

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY  
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION  
HOLDEN AT JABI FCT ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN**

**SUIT NO: CV/734/2021**

**BETWEEN:**

**C.U. PETERS ESQ \_\_\_\_\_ CLAIMANT/APPLICANT**

**AND**

- |  |   |                   |
|--|---|-------------------|
| <b>1. ENGR. EKUNDAYO AFOLA-OGUN</b>    | } | <b>DEFENDANTS</b> |
| <b>2. REED ENGINEERING CONSULT LTD</b> |   |                   |
| <b>3. TOO AUTHENTIC NIGERIA LTD</b>    |   |                   |

**RULING**

The applicants herein filed this motion with No. M/5953/2022 and seek for the dismissal of this suit in its entirety on the grounds that the court lacks the jurisdiction to her the matter as it is statute barred being a case of simple contract.

The application is supported by an affidavit and a written address of counsel.

The respondent filed a four paragraphed counter affidavit in opposition to the application.

It is stated in the affidavit in support that the 1<sup>st</sup> defendant is a Director in 2<sup>nd</sup> and 3<sup>rd</sup> defendants/applicants which are Limited liability companies duely incorporated in Nigeria and carry on businesses as general contractors but does not operate business or any transaction in the names of 2<sup>nd</sup> and 3<sup>rd</sup> defendants/applicants. That on the first week of November, 2009, the plaintiff/respondent and the 2<sup>nd</sup> and 3<sup>rd</sup> defendants/applicants entered into a simple contract over legal representation in plaintiff/respondent's capacity as a legal practitioner and to this effect, the plaintiff/respondent represented the 2<sup>nd</sup> and 3<sup>rd</sup> defendants/applicants on the negotiation.

The 1<sup>st</sup> defendant was said to have paid the plaintiff/respondent an initial deposit of N500,000.00 (Five

Hundred Thousand Naira) only in cash on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants/respondents before the plaintiff/respondent proceeded to Yola thereafter he was issued cheque dated 20<sup>th</sup> November, 2009 and 30<sup>th</sup> November, 2009 both of intercontinental Bank in respect of another transaction/instruction involving another company, Anointed Treasures Ltd which the plaintiff/respondent also handled for the company. The cheques were said to have been paid but were ignored.

It was also stated that the 1<sup>st</sup> defendant/applicant on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants/applicants paid for the plaintiff/respondent's travel expenses from Abuja to Yola and from Yola to Abuja including accommodation, feeding, drinks etc.

It was further stated that the 1<sup>st</sup> defendant/applicant did not avoid the plaintiff/respondent but instead the plaintiff/respondent started harassing him, using Nigeria Police Force to demand for a professional fee not owed him and while he was invited by the FCT Police Command in 2009, he was released on the ground that the complaint by the plaintiff/respondent was a clear case of simple contract without element of crime. The 1<sup>st</sup> defendant/applicant was said to have been advised by the Nigeria Police Force to settle the matter with the plaintiff/respondent and both parties amicably resolved the matter. To this end, the 1<sup>st</sup> defendant/applicant paid plaintiff/respondent the sum of ₦500,000.00 in cash as full and final settlement of the dispute between them.

It was also stated that the 1<sup>st</sup> defendant/applicant made several requests for cash invoice from the plaintiff/respondent which were turned down and every call put to him for issuance of cash invoice were met with insults and derogatory words not expected of a lawyer. That the 1<sup>st</sup> defendant/applicant was arrested by the FCT Police Command in 2009 over the legal fees claimed by the

plaintiff/respondent against the defendants/applicants and this he served all the defendants/applicants with Bill of Charges covering the transaction in dispute before this court. This demand was said to have been made in 2009 when the Bill of Charges was served on the defendants at the police station.

It was stated that this action cannot be maintained after about eleven years after the transaction took place with formal demand for payment made through the issuance of legal practitioner's bill of charges, being a demand for his professional fees.

It was stated further that the plaintiff/respondent became angry with the 1<sup>st</sup> defendant/applicant over his intervention in the dispute between the plaintiff/respondent's and Patibon Services Ltd, Francis Shoga and Philip O. Shoga who were the plaintiff/respondent's clients introduced to him in good faith with the intention of promoting his legal practice and finance. It is stated that the plaintiff/respondent's action is frivolous and was instigated by the 1<sup>st</sup> defendant/applicant's position of finding fault in the plaintiff/respondent's negative and reckless habits unexpected of a lawyer of picking up petty quarrels with his clients, shouting, threatening and insulting them like his slaves including the 1<sup>st</sup> defendant/applicant. That this action cannot be maintained as it is reckless, gold digging, embarrassing and worthless.

In his written address, the counsel to the defendants/applicants formulated an issue for determination:

**Whether this Honourable Court can entertain this action in view of the action being statute barred?**

The counsel quoted the provisions of section 7 of the Limitation Act (FCT Abuja) which provides that, this type of action shall not be brought after the expiration of six years from the date on which the cause of action accrued. That the section 7 (as dwells on actions founded on simple

contract which has been defined by I.E. Jagay in his book, Nigerian Law of Contract, 3<sup>rd</sup> Edition (Revised) 2018 at pages 8 – 9 as all contracts other than formal contracts or contract required to be under seal. They may be in writing, or may be oral. In the later case, they are called parol contracts. The major distinction between a contract under seal (deed) and a simple contract is that unlike formal only a party who furnished consideration can bring an action to enforce a simple contract. In other words, the validity of the simple contract is derived from the presence in it a consideration. Simple contracts can take both oral and written force.

The counsel submitted that the plaintiff in his statement of claim claimed that the defendant engaged his professional services on November, 2009, that shows the agreement between the plaintiff and the defendant was in 2009 and the plaintiff also issued defendants his professional bill of charges in same year 2009.

The counsel cited the case of **Gbadamosi V. Taiwo (2004) 43 WRN 51** where the Court of Appeal in considering on when cause of an action will be said to be statute barred held that a cause of action is statute barred if legal proceedings cannot be commenced in respect of same because the period laid down by the limitation law or Act had elapsed. If a plaintiff's action is statute barred it affects the legal competence or jurisdiction of the court. If the date as on the writ when an action is filled is beyond the period alluded by the Limitation Law then the action is statute barred.

The counsel opined that it will be correct in this case to hold that the case of the claimant has become statute barred because the plaintiff and the defendant entered into a simple contract in November, 2009 for which the plaintiff issued a bill of charges covering the transaction and the plaintiff brought this action dated 10<sup>th</sup> day of March, 2021. The counsel contended that by the provision of section 7 of

the Limitation Act, this action cannot be maintained, and he cited the case of **I.T.F. V. NRC (2006) 11 WRN 74** where the court on the factors to be taken into consideration on how to determine when time begins to run for the purpose of statute of limitation where the Court of Appeal held that time begins to run from the date on which the cause of action accrues. The cause of action generally accrues on the date on which the incident giving rise to the cause of action accrues, proceedings must begin normally by the issue of writ of summons within a period prescribed by the relevant statute.

The counsel argued that on this present case, the cause of action accrued in November, 2009 when the plaintiff issued the defendants a bill of charges in same year, and he cited the case of **Eboighe V. NNPC (1994) NWLR (pt 347) 649 at 659**.

On the effect of action brought outside the period prescribed by statutes, the counsel to the defendants/applicants cited the case of **N.P.A. Plc V. Lotus Plastic Ltd. (2006) 3 WRN** where the Supreme Court held that the general principle of law is that where the law provides for the bringing of an action within a prescribed period, in respect of a cause of action accruing to the plaintiff, proceeding shall not be brought after the time prescribed by the statute had expired. This means an action brought outside the prescribed period offends against the provision of the statute and does not give rise to a cause of action.

Counsel re-iterated that the plaintiff brought his action after fifteen years from the time the defendant was engaged and a bill of charges issued, which shows that the plaintiff brought the action after the expiration of the time prescribed by the Limitation Law, and he cited the case of **Elabanjo V. Dawodu (2006) 50 WRN 79** and **IGP V. Nomiri (2006) 35 WRN 117**. He cited the case of **Eboigbe V. NNPC (1994) (supra)** to the effect that the proper order for the trial court to make is an order of dismissal of the plaintiff's action and not to merely

strike it out, and he urged the court as the strength of the authorities above to dismiss this action.

The claimant in response to the motion filed a four paragraphed counter affidavit dated the 4<sup>th</sup> day of July, 2022, and in the counter affidavit, it is stated that the depositions were purported to misrepresent, mislead and they are untrue evidence given in order to waste the court's time, claimant's time and finances. The claimant denies the allegation that he was paid ₦500,000.00 cash or any other money in respect of his professional services rendered on behalf of the defendants at the Chief District Court I Administrative in Adamawa State Judiciary, Yola, but he was given a postdated cheque of Intercontinental Bank Plc for ₦300,000.00 but same amount was never paid.

He stated that the defendants feigned bankruptcy and urged him to go on with their case and that they will pay as soon as the order is vacated for the sum of ₦500,000.00 immediate cash and that they will redeem their Intercontinental Bank Plc Cheque valued ₦300,000.00 he said he could not as a matter of policy of Forte Peter Law collect cash of any amount. He also denies handling any brief or transaction with another of the defendants' company known and called Anointed Treasurers Limited and no Cheques valued ₦300,000.00 and ₦150,000.00 were issued to him as professional or any other services. He stated further that the cheque of Intercontinental Bank Plc issued of Intercontinental Bank Plc issued to him by the 1<sup>st</sup> defendant is for his bail processing at the EFCC on allegation of fraud. He stated that he provided one of the 1<sup>st</sup> defendant's sureties at the EFCC bail called Emmanuel Ekqughu who was then a level 14 officer in the Federal Ministry of Industries at Area I, Garki. He stated further that one Maurice, who is court registrar at Magistrate Court Zone 2, Wuse, endorsed for the 1<sup>st</sup> defendant as the 2<sup>nd</sup> surety before the 1<sup>st</sup> defendant was released from EFCC bail.

The claimant stated further that why the ₦300,000.00 became due and unpaid and the defendants had no known address and were avoiding him and refusing to pick his calls, he prepared a petition against them for issuance of dud cheque which is criminal offence and submitted same to the Commissioner of Police, FCT Command. He stated that in a co-incidence, he met the 1<sup>st</sup> defendant at Sky Memorial shopping Plaza in Wuse Zone 5, Abuja, and upon seeing him, he called the Investigating Police Officer in the matter, and before he could get there, he said, the 1<sup>st</sup> defendant attempted to escape and so he ran and called the mobile police force unit on duty around Zone 5 who then arrested him and took him to FCT Command. That his secretary who brought the defendants' bill of charges which the defendant was granted bail as the offence he was arrested for was bailable but that he still jumped bail and is still a wanted man till date and the police has not concluded the criminal case against the 1<sup>st</sup> defendant.

It is stated by the claimant that this matter is for payment of professional fees and not a simple contract as alleged by the defendants as it is guided strictly by the Rules of Professional Conduct provided by the Nigerian Bar Association empowered by Legal Practitioners Act as such it is caught by statute of limitation. It is stated that the counting of time in cause of action can be stopped by fraud, mistake or misrepresentation and that the police have not concluded their investigations.

Now, let me formulate issue for determination in this application, to wit:

**Whether the claimant's action is statute barred?**

In deciding whether an action has become statute barred, the first issue to deal with is when the cause of action arose for the purposes of determining the period within which the plaintiff is allowed to bring the action. See the case of **Kolo V. First Bank of Nigeria Plc (2002) FWLR (pt 116) 992** where

the Court of Appeal extensively dealt with the issue especially in determining when a cause of action arose, and it was also held that it is trite law that in an action for the recovery of debt, the cause of action accrues upon demand for payment of the debt. If no demand is made, a cause of action does not arise and no action can be commenced.

It is pertinent to look at the statement of claim with a view to see if there is a cause of action and it accrued.

By paragraph 19 of the statement of claim, the claimant averred that he petitioned the 1<sup>st</sup> defendant to the Federal Capital Police Command and petition was assigned to Commissioner of Police Monitoring Unit and the 1<sup>st</sup> defendant was arrested and granted bail at the conclusion of the investigation, and the police invited the 1<sup>st</sup> defendant to arraign him and he jumped bail and never been seen again till December, 2019.

The claimant also in paragraph 20 of the Statement of Claim averred that he had served the defendants the bill when the 1<sup>st</sup> defendant was arrested by the police. The claimant said he has pleaded the bill, however, by the document annexed to the statement of claim, there is no bill of charges pleaded.

Looking at the paragraphs 19 and 20 of the Statement of Claim of the claimant, it can be seen that even though it was pleaded that a bill of charges was served on the defendants, no date was mentioned as to when such bill of charges was served on the defendants, but it was stated that the bill of charges was served as at the time when the 1<sup>st</sup> defendant was arrested by the police.

In determining when the 1<sup>st</sup> defendant was arrested by the police, and where the date of such arrest was not mentioned in the statement of claim, and no documentary evidence as to the bill of charges was annexed to the statement of claim, recourse has to be had to the supporting affidavit and the counter affidavit of both parties.



Thus, it is deposed to the fact by the defendants/applicants in paragraph 3(j) and (k) that the 1<sup>st</sup> defendant/applicant was arrested by the FCT Police Command in 2009 over the Legal fees claimed by the plaintiff/respondent against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants/applicants and he served 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants/applicants through the 1<sup>st</sup> defendant/applicant with a bill of charges covered the transaction in dispute before this court, and that this demand was made in 2009 with a bill of charges served on the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants/applicants at the police station. While the claimant/respondent deposed in paragraph 4(h) to the fact that he called the investigating police officer in the matter before his arrival, the 1<sup>st</sup> defendant wanted to escape and he ran to the mobile police force unit with duty bit at the Zone 5 Wuse and Julius Berger Junction alerted the police, they arrested the 1<sup>st</sup> defendant at the exit gate of Sky Memorial Plaza. The 1<sup>st</sup> defendant fought the police and resisted arrest but the police over powered him and force took him to FCT Police Command at Old CBN Garki 2, Abuja. The claimant stated in his counter affidavit that he called his secretary who brought the defendants' bill of charges which by the assistance of the investigation police officer served the 1<sup>st</sup> defendant and the 1<sup>st</sup> defendant collected for himself, 2<sup>nd</sup> and 3<sup>rd</sup> defendants.

Now throughout the counter affidavit of the claimant/respondent there is no where it was denied that the police arrested the 1<sup>st</sup> defendant in 2009, and that there is no where it was denied that the bill of charges was served on the 1<sup>st</sup> defendant in 2009.

The implication of not denying, the fact that the arrest of the 1<sup>st</sup> defendant and service of the bill of charges on him was in 2009 as deposed by the 1<sup>st</sup> defendant/applicant in his affidavit in support, by the claimant in his counter affidavit is that the fact was admitted by the claimant. See the case of

**F.A.N.N. V. W.E.S. (Nig) Ltd. (2011) All FWLR (pt 574) p. 46 at pp. 55-56, paras. H-A** where the Supreme Court held that any averment in an affidavit which has not clearly, unequivocally and directly been denied is deemed admitted. In the instant case, the claimant not denying that the 1<sup>st</sup> defendant was arrested and service of bill of charges was served on the 1<sup>st</sup> defendant in 2009, he is deemed to have admitted that fact. In considering this application, the bill of charges was served on the 1<sup>st</sup> defendant/applicant in 2009, and that was when the 1<sup>st</sup> defendant was arrested by the police.

Now, having ascertained when the cause of action arose, and that was in 2009, the question is:

**Whether this action that was instituted on the 10<sup>th</sup> of March, 2021 is statuted barred?**

It is the contention of the defendants/applicants that the relationship that was between the claimant and the defendants was a simple contract, while it is the contention of the claimant/respondent that the recovery of legal practitioner's professional fee is not a simple contract, but is guided by the Rules of Professional Conduct which was made pursuant to Legal Practitioners Act.

Both counsel did not cite any authority to back up their contentions, however, the question is:

**Whether the relationship between the claimant and the defendants is that of a contract?**

In finding an answer to this, I refer to the case of **E.I.B. Building Society Ltd V. Adebayo (2004) FWLR (pt 193) p. 232 at 253, paras. B-C** where the Court of Appeal, Calabar Division held that, the position of a counsel in relation to his client has been likened to that of an independent contractor. The analogy applies only to the freedom in the mode of operation by both operators. See also the case of **Niger-Benin Transport Co. Ltd. V. Okeke (2005) All FWLR (pt 256) p. 1289 at 1304, paras. G-H** where the Court of Appeal, Benin Division held that the relationship between counsel and client

arises from contract, and the contract is with respect to the services which counsel has agreed and undertaken to render in respect of his client. In the instant case, and based upon the above authorities, I hold that the relationship between the claimant and the defendants is contractual, and to this I so hold.

I have gone through the Rules of Professional Conduct for Legal Practitioners and I have not seen where it is enshrined that the relationship is not contractual, and if not so, what is it? The claimant/respondent did not profess any argument as to what type of relationship that was between him and the defendants. To this, I so hold that the argument of the claimant does not hold water and it is hereby discountenanced.

Thus, section 7(1) (a) of the Limitation Act Cap. 522 LFN (Abuja) provides:

**“(I) The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued:**

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

By the above quoted provisions, it can be inferred to mean that actions that bother on contract cannot be maintained after the period of six years from the date on which the cause of action accrued. In the instant case, the cause of action accrued from the date when the demand for professional fee was made, that was when the bill of charges was served on the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants, and that was in 2009. From 2009 to the 10<sup>th</sup> of March, 2021 is certainly beyond six years, and therefore I hold the view that this action is caught up by statute of limitation, and is therefore statute barred.

The claimant/respondent in his counter affidavit alleged fraud on the part of the defendants/applicants, however, the fraud was not alleged and particularised in the statement of claim, and therefore this goes to no issue as the issue of fraud

is never in contention between the parties in the statement of claim of the claimant. See the case of **Dekit Construction Co. Ltd. V. Adebayo (2011) All FWLR (pt 596) p. 518 at 535, para. G** where the Court of Appeal, Ibadan Division held that it is the plaintiff's claim, that determines the issues in contention between the parties. In the instant case, the claimant in his statement of claim did not raise the issue of fraud, and therefore cannot be allowed to raise in his counter affidavit in opposition to this application.

In the circumstances of this application, I have come to the conclusion that the action is statute barred and therefore cannot be maintained by the claimant.

Also where a court finds that the claim of the plaintiff is statute barred, the appropriate order to make by the court is that of dismissal since by such finding, the claim of the plaintiff is stale, unmaintainable and unenforceable in other court of law. See the case of **Dangana V. Gov., Kwara State (2011) All FWLR (pt 593) p. 1861 at pp. 1904 – 1905, paras. H- A.**

The claims of the claimant against the applicants are hereby dismissed.

Hon. Judge  
Signed  
9/11/2023

Appearances:

Sir C.U. Peters Esq appeared for himself as the claimant.

A.G. Inyandu Esq appeared for the defendants.

Hon. Judge  
Signed  
9/11/2023