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

THIS MONDAY, THE 30TH DAY OF MAY, 2022

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/1648/2020

BETWEEN:

SUNDAY OYONG OBI …….. PLAINTIFF

AND

ASO SAVINGS & LOANS PLC …… DEFENDANT

RULING

By a notice of preliminary objection dated 30th October, 2020, the defendant contends that the court lacks the jurisdiction to entertain this suit as presently constituted and should dismiss same on the ground that the action is caught by the Limitation Act and thus statute barred.

The grounds upon which the objection are predicated are as follows:

a. **By the provision of Section 7 (1) (a) of the Limitation Act Cap 522 of Laws of FCT Nigerian an action founded on simple contract shall not be brought after the expiration of six years.**

b. **By the provision of Section 7 (4) of the Limitation Act Cap 522 of Laws of FCT Nigeria and subject to the provisions of Section 8 of this act, an action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued.**

c. **The present case is founded on simple contract and tort.**

d. **The cause of action in this case arose on the 29th of November 2012 when the Defendant's property was demolished by the officials of FCDA and Development Control the subject matter of this suit; whereas the present suit was commenced on the 27th of May 2020 more than 6 years after the accrual of the cause of action and outside the prescribed statutory period within which the suit of that class ought to have been instituted for damages for breach of contract and negligence.**

e. **By reason of the above this action is statute barred, and once an action is statute barred, a court of law is deprived of the requisite competence or jurisdiction to adjudicate over it by the operation of relevant statue or law, which, in this case, is the provision of Section 7 (1) (a) and 4 of the Limitation Act Cap 522, Laws of FCT Nigeria.**

f. **On the premises of grounds (a) to (e) above, this action is liable to be dismissed.**

The objection is supported by a written address in which one issue was raised as arising for determination:

Whether this suit as statute barred and this Honourable Court is consequently robbed of the jurisdiction to entertain same.

The submissions on the above issue forms part of the Record of Court. I shall refer to the submissions as I consider necessary in the course of this Ruling. The summary of the address is that the present action is founded on contract and that it arose on 29th November, 2012 when defendants properly was demolished by officials of FCDA and Development Control, the subject matter of this suit, but the action was filed on 27th May, 2020 more than 6 years after the accrual of the cause of action and outside the prescribed statutory period within which the suit of that clause ought to have been instituted as stipulated under **Section 7 (1) (a) and 4 of the Limitation Act Cap.522 Laws of FCT, Nigeria**.

In response the **plaintiff/respondent** filed a **counter-affidavit** and a written address in opposition. Two issues were raised as arising for determination:

1. **Whether or not the objection in the circumstance of this case, does not amount to demurrer as abolished by ORDER 23 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018.**

2. **Whether this suit is statute barred as to rob this court of jurisdiction.**

Submissions were equally made on the above issues which forms part of the Record of Court. I shall equally refer to the address as I consider necessary in the course of this Ruling.

The summary of the submissions on issue 1 is that the extant application raises issues of law and that the defendant has not filed his defence raising those issues. Accordingly that the objection is incompetent as it is in the nature of demurer proceedings which has been abolished by the Rules of Court.

On **issue 2**, the case made out is simply that the present action is not statute barred as the cause of action flowing from the statement of claim relates to unlawful and illegal deductions which accrued on 4th December, 2019 and therefore not caught by the provisions of **Sections 7 (1) and 4 of the Limitation Act, Cap 522**.

The defendant/applicant filed a reply on points of law on the issue of demurrer and contends that it is not applicable to a jurisdictional challenge which the present objection deals with.

I have carefully considered all the processes filed and submissions made by learned counsel on both side of the aisle. The narrow issue is whether the present action is statute barred as contended by the applicant and it is a matter to be settled on fairly settled principles.

Let me start by making some prefatory remarks including on the contentious point of whether the extant jurisdictional challenge by applicant is a demurrer. It is stating the obvious that firstly, jurisdiction is very important and indispensable in the administration of justice. It is fundamental as the validity or otherwise of any proceedings turns on its existence or non-existence. See **Uti V Onoyiwe (1991) 1 SCNJ 25 at 49.**

Secondly and as rightly alluded to by all counsel in this case, the issue of jurisdiction is a crucial question of competence extrinsic to the adjudication on the merits. It is a matter obviously which the court cannot dance around with

and is usually given the utmost consideration when raised. In the often cited case of **Madukolu V. Nkemdilim (1962)1 AII W.L.R 587 at 595; The Supreme Court** instructively stated as follows:

"A court is competent to adjudicate when:

a) It is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or another; and

b) The subject matter of the case is within its jurisdiction and there is no feature which prevents the court from exercising its jurisdiction.

c) The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

Any defect in the competence of the court is fatal and the proceedings however well conducted and decided are a nullity as such defect is extrinsic to the adjudication".

For the jurisdiction of the court to crystallize into hearing a matter, the three ingredients above must co-exist conjunctively.

Thirdly and finally on the remarks, the relationship between jurisdiction and demurrer must not be confused as they are distinct legal processes. Proceedings by way of demurrer may have been abolished under extant Rules of Court but it is imperative to understand the difference between jurisdiction and demurrer since proceedings in lieu of demurrer are still available. The Supreme Court in **NDIC V CBN (2002) 7 NWLR (pt.766) 272 at 296 – 297** instructively brought out the dichotomy between the two concepts thus:

"The tendency to equate demurrer with objection to jurisdiction could be misleading. It is a standing principle that in demurrer, the plaintiff must plead and it is upon that pleading that the defendant will contend that accepting all the facts pleaded to be true, the plaintiff has no cause of action, or, where appropriate, no locus standi…. But as already shown, the issue of jurisdiction is not a matter for demurrer proceedings. It is much more fundamental than that and does not, entirely depend as such on what

a plaintiff may plead as facts to prove the reliefs he seeks. What it involves is what will enable the plaintiff to seek a hearing in court over his grievance, and get it resolved because he is able to show that the court is empowered to entertain the subject matter. It does not always follow that he must plead first in order to raise the issue of Jurisdiction."

Therefore in demurrer, now branded application in lieu of demurrer, parties to an action must file their pleadings, the statement of claim and defence. Then the defendant is entitled to raise his point of law, which may include but not limited to the issue of jurisdiction as a preliminary issue in his statement of defence. Whereas if the important issue of jurisdiction is raised, the parties need not plead nor the defendant peremptorily required to raise the jurisdictional issue in his statement of defence; such a defendant is free to file a preliminary objection to the jurisdiction of the court with the writ of summons as the only process before it, that is without pleadings. See **Elabanjo V Dawodu (2006) 15 NWLR (pt.1001) 76; Akintaro V Egungbohum (2007) 9 NWLR (pt.1038) 103.**

The only point to perhaps add flowing from the above is that a complaint that a case is statute barred is jurisdictional in nature. In **Ajayi V Military Administrator of Ondo State (1997) 5 NWLR (pt.504) 237 at 254**, the Apex Court per Eso JSC (of blessed memory) stated thus:

"The issue of whether or not an action has been statute-barred is one touching on jurisdiction of court for once an action has been found to be statute barred, although a plaintiff may still have his cause of action, his right of action, that a legal right to prosecute the action has been taken away by statute. In that circumstances, no court has the jurisdiction to entertain his action."

The bottom line is that the fundamental question of jurisdiction is not predicated on the filing of pleadings. A challenge to jurisdiction is not a demurrer or a matter for demurrer proceedings. See **Arjay Ltd V Airline Management Support Ltd (2003) 9 NWLR (pt.820) 577 at 625 A-B, 603H; Tiga Green Farms Agric (Nig.) Ltd V Mitsai O.S.K. Ltd (2005) 17 NWLR (pt.953) 70 at 83-84**.

Now to the substance. It is stating the obvious that certain enactments stipulate a time limit within which a party who alleges that his civil rights and obligations

are stamped on must approach the court for redress. If such a wronged party fails or neglects to institute an action on schedule, as permitted by that enactment, his suit becomes stale and statute barred. Such a party is taken to be indolent who has slept on his violated rights. His tardiness in not taking action within the statutory period, makes the court to lose the jurisdiction to entertain his claim. See **Ajayi V Military Administrator of Ondo State (supra); Ekiti State V Aladeyelu (2007) 14 NWLR (pt.1055) 619**.

The limitation law the present action is said to have fallen foul of is the provision of **Section 7 (1) (a) and (4) of the Limitation Act, Cap 522** which provides thus:

"Actions in Contract and Tort and certain other Actions

Action barred after certain periods of six years

7. (1) 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
b. ...

(4) Subject to the provisions of Section 8 of this Act, an action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued."

The above provisions appear to me clear. In law, it is settled principle of general application that where the words of a statute are clear, the court shall give effect to their literal meaning. See **Adewunmi V A.G. Ekiti State (2002) 2 NWLR (pt.751) 474 at 511 – 512 H-B**.

Flowing from the above, by virtue of the provision of **Section 7 (1) (a)** above, actions founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action arose.

With respect to **Section 7 (4)** it also similarly contains a 6 years time sensitive criteria for actions founded in tort however subject to the provision of Section 8 of the Act. In law wherever the expression "subject to" is used at the commencement of a statute, it is an expression of limitation. It implies that what the section or subsection is subject to shall govern, control and prevail

over what follows in that section or subsection. See **Odjegba & ors V Odjegba (2004) 2 NWLR (pt.858) 566 at 582**.

I have here considered the provision of **Section 8** and it does not in any way impact or have any bearing with the extant objection. In either situation, whether the cause of action is predicated on contract or tort as we will soon determine, the limitation period is six years.

How then does a court know or determine that a suit is statute barred?

The formula on the authorities is fairly straightforward. A court looks at the filed writ of summons and statement of claim alleging when the wrong was committed by the defendant, that is when the **cause of action** accrued, and situate the date with that when the writ of summons was filed in court. If the date of the filing as endorsed on the writ, is beyond that permitted by the limitation law, then the action is statute barred. See **Amusan V Obideyi (2005) 14 NWLR (pt.945) 322; Asabosa V Pan Ocean Oil (Nig.) Ltd (2008) 4 NWLR (pt.971) 595**. If otherwise, then it is not statute barred. Let me quickly add that on the authorities, negotiation is not reckoned with as it does not break the period of limitation. That is to say time for limitation runs during negotiation. See **N.B.N Ltd V A.T. Eng. Co. Ltd (2006) 16 NWLR (pt.1005) 210; Ibeto Cement Co. Ltd V A.G. Fed (supra).**

The duty of court now is to determine the cause of action in this case, when it accrued and most importantly whether the provision of **Section 7 (1) (a) and 4** is applicable to the case of plaintiff. In resolving this issue, the court must have recourse to the statement of claim. Parties on both sides have understandably set out in different terms the cause of action and when it accrued. That is their right but then the court must still do its duty by carefully perusing the claim to precisely situate the cause of action and when it accrued.

Perhaps it may be apposite to first define what a cause of action is. In **Akibu V Oduntan (2000) 13 NWLR (pt.685) 446 at 463**, the Supreme Court defined cause of action as follows:

"A cause of action is defined as the entire set of circumstances giving rise to an enforceable claim. It is in effect the fact or combination of facts which give rise to a right to sue and it consists of two elements:

a. **The wrongful act of the Defendant which gave the Plaintiff his cause of complaint, and**

b. **The consequent damage."**

I have here carefully gone through the writ of summons and the rather voluminous 50 paragraphs statement of claim. In so far as can be evinced from the statement of claim, the fact or combination of facts on which plaintiff has premised his right to sue seem not difficult to recognise and or discern.

I will highlight the **essence** of the case made out without going into unnecessary details. The claim situates that the **Nigeria Electricity Regulatory Commission** (NERC), the claimants employer, sometime in 2012 entered into a Mortgage servicing agreement with defendant to provide mortgage loan to its qualified staff to finance ownership of residential houses. The claimant is one of such qualified staffs.

It is the case of plaintiff that before the loan or mortgage facility was disbursed, the defendant must be "sure there is good title by conducting legal search and be satisfied that there is no encumbrance on the property before the Applicant can become a beneficiary." That after the defendant conducted a search around 30th April, 2012, which claimant considered improper, his employer approved the facility of N20, 000, 000 and directed the defendant to disburse same which defendant did. The claimant then commenced development and sometime on 29th November, 2012, a third party and officials of Federal Capital Development Authority and Development Control demolished the property which occasioned damages to him.

The claimant in 2013 commenced an action against Minister FCT and the FCDA for trespass and damages for the demolition but had to subsequently withdraw the case as the land was never allocated to the Estate Developer.

The narrative above situate a banker/customer relationship. The crux of the complaint against the defendant involves the alleged failure to properly conduct a legal search which according to claimant constitutes a breach of its duty to the plaintiff as his primary mortgage institution and provides the basis for the claims made as follows:

"1. A Declaration that the failure of the Defendant to conduct a legal search on the title of property at Plot No. 11 Defenders Family Estate, Sabon Lugbe South West Extention Layout Abuja situate at Goza Sabon Lugbe South West Plot 251, 257, 258 FCT Abuja submitted for the mortgage loan of N20, 000, 000 despite payment for legal search by the plaintiff to the defendant in line with the terms of the loan grant his negligent breach of her duty and undertaking.

2. A Declaration that the failure of the Defendant to conduct a legal search on the title of property despite the plaintiff's payment for the conduct of legal search and knowingly issued a false report of no encumbrance and proceeded to approve the loan and development of the land – Plot No. 11 Defenders Family Estate, Sabon Lugbe South West Extention Layout Abuja situate at Goza, Sabon Lugbe South West, Airport Road, Abuja with beacon nos 251, 257, 258 FCT Abuja with the loan fund is a "willful default" and "Breach of Contract" as provided in the Mortgage Service Agreement between the Defendant and Nigerian Electricity Regulatory Commission (NERC) before releasing the Mortgage loan to the Plaintiff.

3. A Declaration that the failure of the Defendant to conduct a legal search on the title of property despite the Plaintiff's payment for the conduct of legal search and knowingly issued a false report of no encumbrance and proceeded to approve the loan and development of the land – Plot No 11 Defenders Family Estate, Sabon Lugbe South West Extention Layout Abuja situate at Goza, Sabon Lugbe South West, Airport Road, Abuja with beacon nos. 251, 257, 258 FCT Abuja and more particularly described in the site plan provided by the Developer with the loan fund is a Breach of Contract between the Plaintiff and the Defendant as the Plaintiff's Primary Mortgage Institute (PMI) and Bank Customer/Banker with regards to the Mortgage Loan Account.

4. A Declaration that the actions of the Defendant amounts to a breach of its duty to the Plaintiff as his Primary Mortgage Institute (PMI) and Agent/broker of the Plaintiff in carrying out a proper legal search on the land Plot No 1 Defenders Family Estate, Sabon Lugbe South West Extention Layout Abuja situate at Goza, Sabon Lugbe South West, Airport Road, Abuja with beacon nos 251, 257, 258 FCT Abuja in line

with clause (o) and (v) of the schedule of the Mortgage Servicing Agreement.

5. **A Declaration that the Defendant's breach of its duty to the Plaintiff in not carrying out a proper legal search from the FCT Land's Administration office/Abuja Geographic Information System (AGIS) on the land – Plot No 11 Defenders Family Estate, Sabon Lugbe South West Extention Layout Abuja situate at Goza, Sabon Lugbe South West, Airport Road, Abuja with beacon nos 251, 257, 258 FCT Abuja and consequent issuance of a search report by the Lawyer engaged by the Defendants, upon which the Defendant approved the loan grant and development of the now demolished 4 bedroom duplex built on the property with the mortgage housing loan as a result of bad title to the land is detrimental and therefore exposed the plaintiff to pure economic loss.**

6. **A Declaration that it was the breach of the Defendant that exposed the Plaintiff to losses occasioned by the Demolition of the Plaintiff's Four Bedroom Duplex with attached Boys Quarter construction up to the roof at Plot No 11 Defenders Family Estate, Sabon Lugbe South West Extention Layout Abuja situate at Goza, Sabon Lugbe South West, Airport Road, Abuja with beacon nos 251, 257, 258 FCT Abuja by the Federal Capital Development Authority.**

7. **An Order of this Honourable directing or mandating the Defendant to indemnify or refund and/or pay to the Plaintiff the loan sum of N30, 060, 000.00 (Thirty Million, Sixty Thousand Naira only) being the Mortgage Loan granted to the Plaintiff utilized or used to develop the demolished mortgaged property as a result of the Defendant's negligence and/or willful default in line with clause 3.5 (b) of the Mortgage Servicing Agreement made on the 21st day of February 2012 between the plaintiff Employer and the Defendant as loss, brokered, supervised and approved by the Defendant which is being deducted from the Plaintiff including interest.**

8. **An Order of this Honourable Court directing or mandating the Defendant to stop all further deductions from the Plaintiff's salaries and allowances as well as from his Account with the Defendant in Account**

No. 1015217056 including the 1% service charge or any other charges and deductions on the Mortgage loan to the Defendant or in repayment of the Mortgage loan facility.

9. **An Order of this Honourable Court directing or mandating the Defendant to refund and/or indemnify the plaintiff of all deductions made or to be made from the Plaintiff's salaries and allowances by his employers – Nigerian Electricity Regulatory Commission (NERC), the real lender of the loan under their Housing Loan Scheme managed by the Defendant.**

10. **General Damages in the sum of N100, 000, 000.00 (One Hundred Million) Naira only against the Defendant in favour of the plaintiff for the willful default, negligence, fundamental breach, detrimental reliance, emotional and psychological trauma and economic loss and exposure by the actions of the Defendant occasioned by the demolition of the secured property for want of legal title.**

11. **Legal Cost in the sum of N1, 000, 000.00 (One Million Naira only).**

12. **10% interest per annum on the judgment sum from the date of final judgment debt is liquidated by the Defendants.**

OR IN THE ALTERNATIVE TO RELIEF 7

Special Damages in the sum of N30, 060, 000.00 (Thirty Million, Sixty Thousand Naira only) against the Defendant in favour of the plaintiff as par the valuation report and certificate for the loss occasioned by the demolition of the secured property dated 18th May 2013 for want of legal title."

I have deliberately highlighted the reliefs above to situate the **centrality** of the **legal search Report** to the case of the plaintiff.

By the trajectory of the claim, the substance of the narrative relating to this contentious legal search centers around paragraphs 14-19, 33 and 35 of the statement of claim. The case of claimant hinges or pivots on the circumstances surrounding the making of this search report. The key legal search report claimant contends was not properly conducted or prepared is dated 30th April,

2012 and pleaded in paragraph 19. It was after this search report that the N20 Million naira facility was disbursed to claimant sometimes on 28th May, 2012 and 28th November, 2012 and the claimant then commenced development in June 2012 and then the subsequent demolition on 29th November, 2012 vide paragraph 29 of the claim.

By paragraphs 32 – 33 of the claim, the claimant became aware of the defective search report after the demolition on 29th November, 2012. Paragraphs 32 and 33 of the claim reads thus:

"32. The Plaintiff after his property was demolished demanded for the legal search report of his property obtained from ABUJA GEOGRAPHIC INFORMATION SYSTEMS (AGIS) from the Defendant. He then discovered to his chagrin that the purported search report by ADIGWE CHAMBERS to the Defendant which the defendant relied and acted upon for the Approval was actually gotten from the Estate Developers, "Danemy Nigeria Limited" and not from Abuja Geographic Information Systems (AGIS) nor any Land Registry or Secretariat in the Federal Capital Territory.

33. The Plaintiff avers that he also discovered that the Defendant hired ADIGWE CHAMBERS to conduct the Legal Search and disengaged BA Legal Resources Alliance because the firm insisted on conducting a genuine legal search on the property at ABUJA GEOGRAPHIC INFORMATION SYSTEM (AGIS) for which the plaintiff had written them for compliance and cooperation."

The importance of this search report was not lost on plaintiff. In paragraphs 35-37 of the claim, he pleaded thus:

"35. That unfortunately it was on account of this purported legal search report by the law firm of ADIGWE CHAMBERS (acting on behalf of the Defendant) that confirmed that there was no encumberance on the property that ensured the release of the mortgage loan to the plaintiff to begin the construction of his 4-bedroom Duplex Apartment on the said land.

36. The Plaintiff further avers that the Defendant Bank and the Plaintiff's Commission (Employers) had made a legal search report by staff

participating in the NERC STAFF HOUSING LOAN SCHEME a mandatory requirement to qualify for the Housing loan and consequently it was mandatory for the Defendant to be paid by the Plaintiff to conduct the said search as provided in the agreement between the defendant and the NIGERIAN ELECTRICITY REGULATORY COMMISSION (MORTGAGE SERVICING AGREEMENT) with the commission.

37. The Plaintiff categorically avers that it was not his responsibility to engage a Lawyer of his choice to conduct the legal search report on his behalf to verify the authenticity or otherwise of the property in order to make him to qualify for the NERC STAFF HOUSING LOAN SCHEME but the responsibility of the Defendant which they all relied upon."

There may not be clarity with respect to specifics of dates of when claimant became aware of the defective search report but there is no dispute that the cause of action in this case arose sometime **end of 2012** after the demolition on 29th November, 2012 when he became aware of the said defective search report. The wrongful act has thus effectively crystallised and time effectively began to run for purposes of any breach related to the preparation of the defective search report in 2012. Indeed as at this date, there was in existence a person or party who can sue and another who can be sued and all facts had happened which are material to be proved to enable the plaintiff to succeed.

In law, cause of action arises on a date or from time when a breach of any duty or act occurs which warrants the person who is injured or the victim who is adversely affected by such breach to take a court action to assert or protect his legal right that has been breached or violated. See **A.G. Adamawa State & ors V A.G. Fed. (2014) LPELR-23221 (SC)**.

The point to perhaps underscore is that cause of action arises on the date of occurrence, neglect or default complained of and not the consequence of the neglect or default. Once a person will be adversely affected by a breach or any act which would warrant the taking of an action in court as in this case, a cause of action would have accrued. See **Mosojo V Oyetayo & ors (2003) LPELR – 1917 (SC); Dada V Aina & ors (2007) LPELR – 8305.**

Indeed the plaintiff could have commenced this action against defendant on similar terms years ago but by **paragraph 34**, he chose to sue the FCT Minister for the demolition of his property which he had to withdraw for reasons already stated.

The summary of the **complaint of plaintiff within the structure of the pleadings** and this finds eloquent expression in **paragraph 42** of the statement of claim thus:

"The plaintiff asserts that the defendant wilfully defaulted and grossly neglected its duty towards the plaintiff as well as breach their contract to conduct a thorough legal search before the loan can be approved and disbursed for the building of the property which he failed despite being paid."

There can therefore be no doubt that the cause of action in this case accrued end of 2012 when this search report was found by plaintiff not be genuine vide paragraphs 32 and 33 of his claim. The claimant concedes or agrees by paragraph 42 that the relationship with defendant with respect to the production of a thorough search report is contractual and if there was a failure to conduct the search as defendant was contractually bound, then the cause of action relating to that failure must logically arise around the period he found the report not be genuine towards end of 2012 after his property was demolished in November 2012.

I am in no doubt that the underlying mortgage transaction between parties was contractual in nature, and the making or procurement of the search report is a part of. The specific complaint with respect to the failure to do due diligence and get a proper search report on which all the reliefs sought are predicated on is equally contractual or founded on simple contract. Even the claim(s) for refund of the loan facility granted around June 2012 arising from the demolition which happened on 29th November, 2012 and the complaint of negligence on part of defendant are all rooted in contract and or tort. The nature of the claims presented in my considered opinion, comes within the class of claims covered by the provision of **Section 7 (1) (a) and (4) of the Limitation Act (supra).** An action for breach of contract founded on simple contract and negligence (tort) has a clear limitation period or time sensitive criteria of six (6) years.

If the cause of action in this case accrued latest **end of 2012**, when the plaintiff found the search report relied on for the transaction as not genuine, then this action ought to have been filed latest end of 2018 or even early 2019 and that is even been charitable. From an examination of the writ of summons in this case, it is glaring that the suit was filed on 27th May, 2020, clearly more than six years after the cause of action of claimant crystallised end of 2012 when he became aware of the defective search report. From end of 2012 or say December 2012 when the cause of action arose, to 27th May, 2020 when the action was commenced is about Eight years and definitely more than six years and has clearly fallen foul of the limitation law.

As much as I have sought to be persuaded, I have not been persuaded by the submissions of counsel to the plaintiff that this case is just about **"unlawful and illegal deductions from the plaintiffs account."** The Reliefs plaintiff's seeks which I had earlier highlighted gravely undermines such submission. The very foundation of the case of plaintiff and all the principal reliefs claimed are rooted on the alleged breach of the defendants contractual obligation to conduct and obtain a genuine legal search report. All other claims including the claim for unlawful deduction is ancillary to the principal relief(s) and does not define the essence of the cause of action and the extant dispute.

The bottom line here is that the claimant for reasons that are not apparent has chosen or elected to sleep on his right for far too long. In law, when a right accrues as in this case, it is the duty of the beneficiary to make moves to claim his right without any delay. At this point, the cause of action has accrued and is now enforceable through the instrumentality of a judicial process. The law sufficiently provides ample time to activate the process. Where a party chooses not to do so, he can only have himself to blame. The situation plaintiff finds himself unfortunately cannot be salvaged and for good reasons. The Supreme Court in **Aremo II V Adekanye (2004) 13 NWLR (pt.891) 572 at 592** per Edozie JSC stated the reasons for limitation laws:

1. **That long dormant claims have more of cruelty than justice in them;**

2. **That a defendant might have lost the evidence to disprove a stale claim; and**

3. **That persons with good causes of action should pursue them with reasonable diligence.**

The Court of Appeal has equally reiterated these principles in equally trenchant terms. In **Chief S.N. Moumah V Spring Bank Plc (2008) LPELR – 3965 (CA),** the court per Jauro JCA (as he then was) stated thus:

> ***"The Limitation of action law is the pivot upon which the wheel of litigation rotates and the ruthless watchman that guards the gates to the sanctuary of justice. The statute of limitation is therefore regarded as an act of peace based on the principle that long dormant claims have more of cruelty than justice in them, as the defendant might have lost the evidence to disprove a stale claim and persons with good causes of action should pursue them with reasonable diligence. The reasoning of the statue of the limitation is that greater injustice is likely to be done by allowing stale claims than by refusing them a hearing on the merit. See D.N. Udoh Trading Co. Ltd Vs. Sunday Abere & Anor (1990) & NWLR (pt.467) 479 at 492, Nwadiuro V Shell Dev. Co. Ltd (1990) 5 NWLR (pt.150) 322 at 339."***

On the whole, the objection clearly has considerable merit. The cause of action arose end of 2012 whereas the action was filed on 27th May, 2020. The action having been brought more than six years after it accrued and outside the prescribed mandatory period which the said suit founded on simple contract and tort ought to be filed and is therefore statute barred. The court clearly lacks the jurisdiction to entertain same. What then is the order to make in the circumstances. The Applicant has prayed that the action be dismissed. I agree that this is a valid request. A striking out order for an action found to be statute barred cannot be of any assistance to the plaintiff because it cannot be filed again under any circumstances since the time granted by law to commence the action has lapsed and the action is no longer enforceable by judicial process and forever too. See **Amade V UBA (2008) 8 NWLR (pt.1090) 623 and Lamina V Ikeja Local Govt. (1993) 8 NWLR (pt.314) 758.**

The Apex Court however appear to have settled any issue with respect to what order to make where a case is found to be statute barred in **Egbe V Adefarasin (1987) 1 NWLR (pt.47) 1** as follows:

"When a defendant raises a defence that the plaintiff's suit is statute barred and the defence is sustained by the trial court, the proper order for the trial court to make is an order of dismissal of the plaintiffs action and not merely striking it out."

On the whole, the preliminary objection that the present action is statute barred has considerable merit and succeeds. The present action is accordingly hereby dismissed. No order as to cost.

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Hon. Justice A.I. Kutigi

<u>Appearances</u>:

1. ***Casmir C. Igwe, Esq., with Ngozi Casmir Igwe, Esq., for the Claimant/Respondent.***

2. ***Austine Dimonye, Esq., for the Defendant/Applicant.***