

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. 14

CASE NUMBER : SUIT NO: CV/1406/2021

DATE: : FRIDAY 20TH MAY, 2022

BETWEEN:

**TOTAL ENGINEERING SOLUTIONS CLAIMANT
INTERNATION LTD. }**

AND

**1. HASSAL MICROFINANCE } DEFENDANTS
BANK LTD.
2. PETROLEUM TECHNOLOGY }
DEVELOPMENT FUND }**

RULING

This ruling is hinged on Notice of Preliminary Objection dated the 19th day of July, 2021 filed by the learned counsel for the 2nd Defendant praying the court for the following:-

- a. An Order of this Honourable Court striking out the Claimants suit for lack of jurisdiction, same having been commenced in an inappropriate venue (i.e this court) as opposed to the Federal High Court.
- b. An Order of Court for an outright dismissal of the Claimant's claim for lack of jurisdiction, same having been commenced against the 2nd Defendant outside the three (3) months statutory time prescribed for filing the action against the

2nd Defendant by the Public Officers Protection Act, and therefore statute – barred.

- c. Order of this Court dismissing the Claimant's suit against the 2nd Defendant for disclosing no valid cause of action.
- d. And for such further Order(s) as this Hon. Court may deem appropriate and fit to make in the circumstance.

The ground upon which the objection is brought is that the 2nd Defendant is a fully funded and controlled Federal Government Agency, and the proper venue for instituting any action against her is the Federal High Court as prescribed by section 251 of the Constitution of the Federal Republic of Nigeria 1999 (as Amended).

That the 2nd Defendant and its official, are public officers and any action or proceeding to be instituted against them must be within 3 (three) months from the date of accrual of the cause of action. This, the Claimant had outrightly failed to do to enable the Court exercise jurisdiction over the matter.

That the Claimant's claim had not disclosed any valid cause of action against the 2nd Defendant, same having been filed out of time.

The Preliminary Objection is filed along with affidavit of 4 paragraph deposed to by Patience NkemAroh, Secretary and Officer in charge of litigation in the office of M/S SanyaOgunkuade & Co.

It is her deposition that going by the Claimant's assertion themselves and the contract agreement

with the 2nd Defendant and exhibited in their processes, they are entitled to payment of valuation to the 2nd Defendant by the Consultants.

That the Claimant has asserted that all payments due to them by the valuation certificates issued in their favour, dated back to 20th March, 2011 till April, 2015 were all not paid within the 30 days period agreed upon, but many months thereafter.

That the Claimant further asserted that the payment of the last valuation certificate made to them by the 2nd Defendant in April, 2015, was not paid until “10 months as payment was not received until the 5th February, 2016”.

That the Claimant had asserted that the 2nd Defendant, after terminating the contract in question had demanded a refund of over N60,000,000 (Sixty

Million Naira) from them via their letter of 23rd May, 2018, and even threatened criminal action against them.

That the Claimant in the circumstance stated above, no longer have any valid cause of action against the 2nd Defendant, and that same had since elapsed well over 4 calendar years, by effluxion of time.

In compliance with law, a written address was filed wherein the following issues were raised for determination.

- 1. Whether this Honourable Court, i.e FCT High Court, is the appropriate Court to institute this action against the 2nd Defendant, being an Agency of Federal Government of Nigeria?**
- 2. Without prejudice to issue No. 1 above, whether the Claimant's suit is not caught up by**

statute of limitation, i.e, the Public Officers Protection Act, same having not been filed within the mandatorily prescribed three (3) months from date of accrual of the causes of action, therefore robbing the court the jurisdiction and competence to entertain their claims?

3. Whether in the circumstance of facts in issue II above, the Claimant could still be said to have any valid and live cause of action, against the 2nd Defendant?

On issue 1, “Whether this Honourable Court, i.e FCT High Court, is the appropriate Court to institute this action against the 2nd Defendant, being an Agency of Federal Government of Nigeria”

Learned counsel submits that it is a trite law that jurisdiction is sine qua non to the hearing of any action, and where the court lacks jurisdiction, it is divested of the power to entertain such action.

NIGERIA AGRICULTURAL INSURANCE CORPORATION VS. WEMA SECURITIES AND FINANCE PLC. (2006) Vol. 41 WRN Page 125 Line 25; was cited.

Counsel submits that the 2nd Defendant, being an agency of the Federal Government can only be sued in the Federal High Court in the circumstance.

Section 251(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended);

COMMERCIAL BANK (CREDIT LYONNAIS) NIGERIA LIMITED VS. UNION BANK OF NIGERIA PLC. (2006) 12 WRN Page 75 at 78

were cited.

Counsel urged the court to decline jurisdiction in entertaining this suit and to strike – out the action for lack of jurisdiction, having been instituted at an inappropriate venue.

On issue 2, “without prejudice to issue No. 1 above, whether the Claimant’s suit is not caught up by statute of limitation, i.e, the Public Officers Protection Act, same having not been filed within the mandatorily prescribed three (3) months from date of accrual of the causes of action, therefore robbing the court the jurisdiction and competence to entertain their claims”

Learned counsel submits that the 2nd Defendant, been a creation of statute, the functions and the duties are clearly enumerated in the PTDF Act, and that the Agency is a perpetual one, being in

perpetual succession. All these factors are present in the instant case. The 2nd Defendant is a public office and its officers are public officers, irrespective of the manner or shape in which their services are being offered to the Federal Government of Nigeria. Chief ***ANYOM VS. A.G OF CROSS RIVER STATE (2007) 24 WRN Page 108 at Page 122 was cited.***

Counsel further submits that the Claimant's cause of action against the 2nd Defendant had elapsed by effluxion of time and is therefore statute – barred from instituting legal action against the 2nd Defendant, as fair as the subject matter of this case is concerned, i.e breach of contract or any other related matter.

On issue 3, **“Whether in the circumstance of facts in issue II above, the Claimant could still be said to**

have any valid and live cause of action, against the 2nd Defendant”

Counsel submits that any supposed causes of action the Claimant must have had as a result of, or flowing from the contract in question, had become lost and extinguished, failing their neglect or failure to proceed to court against the 2nd Defendant within the 3 months of occurrence of the said alleged various acts or injury/damages suffered by them. Having not acted within time, the Claimant no longer had any valid cause(s) of action upon which to place their various claims against the 2nd Defendant.

EBOIGBE VS NNPC (1994) NWLR (Pt. 347) page 649 at 659;

NIGERIAN PORT AUTHORITY VS LOTUS PLASTIC LTD. & ANOR (2006) 3 WRN Page 133 at 171, were cited.

Counsel respectfully submits that the grounds of preliminary objection of the 2nd Defendant as canvassed are sustainable by the naked facts sworn to on oath by the Claimant witness itself, and backed up by law, cum, relevant authorities herein cited.

Counsel urged the court to dismiss the Claimant's claim in its entirety, as baseless and no longer actionable in law, with substantial cost awarded in favour of the 2nd Defendant.

On its part, Claimant/Respondent filed counter affidavit of 7 paragraphs deposed to by one Oluwolellori a legal practitioner assisting the lead counsel.

It is his deposition that the case before the court is a breach of simple contract, damages and claim for payment of actual work done against the 2nd Defendant as clearly shown, in reliefs i-v, x and xi of the writ of summons and the statement of claim of the Claimant.

That the appropriate court for redress of a breach of contract, damages and recover of payment for actual work done against an agency of Federal Government is the State High Court and not the Federal High Court.

That the public officer protection Act is not applicable to breach of contract and recovery of payment for actual work done.

That the Claimant action is not statute barred.

A written address was filed along with the counter affidavit wherein the Claimant/Respondent adopted the issues formulated by the Applicant. Counsel treated issues 2 and 3 together while issue 1 was treated separately.

On issue 1, ***“Whether this Honourable Court, i.e FCT High Court, is the appropriate Court to institute this action against the 2nd Defendant, being an Agency of Federal Government of Nigeria”***

Learned counsel submits that, it is a settled law that courts are creatures of statutes based on the constitution with their jurisdiction stated or prescribed therein. That being the case, it is obvious that no court assures jurisdiction except it is statutorily prescribed as jurisdiction cannot be

implied nor can it be conferred by parties. ***GAFAR VS. GOV'T, KWARA STATE (2007) 4 NWLR at 1024, 375, at 403 to 404 was cited.***

Counsel submits further that a perusal of claimant's reliefs i – v, x and xi of the writ of summons and paragraph 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 39, 40, 41, 43 and 44 of the Statement of Claim confirm that this case is claim for breach of contract recovery of payment for work done and damages for breach of contract which is within the jurisdiction of the High Court.

Counsel further draws the attention of the court that from a careful perusal of the instant writ of summons, statement of claim of the Claimant and the plethora of settled decision of the Supreme Court, it is only the High Court of the FCT that has

jurisdiction under section 272 (1) of the 1999 Constitution as amended to entertain this suit which concern breach of contract, damages and claim for work done. *ADELEKAN VS. ECU – LINE NX (2006) 12 NWLR (Pt. 993) 33 at page 52 was cited.*

Counsel urge the court to resolve issue 1 in favour of the Claimant.

On issue 2 and 3.

2. *Without prejudice to issue No. 1 above, whether the Claimant's suit is not caught up by statute of limitation, i.e, the Public Officers Protection Act, same having not been filed within the mandatorily prescribed three (3) months from date of accrual of the causes of action, therefore robbing the court the*

jurisdiction and competence to entertain their claims?

3. **Whether in the circumstance of facts in issue II above, the Claimant could still be said to have any valid and live cause of action, against the 2nd Defendant?**

Counsel submits that the public protection Act does not apply to cases of breach of contract, claims for work and labour done and recovery of debt. ***F.G.N VS. ZEBRA ENERGY LTD. (2002) 18 NWLR (Pt. 798) 16 at 196 was cited.***

Counsel contents that the Claimant has a valid cause of action as the contract in question was only revoked by the 2nd Defendant by its notice of revocation of contract dated 23rd May, 2017 thus, by the statute of limitation Act, the Claimant has 6

years to file its action for a breach of contract and recovery of money for work done. In effect, the claimant has upto May, 2023 to file this action.

Counsel respectfully urge the court to dismiss the preliminary objection of the 2nd Defendant with substantial cost.

COURT:-

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 giving 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 Plaintiff to the sought relief. See ***EBENOGWU VS. ONYEMAOBA (2008) 3 NWLR (Pt. 1074) 396 P. 422 Paragraph A – C.***

The Public Officers Protection Act is a statute of limitation which removes the right of action, the right of enforcement and the right to judicial reliefs in a Plaintiff and leaves him with a bare and lifeless cause of action, which cannot be enforced having been initiated after the three months prescribed by the said Law. See ***OSUN STATE GOVERNMENT VS DALAMI NIGERIA LTD. (2007) ALL FWLR (Pt. 365) 436 at 467 Paragraph A – B.***

The Public Officers Protection Act, Cap 379 Laws of the Federation of Nigeria, 1990 is designed to protect the officers who act in good faith and does

not apply to acts done in abuse of office and with no semblance of legal justification. See the case of ***UNIVERSITY OF ILORIN VS. ADENIRAN (2007) ALL FWLR (Pt. 382) 1871 at 1913, Paragraphs E – G (CA).***

It was the submission of the learned counsel for the 2nd Defendant that where the date or time the cause of action arose is beyond the period allowed by statute, the action is statute barred.

Cause of action are fact or facts which establish or give rise to a right of action. That it is the factual situation which gives a person a right to judicial relief. See ***FRED EGBE VS HON. JUSTICE J. A. ADEFARASIN (2002) 14 WRN 57, (1987) 1 NWLR (Pt. 47) 1 at 20***

Counsel argued, that any supposed causes of action the Claimant must have had as a result of, or flowing from the contract in question, had become lost and extinguished, failing their neglect or failure to proceed to court against the 2nd Defendant within the 3 months of occurrence of the said alleged various acts or injury/damages suffered by them. Having not acted within time, the Claimant no longer had any valid cause(s) of action upon which to place their various claims against the 2nd Defendant.

Placing heavy reliance on Section 251(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), learned counsel contended further, that the 2nd Defendant, being an agency of the Federal Government can only be sued in the Federal High Court in the circumstance.

I have gone through the argument in support of notice of preliminary objection and written address of the 2nd Defendant/Applicant on one hand and the Plaintiff/Respondent's Counter affidavit and written address on the other hand.

It is my considered opinion that the salutary approach here is to closely look at the Plaintiff/Respondent's statement of claim which are germane for consideration in establishing whether or not suit No. **FCT/HC/CV/1406/2021** is statute barred by virtue of the Public Officers Protection Act.

Section 2(a) of the Public Officers Protection Act provides thus;

“Where an action, prosecution, or other proceeding is commenced against any person

or any act done in pursuance or intended execution of any Act or law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, law, duty or authority, the following provision shall have effect”;

Limitation of time, the action, prosecution or proceeding shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of or in case of a continuance of damage or injury, within three months next after the cessation thereof.

In the case of *N.E.P.A VS OLAGUNJU (2005) 3 NWLR, (Pt. 913) page 602 at Page 623* the court in interpreting the provision of section 2(a) of the public Officer Protection Act stated that by virtue of

section 2(a) of the Public Officers Protection Act Cap 379, Laws of the Federation of Nigeria 1990, where any action, prosecution or other proceeding is commenced against any person for an act done in pursuance or execution or intended execution of any act or law or of any public duty authority or in respect of any act or law, duty or authority, the action prosecution or proceeding shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of or in the case of a continuance of the damage or injury, within three months next after the ceasing thereof.

Indeed, the case before this court is that of a simple contract, damages and claim for payment of actual work done against the 2nd Defendant as clearly

shown in the writ of summons and statement of claim.

The Public Officers Protection Act does not apply to cases of breach of contract, claims for work and labour done, and recovery of debt.

It is instructive to note that going by the statement of claim of the Plaintiff; it is obvious that the acts complained of by the Plaintiff occurred between 2014 and 2021.

In his paragraphs 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 39, 40, 41, 43 and 44 of the Statement of Claim, the Plaintiff maintains that this case is claim for breach of contract, recovery of payment for work done and damages for breach of contract which is within the jurisdiction of the High Court.

From the above, it is clear that the principal act commenced in 2014 but the damages/injury occasioned to the Plaintiff/Respondent by the said act continues as long as the Plaintiff is still bound by the obligations under the loan contract with the 1st Defendant.

On the whole, therefore, I find the argument of learned counsel for the 2nd defendant half hearted, whimsical and unsustainable in law.

The said argument has been dwarfed by the legal argument of learned counsel for the Claimant/Respondent.

I most importantly wish to restate the already established position of law, that for a court of law to assume jurisdiction over a matter, the said subject matter of the case shall be within jurisdiction, and

there shall be no feature in the case which constitute a vice and which prevents the court from exercising its jurisdiction. See *MADUKOLU V NKEMDILIM & ORS (1962) 2 SC NLR 341.*

The appropriate court for redress of a breach of contract, damages and recovery of payment for actual work done against an agency of Federal Government is the State High Court and not the Federal High Court. Section 272(1) Constitution of the Federal Republic of Nigeria 1999 (as Amended) is most instructive on this.

It is settled that by virtue of Section 299 Constitution of the Federal Republic of Nigeria 1999 (as amended); the Federal Capital Territory is considered a state. Consequently, when a wrong is committed within the FCT, it only makes sense that

the matter be tried in the Federal Capital Territory, once the jurisdiction is not ousted by section 251 of the Constitution.

From above, therefore, I have no difficulty in dismissing this application for being most academic and predatory.

Consequently, the preliminary objection filed by the 2nd Defendant is hereby dismissed.

Justice Y. Halilu
Hon. Judge
20th May, 2022

APPEARANCES

Rama Tijjani, Esq. – for the Claimant.

Agnes Z., Esq. – for the 1st Defendant.

DayoAyilara, Esq. – for the 2nd Defendant.