

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

**BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE**

**COURT CLERKS: JAMILA OMEKE & ORS**

**COURT NUMBER: HIGH COURT NO. 32**

**CASE NUMBER: SUIT NO. FCT/HC/CV/592/2019**

**DATE: 22<sup>ND</sup> JANUARY, 2021**

**BETWEEN:**

ARTCO INDUSTRIES LTD.....CLAIMANT

**AND**

VITA CONSTRUCTION LIMITED.....DEFENDANT

**APPEARANCES:**

Arinze M. Obetta Esq for the Plaintiff

Defendant absent and unrepresented.

**RULING**

The instant suit was initiated via Writ of Summons dated 12<sup>th</sup> of December 2019, under the Undefended List. The writ of was taken out by Joseph Ameh Esq and Arinze M. Obetta Esq of J. A. Ameh & Co. The Claimant Claims against the Defendant as follows: -

- “1. The sum of N4, 335, 327.75 (Four Million, Three Hundred and Thirty Five Thousand, Three Hundred and Twenty Seven Naira, Seventy Five Kobo) only being the sum due from the Defendant to the Claimant in respect of different kinds of furniture the Claimant supplied and installed at the Defendant’s site at Petroleum Products Pricing Regulatory Agency Headquarters in Abuja.*”**

**2. Cost of action in the sum of N500, 000.00 (Five Hundred Thousand Naira) only”.**

The Writ is supported by a 22 paragraphed affidavit deposed to by one Ayeni Adesoji Gold, an executive officer at Arcto Industries Ltd (Claimant) attached to the affidavit are annexures marked as Exhibits JA1, JA2, JA3, JA4, JA5, JA6, JA7, JA8 respectively.

The Defendant filed a 5 paragraphed Counter Affidavit deposed to by one Ekene Ngene, a litigation Secretary in the Chambers of Messrs. O. J. Aboje & Co. Counsel to the Defendant. Attached to Defendant’s Counter Affidavit are annexures marked Exhibit V1, V2, V3, V4 respectively, also filed by the Defendant Counsel is a Notice of Counter Claim whereby the Defendant counter claims against the Claimant as follows: -

**“a. AN ORDER OF COURT** awarding the sum of N13, 380, 977.25 (Thirteen Million, Three Hundred and Eighty Thousand, Nine Hundred and Seventy Seven Naira, Twenty Five Kobo) only against the Claimant being refunds of sums paid by the Defendant to the Claimant for the supply of unfit for purpose doors to the Petroleum Products Pricing Regulatory Agency by the Claimant under a sub-contract with the Defendant.

**b. Cost of the action as my adjudged due to the Defendant’s/Counter Claim by the Court.**

Also filed by the Defendant Counsel is a Notice of Preliminary Objection predicated on 6 grounds.

Counsel to the Defendant then filed a Written Address dated 13<sup>th</sup> of May, 2020. In the said Written Address, Counsel to the Defendant formulated two issues for determination: -

**“1. Whether the Claimant’s suit is not statute barred having been filed 11 years after the cause of action arose?**

**2. Assuming but not conceding that the suit is not statute barred, whether the claims of the Claimant as contained in the Writ of Summons before the Court is a liquidated money demand”.**

Counsel to the Defendants argued the issues independently.

On the first issue, Counsel averred that the Plaintiff's suit is statute-barred according to Section 7(1)(a) of Limitation Act, Cap. 552, Laws of the Federation of Nigeria (Abuja), 1990, having been filed 11 years after the cause of action arose. Counsel referred the Court to the following case of **OGUNDIPE V N.D.I.C (2009) 1 NWLR (Pt. 1123) P. 473 PP at 495 paras. B – D, paras B – C.**

Counsel further averred that an application of the decision of the aforementioned case discloses that the cause of action is one founded on simple contract. Also paragraph "8" of the Claimant's Affidavit in support of Writ of Summons evinces that, at various times in the year 2009, the Defendant by virtue of **Five Nos. Local Purchase Order (LPO) with INV. NOs. (Code number) LPO001393, LPO0020361, LPO002044, LPO0002960 and QRN0910B05** respectively subcontracted the Claimant to supply and install different kinds of furniture stated in the said five Nos. LPO at the Defendant's site at Petroleum Products Pricing Regulatory Agency (PPPRA) Headquarters located in Central Area, Abuja. Counsel averred that the facts stated in Claimant's affidavit in support of the Writ of Summons, reveals the fact that what arose between the parties is a simple contract. Counsel referred the Court to the provisions of Section 7(1)(a) of Limitation Act, Cap. 522, Laws of the Federation of Nigeria (Abuja), 1990. And also the case of **C.B. LTD V INTERCITY BANK PLC (2009) 15 NWLR (Pt. 1165) P. 445 at PP. 459 – 460, paras. F –A, and N.B.N LTD V A.T. ENG. CO. LTD. (2006) 16 NWLR (Pt. 1005) p. 210 at PP. 223 – 234 paras. H – A.**

Counsel averred that the Claimant's affidavit in support of Writ of Summons in 2009 states that the Defendant subcontracted the Claimant to supply and install different kinds of furniture stated in the five Nos. LPO at the Defendant's site, which asserts that the cause of action which is a simple contract is one that begun and accrued in 2009. In juxtaposing this assertion with Section 7(1)(a) of Limitation Act, Cap. 522, Laws of the Federation of Nigeria (Abuja) 1990, Counsel averred that the action being one of simple contract must be instituted before this Court within six years, a day exceeding this period puts a bar against the Claimant in instituting the action according to the Limitation Act. Counsel relied on the case **C.B. LTD V INTERCITY BANK PLC (2009) 15 NWLR (Pt/ 1165) P. 445 at PP: 459 – 460, paras, F – A.** Counsel lastly averred that in aligning the decision of the Court below with issue at hand, it is clear that time began to run against the Claimant from the year 2009, as this is the year the contract came into being and the

Claimant was to be paid. The Claimant having brought the action on the 12<sup>th</sup> day of December 2019, outside six (6) years the action cannot be maintained and Counsel finally prayed the Court to so hold.

On the second issue, in the averments, Counsel stated that the claims of the Claimant as contained in the Writ of Summons before the Court is not a liquidated money demand and as such it is not cognizable under the undefended list procedure contained in Order 35 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018. Counsel referred the Court to the case of **ALHAJI M.U. & SONS LTD V. L.B.B. PLC (2006) 2 NWLR (Pt. 964) P. 228 at P. 296, paras. C – D.**

Claimant further averred that in the endorsement made in Claimant's Writ of Summons, a careful analysis of the Court's holding in **ALHAJI M.U. & SONS LTD V. L.B.N. PLC** (supra) evinces that a liquidated money demand is a claim that must have been previously agreed by parties or that can be precisely determined by operation of the law or by the term of the parties agreement or by an ascertainable means such as a receipt, Counsel avers that the Claimant claims N500, 000.00 (Five Hundred Thousand Naira) only as cost of the suit, but same is not traceable to any agreement, rule of Court or statute. The assessment on the Claimant's Writ of Summons from the High Court Registry shows that same was assessed at N4, 500.00 (Four Thousand, Five Hundred Naira only) there are no incidental costs attached to this originating process and certainly proceedings have not begun so where did the Claimant get the cost claimed.

Counsel also averred that where assuming, the Preliminary Objection fails, that the Court still has to transfer the matter to the general cause list so the Claimant can prove the claim of cost. Counsel finally submits by stating that the Claimant has fabricated a sum that is unfounded and has no grounds in law and therefore void. Making the Claimant's entire claim void as both of the Claimant's claim must be taken together, a nullity in one claim voids the other in law. Counsel further submits that by the nature of their Counter Affidavit, the Court is prayed to hold that the Defendant has disclosed a defence on the merit and more so, that the Defendant has a Counter Claim in respect of the main claim of the Plaintiff.

The Claimant then filed a reply on points of law to the Defendant's Notice of Preliminary Objection. Counsel for the Claimant averred that the position of the law as stated in paragraph "a" of the Defendant's Notice of Preliminary Objection and same in impari materia with Section

7(1)(a) of the Limitation Act, Cap. 552, Laws of the Federal Capital Territory, 1990. Counsel for the Claimant went on to say that there is no doubt that the instant action of the Claimant against the Defendant is founded on simple contract, hence, what the Court is called to determine is the date in which the cause of action accrued in this matter, Counsel also averred that in determining whether an action is statute barred or not, the most crucial thing to consider is when the cause of action arose, also when the Plaintiff comes to find out that his enforceable claim or right has come into existence. Counsel referred to the case of: -

- a. ***SIFAX (NIG) LTD V. MIGFO (NIG) LTD (2018) 9 NWLR (Pt. 1623) P. 138.***
- b. ***CAPITAL BANCORP LTD V. S.S. L. LTD. (2007) 3 NWLR (Pt. 1020) P. 148 at P. 162, Para D.***

Counsel avers that the law is trite that the only material or document the Court considers or examines in ascertaining or determining if an action is statute barred is the originating processes to find out the Plaintiff's cause of action or wrong complained of occurred and compare that date with the date the suit was filed. In the instant case the originating processes are the Writ of Summons and affidavit in support. Counsel also avers that by the judicial decision of *SIFAX* (supra) the Claimant became aware that his enforceable claim or right has come into existence when the Defendant blatantly ignored the Claimant's letter of 20<sup>th</sup> August 2019 i.e. the Claimant's cause of action against the Defendant accrued since that was the Defendant took a step that adversely affected the Claimant and consequently warranted the Claimant to seek redress. Counsel relied on the case of ***C.B. LTD V INTERCITY BANK PLC (2009) 15 NWLR (Pt. 1165) P. 445.***

Counsel further averred that relying on the authority of *Biem* (Supra) it is their humble submission that the instant case is not statute barred because the period in between the date the instant action accrued, 20<sup>th</sup> August 2019 and the filing date, 12<sup>th</sup> December 2019 is not outside the time period prescribed by the Limitation Act, Capt 552, Laws of the Federal Capital Territory, 1990.

And also averred the law is trite that business letters unlike social correspondences deserve to be replied and what is not denied is deemed to be admitted. Counsel relied on the case of ***REVENUE MOBILIZATION, ALLOCATION AND FISCAL COMMISSION V IKPE ESQ (2008) LPELR – 8398 (CA); GWANI V EBULE (1990) 5 NWLR***

**(Pt. 149) P. 201 and Section 37b(1) (a & b) of Limitation Act, Cap 552 Laws of the Federal Capital Territory, 1990.**

Counsel in his submission averred that the Defendant's failure to reply or respond to their letter of 20<sup>th</sup> August 2019 has by conduct, admitted/acknowledged its indebtedness to the Claimant. Furthermore, Claimant responded to paragraph D of the Defendant's Notice of Preliminary Objection by averring that the rules of this Court allow a Claimant to claim cost. Counsel relief on Order 4 Rule 4(1).

Lastly, Counsel responded to paragraph "e" of the Notice of Preliminary Objection which states that the Court lacks jurisdiction to hear the matter because the Claimant's writ was not marked 'undefended list' is unfounded and has not legal backing.

Counsel finally submits that the Claimant's action is not statute barred and humbly urged the Court to so hold and hereby pray the Court to discountenance and dismiss the Defendant's Notice of Preliminary Objection for lack of merit.

I have carefully gone through the Writ of Summons and the affidavit in support filed by the Claimant Counsel. I have also gone through the Counter Affidavit as well as Notice of Preliminary Objection filed by the Defendant's Counsel. And lastly the reply on points of law filed by the Claimant's Counsel.

In a bid to determine this issue I will raise one issue for determination:

***"Whether the Claimant's suit is not statute barred and whether the claims of the Claimants as contained in the Writ of Summons before the Court is a liquidated money demand".***

I will begin by briefly explaining using case law the jurisprudence behind the Limitation Law. In ***MR. SEMIU SOBOWALE & ORS V THE GOVERNOR OF OGUN STATE & ORS (2018) LPELR – 43735 the Court of Appeal per CHINWE EUGENIA IYISOBA JCA at (PP. 16 – 18, paras C - E)*** held: -

***"The term "limitation" in the context of Limitation Law means a period after which an action can no longer be brought in a Court of law to enforce a wrong. Statute of Limitation is a law that bars claims after a specified period. The objective of such law is to require diligent prosecution of claims so as to***

***provide finality or predictability in legal matter and to ensure that claims will be resolved while evidence is still available and fresh...”***

This is founded on the principle that states that equity aids the vigilant and not the indolent. Moving forward, the next thing to do is to consider when an action is said to be statute barred in law and how those factors that guide a Court in arriving at such a decision. The law is trite that once a litigant who wishes to exercise his/her right to get a judicial redress for a wrong done must act timeously and diligently especially in cases where the law prescribes a time limit for same. In a situation where the litigant sleeps on their right, then such an action if brought after the expiration of the time limit will be said to be statute barred.

***“The different statutes of Limitation which are essentially founded on the principles of equity and fair play will not avail such a sleeping or slumbering Plaintiff. He will be stopped from commencing the action and that is a just and fair situation. A Plaintiff who suddenly wakes up from a very deep sleep only to remember that the Defendant had wronged him, can, I think, be rightly ‘greeted’ by the Defendant with the appropriate limitation statute, waving same to him as a basis for redress...” MR. SEMIU SOBOWALE & ORS V. THE GOVERNOR OF OGUN STATE & ORS (supra).***

Moreover, in ***INEC V OGBADIBO LOCAL GOVERNMENT & ORS (2015) LPELR-24839 (SC)***, the Supreme Court set out the yardstick for determining whether an action is statute-barred thus: -

- “a. The date when the cause of action accrued;***
- b. The date of commencement of the suit as indicated in the Writ of Summons.***
- c. Period of time prescribed to bring an action to be ascertained from the statute in question...”***

This simply means that in order to discover whether a cause of action is disclosed, the Court limits itself to the Plaintiff’s pleadings, and has no need to examine the pleadings of the Defendant. In the instant case, it is clear that the Claimant had made several request via letters for outstanding payment to the Defendant, the last was made on the 20<sup>th</sup> August 2019, as set out in paragraph 19 of the affidavit supporting the

Writ to which there was no response from the Defendant. The Defendant also did not dispute this fact in their pleadings or provide for the Court a copy of the response sent to the Claimant. In my view, the Claimant's right of action arose after the Defendant ignored their letter of demand for payment of outstanding sum and are well within their rights to approach the Court for judicial redress. Also the Claimant's letter was drafted on 20<sup>th</sup> August 2019 and the instant suit was filed on 12<sup>th</sup> of December 2019. The Statute Section 7(1)(a) of Limitation Act, Cap, 552, LFN 1990, makes an action for simple contract statute barred after six years. In the instant case the cause of action arose/accrued August 2019 and the suit was filed in December 2019.

Consequently, I hold in view of foregoing that the Claimant's' suit is not statute barred.

Furthermore, the Court of Appeal in ***BASAWA V UNITY BANK PLC (2015) LPELR-25913 HABEEB ADEWALE OLUMUYIWA ABIRU J.C.A (PP. 29 – 30, para. D) held “learned authors of the Black’s Law Dictionary defined a liquidated money demand as “a claim for an amount previously agreed on by the parties or that can be precisely determined by operation of law or by the terms of the parties’ agreement”.*** In ***ALHAJI MUKTARI UBA & SONS LTD V. LION BANK OF NIGERIA PLC (2006) 2 NWLR (Pt. 964) 288, a liquidated money demand was defined ‘as a claim or demand in which the amount is fixed, or has been agreed upon or is capable of ascertainment by mathematical computation or operation of law’.*** In ***MAJA V. SAMOURIS (2002) 7 NWLR (Pt. 765) at page 102, Iguh, JSC stated that: “A liquidated demand is a debt or other specific sum of money usually due and payable and its amount must be already ascertainable or capable of being ascertained as a mere matter of arithmetic without any other or further investigation...”***

In the instant case, the amount to which the Local Purchase Order was made is ascertainable, the amount paid, and balance outstanding. It is the view of this Court that the amount is a liquidated sum and can come under the summary judgment. I so hold. To that extent, this Honourable Court has unfettered jurisdiction to hear and determine this suit as presently constituted.

Having dismissed the Defendant's Preliminary Objection. I have gone through the Notice of Intention to Defend the suit filed by the Defendant dated 13<sup>th</sup> day of May, 2020, Notice of Counter Claim against the Claimant also dated 13<sup>th</sup> day of May, 2020 and the Counter Affidavit of



five paragraphs. I believe the justice of this case can best be met bearing in mind the depositions in both the supporting affidavit to the Writ of Summons and the Counter Affidavit by transferring the suit to the general cause list for hearing on the merit.

On the whole, the Claimant's action is therefore proper in law and procedure and not statute barred, I hereby resolve the issue in favour of the Claimant against the Defendant. Consequently, I dismiss the Preliminary objection of the Defendant for lack of merit.

In that respect, and without further ado, this suit with Suit No. CV/592/2019 brought under the Undefended List is hereby transferred to the general cause list in the interest of justice. Consequently parties are hereby ordered to file and exchange pleadings accordingly.

**Signed:**

**Hon. Justice Samirah Umar Bature**