

**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/1547/17

DATE: 16TH JUNE 2021

BETWEEN:

ALHAJI AMINU SHAGALI.....PLAINTIFF

AND

ABAJI AREA COUNCIL.....DEFENDANT

APPEARANCES:

H. A. Ibrahim Esq with O. C. Ofuasia Esq for the Plaintiff.

RULING

By a Notice of Preliminary Objection dated 30th day of April 2018 and filed on 2nd day of May 2018. The Defendant/Applicant sought for the relief as contained on the motion paper to wit:

An order striking out the suit against the Defendant for being statute barred. Filed in support of the Preliminary Objection is a Written Address dated the 30th day of April 2018. In the said Written Address, learned Counsel to the Defendant/Applicant who addressed the Court while making the Preliminary Objection, Y. G. Haruna Esq formulated a lone issue for determination which is whether or not this action is statute barred.

In arguing the sole issue, the learned Counsel submitted that the issue of jurisdiction is so fundamental that it can be raised at any time in any

manner and at any stage of the proceedings. That is desirable that Preliminary Objection be raised early on the issue of jurisdiction so as to save time and costs and to avoid a trial in nullity. Reliance was placed on the case of **APGA V ANYANWU (2014) 7 NWLR (Pt. 1407) 541, SC; R.3.**

It is the learned Counsel's contention that when any suit is commenced against any Local Government for any act done, or execution or intended execution of any law or any public duty or authority or of any alleged default, such suit shall not be or be instituted unless it is commenced within six months next after that act, neglect or default complained of. He placed reliance on Section 114 of the Local Government Edit 1976 of Niger State which he said is embodied in the Laws of the Federal Capital Territory of Nigeria Vol. 3 of Local Government Act 1976.

He stated further that the Niger State Local Government Edit was made applicable to the Federal Capital Territory by virtue of Section 13(1) item 55 of the Laws Schedule of the Federal Capital Territory Act Cap F6 Laws of the Federation of Nigeria, 2004.

Consequently, Counsel submitted that the Federal Capital Territory Area Councils shall be treated as Local Governments in the States of the Federation. He referred the Court to Section 299 and 318(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

In another submission, Counsel stated that Limitation Statute extinguishes both the remedy and the right to maintain the action for the remedy. In support he cited the case of **S.P.D.C.N LTD V EJEBU (2011) 17 NWLR (Pt. 1276) 324 (CA).**

Therefore, Counsel referred the Court to paragraphs 3,6,7 and 11 of the Statement of Claim and submitted that the Plaintiff's cause of action accrued at the time of the supply of the items in 2015 while this action was filed on the 28th day of April 2017 having interval of a period of over two (2) years, beyond this time allowed by the applicable law. Thus the action is statute barred. Reliance was placed on the cases of **NDUKA V OGBONNA (2011) 1 NWLR (Pt. 1227) 153; IBRAHIM V LAWAL (2015) 17 NWLR (Pt. 1489) 490; CRUTECH V OBATEN (2011) 25 NWLR (Pt.1271) 588 (CA).**

Moreso, Counsel submitted that when an action is statute barred, the Plaintiff loses the right to enforce the cause of action by judicial process because the period of limitation had lapsed. That an action brought or instituted outside the period allowed by a Limitation Law or Act is invalid. Reference was made to the cases of ***EZEANNI V NIGERIAN RAILWAY CORPORATION (2015) 3 NWLR (Pt. 1445) 139 (CA); OBI V ONYEMELUKU (2011) 1 NWLR (Pt. 1228) 400 (CA).***

It is the learned Counsel's submission that where a Defendant raises an objection as in the instant case that the Plaintiff's action is caught by limitation statute and the objection is upheld by the trial Court, the proper order to be made is not one of the striking out but of dismissal of the said action since there is nothing to be saved or salvaged therefrom and urged the Court to dismiss the Plaintiff's action. Reliance was placed again on the case of ***CRUTECH V OBATEN (supra) R.6.***

Finally, Counsel urged the Court to hold that the action of the Plaintiff is statute barred and to dismiss same.

In opposing the Preliminary Objection, Claimant/Respondent filed a Written Address dated 19th day of June 2018 and filed same day.

In the said Written Address, learned Counsel to the Claimant/Respondent in response to the Defendant/Applicant's sole issue for determination, formulated three issues for determination to wit:

- “(1). Whether the Niger State Local Government Edict 1976 as applicable to the Federal Capital Territory is still an existing law for which the Defendant can rely on.***
- (2). Whether this Honourable Court lacks the jurisdiction to entertain this matter.***
- (3). Whether the Defendant's Preliminary Objection amounts to demurer.”***

In arguing the issue, learned Counsel submitted on issue one that the National Assembly of the Federal Republic of Nigeria makes law for the peace, order and good governance of the Federal Capital Territory, Abuja. Reference was made to Section 299(a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

The learned Counsel stated that the National Assembly enacted the Federal Capital Territory Act, Cap F6 Laws of the Federation of Nigeria, 2004 and that the 2014 extant Local Government law of Niger State which is the extant law is conspicuously missing in the Federal Capital Territory Act, Cap F6, Laws of the Federation of Nigeria, 2004 as such cannot be made applicable to the Defendant and the Defendant cannot take advantage of a non-existing law to avoid the performance of her obligation under a contract willingly and freely entered into with the Claimant. Counsel submitted that you cannot put something on nothing and expect it to stand.

Reliance was placed on the case of ***MACFOY V UAC (1962) at 152.***

Consequently, Counsel stated that the implication of the repealed Local Government Edict 1976 on the Federal Capital Territory Abuja is that it ceases to apply to the Federal Capital Territory Abuja.

It is the submission of the learned Counsel that being a State Assembly statutorily empowered to make laws solely for Niger State, the Niger State House of Assembly is not constitutionally vested with the powers to make laws for the Federal Capital Territory or make laws applicable to the Area Councils in the Federal Capital Territory including the Defendant and urged the Court to so hold.

The learned Counsel contended that if the National Assembly that is constitutionally empowered to make laws for the peace, order and good governance of the Nation and the Federal Capital Territory had wanted the continuous application of the Local Government Edict 1976 of the Niger State as hitherto applicable to the Federal Capital Territory, Abuja even after its repeal, it would have expressly stated so in the Federal Capital Territory Act Cap F6, Laws of the Federation of Nigeria 2004 or any subsequent legislation.

As such, the Counsel stated that the Local Government Edict 1976 of Niger State previously applicable to the Federal Capital Territory Abuja having been repealed cannot be relied upon by the Defendant and urged the Court so hold.

The learned Counsel contended that Section 114 of the repealed Local Government Edict 1976 of the Niger State apart from being inapplicable to the Defendant by virtue of its repeal, does not apply to simple contracts because it is not claims bordering on personal injury or proprietary injury.

In his further contention, Counsel stated that in simple contracts cases, the limitation period is six years from the date the right of action accrued. Reference as made to Section 7 Limitation Act 1966 and the Limitation act, Cap 522 Laws of the Federal Capital Territory. Also, the case of **OGBORU V SPDC (NIG) LTD (Pt. 955) 595 at 619 paras G – H; N.B.N. LTD V A.T. ENG. CO. LTD (2006) 16 NWLR (Pt. 1005) 210 at 224, para B.**

Therefore Counsel submitted that the action of the Claimant is not statute barred and urged the Court to so hold.

In another submission, Counsel stated that the Local Government Edict 1976 of Niger State or any other law in that regard does not exonerate the Defendant from performing her obligation of paying for goods supplied, collected and consumed by the Defendant under a contract freely entered into. Reference was made to the case of **SERGIUS ONYEKWELU V ELF PETROLEUM LIMITED (2009) LPELR-SC - 134/2003.**

Similarly, Counsel submitted that parties are bound by the terms of contract wilfully entered into and no Court is allowed to assist a party avoid its obligation in a contract. In this respect, Counsel cited the cases of **FGN V ZEBRA ENERGY LTD (2002) 3 NWLR (Pt. 754) page 471 at 491, paras E – F; ASTRA INDUSTRIES (NIG) LTD V NIGERIAN BANK FOR COMMERCE AND INDUSTRY (1998) 4 NWLR (Pt. 546) 357 at 376 (SC), para E; JERIC (NIG) LTD V UNION BANK NIGERIA PLC (2000) 15 NWLR (Pt. 691) 447 SC 462 – 463 Paras G – A.**

Moreso, Counsel submitted that cases of contract is an exception to the applicability of a statute of limitation just as cases of contract is also applicable where a Defendant raises Section 2(a) of the Public Officers Protection Act as defence against an action at the instance of the Claimant in other to avoid its obligation under the contract. Reliance was placed on the cases of **NIGERIAN PORT AUTHORITY V CONSTRUZION GENERALI FARSURACOGEFOR SPA (1974) 1 ALL NLR 463; OGUN STATE GOVT. V DANLAMI NIG LTD (2007) ALL FWLR (Pt. 365) 439 at 452.**

To that extent, Counsel stated that the present action brought against the Defendant is founded in contract for supply of food items and as such the claim by the Claimant cannot by any stretch of imagination be said to be claims bordering on personal injury or proprietary injury and urged the Court to so hold. In this respect Counsel cited the cases of

NIGERIA ELCTRICITY REGULATORY COMMISSION & ANOR V GLOSUN INVESTMENT LIMITED (2017) LPELR – 42337 (CA); UGWUANYI V NICON INSURANCE PLC (2013) LPELR – 20092 (SC).

In the circumstance, Counsel submitted that this present case which borders on breach of contract is not within the contemplation of Section 114 of the repealed Local Government Edict 1976 of Niger State or any other law in that regard because it is not a claim bordering on personal injury or proprietary injury to the Defendant and urged the Court to so hold.

On issue two which is whether this Honourable Court lacks the jurisdiction to entertain this matter, the learned Counsel submitted that it is settled law that Courts are creatures of statute based on the constitution with their jurisdiction stated or proscribed therein and that jurisdiction is a threshold issue. Reference was made to the case of ***MADUKOLU V NKEMDILIM (1962) 2 SCNLR.***

It is the contention of the learned Counsel therefore that this Court is competent to adjudicate on this matter, subject matter of this case is within its jurisdiction and there is no feature in the case which prevents this Court from exercising its jurisdiction and that this case was instituted by due process of the law and upon fulfilment of any condition precedent to the exercise of jurisdiction.

Lastly on issue three which is whether the Defendant's Preliminary Objection amounts to demurer, Counsel submitted that it is trite law that whereby the Rules of Court a thing specifically mentioned is to be done in a particular manner, any other manner employed by any party in doing that thing is not just unlawful, but also null, void and of no effect. Therefore Counsel stated that demurer shall not be allowed. Reference was made to Order 23 Rules 1 and 2 of the Federal Capital Territory High Court (Civil Procedure) Rules 2018.

As such, Counsel stated that only party who intends to raise any points of law shall do that in his pleading and that the Defendant ought to have filed his defence and thereby raise any point of law in the pleadings. That the Defendant only filed a Preliminary Objection without pleadings in contravention of the rules of Court. In support, he cited the following cases, ***DISU V AJILOWARA (2001) 4 NWLR (Pt. 702) 76; FADARE V. A. G. OYO STATE (1982) 1 ALL NLR (Pt. 1) 24; ONIBUDO V. AKIBU (1982) 1 ALL NLR (Pt. 1) 194 at 199 – 200, MOBIL OIL (NIG) PLC V I. A. L. INC (2000) 6 NWLR (Pt. 659) 146 at 175 – 176; BRAWAL***

SHIPPING LTD V. ONWADIKE & CO. LTD (2000) 11 NWLR (Pt. 678) 387 at 407.

Finally, Counsel urged the Court to dismiss the Preliminary Objection for being frivolous, vexatious and finally short of the requirement of the law.

I have carefully gone through the Notice of Preliminary Objection, the grounds upon which the Preliminary Objection was based, the relief sought and the Written Address in support. I have equally perused carefully the Claimant's Written Address in opposition to the Preliminary Objection. In my humble view, the issue for determination is whether the Preliminary Objection is meritorious and sustainable.

It should be pointed out at the bringing that the centre point of this Preliminary Objection raised by the Defendant/Applicant is that this suit is statute barred on the ground that same was brought outside the period limited by statute. The Defendant/Applicant contention is that the suit should have been commenced six months next after the act, neglect or default complained of has occurred. The Defendant's contention is firmly anchored on Section 114 of the Local Government Edict 1976 of Niger State and that same is embodied in the Laws of the Federal Capital Territory Laws of Nigeria Vol. 3 of the Local Government Act, 1976.

Also, it should be noted that the Claimant's suit from the Writ of Summons and Statement of Claim borders on payment and/or claim of money for the food items supplied to the Defendant by the Claimant. In other words, the Claimant's suit bordering on simple contract of supply of food items.

Having pointed this out, let me fortify myself with the case of **YAKUBU V NITEL LTD (2006) 9 NWLR (Pt. 985) at Page 367** where the SANUSI JCA held thus: -

“Statute of limitation is applicable to actions founded on simple contracts or tort and such actions should not be brought after the expiration of six months from the date which the cause of action accrued. An action on contract must therefore be filed within six years from time when the cause of action arose; any such action brought outside the limited period prescribed by law is invalid, incompetent and not maintainable...”

Furthermore, it is trite law that in order to determine whether an action is statute barred or not, the Court is expected to examine the Writ of Summons and the Statement of Claim vis-a-vis the date of filing the suit. In this respect, see again the case of **YAKUBU V NITEL LTD (supra) particularly at Page 392, paras H – B** where it was held that:

“What determines whether a cause of action is statute barred or not is the clause in the Writ of Summons or Statement of Claim alleging when the wrong giving rise to the cause of action was committed and of course the date when the suit was filed....”

See also the case of **MUOMAH V SPRING BANK PLC (2005)3 NWLR (Pt. 976) 575 – 576.**

At this juncture, it is instructive to state that from the Statement of Claim particularly paragraphs 3, 4 and 7, the Claimant's cause of action arose sometime in the year 2015 and from the originating processes in this suit, this suit was filed sometime in the year 2017, specifically 28th day of April 2017. In that regard, I am of the considered opinion that the Claimant's suit was properly filed and within the time allowed by law. I so hold.

Before I conclude, let me refer to a more recent Court of Appeal decision in **COMMISSIONER FOR FINANCE, IMO STATE & ORS V KOJO MOTORS LTD (2018) LPELR-45075 (CA)** where it was held thus:

“We have always stated that it is highly immoral and offensive for a party to enjoy the benefits of a contract and when called upon to pay for it, pleads statute of limitation to escape responsibility. While still enjoying the proceeds of the contract....”

To this end, it is my considered opinion that the suit is not statute barred. I so hold.

In view of the foregoing, I hereby resolve the issue for determination in favour of the Claimant/Respondent against the Defendant/Applicant and hold very strongly that this Preliminary Objection is not sustainable, same lacks merit and it is overruled accordingly. On that note, I hold that this Honourable Court has unfettered jurisdiction to hear and determine this suit on its merit.

Consequently, and without further ado, this Preliminary Objection is hereby dismissed in its entirety. I make no order as to cost.

Signed:

Hon. Justice Samirah Umar Bature
16/6/2021