

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT ABUJA**

**BEFORE HIS LORDSHIP: THE HON. JUSTICE PETER O. AFFEN**

**THURSDAY, MARCH 12, 2020**

**SUIT NO. FCT/HC/CV/369/2018**

**MOTION NO. M/9220/2019**

**MOTION NO. M/6888/2019**

**BETWEEN:**

**HEROES PROTECTION SYSTEMS LIMITED      ... CLAIMANT/RESPONDENT**

**AND**

**1. NIGERIAN GAS PROCESSING AND  
TRANSPORTATION COMPANY LIMITED } ... 'DEFENDANTS/APPLICANTS'**  
**2. NIGERIAN GAS COMPANY LIMITED }**

**R U L I N G**

1. BY AN AMENDED WRIT OF SUMMONS dated 30/4/19 [which relates back to 17/12/18 when the original writ of summons was issued out of the Registry of this Court along with the accompanying statement of claim], the Claimant herein claims against the Defendants the reliefs endorsed thereon as follows:

- i. The outstanding sum of ₦5,832,000.00 (Five Million, Eight Hundred and Thirty-Two Thousand Naira only) for security service offered the Defendant[s] for the month of June, 2017 for which the Defendant[s] [have] refused and or neglected to pay despite repeated demands despite acknowledging same.
- ii. The sum of ₦25,000,000.00 (Twenty-Five Million Naira only) for unlawful termination and breach of contract for security services that was extended by the conduct of the parties till June 2017.
- iii. 5% interest on the outstanding sum of ₦5,832,000.00 (Five Million, Eight Hundred and Thirty-Two Thousand Naira only) weekly, from the 30<sup>th</sup> of June, 2017 until the date of judgment.
- iv. An order declaring clauses 4.2, 9.2 and 10.0 of the Letter of Intent For the Provision of Security Services in NGC's Northern Operations

Department (NOD), Ref. No. NGC/MD.9/Vol.IX of 3<sup>rd</sup> of October 2014, as illegal, null and void and of no effect whatsoever being contrary to law and equity.

- v. An order mandating the Defendant[s] to furnish the Claimant with credit notes for withholding taxes deducted from the Claimant's payments or in the alternative, a refund of all monies deducted as credit notes from the Claimant in the course of payments.
- vi. 10% post-judgment interest from the date of judgment until the judgment sum is fully liquidated.
- vii. The sum of ₦700,000.00 (Seven Hundred Thousand Naira only) being cost of prosecuting this suit.

2. The 'Defendants' filed out of time [albeit with the leave of court] a statement of defence dated 2/10/19 and applied to withdraw an earlier objection dated 2/6/19 but filed on 6/6/19, and the same was struck out without objection whereupon the '2<sup>nd</sup> Defendant' relied on the notice of preliminary objection dated 26/9/19 praying the court to dismiss this suit on the grounds that: *"(1) This Honourable Court lacks the jurisdiction to entertain this suit; (2) This suit is statute-barred having regard to the provisions of Section 12 (1) of the Nigerian National Petroleum Corporation Act"*. On its part, the '1<sup>st</sup> Defendant' filed a motion on notice dated 6/6/19 praying the court for an order striking out its name from this suit, which is supported by an 8-paragraphed affidavit with Exhibit A annexed thereto, and a 3-paragraphed further affidavit dated 13/6/19 –both deposed by one *Israel Ayeni, Esq.* [a Legal Practitioner in the Law Firm of *Gbadeyan & Co*].
3. Quite understandably, the Claimant is opposed to both applications and caused to be filed a written address dated 3/10/19 in opposition to the 2<sup>nd</sup> Defendant's preliminary objection, as well as a 12-paragraphed counter affidavit deposed on 13/6/19 by one *Udoh Joyce* [a Litigation Clerk in the Law Firm of *E. R. Opara & Co.*, solicitors to the Claimant] with Exhibits A and B annexed thereto. Both applications were taken together

in a consolidated hearing, beginning with the preliminary objection for obvious reasons.

#### Preliminary objection

4. *Usman Olowokere, Esq.* [who held brief for *Oladele Gbadeyan, Esq.* of counsel for the Defendants] relied on the grounds of objection and adopted the written address in support in urging the court to dismiss the suit for being statute barred under and by virtue of s. 12 (1) of the *Nigerian National Petroleum Corporation Act, Cap. N123, Laws of the Federation of Nigeria, 2004*. It is forcefully contended in the written address in support of preliminary objection that this suit is statute barred in that the Claimant's grievance as can be gleaned from the writ of summons and statement of claim [which are the only processes to be considered for present purposes] stems from alleged non-payment of the contract price of ₦5,832,000.00 (Five Million, Eight Hundred and Thirty-Two Thousand Naira only) for security services rendered by the Claimant at the 2<sup>nd</sup> Defendant's Northern Operations Department (NOD) in June 2017, despite demand being made; that as averred in paragraphs 22 and 23 of the statement of claim, the Claimant's request for payment is dated 20/6/17 whilst the 2<sup>nd</sup> Defendant's response [which terminated the Claimant's contract with the 2<sup>nd</sup> Defendant and made the requested payment subject to confirmation that the security personnel at the locations have been paid] is dated 30/6/17 and constitutes the cause of action that donates the Claimant's right of action, but the Claimant instituted this suit on 17/12/18 outside the 12-month limitation period provided in s. 12(1) of the NNPC Act; that the revocation of the Claimant's contract and non-payment of the alleged contract price for June 2017 [which is the cause of action] occurred on 30/6/17, which shows by simple arithmetical calculation that this suit was filed seventeen (17) months after the date of accrual of the cause of action; that being a wholly owned subsidiary of

the NNPC as admitted in paragraph 3 of the statement of claim, the 2<sup>nd</sup> Defendant falls within the operability of s. 12 (1) of the NNPC Act, calling in aid the definition "Corporation" under s. 22 (1) of the NNPC Act. The 2<sup>nd</sup> Defendant referred to **MUOMAH v SPRING BANK PLC [2009] 3 NWLR (PT. 1129) 553 at 570 (CA)** and **SIFAX (NIG) LTD v MIGFO (NIG.) LTD [2018] 9 NWLR (PT. 16 23) 138 at 191-192 (SC)** on the definition of cause of action and submitted that the Claimant's suit is irredeemably defective as it is caught up by the limitation clause in Section 12(1) of the NNPC Act and no longer maintainable in law however meritorious it may have been, placing reliance on **NNPC v ABDULRAHMAN [2006] ALL FWLR (PT. 332) 1478 at 1489-1491** –per Alagoa JCA (as he then was) and **EBOIGBE v NNPC (1994) 6 SCNJ (PT 1) 71 at 77 – 79**, insisting that it is immaterial that the Claimant subsequently wrote on 9/1/18 urging the 2<sup>nd</sup> Defendant to pay and that all steps taken by either the Claimant or the 2<sup>nd</sup> Defendant after that letter of 30/6/17 [including the pre-action notice], being subsequent to the accrual of the cause of action cannot operate to break the computation of the limitation period in this case, citing **AMADI v INEC [2013] 4 NWLR (PT 1345) 595 at 631(SC)** and **GBADEYAN v KILADEJO [2012] 16 NWLR (PT. 1326) 392 at 413, 417-418 (CA)** on the far-reaching effect of limitation laws.

5. The further contention of the '2<sup>nd</sup> Defendant' is that the preliminary objection is not caught by the provisions of the Rules of Court dealing with proceedings in lieu of demurrer because it has already filed a statement of defence wherein this same point of law was raised in paragraphs 10 and 11 thereof; and that the Supreme Court has put it beyond cavil that points of law that are jurisdictional in nature can be raised at any time in the proceedings even by way of preliminary objection, citing **ELEBANJO v DAWODU (2006) 6 SCNJ 204 at 220-222** –per Mahmud Mohammed JSC (as he then was) and **NATIONAL REVENUE MOBILISATION ALLOCATION**

**AND FISCAL COMMISSION v JOHNSON [2019] 2 NWLR (PT. 1656) 247 at 270.** The Court was urged to give effect to the limitation provision of the NNPC Act and hold that the Claimant's action is incurably defective, sterile and statute-barred.

6. Opposing the preliminary objection, *E. R. Opara, Esq.* of counsel for the Claimant/Respondent [who appeared with *F. C. Oha, Esq.*] adopted the written address dated 3/10/19 and urged the court to dismiss the objection. He pointed out that the cases of **ABDULRAHMAN v NNPC supra** **EBOIGBE v NNPC supra** upon which the 2<sup>nd</sup> Defendant has relied are distinguishable as they dealt with employment relationships as opposed to a simple contract for the provision of services. It is contended in the Claimant's written address that the issue of jurisdiction is fundamental, radical, foundational and the bedrock of litigation, and this Honourable Court has met with all the prerequisites for exercising jurisdiction and therefore competent to entertain this suit as presently constituted, citing **EZE v PDP [2019] 1 NWLR (PT 1652) 5** and **KEYSTONE BANK LTD v JOA & S (NIG) LTD [2015] 1 NWLR (PT 1439) 100**; that the actions that can be affected by the provisions of s. 12(1) of the NNPC Act are those pertaining to acts done in "*pursuance or execution of any enactment or law, or of any public duties or authority, or default in the execution of such enactment or law, duties or authority*", but not actions founded on simple contract [such as the present] and the continued failure on the part of the 2<sup>nd</sup> Defendant to pay for the services rendered; that paragraphs 24, 26, 28, 29, 30 of the statement of claim highlight the circumstances of the case and the various unfulfilled promises made by the Defendants which the claimant relied upon before eventually commencing this suit; that the period between June 2017 when the Defendants purportedly terminated the contract and June 2018 when they promised to revert to the Claimant is less than 12 months, and from June 2018 till October 2018 (and even

December 2018) is equally less than 12 months, considering the fact that if the Defendant had complied with their various promises, this suit would not have arisen; and that it suffices to say that the cause of action in this suit [which is founded on simple contract] constitutes an exception to or is exempted from the categories of acts stated in s. 12(1) of the NNPC Act which has nothing to do with simple contractual obligations between the parties which are corporate entities invested with powers to enter into contracts; that, at any event, it was held in **MTN COMMUNICATIONS LTD v SIDNEY C. AMADI (2013) ALL FWLR (PT. 670) 1329** that in order for an exclusion clause to be effective in a contract, it must have been incorporated into the Agreement, its wording must cover the liability in question and it must not be prohibited by law; and that the Supreme Court held in **SIFAX (NIG). LTD v MIGFO [2018] 9 NWLR (PT 1623) 147** that 'what a statute of limitation bars is an action and not the cause of action' and this Honourable Court has the jurisdiction to entertain this suit. The court was urged to dismiss the objection, citing **OKADA AIRLINES LTD v F.A.A.N [2015] 1 NWLR (PT 1439) 1.**

7. Now, the preliminary objection raised by the 2<sup>nd</sup> Defendant constitutes a challenge to the competence of this action on the grounds of statute bar and *ex ipso facto* the jurisdiction of this court to adjudicate. The pre-eminent status or stature of jurisdiction in the schema of legal proceedings is well ingrained in our jurisprudence and it is merely restating the obvious that jurisdiction is the first test in the legal authority of a court or tribunal and its absence disqualifies the court or tribunal from determining the substantive issues submitted to it for adjudication. This is so because jurisdiction is the very lifeline of judicial power [and judicialism] without which the entire proceedings constitute a nullity however brilliantly they may otherwise have been conducted. Indeed, jurisdiction is everything: without it a court has no power to take one step in the proceedings

beyond merely declaring that it lacks jurisdiction; there would be no basis for the continuation of proceedings pending and the court downs its tools in respect of the matter before it the moment it holds the opinion that it is bereft of jurisdiction. Jurisdiction is a radical and crucial question of competence and any defect in the competence of the court is fatal and snuffs out the life of adjudication from the court; such defect is extrinsic to the adjudication on the merit and the proceedings however well conducted and decided they otherwise may be are a nullity. See **MADUKOLU v NKEMDILIM (1962) 1 ALL NLR 587 at 595, ROSSEK v ACB LIMITED [1993] 8 NWLR (PT. 312) 382 at 437, MATARI v DANGALADIMA [1993] 3 NWLR (PT. 281) 266, OLOBA v AKEREJA [1988] 3 NWLR (PT. 84) 508 and OKE v OKE [2006] 17 NWLR (PT. 108) 224** amongst a host of other cases. Owing to its fundamental and intrinsic nature and effect in judicial administration, it is neither too early nor too late in the day to raise the issue of jurisdiction, nor is the court finicky or fussy about the manner in which it may be raised. It can be raised *viva voce* [see **PETROJESSICA ENTERPRISES LIMITED v LEVENTIS TRADING COMPANY LIMITED [1992] 5 NWLR (PT. 244) 675 at 678** and **NDIC v CBN [2002] 7 NWLR (PT. 766) 272**], or for the first time on appeal without any restraints as to leave or otherwise. See **WESTERN STEEL WORKS LTD & ANOR v IRON STEEL WORKERS LTD [1987] 2 NWLR (PT. 179) 188, MAGARI v MATARI [2000] 8 NWLR (PT 670) 722 at 735, ADERIBIGBE v ABIDOYE [2009] 10 NWLR (PT.1150) 592, 615, AKEGBE v ATAGA [1998] 1 NWLR (PT 534) 459 at 465, STATE v ONAGORUWA (1992) 2 SCNJ 1** and **ATTORNEY-GENERAL, LAGOS v DOSUMU [1989] 3 NWLR (PT. 111) 552**. Jurisdiction can also be raised by the court *suo motu* once sufficient facts or materials are available without any charge of bias by any of the parties insofar as the parties are afforded the opportunity to address the court on the issue so raised. See **SAMSON IWIE v SOLOMON IGIWI [2005] 3 MJSC 82 at 112 – per Niki Tobi, JSC, OLORIODE v OYEBI (1984) 1 SCNLR 390, OBIKOYA v**

**THE REGISTRAR OF COMPANIES (1975) 4 SC 31, 35, NNPC v ORHIOWASELE & ORS (2013) LPELR-20341 (SC), NDAEYO v OGBONNAYA (1977) 1 SC 11 and ELEBANJO v DAWODU (2006) 15 NWLR (PT. 1001) 76.**

8. In civil jurisprudence, where the issue arises as to whether or not a court can entertain a suit, it is to the plaintiff's claim that reference must be made in order to find an answer. See **ADEYEMI v OPEYORI (1976) 9 - 10 SC 31 at 49, NZEKWE v NNADOZIE (1952) 14 WACA 361; TUKUR v GOVERNMENT OF GONGOLA STATE [1989] 4 NWLR (PT. 117) 517 at 549 and METTERADONA v AHU [1995] 8 NWLR (PT. 412) 225.** Jurisdiction is determined by the plaintiff's demand and not the defendant's answer which merely disputes the existence of the claim but does not alter or affect its nature. Put differently, it is the statement of claim and not the statement of defence that is to be looked at in order to determine jurisdiction. See **C.G.G. (NIG) LTD v OGU [2005] 8 NWLR (PT 927) 366, ABIA STATE TRANSPORT CORP. v QUORUM CONSORTIUM LTD [2004] 1 NWLR (PT 855) 601 at 621, ATTORNEY-GENERAL, KWARA STATE v WARAH [1995] 7 NWLR (PT. 405) 120, ANIGBORO v SEA TRUCKS (NIG) LTD. [1995] 6 NWLR (PT. 399) 35 and NUORAH v OKEKE [2005] 10 NWLR (PT. 932) 40.** But even though jurisdiction is donated by the claim before the court, 'the jurisdiction of a court or tribunal is not something you employ a searchlight to discover: it must be plain for all to see'. See **OBI v INEC [2007] 11 NWLR (PT. 1046) 565 at 669 E** –per Oguntade, JSC. In the peculiar scheme of legal proceedings, a court is vested with jurisdiction to entertain and determine the application by which its jurisdiction is challenged. See **BARCLAYS BANK OF NIG LIMITED v CENTRAL BANK OF NIGERIA (1976) 6 SC 175 at 188 -189, IWUAGOLU v AZYKA [2007] 5 NWLR (PT. 1028) 613 at 630 and WILKINSON v BANKING CORPORATION (1948) 1 KB 721 at 724.** It is therefore imperative for this court to be



reasonably assured that it is invested with the requisite jurisdiction to entertain and determine this matter before going further in the proceedings, if at all it will go any further.

9. In navigating the stormy waters of the jurisdictional challenge posed by the present preliminary objection, it is needful to point out that the records in the case file reveal that the Defendants filed a statement of defence and withdrew the earlier notice of objection dated 2/6/19 but filed on 6/6/19 which was struck out before the preliminary objection dated 26/9/19 was argued by the parties and/or heard by the court. Thus, all arguments in the Claimants' written address alleging abuse of court process on the basis of pendency of two objections [raising the same ground of objection] and/or that the objection offends Order 23 Rules 1 and 2 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 dealing with proceedings in lieu of demurrer clearly go to no issue and no useful purpose will be served by rehashing them. The cases cited by the Claimant, notably **AGWASIM v OJICHIE (2014) 18 NSCQR 359**, **UNIFAM IND LTD v ECOBANK (NIG.) LTD [2019] 1 NWLR (PT 1653) 189** and **UMAH v APC [2019] 5 NWLR (PT 1666) 431** [on what constitutes abuse of court process] on the one hand, and **MOBIL OIL (NIGERIA) PLC v IAL 36 INC (2000) LPELR-SC 106/1999**, **DISU v AJIWOLA (2000) LPELR-9888 (CA)** and **LASISI v ATTORNEY-GENERAL OF OYO STATE (1982) ALL NLR (PT. 1)** [on demurrer proceedings] on the other hand, which are solid authorities in their own right are patently inapplicable in the case at hand.
10. Aside from filing of a statement of defence in which the self-same point of law alleging statute bar under s. 12(1) of the NNPC Act as in the preliminary objection is raised which shows that the requirements of proceedings in lieu of demurrer have been complied with, it occurs to me that there is a marked difference between demurrer proceedings and a

preliminary objection bordering on jurisdiction; and an objection such as the present which borders on limitation of action under s. 12(1) of the NNPC Act undoubtedly raises a point of law that affects the jurisdiction or competence of the court to adjudicate and cannot be lightly wished away. See **HASSAN v ALIYU [2010] 17 NWLR (PT. 1223) 547 at 619**. The law, as I have always understood it, is that an application which touches on jurisdiction can be raised at any stage of the proceedings even without the completion of pleadings. See **GLOVER v OFFICER ADMINISTERING GOVT. OF NIGERIA (1956) NLR 45, FASHANU v GOVERNOR, WESTERN NIGERIA (1956) WNLR 135** and **R. T. C. v FOB INVESTMENT & PROPERTIES LTD [2001] 6 NWLR (PT. 708) 246 at 261-262**. It has been held that an objection touching on jurisdiction is certainly not a demurrer [see **JIMOH v STARCO NIGERIA LIMITED [1998] 7 NWLR (PT. 558) 523 at 533**], and that the tendency to conflate or equate demurrer proceedings with an objection to jurisdiction is manifestly misleading. See **NIGERIA DEPOSIT INSURANCE CORPORATION v CENTRAL BANK OF NIGERIA [2002] 7 NWLR (PT. 766) 272 at 296, PEOPLES DEMOCRATIC PARTY v ADEYEMI [2002] 6 WRN 169 at 185** and **DAVIS v MENDES [2007] ALL FWLR (PT. 348) 883 at 901-902 (CA)**. It bears emphasizing that jurisdiction is a radical question of competence: a fundamental prerequisite and compelling necessity for the consideration of demurrer proceedings. That is to say, demurrer proceedings will not lie where the court is bereft of the requisite jurisdiction to adjudicate. See **OKONKWO v INEC [2004] 1 NWLR (PT. 854) 242**. This being so, the 2<sup>nd</sup> Defendant/Applicant is perfectly entitled to raise this present preliminary objection even without first filing a statement of defence [which is not the case], and cannot be said to have acted contrary to the provisions **Order 23 Rule 2 (1) & (2) CPR 2018** in doing so. We should therefore not suffer ourselves to be detained by the Claimant's anxiety in this regard.

11. As stated hereinbefore, the preliminary objection alleges that the cause of action disclosed in this suit is statute barred under and by virtue of s. 21(1) of the NNPC Act. Limitation of action is the principle of law requiring a claimant as a matter of obligation to seek prompt remedy for the breach of his right in a court of law within the time limited by law, otherwise his right of action or cause of action becomes unenforceable at the expiration of the period allowed by law for commencing the action. This principle is deployed as a defence in actions in tort and contract amongst other actions. See *Halsbury Laws of England (Vol 28), 4<sup>th</sup> ed., p. 408*. Thus, where a statute provides for the institution of an action within a prescribed period, no proceedings shall be commenced after the time prescribed by such statute; and any action brought after the prescribed period is said to be statute barred. See *NATIONAL REVENUE MOBILISATION ALLOCATION AND FISCAL COMMISSION v JOHNSON [2019] 2 NWLR (PT. 1656) 247 at 270, SANDA v KUKAWA LOCAL GOVT (1991) 2 NWLR (PT 174) 379, EKEOGU v ALIRI (1991) 3 NWLR (PT 179) 258, EBOIGBE v NNPC [1994] 5 NWLR (PT. 346) 649 at 659 and P. N. UDDOH TRADING CO LTD v SUNDAY ABERE (2001) 11 NWLR (PT 723) 114, (2001) 24 WRN 1*. A cause of action is time barred if legal proceedings can no longer be validly brought or maintained because the period laid down by applicable limitation law has lapsed. A claimant's cause of action to seek redress for wrong allegedly suffered as a result of the defendant's action is to be distinguished from a right of action, which is a remedial right: the warrant to enforce presently a cause of action. A statute of limitation however removes the right and leaves a plaintiff with a barren and empty cause of action which he cannot enforce. See *EGBE v ADEFARASIN [1987] 1 NWLR (PT. 47) 1*. The effect of time bar is that the action would be dismissed. See *NPA v LOTUS PLASTIC LTD (2005) 12 SCNJ 165 and LAMINA v IKEJA LOCAL GOVERNMENT [1993] 8 NWLR (PT. 314) 758 at 771*.

12. The reliefs sought by the Claimant as well as the arguments put forward by the parties for and against the preliminary objection are set out hereinbefore. The claim before us is essentially for outstanding payments allegedly due for security services rendered by the Claimant to the Defendant in the month of June 2017, and damages for unlawful termination and breach of contract for the provision of security services. The case pleaded in the statement of claim is that the Claimant was engaged to provide security services for the Defendant's Northern Operations Department (NOD] in 2014 upon mutually agreed terms and conditions. At the expiration of the initial term, the security services contract was variously extended for fixed periods as stated in letters of extension to that effect up until the end of May 2017. The Claimant however continued to provide security services and subsequently applied on 20/6/17 to the Defendant for payment of the sum of ₦5,832,000 as security charge for June 2017, whereupon the Defendant, by a letter dated 30/6/17, advised that the Claimant's services were no longer required with effect from 30/6/17 and that *"your company will be paid for services provided for the month of June [2017] under the terms of the expired contract after confirmation of payment to the security personnel at the locations"*. After the Claimant had waited in vain without any reply from, or payment by, the Defendant, it wrote a demand letter dated 9/1/18 and equally instructed its solicitors who wrote another demand letter dated 27/3/18. When the Defendant did not accede to these demands, the Claimant's solicitors served pre-action notices dated 19/6/18 and 21/6/19 on the Defendant and its parent company [NNPC] respectively, to which the Defendant responded by a letter dated 27/6/18 stating that the letter was *"receiving attention and we shall revert thereon as soon as possible"*. But when the Defendant did not revert as promised, the Claimant filed this action on 17/12/18.

13. The preliminary objection is premised on s. 12(1) of the NNPC Act which provides as follows:

Notwithstanding anything in any other enactment, no suit against the corporation, a member of the Board or any employees of the Corporation for any act done in pursuance or execution of any enactment or law, or of any public duties or authority, or in respect of any alleged neglect or default in the execution of such enactment or law, duties or authority, shall lie or be instituted in any court unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuance of damage or injury, within twelve months next after the cessation thereof.

14. There is no gainsaying that by s. 22 (1) of the NNPC Act, “Corporation” includes “*any wholly owned subsidiary thereof*” unless the context otherwise requires. The Claimant’s averment that the Defendant is “*one of the subsidiaries of the Nigerian National Petroleum Corporation*” makes it clear beyond peradventure that the applicability of s. 12(1) of the NNPC Act extends *mutatis mutandis* to the 2<sup>nd</sup> Defendant. The courts have variously interpreted and applied s. 12(1) of the NNPC Act as well as analogous provisions in other enactments involving public bodies, such as the Nigeria Ports Authority Act, Nigeria Broadcasting Corporation Act, Nigeria Railway Act, etc. In **BAKARE v NRC** *supra* wherein s. 83(1) of the Nigeria Railway Corporation Act fell for construction, the Supreme Court [per *Chukwuma-Eneh JSC*] noted thus:

The provision of Section 83(1) of the NRC Act is identical to the provision of Section 2 Public Officers Protection Act which has been dealt with in numerous cases including *Yare v. Nunku* (1995) 5 NWLR (Pt. 394) 129, and *Ibrahim v. Judicial Service Commission* (1998) 14 NWLR (Pt. 584) 1. The same is true in the case of Section 61 of the Nigeria Broadcasting Corporation Act (NBC Act) which has been interpreted in the case of *Nigerian Broadcasting Corporation v. Bankole* (1972) NSC 220. Furthermore, the Court has had the opportunity of construing Section 12(1) and (2) of the Nigerian National Petroleum Corporation Act, Cap. 320, Laws of the Federation giving protection in this regard not only to the Corporation itself but any member of the Board of the Corporation or an

employee. It also provides that no action shall lie against these persons for any "act done in pursuance or execution of any Act or law or any public duties or authority...." Like in the instant Section 83(1) of the NRC Act being construed here it has been construed in the case of *Eboigbe v. N.N.P.C.* (1994) 5 NWLR (Pt. 347) 649.

15. What appears in bold relief therefore is that these provisions have agitated, and has been agitated in, our courts from time to time and there is no paucity of dicta in this aspect of our law. In ***N.B.C. v. BANKOLE (1972) All NLR 331 at 338***, the Supreme Court (*per Madarikan, JSC*) adopted the views expressed by *Crossman, J* in ***COMPTON v WEST HAM COUNTY BOROUGH COUNCIL (1939) 3 All E.R. 193 at 198 – 200*** to the effect that only '*the breach of a contract which a public authority has the duty to make or is by statute bound to make comes within the protection of the Act*'. A conspectus of the leading cases in this aspect of our law reveal that contracts of employment have generally been held to be amenable or obedient to the inviolable provisions of the various laws stipulating limitation period for initiating suits against relevant public bodies whilst other forms of specific contracts are generally construed to fall outside the embrace of these limitation provisions. The rationale is that employment contracts fall within the prism of contracts public bodies owe a duty to, or are bound by statute, to make. The Supreme Court explained that much in ***BAKARE v NIGERIAN RAILWAY CORPORATION [2007] 17 NWLR (PT. 1064) 606***.

16. However, in the recent case of ***NATIONAL REVENUE MOBILISATION ALLOCATION AND FISCAL COMMISSION v JOHNSON supra at 270***, the Supreme Court (*per Ariwoola JSC*) noted that the claim was founded on a contract of service but still proceeded to hold, rather tersely, that: "*It is now settled law that section 2 of the Public Officers Protection Act does not apply to cases of contract*", placing reliance on ***NPA v CONSTRUZIONI***

**(1974) 12 SC 69, (1974) ALL NLR (Reprint) 945 and OSUN STATE GOVERNMENT v DANLAMI NIG LTD [2007] 9 NWLR (PT. 1038) 66 at 83 – 84.** It would seem therefore that the traditional distinction between contracts of employment and other types of contract for purposes of the applicability of time bar under POPA and similar enactment has been done away with. Thus, the preponderant view is that where an action has been brought for something done or omitted to be done under an express contract, an enactment of this kind does not apply. See **FEDERAL GOVERNMENT OF NIGERIA v ZEBRA ENERGY LTD [2002] 18 NWLR (PT. 798) 162, OSUN STATE GOVERNMENT v DANLAMI NIG LTD supra, OKEKE v BABA [2000] 3 NWLR (PT. 650) at 653 and ENERGY MARINE & INDUSTRIAL LTD v MINISTER OF THE F.C.T. (2010) LPELR- 19774(CA).**

17. In **NPA v CONSTRUZIONI supra at 955**, the Supreme Court (per *Ibekwe JSC*) construed s. 97 of the Ports Act, [which is analogous to s. 12(1) of the NNPC Act] and held thus:

[T]he section applies to everything done or omitted or neglected to be done under powers granted by the Act. But we are not prepared to give the section the stress which it does not possess. We take the view that the section does not apply to cases of contract. The learned Chief Justice, in deciding the point, made reference to the case of *Salako v. L. E. D. B. and Anor.*, 20 N.L.R. 169 where De Commarmond S.P.J. as he then was, construed s. 2 of the Public Officers Protection Ordinance which is almost identical with s. 97 of the Ports Act, and thereafter stated the law as follows:-

“I am of the opinion that section 2 of the Public Officers Protection Ordinance does not apply to cases of recovery of land, breaches of contract, claims for work and labour done, etc.”

We too are of the opinion that de Commarmond S.P.J. has quite rightly stated the law in the passage of his judgment cited above. It seems to us that enactments of this kind i.e. s. 97 of the Ports Act is not intended by the legislature to apply to specific contracts.

18. As it was in *NPA v COSTRUZIONI supra*, so it is in the instant case. That case dealt with a counterclaim for payment of balance of money due from the appellant to the respondent as a result of a contract for the construction of the second Apapa Wharf, just as the present case is a claim for payment of money due from the Defendant to the Claimant as a result of a contract for the provision of security services. This being so, the inevitable conclusion to which I must come is that s. 12(1) which prescribes a twelve month limitation period for commencing actions against the NNPC [or its wholly owned subsidiaries such as the 2<sup>nd</sup> Defendant/Objector herein] does not apply to the present action which is founded on a specific contract for the provision of security services.
19. What is more, even if this were not so, given the tenor of the letter dated 30/6/17 upon which the Defendant has relied, it does not seem to me that the Defendants can validly plead time bar under s. 12(1) of the NNPC Act in the peculiar facts and circumstances of the case at hand. Whilst giving notice in the said letter that the Claimant's services "*will no longer be required as from June 30, 2017*", the Defendant stated that the Claimant "*will be paid for services provided for the month of June under the terms of the expired contract after confirmation of payment to the security personnel at the locations*". Strictly speaking therefore, the Claimant's cause of action cannot be said to have crystallised until the Defendants either fail or neglect to confirm within a reasonable time that security personnel at the locations have been paid, or the Defendant fails or neglects to pay for services provided by the Claimant for the month of June 2017 within a reasonable time after confirmation. But since there is no indication of any confirmation whatsoever by the Defendant, the only practical period from which the Claimant's cause of action can be said to have accrued would be 9/1/18 when the Claimant, having waited for over six (6) months for the Defendant to confirm that security personnel at the locations have been



paid to no avail, made a demand on the Defendant “to kindly process and pay to us the outstanding sum of ₦5,832,000 being the total sum of the security service charge in NGPTC NOD locations for the month of June 2017”. The Defendant who lulled the Claimant into a false sense of security by its promise to pay the debt owed after confirmation of payment in consequence whereof the Claimant forbore to sue immediately ought not to be allowed to plead time bar under s. 12(1) of the NNPC Act. Thus, from whatever perspective this matter is looked at, the preliminary objection is destitute of legal merit and bereft of factual substance. It fails and it will be and is hereby dismissed.

Motion to strike out ‘1<sup>st</sup> Defendant’

20. Let us shift attention presently to the motion dated 2/6/19 which seeks the striking out of the 1<sup>st</sup> Defendant on record from these proceedings. Arguing the motion, *Usman Olowokere, Esq.* (holding brief for *Oladele Gbadeyan, Esq.* of counsel for the Defendants] relied on the 8-paragraphed affidavit [with Exhibit A annexed thereto] as well as the 3-paragraphed further affidavit [with Exhibit 1 annexed thereto] –both deposed by *Israel Ayeni, Esq.*, and adopted the written address in support of the motion in urging the court to grant the application. It is contended that *Nigerian Gas Processing and Transportation Company Limited* sued as 1<sup>st</sup> Defendant effected a change of name at the Corporate Affairs Commission to *Nigerian Gas Company Limited* as evidenced by the Certificate of Change of Name annexed to the supporting affidavit as well as the certified copy of reissued Certificate of Incorporation dated 11/6/19 [annexed to the further affidavit dated 13/6/19] which reflects the change in the name; that by s. 37 of the Companies and Allied Matters Act, Cap. C20, LFN 2004, juristic persons are to be sued in their registered names; that this application seeks to bring parties who would be bound by the decision of the Court; and that striking out the 1<sup>st</sup>

Defendant's name from this suit will neither affect the substance of the dispute before this court nor prejudice the Claimant in any way. Reliance is placed on **MADUKOLU v NKEMDILIM (1962) NSCC 374**

21. On his part, *E. R. Opara, Esq.* of counsel for the Claimant/Respondent relied on the 12-paragraphed counter affidavit deposed by *Udoh Joyce* as well as Exhibits A and B annexed thereto, and adopted the written address filed in opposition to the motion in urging the court to dismiss the motion. The Claimant contends that the contract for the provision of security services was/is in the name of the 1<sup>st</sup> Defendant [i.e. *Nigerian Gas Processing and Transportation Company Limited*] as shown in the letter of intent for the provision of security services in NGC's Northern Operations Department (NOD) dated 3/10/14 and correspondence exchanged in the course of transaction including the one dated the 30/5/17; that the Defendants are corporate entities duly registered with the Corporate Affairs Commission and it is only necessary to join them irrespective of their nomenclature in the light of their participation in the activities leading to this suit to enable the Honourable Court fully and clearly determine the issues in controversy, hence the Claimant deemed it necessary to seek the leave of court to join the 2<sup>nd</sup> Defendant as a necessary party, citing **JURASSIC COMMUNICATIONS NIG. LIMITED v ADEYEYE (2019) LPELR-46498 (CA)**; that the Defendants will not be prejudiced if the name of the 1<sup>st</sup> Defendant is not struck out; and that it will be in the interest of justice and equity to refuse the application. The Claimant argued that despite its name change, the “1<sup>st</sup> Defendant is still a judicial personality as its existence is not extinguished by the mere changing of its name, provided the Corporate Affairs Commission still recognises it as a corporate entity with the same Registration number”; that the Defendant merely effected a change of name at the Corporate Affairs Commission as a corporate entity but did not apply for winding up of their existence which is showing a strong

reason for them to be jointly sued as the Defendant may, by resolution equally seek to change its name to another during the pendency of the suit; that in a contractual transaction, the claimant is at liberty to join parties who have represented and/or contributed in the entire transaction leading to the suit, citing **ANTHONY IDEHEN OGIDA v JACKSON OSAZE OLIHA (1987) 2 SC 406** and Order 13 Rules 4, 6, 7 and 8 of the High Court of the Federal Capital Territory Abuja civil procedure Rules 2018; and that it is settled law that courts of law are not bound by internal arrangements of various organizations or bodies.

22. The foregoing are the arguments put forward by the parties in support of and in opposition to the application to strike out the name of the 1<sup>st</sup> Defendant on record. I must confess that I have found it difficult in the extreme to appreciate the factual and/or legal basis of the Claimant's opposition to this innocuous application. Let us put things in their proper perspective. The Claimant initially sued *Nigerian Gas Processing and Transportation Company Limited* as sole Defendant. Subsequently, the Claimant sought and obtained leave to join *Nigerian Gas Company Limited* as "2<sup>nd</sup> Defendant". The Defendant has now furnished evidence showing that the two names refer to one and the same corporate entity: it is the same corporate entity that was previously known as *Nigerian Gas Processing and Transportation Company Limited* that has changed its name at the Corporate Affairs Commission to *Nigerian Gas Company Limited*. It would seem therefore that the application to join *Nigeria Gas Company Limited* as "2<sup>nd</sup> Defendant" was completely unnecessary in the first place. By s. 31(6) of the Companies and Allied Matters Act, "*the change of name shall not affect the rights or obligations of the company, or render defective any legal proceeding by or against the company, and any legal proceedings that could have been continued or commenced against it or by it in its former name may be continued or commenced against or by it in its new name*". See

**NAGARTA INTEGRATED FARMS LIMITED v IBRAHIM MUDI NAGODA & ORS  
(2016) LPELR-40266(CA).**

23. In the light of the name change, the Claimant could merely have applied to substitute *Nigerian Gas Processing and Transportation Company Limited* with *Nigerian Gas Company Limited* rather than join *Nigerian Gas Company Limited* as if it were a separate legal entity. But having already joined *Nigerian Gas Company Limited* as a party, it stands to reason that this suit cannot now be maintained against a single legal entity both in its old and new name simultaneously. The implication of a name change is that a person or entity ceases to be known *at law* by the former name even though rights and liabilities that had accrued prior to the name change remain unaffected. It is therefore incumbent on the court to grant this application *ex debito justitiae* in order to avoid the incongruous situation that arises from suing a single entity in different names and thereby creating a false impression that two defendants are involved when in fact there is only one. I accordingly entertain no reluctance whatsoever in recording an order striking out the name of *Nigerian Gas Processing and Transportation Company Limited* from this suit. IT IS SO ORDERED.

24. There shall be no order as to costs.

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**PETER O. AFFEN**  
Honourable Judge

**Counsel:**

***E. R. Opara, Esq.*** (with him: ***F. C. Oha, Esq.*** and ***P. A. Okwechime***) for the Claimant.  
***Usman Olowokere, Esq.*** (holding brief for ***Oladele Gbadeyan, Esq.***) for the Defendants.