

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

**BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS**

**COURT: 28**

**DATE: 16<sup>TH</sup> February, 2022**

**FCT/HC/GWD/CV/15/21**

**BETWEEN**

**NYAM WILLIAMS DIWO -----**

**CLAIMANT**

**AND**

**BITRUS BARAU-----**

**DEFENDANT**

**JUDGMENT**

Before the Court is a preliminary objection No. M/7847/2021 dated and filed on the 8<sup>th</sup> July, 2021 raised by the defendant/Applicant challenging the jurisdiction of this Court to entertain this suit as presently constituted as it has become statute barred by virtue of section 15(2) of the limitation act of the FCT 2004.

Attached to this application is a 3 paragraph affidavit deposed by one Blessing Ochuba the litigation secretary in the law firm of Counsel to the Defendant/Applicant wherein she avers to the following facts:-

That the Claimant/Respondent institute an action for declaration of title over a piece of land measuring 1300 square meters situate at Plot No. 260 Cadastral Zone EO5 within Kubwa Extension III District, FCT Abuja with old file no. KD 2912 and new file No. KD 10263 against the Defendant/Applicant.

That in the Claimant/Respondent's statement of claim, he claims that he acquired the said land in 2003 from one Yakubu Abashiya and noticed the presence of the Defendant/Applicant on the said land in 2007.

That in January, 2021 Claimant's/Respondent discovered that the Defendant/Applicant had almost finished building a duplex on the said land that the Defendant/Applicant acquired the said piece of land in 2005 through a power of attorney donated by one Ibrahim Zakari.

That the period from which the Claimant/Respondent discovered that the Defendant/Applicant is carrying on activities on the said land to the period when this suit was instituted as an action before the Court is 14 years. That the suit has become statute barred as it is caught up by the Limitation Act (LA) FCT 2004.

Annexed to this application is the Claimant statement of claim an affidavit in support, irrevocable power of attorney and marked as exhibit A – consecutively and Defendant/Applicants written address in support of the notice of preliminary objection wherein Counsel on behalf of the Defendant/Applicant states that the statutes of Limitation Act(LA) defines the period within which a law suit can be brought to a Court if such period specified under the law has elapsed it means that the law suit cannot be filed again because the law prohibits the Claimants from filling such suit see ***MERCANTILE BANK OF Nig. PLC VS FETCCO NIG LTD (1998) 2 NWLR (pt 540) 143 at 156-157.***

In arguing his sole issue before the Court whether this suit as presently instituted before this Court is statute barred? Counsel cited the case of ***INEC VS OGBADIBO L.G & ORS (2015) LPSLR 24839 SC.***

Wherein the Supreme Court set out the yard stick for determining whether an action is statute barred thus:-

- A. The date when the cause of action accrued
- B. The date of commencement of the suit as indicated in the writ of summons
- C. Period of time prescribed to bring an action to be ascertained from the statute in question. Counsel submits that the Claimant/Respondent by his statement of claim noticed the Defendant/Applicant presence on the said land in 2007.

That he commenced this suit on the 9<sup>th</sup> February, 2021. That section 15 (2)(a) of the Land Act (LA) chapter 522 L. FCT 2004 stipulate that the time within which to bring an action in relation to land dispute within the FCT is 12years. That the Claimant has slept on his legal right and urged the Court to resolve this issue in favour of the Defendant/Applicant and dismiss this suit and award cost against the Claimant/Respondent.

In response, the Claimant filed a counter affidavit dated and filed on the 3<sup>rd</sup> November, 2021 and a reply on point of law to the Defendant's notice of Preliminary objection dated 14<sup>th</sup> October, 2021 and filed on the 15<sup>th</sup> October, 2021 wherein Counsel on behalf of the Claimant formulated one issue for determination.

viz

Whether the Claimant's suit is statute barred as claimed by the Defendant to rob off this Court of jurisdiction to try this case.

Counsel answered this in negative and submits that what constitutes a cause of action is the entire set of circumstances giving rise to an enforceable claim. See ***EDIAGBON VS APC (2019) ALLFWLR (pt1021) page 186 paragraph D-E*** . Counsel submits that the cause of action in this suit arose in the year 2021 as seen in paragraphs 25, 26 and 27 of the Claimants statement of claim and paragraphs 23 and 24 of the Claimants affidavit see ***NWEKE VS NNAMDI AZIKIWE UNIV. AWKA (2018) ALLFWLR (pt. 941) at page 190 paragraph A-D*** . Where there had been a continuance of damages or injury, a fresh cause of action arises from time to time and so often the damage or injury is caused. That the period prescribed by limitation Act as stated by the Defendant in section 15 (2) (a) Could have been against the claimant only if the Claimant has not been in the possession of his plot of land. That the claimant has been in the possession of his land since 2007 till date and has built a fence . Counsel cited section 15 Limitation Act (LA) L FCT 2004.

Counsel concluded that the Defendant's preliminary objection challenging the unfettered and constitutional power of this Court to adjudicate on this suit is premature. Counsel urged the Court to discontinue in its entirety same urged the Court to award a cost of ₦1,000,000.00 against the Defendant for wasting the time of the Court. Counsel to the Defendant in response urged the Court to strike out the Claimants reply on point of law based on the provision of order 43 (3) of the rules of this Court. Counsel also submits that the Claimants paragraphs 3 A,B D,P and T it should be struck out based on section 115 (2) (3) and (4) of the Evidence Act 2011.

The Defendant/Applicant filed a further and better affidavit in response to the Claimants/Respondent counter affidavit dated and filed on the 10<sup>th</sup> November, 2021 deposed to by the Defendant/Applicant wherein he avers that he has been in physical possession of the said land since 2005. That he

spoke to the Claimant in 2021. That the name of the Claimant/Respondent is not on the title documents exhibited by him but the name of one Yakubu Abashiya who is not a party to this suit. That from the said title document of Yakubu Abashiya the location of the claimants land is somewhere else. Attached to this affidavit are 3 exhibits and a written address. Where a Court is to determine whether a claim is statute barred it must examine the applicable legislation. In respect of the suit before it. In otherwords it is a recovery of land, a recovery of debt or a matter of contract or tort. After such a determination since different periods apply to different actions the Court would now determine when the cause of action occurred by examining the writ of summons and statement of claim. If the Court is satisfied that there is a cause of action and when it arose, it will then compare the date when the cause of action occurred by examining the writ of summons and statement of claim. If the Court is satisfied that there is a cause of action and when it arose, it will then compare the date when the cause of action arose with the date the writ of summons was filed. If the period when the cause of action occurred and the time the suit was filed is beyond the stipulated period in the Limitation Law, then the suit is statute barred and must be struck out. See ***JFS INVEST. LTD VS BRAWAL LINE LTD & ORS (2010)18 NWLR (pt 47)***, the reason being that the suit would not have been initiated by due process of the law. It would then rob the Court of jurisdiction to adjudicate on it. In the instant case, the Defendant/Applicant Counsel position is that the period from which the Claimant/Respondent discovered that the Defendant/Applicant is carrying on activities on the said land to the period when this suit was instituted as an action before this Court is 14 years which inadvertently means that this suit has been statute barred as it is caught up by the Limitation Act of the FCT (2004).

See Defendant/Applicant paragraph 3 (1) (j) of affidavit in support of notice of preliminary objection and paragraphs 2,3 of their written address in support. In respect to the argument Counsel on behalf of the claimant respondent submits that the cause of action in this suit arose in 2021 (see Claimant/Respondent reply on points of law and written address in support of Counter affidavit. A quick perusal at the fact presented to the Court show that the Claimant/Respondent claim that he noticed the presence of a trespasser in this case the Defendant on the land in 2007. See Claimant/Respondent paragraph 16 and 17 statement of claim paragraph 2.9 (d) of Claimants reply on points of law.

While the Defendant/Applicant claim that he has been in peaceful possession of the said land since (2005) see Defendant/Applicant paragraph 2 of further and better affidavit paragraph 3 (G) of affidavit in support of notice of preliminary objection.

In determining the date of cause of action in this suit see ***COMMISSIONER FOR LAND AND SURVEY BORNO STATE VS BASHARA (2018) LPELR 46320.*** It was held that the cause of action arose in 2014 and because the suit was instituted in 2015 and the initiation period in respect of recovery of land or interest on land is 12 years. It was held that the action was not caught by statute of limitation. Applying this to the instant case before the Court, the cause of action to my mind is the period or year both parties started any form of interaction whether verbal or otherwise over the piece of land.

Claimant /Respondent submit that he noticed a trespassers presence on the land in 2007 while Defendant/Applicant claims he has been in possession and on the land since (2005). There was however no form of interaction between any of the parties. The 1<sup>st</sup> times both parties made any form of

interaction with each other over the land was in 2007. See Claimant paragraph 16,17 and 18 of the Claimant statement of claim, 1<sup>st</sup> witness deposition on oath paragraphs 9,10,11 and 2<sup>nd</sup> witness deposition on oath with emphasis on paragraph 12 paragraph 8,9,10 and 11 of Claimants paragraph 2,9 of claimants reply on points of law. See Defendants paragraph 12 of statement of defence admission to Claimant paragraphs 18 of statement of claim paragraph 16 of Defendants witness statement on oath.

The above paragraph 12 and 16 of defendants statement of defence and Defendants witness statement on oath constitute an admission that indeed the Claimant approached the Defendant showing him his title documents and warned him to desist from trespassing, admitted fact need no further proof see ***IBOTILE & ORS VS ELP PETROLUM (2019) LPELR 47P40 CA.***

This suit was instituted in February, 2021 see section 15(2) (a) of the Limitation Act cap 522 LFCT 2004 provides:-

*" No action by a person to recover land shall subject to paragraph B, of this subsection be brought after the expiration of 12 years from the date on which the right of action accrued to the person bringing it or if it first accrued to same person through whom he claims to the person"*

Therefore statute has put it at 12 years from the date on which the right of action accrued. The 2<sup>nd</sup> time both parties agreed that they interacted over the land was in January 2012. See paragraph 18 of Defendant witness statement on oath paragraphs 19 and 20 of Defendants statement of defence, paragraph 18 of Defendant's further affidavit and paragraph 2,9 (1)

of claimants reply on points of law, paragraph 25 of statement of claim. The Claimant first discovers a trespassers presence on the land in 2007. The defendant who claims he got his title to the land in 2005 first learnt about the Claimant in 2007. See paragraph 16 of Claimant statement of daim paragraph 16 of Claimants witness statement on oath. Both parties also made interaction over the land in 2007 as earlier stated in **AREMO VS ADEKAYE & 2OR (1999) LPELR 5990 CA.** the Court stated that the statute of limitation begins to run from the moment the cause of action accrues, not when it was discovered see **SHELL PETROLEUM DEV VS FAEL (1995) 3 NWLR (pt 382) 148- 185.** To my mind, the cause of action accrued in (2007) when both parties interacted over the land. The Claimant reply on points of law based on order 43,(1),(3) Rules of the Court. The Defendants notice of preliminary objection before the Court was filed and dated 8<sup>th</sup> July, 2021 see order 43 (1) (3) states

*"When the other party intends to oppose the application he shall within 7 days of the service on him of such application file his written address and may accompany it with a counter affidavit."*

The Claimant's reply on point of law are dated on the 14<sup>th</sup> October, 2021 and filed on the 15<sup>th</sup> October, 2021 while the counter affidavit is dated and filed on the 3<sup>rd</sup> November, 2021. A perusal of the case file show that there is no application by the Claimant for an extension of time order 43 (1) (3) used the word shall to specify the duration of time within which the Claimant is to respond to the application. Also the Claimant counter affidavit offends section 115 (2)(3) of the Evidence Act. Section 115 (2) (3) of the Evidence Act provides:-



2. An affidavit shall not contain extraneous matter by way of objection or prayer or legal argument or conclusion.

3. When a person deposes to his belief in any matter of fact and his belief is derived from any source other than his own personal knowledge he shall set forth explicitly the facts and circumstances forming the grounds of his belief.

4. When such belief is derived from information received from another person, the name of his informant shall be stated and reasonable particulars shall be given respecting the informant and the time, place and circumstances of the information this satisfy paragraph 115 (4) of the Evidence Act . However paragraphs 3 (g) (i) (j) , (r ) (j) of the said counter affidavit to my mind offend section 115 (2) as they seems to be conclusion rendered by the Deponent.

Whether the Defendants affidavit in support of his preliminary objection was properly sworn before the commissioner for oat is unfounded. In the whole I have looked at the processed filed by both sides. I have equally analyzed same in this judgment however above all is the applicability of the status of Limitation Act applicable to FCT this is the crux of the matter in this Court. On this issue I submit that the law is clear and now firmly settled that where a statute of Limitation provides within which an action must be filed in Court the said action must be filed within the said time failure to do that will make the right of action to be extinguished as Tobi, JCA (as he then was) states in ***MERCANTILE BANK NIG. LTD VS FCTECO LTD (1988)3 NWLR (Pt540)142-156 157*** as follows:-

*"A statutes of limitation of action is designed to stop or avoid a situation where a Plaintiff can commenced action anytime he feels like doing so, even where human memory would normally have faded and*

*therefore failed to put in another language by the statutes of limitation a Plaintiff has the freedom of the air to sleep or slumber and wake up at his own time to commence an action against a Defendant the different statutes of limitation which are essentially formulated on the principle of equity and fair play will not avails such a sleeping or slumbering Plaintiff a statutes of limitation."*

Such as Limitation Act in which the law removes the right of action, the right of enforcement and the right of judicial reliefs in a Plaintiff and leaves him with a bare and empty cause of action which he cannot enforce if the alleged cause of action is statute barred, that is to say, if such a cause of action is instituted outside statutory period allowed by such law see ***IBRAHIM VS JUDICIAL SERVICES COMMISSION (1998) 4 NWLR (pt 594) 1 at 31-33.***

In ***TEXACO PANAMA INCORPORATION VS SPDC NIG. LTD (2002) LPELR – 3146 SC.*** The law is clear that a statutes of limitation is one which provides that no Court shall entertain proceedings for the enforcement of certain right if such proceedings were set on foot after the lapse of a definite period of the time, reckoned as a rule from the date of the violation of the right from the application and the affidavit in support of the same or the paragraph contained in the counter affidavit where there are some abnormal made by the claimant and the entire process and the argument for and against I am of the firm view that this action can be said to have caught with the provision of the limitation Act section 15 applicable in the FCT particularly s 15(d) of the limitation act consequently based on the judicial authorities cited above it become imperative on the part of the Court to dismiss this action. Accordingly this action is hereby dismissed. I

also award the cost of ₦50,000.00 in favour of the Defendant against the Claimant

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**HON. JUSTICE M.S IDRIS**  
**(PRESIDING JUDGE)**  
**16/02/2022**