

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 22

CASE NUMBER : SUIT NO: CV/1920/17

DATE: : 1ST FEBRUARY, 2021

BETWEEN

**PETROLEUM TECHNOLOGY DEVELOPMENT FUND } CLAIMANT/
APPLICANT**

AND

**1.DUNE ENGINEERING LIMITED } RESPONDENTS
2. DEPUTY SHERIFF OF THE FCT }**

RULING

This is a consolidated Ruling Pursuant to the Motion brought by the Plaintiff/Applicant and the Notice of Preliminary Objection brought by the Defendant/Applicant.

In its Motion on Notice, the Plaintiff/Applicant sought for the following;

- a. An Order extending the time within which the Claimant/Applicant may file and serve its Originating Summons out of time.
- b. An Order deeming the already filed Originating Summons dated and filed on the 28th day of May, 2018 have with marked Exhibit 'D' and filed separately as properly filed and served; the appropriate filing fees having been duly paid.

c. And for such further Order(s) as this Honourable Court may deem fit to make in the circumstances.

In support of the application is a 7 paragraph affidavit deposed to by One Emem Jeremiah Bassey, a Litigation Secretary in the Law Firm of the Counsel to the Applicant.

It is the deposition of the Applicant that the Applicant filed an Originating Summons before this Honourable Court on the 21st February, 2018 against the Award of the Arbitral Tribunal but the time stipulated for the Claimant/Applicant to file and serve its Originating Summons have elapsed.

That a proposed term of settlement was forwarded to the Defendant on the 12th October, 2016 and the parties agreed to settle same. The agreement and the

terms of settlement were annexed as Exhibit 'A' and 'B' respectively.

Claimant/Applicant further avers that the Defendant responded to the terms of settlement vide a letter herein annexed as Exhibit 'C'.

Claimant annexed the Originating Summons and all other processes as Exhibit 'D'. And that it will be in the interest of justice to grant this application.

A written address was filed wherein a sole issue to wit; *whether the Applicant is entitled to the relief sought herein was formulated for determination.*

Arguing on the above, learned counsel submit that granting an application of this nature is entirely at the discretion of the Court and Court is enjoined to exercise the discretion judiciously bearing in mind the interest of justice.

Learned Counsel submit that Section 29 of the Arbitration and Conciliation Act religiously cited by the Respondent is not only in conflict with the Constitution of the Federal Republic of Nigeria but also aimed at shutting the door of Justice against the Applicant.

OKUGBOWA VS GOV. EDO STATE (2014) ALL FWLR (Pt. 753) 1975.

Court was finally urged to grant this application.

On their part, learned counsel for the Defendant informed the court on the adjourned date that they waived their right of reply.

On their Motion, i.e Notice of Preliminary Objection, learned counsel for the Defendant/Applicant sought for the following:-

- a. An Order of this Honourable Court dismissing the action with **Suit No.CV/1920/18** dated and filed on the 28th May, 2018.
- b. Any further Orders as the Honourable Court may deem fit to make in the circumstances.

The grounds of the Preliminary Objection is that the Originating Summons in this action is statute barred including the Orders and the relief therein by virtue of Section 29(1) (A) & (B) of the Arbitration and Conciliation Act, Cap A18 LFN 2004.

That this Court lacks jurisdiction to entertain this matter as the Claimant/Respondent's time to challenge the arbitral award or seek to set it aside is spent as Section 29(1) (A) & (B) of the Arbitration and Conciliation Act, Cap A18 LFN (2004) provides

for statutory 3 months period for challenging an arbitral award.

A written address was filed wherein sole issue to wit; *whether Claimant/Respondent's cause of action is statute barred and therefore in capable of invoking the jurisdiction of this Honourable Court.*

Learned Counsel argued that Section 29 of the Arbitration and Conciliation provides as follows:-

1. A party who is aggrieved by an Arbitral Award may within three (3) months.
 - a. From the date of the award; or
 - b. In a case falling within 28 of this Act, from the date the request for additional award is disposed of by the Arbitral Tribunal.

Counsel argued that it is clear from the face of the Originating Summons that the Claimant/Respondent attempt to challenge the Arbitral Award two (2) years from the date of the Award has two major consequences.

First, the action is statute barred, being incompetent to invoke the jurisdiction of the Court.

Second, the consequence is more indicative of the Claimant/Respondent's indolence which has resulted in it losing its right to challenge the Award, with the statutory period having already elapsed. ***P.N UDOH TRADING CO. LTD. VS SUNDAY ABERE & ANOR (2001) S.S.C (Pt. 11) 64 at 73 – 74.***

Court was urge to dismiss this suit.

Upon service, the Plaintiff/Respondent sought the leave of this Honourable Court and to rely on the

affidavit earlier moved in the Motion in the Preceding part of this Ruling.

Court:- I have gone through the Motion filed by the Claimant/Applicant and that of the Defendant/Applicant in this case. I shall first of all consider the Notice of Preliminary Objection filed by the Defendant/Applicant in view of the fact that it touches on the jurisdiction of this Honourable Court to hear and determine this case.

Jurisdiction of a Court is pivotal and vital in the adjudication of a cause or matter brought before a Court or Tribunal and where a Court is devoid or bereft of jurisdiction, the trial will be a complete nullity no matter how well conducted the preceding might have been. In other words, if there is no jurisdiction in court, it means there is no case before

the court worthy of any adjudicating. *ANOZIE VS EMERENINI & ANOR (2016)LPELR 40968 (CA)*.

It is the contention of the learned counsel for the Defendant/Applicant that the originating summons in this action is statute barred including the Orders and the relief therein by virtue of Section 29(1)(A) & (B) of the Arbitration and Conciliation Act, Cap A18 LFN 2004.

On whether a case is statute barred, it is the statement of claim that will be considered and not any other process.

I wish to observe that when there is limitation period, such period is determined by looking at the Writ of Summons and the statement of claim, which alleges when the wrong was committed that has given rise to the cause of action and comparing it

with the time when the matter was commenced, that is when the Writ of Summons was filed. Time can, however, only begin to run when there is in existence of a person who can sue and be sued, and material facts that must be proved to entitle the Claimant to the relief sought.

EBENOGWU VS ONYEMAOBA (2008)3 NWLR (Pt. 1074) 396 Page 422 Para A – C.

Section 29(1)(A)(B) of the Arbitration and Conciliation Act Cap A18 LFN 2004 provides for time frame for bringing actions intended to challenge an arbitral award by an aggrieved party.

For avoidance of doubt, the said Section provides as thus:

Section 29 Application for setting aside an Arbitral Award.

1. A party who is aggrieved by an arbitral award may within three (3) months
 - a. From the date of the award; or
 - b. In case falling within Section 28 of this Act, from the date the request for additional award is disposed of by the Arbitral Tribunal, by way of an application for setting aside, request the court to set aside the award in accordance with Sub section 2(two) of the Section.

Indeed, the above provision of the Act clearly outlines the period of 3 months from the date of the Arbitral Award delivery.

In the instant case, the Claimant filed its Originating Summons intended to challenge the Arbitral award on the 28th May, 2018 whereas the Arbitral Award was delivered on 28th July, 2016.

It is clear that the Writ was filed 2 years after the award of the Arbitration.

Indeed, a statute of limitation prescribed time within which action can be brought and where that is not done, it is fatal.

ARAKA VS EJEAGWU (2001) FWLR (Pt. 36) 830 at 860 SC.

It is instructive to state here that failure to file an action within the time frame, which is a pre-requisite in presenting a competent action, robs the Court of jurisdiction to entertain the suit. ***BABALOLA VS OSOGBO LOCAL GOVERNMENT (2003) 10 NWLR (Pt. 829) at 483.***

It worthy to note that court is only competent to hear an action, when it is presented before it, initiated by due process of law and upon the fulfillment of any

condition precedent to the exercise of that jurisdiction. That any defect in the competence of a court is fatal and ultimately affects the jurisdiction of the court to entertain the suit. That the existence or absence of jurisdiction goes to the very root of the suit.

I wish to state the elementary law that, the rules of principles of equity helps only the vigilant and they do not assist an indolent party who fails to pursue his right diligently within a reasonable time. I refer you to the case of ***A. G. RIVERS STATE VS UDE (2007) ALL FWLR (Pt. 347) 600 at 614 paragraph C, Per Mustapha JSC.***

From above, it is crystal clear that Plaintiff's case was filed outside the regulation period allowed by law, hence statute barred.

Where therefore an action has become statute barred by operation of the limitation' Act or law, the effect is that the cause of action becomes extinguished by operation of law and can no longer be maintained in courts.

On this, the case of ***CHUKWU & ORS VS AMADI & ORS (2011) LPELR – 3960 (CA)*** is most instructive. ***SC IN AG ADAMAWA STATE & ORS VS AG OF FEDERATION (2014) LPELR – 2322*** *restated the position aforesated.*

The Plaintiffs, I must say are merely left with a bare and or impotent cause of action which cannot be enforced through a judicial process in a court of law.

Jurisdiction is the life blood upon which any proper adjudication lies. Without same, any adjudication therefore is a nullity..like a lame duck, the suit of

Plaintiffs cannot fly and or stand... Judicial surgical operation is needed to give life to the said cause of action.

I'm afraid, the available judicial surgeon has declined because of the hopeless situation of Plaintiffs. The case must die and be buried for good.

Accordingly the said **Suit. No CV/1920/17s** having been left uncared for like an orphan on the street, only to attempt salvation after a long time of dereliction, is stricken by an irreversible medical condition.

Death is eminent.. Suit is dismissed.

Justice Y. Halilu
Hon. Judge
1st February, 2021

APPEARANCES

A.N. Mohammad – for the Applicant.

Ibrahim Idaiye with K.K. Gold and Anthony
Iyandufor Defendants/Applicants.