IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GUDU - ABUJA

ON THUIRSDAY THE 13TH DAYOF APRIL 2022.

BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO -ADEBIYI

SUIT NO. CV/1004/2021

KNN NETWORK LTD ---------- CLAIMANT/RESPONDENT

AND

INTEGRATED FIRE &---------- DEFENDANT/APPLICANT

SAFETY SOLUTIONS LTD

RULING

The Claimant commenced this action by Writ of Summons and Statement of Claim filed in this Court on31/3/2021, claiming declaratory and other ancillary reliefs against the Defendant. The Defendant upon being served with the writ of summons by substituted means on 3/9/2021filed their memorandum of conditional appearance and a preliminary objection seeking the following reliefs: -

1. An order dismissing this suit in limine on the ground that this Honourable Court lacks jurisdiction to hear and entertain same.
2. AND for such order or orders as the Honourable Court may deem fit to make in the circumstance.

The grounds upon which this application is brought are as follows:

a. That this suit is statute barred as it was commenced after six years of the cause of action.

b. That the Claimant/Respondent has no cause of action against the Defendant/Applicant, no privity of contract and thus lack the locus standi to institute this action against the Defendant/Applicant.
c. That the originating process is grossly defective as there was no counsel stamp/seal affixed on the process.

The application is supported by an11paragraph affidavit deposed to by one Peter Ndukwe Esq.,a legal practitioner in the firm of Peter Ndukwe & Co., the law firm representing the Defendant/Applicant. The content of the supporting affidavit is essentially that this suit is statute barred as the wrongcomplained of occurred on the 3rd day of July, 2015 but this suit was commenced on the 9th day of August, 2021, after six years of the cause of action.That there is no contractual relationship,privity of contract between theClaimant and the Defendant to warrant an action against the Defendant and that the Claimant are unknown to the Defendant. That the contract and or memorandum of understanding that gaverise to this Suit was not between the parties but between the Claimant and Integrated Fire & Safety Solution Limited of No. 16 Hanover Square, Mayfair, London, WIS IHT, United Kingdom.That this suit is an abuse of Court process, incompetent and aimed at embarrassing the Defendant and should be dismissed with punitive cost. Attached is a written address whereinthe learned Counsel for the Defendant/Applicant raised the following issues for determination:

i. Whether this suit is statute barred as it was commenced after six years from the time the cause of arose?

ii. Whether there is privity of contract between the Claimant/Respondent and Defendant/Applicant as to confer locus standi on the Claimant/Respondent to sue the Defendant/Applicant.

iii. Whether the originating process is competent by virtue of the absence of counsel stamp/seal as provided by the rules of this court.

Summarily on the first issue, learned counsel submitted that an action which is not brought within prescribed period offends the provisions of the law and does not give rise to a cause of action. On the second issue, learned counsel submitted that it is improper of the Claimant/Respondent to have made the Defendant/Applicant a party, a person against whom there is no cause of action.On the third issue, learned counsel submitted that the originating summons in this suit infringes and/or violates **ORDER 2, RULE 9 OF THE RULES OF THIS COURT,** which provides " All processes filed at the Registry, shall bear the seal of the counsel filing the suit as provided by the Nigerian Bar Association, showing that the Counsel is fully enrolled as a legal practitioner and qualified to practice in Nigeria. Counsel urgedthe court to dismiss this suit for want of jurisdiction with punitive cost awarded against the Claimant/Respondent. Counsel relied on the following authorities amongst others: -

1. **SECTION 7 OF THE LIMITATION LAW.**
2. **INEC V. OGBADIBO LOCAL GOVT. & ORS. (2015) LPELR - 24 839**

3. ARAKA VS. EJEAGWU (2000) 12 SCNJ: PAGE 206.
4. F.B.N. PLC V. ASSOCIATED MOTORS CO. LTD (1998) 10 NWLR (PT. 570) PAGE 441 AT 480.
5. ORDER 2, RULE 9 OF THE RULES OF THIS COURT.

The Claimant/Respondent in opposing the application filed a 14-paragraph counter affidavit deposed to by Hyginus Eze Esq., a legal practitioner with Ivory Chambers, counsel to the Claimant/Respondent. Counsel averred that although the wrong complained of the claimant started on 3rd July, 2015 but the parties engaged in dialogue for the reconciliation of account up to November 2015 as contained in paragraph 34 of the statement of claim.That this suit was filed by the claimant in this court on 31/3/21 and not 9/8/21 as contained in paragraph 6 of the affidavit in support of the preliminary objection.That the reason for the date 9/8/21 on the writ of summons is that after filing this case in this court on 31/3/21, the judiciary staff union of Nigeria (JUSUN) embarked on a nationwide strike sometime in April and it was after the judiciary staff union of Nigeria called off its nationwide strike in June 2021 that this case was assigned to this court.That he moved the motion for leave of this court to serve the writ of summons and other processes of this court on the defendant outside the jurisdiction of this court on 13/7/21.That it was after the leave was granted by this court to serve the writ out of the jurisdiction of this court that the registrar of this court endorsed the date 9/8/21 on the writ of summons which the defendant/applicant alleges to be the commencement date of this

suit.That there was a contract between the claimant and the defendant which the defendant abandoned halfway.That the contract contained in the memorandum of understanding attached as exhibit A in the affidavit in support of the preliminary objection is between claimant and defendant which gave rise to the contract which is the subject matter of this suit.That although the memorandum of understanding between the claimant and the defendant bears the defendant's London address but the defendant in the course of the execution of the contract sent an email to the claimant notifying the claimant of a change of its physical address to Nairobi, Kenya as averredin paragraph 2 of the statement of claim. Attached to the counter affidavit are four exhibits marked Exhibit A-D.

Learned Counsel also filed a written address in opposition wherein learned counsel submitted that time started to run against the claimant when all the attempts to resolve the difference between the parties failed in November, 2015 as contained in exhibit A attached to the counter affidavit. He cited **Owie V. lghiwi (2005) I SC (Pt.") 16 at 42 paragraphs 35 — 40**.Counsel submitted that this case was brought to this Honourable court on 31/3/15 before the expiration of six years as provided by the Act. Counsel also submitted that issue raised by the defendant/ applicant, that the party who entered into contract with the complainant as per the memorandum of understanding is different from the defendant in this caseis false. Counsel urgedthe court in accordance with the provision of **S.147 of the Evidence Act 2011** to take judicial notice of the stamp and seal of counsel to the claimant attached to the originating process filed before the court and dismiss the preliminary

objection with substantial cost as it is frivolous and calculated to waste the time of the Honourable court.

I have considered the submissions of both counsel,thethree (3) issues for determination areas follows: -

i. **Whether this suit is statute barred as it was commenced after six years from the time the cause of action arose?**
ii. **Whether the issue as to privity of contract between the parties is such that this Court can determine at this stage of the proceedings**
iii. **Whether the originating process is competent by virtue of the absence of counsel stamp/seal as provided by the rules of this court.**

On the first issue, **"Whether this suit is statute barred as it was commenced after six years from the time the cause of action arose".** The Defendant/Applicant's Counsel has submitted that this suit is statute barred as the wrong complained of occurred on the 3rd day of July, 2015 and that this suit was commenced in this court on the 9th day of August, 2021, after six years of the cause of action. The Claimant/Respondent have averred that this suit was filed by the claimant in this court on 31/3/21 and not 9/8/21. That the reason for the date 9/8/21 on the writ of summons is that he moved the motion for leave of this court to serve the writ of summons and other processes of this court on the defendant outside the jurisdiction of this court on 13/7/21. And that it was after the leave was granted by this court to serve the writ out of the jurisdiction of

this court that the registrar of this court endorsed the date 9/8/21 on the writ of summons which the defendant/applicant alleges to be the commencement date of this suit.

S.7 of the Limitation Act Cap 522 Laws of the Federation of Nigeria, (Abuja) 1990 provides as follows;

> *"(1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued namely.*
>
> *(a) Actions founded on simple contract;*
>
> *(b) Actions founded on quasi contract*

And the Supreme Courtin**WOHEREM v. EMEREUWA (2004) 13 N.W.L.R. (PART 890) pages 398 at 416** held that:

> *"The law is firmly settled that the period of limitation is determinable by looking at the writ of summons and the statement of claim only to ascertain the alleged date and the wrong in question which gave rise to the Plaintiff's cause of action was committed and by comparing such date with the date on which the Writ of Summons was filed if the time pleaded in the writ of summons or statement of claim is beyond the period allowed by the limitation law, the action is statute barred".*

Hence the relevant time is determined by perusal of the writ of summons and statement of claim. In paragraph 18 of the statement of claim the Claimant pleaded thus:

> "18.Claimant avers that the relationship between claimant and defendant went awry when sometime on 3rdJuly, 2015, after several demands by the claimant for supply of the equipment she

paid for, the defendant sent the claimant through an email statements of account retrospectively for December, 2014 and June, 2015 where she unilaterally applied and utilized the funds sent by the claimant specifically for the supply of equipment to administrative charges, storage costs, and other sundry costs not contained in the purchase order sent to the defendant and not agreed upon by the parties. Claimant shall at the trial refer to and rely on the said email dated 3/7/15 and statements of account dated 31/12/14 and30/6/15 attached to it.

Parties are not in dispute that the cause of action arose 3/7/2015. I have taken my time to look through the Writ of Summons filed and Statement of Claim, it is clear from the assessment on the writ of summons thatthe Writ was filedon the 31/3/2021and the seal of the High Court of the Federal Capital Territory on the writ is also dated 31/3/2015while the Statement of Claim was dated 30/3/2021. Hence calculating from 3/7/2015 to 31/3/2021 is less three months and 2days to be 6years. Therefore,based upon the principle of law laid above and the calculation this action is not statute barred and the Plaintiff's right to actionis still very much alive and so hold.

On thesecond issue,"**Whether the issue as to privity of contract between the parties is such that this Court can determine at this stage of the proceedings.** The doctrine of privity of contract precludes the Court from enforcing terms of contract against a total stranger to the contract. Although privity of contract can be taken by the court at an interlocutory stage, the peculiarity of this case would preclude the court

from going into whether or not there was privity of contract between parties at this interlocutory stage. The Supreme Court has warned on a number of occasions that each case be determined according to its own peculiar circumstances. The peculiarity of this case would determine the substantive suit at an interlocutory case if this court should go into the issue of privity of contract as raised by the defendant as evidence would have been evaluated in order to arrive at a just conclusion. The Court cannot at this stage, by merely looking at the Memorandum of understanding, without evaluation, determine the true import of the contract. That, in my view, would amount to an exercise in prejudging the Claimants' case. It will therefore be premature at this stage for the Court to wade into the complex facts pleaded in the Statement of Claim or interpret the case of the Claimant based on the contract or memorandum of understanding which is the basis of theDefendant's contention that they had no privity of contract with the Claimant, in determining the Defendant's motion. On this basis, I hold that the grounds on privity of contract is premature.

On the third issue, "**Whether the originating process is competent byvirtue of the absence of counsel stamp/seal as provided by the rules of this court". Section 10(1) of the Rules of Professional Conduct for Legal Practitioners** provides that a lawyer acting in his capacity as a legal practitioner, legal officer or adviser of any Governmental department or Ministry or any corporation, shall not sign or file a legal document unless there is affixed on such document a seal and stamp approved by the Nigerian Bar Association. Subsection (2) of that section then defines

"legal documents" to include pleadings, affidavits, depositions, applications, instruments, agreements, deeds, letters, memoranda, reports, legal opinions or any similar documents, and subsection (3) states that any such document so signed without the seal and stamp shall be deemed not to have been properly signed or filed. In **MEGA PROGRESSIVE PEOPLE'S PARTY V. INEC & ORS (2015) 18 NWLR (Pt. 1491) 207 at 212,** I. T. Muhammad, JSC held that the said Section is directory and not mandatory and the failure to affix the NBA seal and stamp will not invalidate process filed in Court.

In**NYESOMV. PETERSIDE & ORS (2016) LPELR-40036 (SC)**the Supreme Court Per KEKERE-EKUN, J.S.C held that;

> *"…the failure to affix the approved seal and stamp of the NBA on a process does not render the process null and void. It is an irregularity that can be cured by an application for extension of time and a deeming order".*

I have examined the Writ of Summons in the record of the Court. Contrary to the assertion of theDefendant's Counsel, the Writ of Summons in the Court's file which was prepared by Hyginus Eze Esq, has the Seal and Stamp of the said Counsel, Hyginus Ezeconspicuously affixed to it. It is trite law that parties are bound by the records of the Court. Therefore, it is the original processes that are contained in the record of the Court that binds the parties and the Court and not any of the copies of such processes served on the parties. The Writ of Summons in this suit which is contained in the Court's record (file) has affixed to it the NBA Seal and Stamp of Hyginus Eze, the learned Counsel who prepared and filed the originating process, should the Counsel insist on

having the seal and stamp on the copy of the Writ of Summons served on the Defendant, the learned Counsel for the Claimant should make available the said seal and stamp and affix same for him, accordingly as it is trite that irregularity can be regularized.

In conclusion, I rule that, this Preliminary Objection filed by the Defendant/Applicant has no basis, it is a simple academic exercise and waste of court's time. It is hereby struck out.
Order as to cost: cost of N50,000.00 (Fifty Thousand Naira) is hereby awarded against the Defendant.

Parties: Absent
Appearances:H. A. Eze appearing for the Claimant. Godswill Okorie appearing for the Defendant holding the brief of Peter NdukweEsq.

HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
13TH APRIL, 2022