

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

**IN THE NYANYA JUDICIAL DIVISION**

**HOLDEN AT NYANYA ON THE 30<sup>TH</sup> DAY OF JUNE, 2021**

**BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE**

**SUIT NO.FCT/HC/CV/0757/18**

**COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.**

**BETWEEN:**

**MR. ONYEMA EJIMOFOR.....PLAINTIFF**

**AND**

**STALLION NIGERIA LIMITED.....DEFENDANT**

**RULING**

The Defendants Notice of Objection dated the 11/06/19 but filed on 19/06/19 is for the following:

- (1) An Order dismissing this Suit for lack of jurisdiction having been filed outside the Limitation Act Cap 522 LFN FCT

And for such further or other orders as the Court may deem fit to make in the circumstance.

Learned Defence Counsel rely on the grounds for the objections which are as follows:

- (1) The Writ of Summons was commenced on 25/01/18 against the Defendant for breach of contract.
- (2) The action is founded on simple contract which cause of action accrued on or about December 2008.
- (3) The period statutorily allowed to commence this suit lapsed.

The Defendant's Counsel adopted his Written Address filed along with the Notice of Preliminary Objection. He canvassed that a cause of action is said to have accrued on the date on which the incident giving rise to cause of action occurs. He contends that in this instance the cause of action accrued in 2008. That the cause of action exists for only 6 years after which it becomes statute based and the aggrieved party is estopped from bringing an action to Court to enforce same. That by the averments in the statement of claim and the claims endorsed on the writ of summons, the claimant's cause of action arose in 2008

while the action was commenced in 2018 eight years after the cause of action accrued.

Learned Counsel to the Defendant submits that the action having been statute barred, the Court therefore lacks jurisdiction to entertain the action. He finally urges the Court to dismiss same in its entirety. The Claimant's Counsel argued that the Claim as made out in the Writ of Summons and statement of claim is not impaired by the Limitation Act. He admit that the claim borders on the enforcement of a contract with the Applicant. That by Section 37(b) of the Limitation Act, the Defendant acknowledged the Debt and the right of action arose in August 2016 when the acknowledgment was written. That the Respondent is not caught by Section 7 of the Limitation Act.

Replying, the Defendant contend that there was no form of acknowledgment from the Defendant. That the Defendant did not admit the debt. That for an acknowledgement to

avail a Claimant it must be unequivocal and unconditional. That the letter dated 25/08/16 is not an acknowledgement and does not amount to an admission. Learned Counsel urges the Court to dismiss the argument. The admission if any must be made before the action becomes statute barred.

Section 7 (1)(a) of the Limitation Act Cap 522 Laws of FCT states:

***“the following action shall not be brought after the expiration of six years from the date of which the cause of action accrued namely***

***(a) Actions founded on simple contract.***

***(b) Actions founded on Quasi-Contract”.***

A cursory look at the Writ of Summons and the Statement of Claim reveals that the Claim is for the enforcement of a contract entered into between the Claimant and the Defendant for the supply of bags of rice. It is a case of simple contract entered into in 2008.

Paragraph 8, 9 and 10 states:

***“8. In December 2008, the Claimant facilitated the sale of 25 bags of rice to Hon. Abdulkadir Usman for onward supply to the Nigerian Security and Civil Defence Corps. This transaction entitled the Claimant to the sum of N2.5Million only.***

***“9. The sale of the 8,000 bags referred to in paragraph 7 and the 25,000 bags referred to in paragraph 8(33,000 bags in all) put the Claimant on the threshold of over 40 trucks sale which entitled the facilitator to a brand new Hyundai Accent Car.***

***“10. The Claimant has made several unsuccessful demands for the payment of the rebate (bonuses) amounting to N3,300,000.00 only and the car”.***

From the above paragraphs the Claimant concluded the transaction in 2008 and has been making demands for payment since then. The cause of action accrued when the Defendant failed to pay in December 2008. This action was filed on the 26/01/18. The cause of action lapsed in 2014 which is six years after the cause of action accrued.

The Claimant Counsel argued that, the admission of liability conveyed vide a letter dated 25/08/16, the period of computation of Limitation starts counting from 2016. That the Respondent is not caught by Section 7(1) of the Limitation Act. I have read the said letter dated 25/08/16. It is titled “***Resolutions on your indebtedness to Stallion Nig. Ltd***”.

The 3<sup>rd</sup> paragraph of the letter states:

***“We are glad to inform you that after a critical and painstaking auditing of your accounts and not minding the enormous discrepancies, the***

***company has come to the resolution that all the issues above be resolved in your favour”.***

The above means that for whatever it is worth we admit liability in respect of the claims listed in paragraph 2 of the said letter.

In the circumstance of this case, the Defendants/Respondents has acknowledged the debt. However the above acknowledgment came after the cause of action has already been extinguished by Section 7 of the Limitation Act. The letter of 25/08/16 cannot in our view revive a cause of action that expired in 2014. Where a statute of limitation prescribes a period within which action should be brought, legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period. Thus an action instituted after the expiration of the prescribed period is said to be statute barred.

See ***OGUNKO VS. SHELE (2004) 6 NWWLR (PT. 868) 17***

***OSUN STATE GOVERNMENT VS. DANLAMI NIG. LTD  
(2007) AFLWR (PT. 365) 438 SC.***

***JAKO LTD VS. OHORI BOYS TECH. SERVO LTD (1995) 4  
NWLR (PT. 391) 534 at 538 SC.***

All actions founded on simple contract shall not be brought after the expiration of 6 years from the date on which the cause of action accrued. The case is an empty shell the substance having been taken away by statute. There is therefore nothing to adjudicate upon. The Court cannot sit on nothing.

Consequently the Claim and Counter Claim have all expired. The Notice of Preliminary objection succeeds. This suit is accordingly dismissed.

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**HON. JUSTICE U.P. KEKEMEKE  
(HON. JUDGE)**



**30/06/2021**