairs and tables on the 30<sup>th</sup> July, 2012.
5. That the Defendant/Applicant has already admitted and acknowledged this debt on the letter of request for payment dated 3<sup>rd</sup> September, 2012 and served on Defendant/Applicant by the Claimant/Respondent and promised to pay off same through its past Chairman Alhaji Abdullahi D. Galadima.
6. That contrary to paragraph 7 of the affidavit, there has been communication and negotiation between the Claimant/Respondent and the Defendant/Applicant in respect of the payment of the contract sum and it was in the process that the Defendant/Applicant through its past Chairman promised to pay off the debt and consequently set up a committee on contract verification to verify the contract.

7. That contrary to paragraph 7 of the affidavit, exhibits C,D,E are well acknowledged signed and stamped by the Defendant/Applicant.
8. That contrary to paragraph 8 of the affidavit, under undefended list procedure, the Claimant/Respondent accompanies its originating process with affidavit and nothing else.
9. That the Defendant/Applicant misconceived the procedure of bringing suit under undefended list procedure and that of the general suit and/or suit for summary judgment brought under writ of summon.
10. That the Defendant/Applicant has not disclosed any justifiable ground to question the jurisdiction of this Honourable Court to hear this suit on its merit.
11. That it will serve the interest of justice for this Honourable Court to dismiss the Defendant/Applicant's preliminary objection and hear the Claimant/Respondent's case against the Defendant/Applicant on its merit.

In the written address, Claimant/respondent formulated two issues for determination as follows:-

1. Whether the Claimant/Respondent followed due process required by law in filing its originating process in this suit.
2. Whether given the reliefs sought with the facts in support, the Claimant/Respondent action against the Defendant/Applicant is statute barred to oust the competent jurisdiction of this Honourable Court to hear and determine this suit on merit.

In further response, Defendant/Applicant filed a reply affidavit to Plaintiff's counter affidavit and a reply on points of law all dated the 8<sup>th</sup> February, 2022. The (paragraphed affidavit was deposed to by Josiah Gata and contains among others the follows facts:-

1. That contrary to paragraphs 6 and 7 of the Claimant/Respondents counter affidavit, the Defendant/Applicant is not owing the Claimant/Respondent debt.
2. That contrary to paragraph 8 of Claimant/Respondents counter affidavit, the Defendant/Applicant did not at any time admit and acknowledge the purported debt on the letter of request, neither did the Defendant/Applicant through its past Chairman Alhaji Abdullahi D Galadima promise to pay off the purported debt claimed in this suit.
3. That the Defendant/Applicant did not at any time set up a committee to verify the contract awarded by it.
4. That in actuality, sometime in 2019 shortly after the incumbent Chairman of the Defendant/Applicant Honourable Adullahi Sabo was voted into office after a fresh mandate for second term was denied the immediate past Chairman, dubious persons who claimed to be contractors who attempted catching in on the facts that Hon. Sabo was new in office and may not have acquainted himself with the office and its workings, faked a list of contractors allegedly verified by a purported verification committee they claimed was set up by the Defendant/ applicant in 2016

5. That 3 dubious person had approached the incumbent chairman with fake verification list of contracts with numerous claims for payment of various debts. The list is the same document attached to the Claimant/Respondent's counter affidavit herein as exhibit A.
6. That the Chairman of the committee who purportedly signed exhibit A is unknown to the Defendant/Applicant and also not a staff of the Defendant/Applicant.
7. That since the Claimant/Respondent was confronted with the fact that exhibit A is fake, he was never seen with it again and thus did not bother attaching it to originating processes when initially filed.

Defendant/Applicant riled upon order 11 Rule 1 of the High Court of the FCT Abuja Civil Procedure Rules 2018 which provides:-

*"where a Claimant believes that there is no defence to his claim, he shall file with his originating process the statement of claim the exhibits, the deposition of his witnesses and an application for summary judgment which application shall be supported by an affidavit stating the grounds for his belief and a written brief in support of the application"*

Counsel further submits that the word "shall" used in the order imposes an obligations and a command on the Claimant to file the processes referred to therein together with the originating process, and refers to **LINGO (NIG) LTD V ARTCO IND LTD (2020) LEPLR – 51744 (CA)**.

Counsel also avers that failure of Claimant to obey the rules of this Court is fatal and tantamount to an abuse of Court processes

which cannot be glossed over *see UKANGWU V PITT (2008) 9 NWLR (pt 1093), 587 R. 2, AMACH REE V PRINCEWILL (2008) 12 NWLR (PT. 1098) 348- 349.*

On whether this action is maintainable against the Defendant/Applicant in view of section 7 of the Limitation Act Cap 522, Laws of FCT Nigeria, Counsel answers in the negative and quotes section 7 of the Act as follows:-

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.
  - b) Actions founded on quasi – contract;
  - c) Action to enforce a recognizance;-----

Counsel then submits that the instant case is an action founded on simple contract and cites ***OGBORU & ORS V SPDC & ORS (2005 LPELR – 7539 (CA), (2005) 17 NWLR (pt 955) 596.***

Counsel further avers that to determine the limitation period of an action, the Court has to look at the writ of summons and the statement of claim, so as to verify when the alleged wrong giving rise to the suit was committed and compare same with the date the suit was instituted or filed in Court. If the time or date the cause of action arose is beyond the period allowed by statute, then the action is said to be statute barred. See ***ADEKOYA V FHA (2008) 28 WRN PG 5, RATIO 2 & 5.***

In the Claimant's letter requesting for payment (exhibit D), the cause of action arose on 3<sup>rd</sup> of August, 2012, however, the suit

was filed on 1<sup>st</sup> of April, 2021, over 9 years after the cause of action and beyond the six years limitations period prescribed by section 7 of the Act. See **OBIEFUNA V OKOYE (1961) 1 ALL NLR, 357, OGBORU & ORS V SPDC & ORS.**

Finally, Counsel contends that a Court is only competent to hear an action, when it is initiated by due process of law and upon fulfillment of any condition precedent to the exercise of that jurisdiction. Any defect in the competence of a Court is fatal and ultimately affects the jurisdiction of the Court to entertain the suit. See **MADUKOLU V NKEMDILIM (1962) 1 ALL NLR 587.**

On the other hand, claimant/Respondent argued due process of law was followed in filing its originating summons and referred to order 35 rule 1 of the High Court of the FCT Civil Procedure Rules 2018 which provides thus:-

“ Where an application in form 1 as in the Appendix is made to issue a writ of summons in respect of a claim to recover debt or liquidated money demand, supported by an affidavit stating the grounds on which the claims is based and stating that in the deponent’s belief there is no defence to it, the judge in chambers shall enter the suit for hearing in what is called “undefended list”

Counsel defines the undefended list procedure as an action for liquidated money demand to obtain judgment in the shortest possible time particularly where the Defendant has no defence to the action filed and refers the Court to the case of **ADEBAYO V OKONKWO (2002) 8 NWLR (pt. 768) P.I.**

Thus, a writ issued under undefended list does not need to be accompanied by a statement of Claim, the exhibits, depositions of witness and written brief in support of application.

On whether the Claimant/Respondent's action against the Defendant/Application is statute barred to oust the jurisdiction of this Court to hear and determine this suit on its merit, given the reliefs sought with the fact in support.

Counsel submits that section 7 of the Limitation Act Cap 522 laws of FCT, Vol 3 relied upon by the Defendant/Applicant in its preliminary objection is not applicable herein to oust the jurisdiction of the Court to determine and hear the action on its merit.

Counsel cites the case of ***AREMO II V ADEKANYE (2004) 13 NWLR (pt891) P. 572 at p. 592 paragraph C-F***, where the Court held that:-

"Sometimes the legislature prescribes certain period of limitation for instituting certain actions. The statutes that prescribed such period and regulate the subsistence of causes of action are known as statutes of limitation.

However, Counsel submits that where there has been an admission of the debt and promise made to pay up same and all that remains is the fulfillment of the promise, it is not just and equitable that the action be statute barred if after the statutory period of limitation, the Defendant resiles from his promise. Thus, limitation acts/laws are not applicable in cases where there has been an admission of debt and promise made to pay up same.

See ***SPCN LTD V EJEBU (2011) 17 NWLR (pt1276)P. 324 at 343 -344, paragraphs H-E.***

See also section 169 of the Evidence Act 2011 and ***KOKOORIN V PATIGI LG (2009) 15 NWLR (pt1164) P. 305 AT 327 paragraph A-C.***

Counsel avers that in the instant case, the Defendant/Applicant through its past Chairman, acknowledged/admitted the debt owed the Claimant/Respondent and promised to pay some on several occasions, even after the committee had submitted their report of its verification to the Defendant/Applicant's past chairman Hon. Alhaji Abdullahi D. Galadima.

Counsel finally urges the Court to take judicial notice of the paragraphs of the Claimant/ Respondent's affidavit, further affidavit and documents pleaded thereto and cites the case of ***UZODIMMA V IZUNASO (2011) 17 NWLR (pt. 1275) p. 30 at 55 paragraph A , 106 paragraph G.***

I have in detailed reproduced the position of both side for and against , equally I have also looked at the exhibits attached thereto and the correspondence emanated from the Claimant. In my view the contemplation of the Defendant/Applicant in this case which culminated to the filing of the preliminary objection challenging the jurisdiction of this Court essentially borders on order 11 Rules 1 of the rules of this Court and section 7 of the Limitation Act Cap 522 Laws of FCT. On the other hand the Counsel to the Claimant Respondent relied order 35 Rules 1 of the Rules of this Court and also the case of ***AREMO 11 VS ADEKOYE (2004) 13 NWLR (pt 891) p. 572 AT P. 592***

**paragraphs C-A (supra)**. However from the facts of this case and the surrounding circumstances of the process filed in this case be decided by way of this application filed by the Defendant Counsel.

It ought to be understood that the law which supports a cause of action is not necessary co extensive with law which confer jurisdiction on the Court which entertain the suit founded on that cause of action. The relevant law applicable in respect of a cause of action is the law enforce at the time the cause arose. Whereas the jurisdiction of Court to entertain action is determined upon the state of the law conferring jurisdiction at the point in time the action was instituted and heard see **UTILI VS OMOYIWA (1991) 1 NWLR (pt 166) paragraph 166 at page 201 per Bello CJN . See also ADEL VS NYSC (2004) 7 SCNJ 379 PER S.O Uwaifo JSC.**

It becomes imperative to note in this ruling that jurisdiction of Court in this country are conferred upon by the constitution or by statute as may be permitted by the constitution see **OSABEBEV VS A.G BENDEL STATE (1991) 1 NWLR (pt 160) 525.** Thus where a Court is denied jurisdiction as the time a cause of action arose, it assumes jurisdiction when action is instituted later in respect of the subject matter even if its jurisdiction to entertain similar matter is then restored. I would safely conclude that from the above judicial authorities and more particularly the argument for and against made in this Court to grant the application filed by the Defendant/Applicant reason can be seen from the above judicial authorities and the principle of substantial

justice as maintained by the Supreme Court severally in its numerous pronouncement I therefore grant the application.

I would also like to add as prayed by the Claimant/Respondent that this Court should take judicial notice of all the process filed by the same as well as the attached exhibit thereto. I have done that in the ruling. The question is does the Claimant Counsel complied with the requirement of section 7 of the Limitation Act applicable to FCT. The answer is no when does the action commenced was there any attempt made by the Claimant/Respondent either by way of communication or interaction demanding the request of payment of the contract within the stipulated time? This also the answer is no. I therefore in totality agree with the Defendant/Applicant Counsel that this case is statute barred having been caught by the provision of section 7 of the Limitation Act applicable to FCT. It is important to note notwithstanding the filing of memorandum of appearance and statement of defence by the Defendant/Applicant in this case. The provision of section 7 of the Limitation Act 2004 applicable to FCT made me to grant the application consequently the entire suit filed by the Claimant/Respondent is hereby dismissed.

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**HON. JUSTICE M.S IDRIS**  
**(Presiding Judge)**  
**30/3/2022**

