

(e) Post judgment interest at 15% per annum until the judgment is fully satisfied

(f) And ~~N~~1 million costs of action

The Defendant filed a statement of defence as well as a notice of preliminary objection on 14th January 2021 urging the honourable court to dismiss the Claimant's suit as same is statute barred.

The notice of preliminary objection is premised on 3 grounds and supported by an 11 paragraph affidavit deposed to by Engr. James Audu, Assistant Chief Scientific Officer in the office of the Defendant, with 3 exhibits attached marked Exhibits 1 to 3. Also filed was a written address wherein a sole issue for determination was canvassed thus:-

“Whether the action of the Plaintiff (Claimant)/Respondent as constituted on the writ of summons and statement of claim is statute barred and should be dismissed by the order of this honourable court.”

It was submitted that the Claimant in this suit instituted her action against the Defendant on the 24th of June 2020, whereas her cause of action arose in November 2013, a period of over 6 years prescribed in the Limitation Act, for filing suits on simple contract. It was thus the contention of the Defendant that the Claimant's action is caught by the Limitation Act and therefore statute barred.

Placing reliance on **SOLOMON V MONDAY (2015) ALL FWLR (PT 76) PAGE 1655 RATIO (P. 1717) PARAGRAPH E; CBN V OKOJIE (2015) ALL FWLR (PT. 807) P.511 RATIO 17, PARAGRAPHS A-B; FMC CORPORATION**

& ANOR V SCOA PETROLEUM SERVICES LTD & 2 ORS (2016) ALL FWLR (PT 828) P. 875 RATIO 4 PARAGRAPHS C-H, the court was urged to dismiss the suit.

The Claimant responded with a 14 paragraph counter affidavit filed on 20th January, 2021 deposed to by Ogechukwu Ikwueme, a Litigation Secretary in the law firm of John Erameh & Co., counsel to the Claimant to which are attached Exhibits A-G.

Also filed was counsel's written address with a similar issue for determination thus:-

“Whether this suit is statute barred in view of the circumstances of this case.”

It was submitted that the Claimant's cause of action arose in January 2020 when the Defendant failed to respond to the Claimant's final demand letter Exhibit G attached to the counter affidavit and not in October 2013 or November 2013 as alleged by the Defendant.

It was thus contended that the Claimant's suit which was filed on 24th June 2020 is not statute barred.

Reliance was placed on **OLUSOGA V ADETOLA (2018) 12 NWLR (PART 1634) PG 483 AT 489; ELEBANJO V DAWODU (2006) 15 NWLR (PT 1001) 76; INEC V ENASITO (2018) 2 NWLR (PART 1602) 62 AT 69**. The court was urged to dismiss the notice of preliminary objection as same is misconceived.

The Defendant filed a 9 paragraph further affidavit deposed to by Engr. James Audu with a written address wherein it was argued that the position of the law is that a debt becomes due once a demand is made and the other party refused to pay or expressly admits to its indebtedness. That the Defendant/Applicant's letter of 6th June 2016 only acknowledged the receipt of the letter of demand from the Claimant and did not amount to admission of its indebtedness to the Claimant. The court was urged to dismiss the suit.

I have considered the notice of preliminary objection, the affidavits in support and against thereof, and the written and oral submissions of learned counsel on both sides.

The sole issue before the court is whether the suit of the Claimant, which is founded on simple contract is statute barred.

Section 7 (a) of the Limitation Act Cap 522 Laws of the Federation of Nigeria (Abuja) 1990 provides:-

“7 (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.”

Whereas the Defendant is adamant that the Claimant's suit is statute barred, the Claimant has argued that their case is within time.

To resolve the dispute as to whether or not the Claimant's suit is statute barred, the court is to consider the Claimant's writ of summons and statement of claim only, to ascertain the alleged date the wrong in

question which has given rise to the Claimant's cause of action was committed and by comparing that date to the date the Claimant's suit was commenced with the filing of the writ of summons.

An action is said to be statute barred if legal proceedings cannot be commenced in court because the period laid down by the Limitation Act or Law has lapsed.

See **ATTORNEY GENERAL ADAMAWA V ATTORNEY GENERAL FEDERATION (2014) LPELR – 23221 (SC); EBOIGBE V NNPC (1994) 5 NWLR (PT 347) 649.**

In the instant case, it is averred in the statement of claim that the Claimant was awarded a contract by the Defendant by a letter of award dated 21st December 2010. See Annexure A in the statement of claim.

That the Claimant completed the project and was issued a certificate of job completion dated 10th May 2011.

By that certificate of job completion, the amount due to the Claimant from the Defendant was ~~₦~~7,285,500. See Annexure B in the statement of claim.

The Claimant wrote to the Defendant and the Defendant paid part payment of ~~₦~~3,216,000 sometime in October 2013, leaving a balance of ~~₦~~4,069,520 unpaid, which the Defendant neglected to offset despite the Claimant's several correspondences calling on the Defendant to defray the balance.

The Claimant again wrote Annexure D dated 18th February, 2014 requesting the balance of ~~₦~~4,069,520.00 from the Defendant.

That instead of yielding to its several entreaties to pay, the Defendant wrote a letter to the Claimant requesting for patience. This letter is dated 6th June 2016.

For ease of reference the said letter of 6th June 2016 is hereby reproduced:-

“The Managing Director
Newtrend Global-Tech Limited
Suit A4 Abuja Shopping Mall
8 Maputo Street
Wuse Zone 3
Abuja.

RE: BALANCE PAYMENT REMINDER IN THE SUM OF ~~₦~~4,069,520
(FOUR MILLION AND SIXTY NINE THOUSAND FIVE HUNDRED AND
TWENTY NAIRA ONLY) FOR CONTRACT REF. NO: ECN/PPC/CAP
10/2/225 EXECUTED FOR THE ESTABLISHMENT OF SOLAR ENERGY
BOREHOLE AT 22 ASABA, OSHIMILI SOUTH LGA, DELTA STATE.

I am directed to acknowledge the receipt of your letter dated 31st
May, 2016 on the above subject matter and to please request for
your patience while your letter is receiving attention. Thank you.

(Signed)

Badaru Lawan

For: Director – General/CEO”

Following the Defendant’s failure to pay, the Claimant’s solicitor wrote several other letters of demand which the Defendant ignored, hence the filing of this suit.

See particularly paragraphs 3,7,8,9,10 11 and 13 of the statement of claim.

Now, the law is trite that a cause of action is the fact or facts which establish or give rise to a right of action.

In the instant case, the Claimant's cause of action arose in October 2013 when the Defendant upon demand by the Claimant for the sum of ₦7,285,500 full payment, the Defendant only paid part payment of ₦3,216,000 leaving an outstanding of ₦4,069,520, or at the very best, the Claimant's cause of action accrued on 1st February 2014 when the Claimant demanded or requested for the balance of ₦4,069,520 from the Defendant. The Defendant received this letter on 18th February, 2014 and did not pay.

In **S & Y NIGERIA LTD V AMCON (2020) LPELR – 50336 (CA) AT PAGE 9 PARAGRAPH C-E** the Court of Appeal echoed **NZEA KO JCA IN HARUNA KOLO V FIRST BANK OF NIGERIA PLC (2002) LPELR – 7106 (CA)** where the court held at page 17 that:-

“It is trite law that in an action for the recovery of debt, the cause of action accrues upon demand for the payment of the debt. If no demand is made, a cause of action does not arise and no action can be commenced.”

The Claimant therefore left the filing of her suit too late. The Claimant's learned counsel has argued that their cause of action accrued in January, 2020.

I am unable to agree with him. As at October 2013 or 18th February 2014, “all facts had happened which are material to be proved to entitle the

Claimant to succeed". See **INEC V ENASITO & ORS (2018) 2 NWLR PT (1602) 62-69 (SUPRA)** cited by the Claimant's learned counsel at paragraph 4.4 of their written address in support of their counter affidavit filed on 20th January, 2021.

The Claimant filed her suit on 24th June 2020, well over 6 years from either October 2013 or February, 2014 when their cause of action arose.

The Defendant's letter of 6th June 2016 did not revive the debt nor exclude the limitation period as it was not an acknowledgment of the debt owed the Claimant.

Even where parties engage in negotiations as to how much to pay as final settlement, the period of limitation applicable is not affected.

See **JOHN EGBOIBE V NNPC (1991) LPELR 992 (SC); IGA ORS V CHIEF AMAKIRI (1976) 11 SC 13.**

The exception to the above rule would be where there is an admission of liability during negotiation and the result being awaited is the fulfilment of the agreement. In that event, it would be unjust to invoke the statute of limitation. However the acknowledgment of liability must be absolute with a clear provision to pay.

See **SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LTD V CHIEF MARK EJEBU & ANOR (2010) LPELR 5025 (CA); OLAOGUN ENT. LTD V SAEBY JERNSTOBERI & ANOR (1992) 4 NWLR (PT 235) 261.**

The Defendant's letter of 6th June 2016 was not an admission of debt and therefore cannot avail the Claimant.

Accordingly, I hold that the Claimant's case is statute barred. Where an action is statute barred the court has no discretion in the matter. The only order to make is that of dismissal.

Accordingly, I dismiss the Claimant's suit in its entirety as same is statute barred.

Hon. Judge