

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**HOLDEN AT JABI**

**THIS WEDNESDAY, THE 10TH DAY OF MAY, 2023**

**BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI-JUDGE**

**SUIT NO: FCT/HC/CV/251/2022**

**MOTION NO: M/3989/2022**

**BETWEEN:**

**B.O. ALEKE ESQ.....CLAIMANT**

**AND**

**ABUJA MARKET MANAGEMENT LIMITED .....DEFENDANT**

**JUDGMENT**

By an originating summons dated 28<sup>th</sup> January, 2022 and filed same date at the Court's Registry, the Claimant prayed for the determination of the following questions:

- 1. Whether the Defendant can lay claim in the provision of the Section 6(6)(b) of the 1999 Constitution as amended to have levied fine of N3, 000.00 (Three Thousand Naira) against the Claimant.**
- 2. Whether the Defendant was right to have clamped the Claimant's Toyota Camry 2000 model with Registration Number GWA 11 8FB on 9<sup>th</sup> February, 2016 at Wuse Market Abuja wherein the Claimant went to do his lawful business.**
- 3. Whether the Claimant is entitled to the specific and general damages claimed against the Defendant.**

Upon a resolution of the above questions, the claimant seeks the following reliefs:

- a. The person whom the Defendant illegally and unlawfully collected the sum of N3, 000.00 (Three Thousand Naira) from on 9<sup>th</sup> day of February, 2016 which the Defendant was not empowered by any law to do so.**

- b. A DECLARATION that the action of the Defendant against the claimant on 9<sup>th</sup> February, 2016 was unlawful.**
- c. An Order of this Honourable court directing the Defendant to pay to the claimant the N3, 000.00 (Three Thousand Naira) unlawfully collected from the claimant on 9<sup>th</sup> February, 2016 and 10% (Ten Percent) interest of N3, 000 (Three Thousand Naira) monthly from 9<sup>th</sup> March, 2016 till the subject sum is liquidated.**
- d. An Order of this Honourable Court directing the Defendant to pay to the Claimant the sum of Twenty Million Naira (N20, 000, 000:00) being the general Damages for the wrongful clamping of the Claimant's Car and collection of the sum of three thousand Naira (N3, 000:00) as fine.**
- e. An Order of perpetual injunction restraining the Defendant, its agent or privies from clamping of vehicle and imposition of fine against anybody without order of court of competent jurisdiction.**

The application is supported by a nineteen (19) paragraphs affidavit with seven (7) annexures marked as **Exhibits A-D**. A written address was filed in compliance with the Rules of Court in which three (3) issues were raised as arising for determination as follows:

- i. Whether the Defendant can lay him in the provision of Section 6(6)(b) of the 1999 Constitution as amended to have levied fine of 3, 000.00 (Three Thousand Naira) against the Claimant on 9<sup>th</sup> February, 2016.**
- ii. Whether the Defendant was right to have clamped the Claimant's Toyota Camry 2000 model with Registration Number: GWA 118 FB on 9<sup>th</sup> February, 2016 at Wuse Market, Abuja wherein the claimant went to do his lawful business.**
- iii. Whether the claimant is entitled to the specific damages and general damages claimed against the Defendant.**

Submissions were made on the above issues which forms part of the Record of Court. I will only summarise and highlight the essence of the submissions as made out.

On **issue (1)**, the court was referred to the provision of **Section 6 (6)(b) of the 1999 Constitution** relating to judicial powers and it was contended that the

Defendant cannot lay claim to the said provision that gave power(s) only to court to determine all disputes relating to the determination of any question as to the civil rights and obligations between persons or between government or authority and any other person.

It was submitted that the defendant is only a limited liability company and cannot usurp powers of the court when it adjudged that the parking of the Claimant's car was wrongful, clamped the car of Claimant and levied a fine before the car was released. That in so doing, the Defendant violated the principle of fair hearing as they became a Judge in their own case. The court was urged to hold that the Defendant acted wrongly in the circumstances and that the levy charged was equally wrongful and unconstitutional.

On **issue (2)**, it was submitted that from the affidavit and exhibits attached, the clamping of claimant's car was wrongful as it has not been shown that the parking of his car obstructed traffic or the free flow of traffic and that there is no order or indication that parking was prohibited at the point he parked his car or that he violated any rule of law in operation at the market on the said date.

It was again contended that the clamping of the car and levy charged are wrong and unconstitutional.

One **issue (3)** it was submitted that the claimant is entitled to both General and Special damages for the unlawful actions of the defendant as the actions of the defendant disrupted his planned honeymoon with his wife which was aborted and this caused pains and psychological trauma to the claimant.

The defendant in opposition filed two processes:

- 1. A motion on notice dated 30<sup>th</sup> March, 2022 praying that the court should dismiss the action for being statute barred.**
- 2. A Counter-Affidavit was then later filed to the originating summons on 5<sup>th</sup> May, 2022.**

I shall start by situating the response of defendant to the originating summons as made out in the counter-affidavit. The **Counter-Affidavit** to the summons contains 10 paragraphs, with a written address. In the address two issues were raised as arising for determination:

- i. Whether this suit is statute barred and**

**ii. Whether this court has the jurisdiction to determine this suit as presently constituted.**

The submissions made equally form part of the Record of Court. I will here too highlight and summarise the essence of the submissions as made out.

On **issue (i)**, it was contended that the claims of claimant are for declarations and damages for breach of duty which means that he is claiming compensation for a breach of duty or infraction of his right by defendant and that under the provisions of **Sections 8 (1) and (2) of the Limitation Law, Cap. 522 LFN**, the claimant had three years to have commenced this action. That by the affidavit in support, the cause of action arose in **2016** but the claimant waited till 2022 to file the action well outside the period of time allowed for the case to be filed. That the action is accordingly **statute barred**.

On **issue (ii)** and following from issue (i), it was submitted that since the action is statute barred, this court will not have the requisite jurisdiction to hear and determine the case.

The claimant then filed a Reply on points of law to the address of defendant with respect to whether the action is statute barred. It is the submission of the claimant that the present action is not statute barred and that the **Limitation Act, Cap. 522** referred to by defendant is not applicable to this case. It was further submitted that even if it is assumed but without conceding that the Limitation Act is applicable, that by **Section 8 of the Act**, the limitation period is 6 years from the date of the occurrence of the event and that in that case the present action is not statute barred.

Now with respect to the **Motion on Notice** challenging the jurisdiction of the court to entertain the action, the defendant prayed for the following orders:

- 1. An Order striking out this suit as this Honourable Court lacks the jurisdiction to entertain same.**
- 2. An Order dismissing this suit in limine as the suit is statute barred.**
- 3. And for such further order or orders as this Honourable Court may deem fit to make in the circumstances.**

The Grounds upon which the application is brought are as follows:

**A. From the contents of the claimant's Affidavit in Support of the Originating Summons, the legal infraction and breach of duty complained by the claimant occurred on 9<sup>th</sup> February, 2016 more than five years before the institution of this matter.**

**B. The cause of action in this matter arose in 2016.**

The motion is supported by a four (4) paragraphs affidavit and a written address. The address raised the same issues and submissions as done in the address in support of the counter-affidavit relating to the fact that the court lacks the jurisdiction to entertain the action because it is statute barred. No purpose will be served repeating the same submissions.

The claimant filed a counter-affidavit and an address which equally repeated the submissions earlier made on the question of whether the case is statute barred filed in response to the submissions of defendant in support of the counter-affidavit to the main originating summons. The defendant then filed a Reply on points of law. In the Reply the defendant contended that by **Section 4 of the Limitation Act**, the provisions applies to both authorities and private individuals.

It was further submitted that the contention of claimant that his action is in tort and accordingly that **Section 7(4) of the Limitation Act** does not apply is misleading as the claim is not one in tort and that the claimant cannot cloth his claim with the garb of a tort so that the case can be sustained.

It was further submitted that even if it is assumed, but not conceded, that the case is one in tort, it was submitted that it is then not a proper case to be commenced by an originating summons as **Order 2 Rule 3 (1) and (2) of the Rules of Court 2018** provides that originating summons is utilized when a court is called upon to determine any question of construction arising under an instrument or statute and for the declaration of the right of the parties. That if the claimant agrees his claims are in tort, then it means he admits that the case cannot be determined by way of an originating summons.

At the hearing, the court ordered with the agreement of all counsel, for a consolidated hearing of both the preliminary objection and the substantive originating summons.

Learned counsel on either side accordingly relied and adopted the processes filed. The defendant urged on court to grant the prayers in the preliminary

objection and hold that the action is statute barred and where the objection fails that the court should order for pleadings because the facts in this case are contentious and that the matter cannot be properly resolved under the originating summons.

On behalf of the claimant, the court was urged to dismiss the preliminary objection as the action is not statute barred and grant the reliefs in the originating summons as the facts related to the case are not in dispute or contentious.

I have carefully considered the processes filed on both sides of the aisle, together with the oral submissions made in addition. The issue is whether the claimant has made out a clear case that would allow the resolution of the issues raised in his favour and the grant of the reliefs sought in the originating summons.

Before dealing with these issues, it is however imperative to first deal with the jurisdictional challenge raised by defendant with respect to whether the action as constituted is statute barred?

It is stating the obvious that jurisdiction is very important and in 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.**

It is settled principle of general application that 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.

The complaint that the action is statute barred clearly falls within the 2<sup>nd</sup> element of the tripod elements streamlined above by the Apex court.

Now it is not in dispute that certain enactments do have a time sensitive criteria and 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 the enactment, his suit becomes stale and statute-barred. Such a party is taken to be indolent and has slept on his violated rights. His tardiness in not taking action within the statutory period makes the court lose the jurisdiction to entertain his claim. See **Ajayi V Mil. Administrator of Ondo State (1997) 5 NWLR (pt.504) 237 at 254.**

Now how does a court know whether a suit is statute barred? The formula is fairly simple. 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 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.** If otherwise, then it is not statute barred. Since we are dealing with an originating summons here, we are to look carefully at the affidavit in support to situate these same features already highlighted.

As already stated, the defendant contends that the case is caught by the provisions of **Section 8 (1) and (2) of the Limitation Act Cap 522 LFN** which provides for three (3) years within the present action ought to have been filed, while the claimant contends that his action is in tort which provides for six (6) years within the purview of **Section 7(4) of the Limitation Act.**

It is therefore important to start by determining first the nature of the cause of action and this then provides both factual and legal basis to situate which of the provisions of the Limitation Act applies.

Before dealing with that point let me address the contention made by Claimant that the **Limitation Act, Cap 522 LFN (Abuja) 1990** applies only to state authority and because the defendant is not a state authority, that the Limitation Act cannot be said to be applicable.

I have read the entire provision of the **Limitation Act** and no where was it provided that the **Limitation Act (Abuja)** applies solely and only to **state authorities** as contended by claimant. The title of the **Act** reads as follows:

**“An Act to make provision for the limitation of actions and arbitrations.”**

Under the interpretation section of the Act vide **Section 68**, an Action was defined thus:

**“action” includes any proceeding (other than criminal proceeding) in a court established by law.**

The word or phrase used here is “any proceeding” in a court of law without any qualifications. The Act therefore has nothing really to do with class of parties but more to do with when proceedings must be filed in court to ventilate a particular grievance or cause of action. I am not sure that there is anything in **Section 1 of the Act** limiting the application of the Act to only state authorities as erroneously contended by Applicant. Section 1 appears to be dealing strictly with a particular situation involving state authorities. No more.

Indeed a proper appreciation of the said section situate clearly that reference to a state authority was made in the context of or in like manner as if the state authority were a private individual to underscore the point that the Act could apply to persons, natural and artificial and not only state authorities. As already alluded to, it is the cause of action that defines the Application of the Act, not so much the class or type of the parties. This can be seen from clear provisions of the Act dealing with specific periods of limitation for different classes of action vide **Sections 7-32**. Indeed under part II, specifically commencing with **Section 7**, the heading provides thus: **“Actions in contract and tort and certain other Actions.”**



**Section 7(1)** for example then streamlines clear time frame for when actions must be filed, failing which, the actions are said to be statute barred. **Other subsequent provisions to Section 7 delineates precise time frames for filing for different causes of action.** There is nothing in these provisions limiting their application as argued to only state authorities. There is no where it is stated that an action in simple contract under Section 7 (1) or for slander under Section 9 of the Act for example must involve a **state authority before advantage can be taken of the Limitation Act.**

The law is settled that no additions or interpolations can be made to provisions of any statute such as Limitation Act to achieve a particular purpose. The Act and its provisions speaks for itself and must be given its literal meaning. See **Section 128(1) of the Evidence Act.**

Now back to the substance of situating the cause of action. What then is the precise nature of the cause of action in this case? The answer clearly is situated within the originating summons of claimant and the affidavit in support. Let us perhaps explain what a cause of action mean:

“In **Akibu V Oduntan (2000) 13 NWLR (pt.685) 446 at 463**, the Supreme Court defined cause of action as:

**“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 give the Plaintiff his cause of complaint, and;**
- (b) The consequent damage.”**

Now from the affidavit in support, the applicant stated thus:

- “5. On 9<sup>th</sup> day of February, 2016, I obtained a ticket with No. 2519340 from the Defendant and drove into Wuse Modern Market to return a wedding gown I leased for my wife at Shop A33 near Heavenly Kitchen Wuse Market. The receipt is attached as Exhibit A.**
- 6. I got to a parking space where one security man (Latin Security) directed my parking.**

- 7. I looked around and there was no any “NO PARKING” or “PARKING PROHIBITED” sign whatsoever.**
- 8. After about 10 (ten) minutes, I came out and discovered that my Toyota Camry 2000 model was clamped at the hind left tyre.**
- 9. I quickly complained to staff of Defendant at exit gate and he only drew a teller asking me to pay a fine of five thousand naira.**
- 10. I demanded to take him there for him to know that my car was not causing any obstruction either by the right or the left and he rebuffed me *intoto*.**
- 11. Quietly, I left to the main office of the Defendant inside Wuse Modern Market and demanded to see the overall head and I was told he was not on seat; I equally explained to about 4 (four) of the staff of the Defendant in the office and non (sic) among them agreed to see the wrongful clamping of my car.**
- 12. I complained further and one of the four told me to go and do whatever I like.**
- 13. I went back to the spot and met the two of the staff of the Defendant who actually clamped my car and one of them asked me what I wanted them to do for me wherein I said that they should unclamp my car as they did it wrongfully.**
- 14. Surprisingly, one of them said that the only thing they could do for me is to give me teller for N3, 000.00 (Three Thousand Naira) which they did and they left me standing under the sun.**
- 15. I took photographs showing free movements of vehicles from left and right that my car did not cause any obstruction of vehicular movements whatsoever and such clamping disrupted my other engagements. The photographs are attached as Exhibits B1, B2, B3 and B4.**
- 16. At about 2:30pm, I paid the sum of N3, 000.00 (Three Thousand Naira) and a receipt with No: 0112440 was issued to me before my car was unclamped by 3:00pm. The receipt is attached as Exhibit C.”**

The fact or combination of facts on which the claimant has premised his right to the reliefs claimed are as situated in the above paragraphs. It is the fact that he

obtained a ticket or car park receipt from defendant vide **Exhibit A** on 9<sup>th</sup> February, 2016 when he drove to the Wuse Modern Market managed by defendant to return a wedding gown leased for his wife at Shop A33. He parked his car and when he came back about 10 minutes later, his car was clamped at the hind left tyre and despite his complaints that his car was not causing any obstruction, nobody listened to him, until he paid the sum of N3000 for “**wrong parking**” vide **Exhibit C**.

The Claimant stated that the wrongful clamping of the car disrupted his travel plans to go for honeymoon with his wife and this occasioned him distress and emotional pains.

The defendant has contended that this is an action covered by **Section 8(1) of the Limitation Act** while the claimant contends that the action is one of tort. There is clearly therefore a disagreement with respect to what the cause of action is here. Let us consider the two positions.

Now a **tort** is defined by the **Blacks Law Dictionary** at Page 1526 as “**A civil wrong, other than breach of contract, for which a remedy maybe obtained, usually in form of damages; a breach of a duty that the law imposes on, persons that stand in a particular relation to one another.**”

A tort therefore is a legal wrong against a person of a civil nature arising independent of contract which is the result of the breach of a legal duty owed to the person for which the person can seek redress.

From the facts of this case, it cannot really be argued that the wrong complained of arises independent of a contract or a precise defined relationship between Claimant and Defendant. On the facts, the complaint arises from the fact of defendant allowing the public use its parking facilities for a fee and it was out of that relationship that the plaintiff complains of a wrongful conduct. It would therefore appear to me that the provision of **Section 7 (4) of the Limitation Act** which provides thus:

***“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.”***

is a general provision and will not apply to a specific situation covered more precisely by the provision of **Section 8 (1) and (2) of the Limitation Act**. The law is settled where there is general provision and a specific provision

governing a particular situation, it is the specific provision that will be relied on as governing that situation.

It is equally to be noted that the provision of Section 7(4) of the Limitation Act commences with the phrase “**subject to the provisions of Section 8 of this Act...**”

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.**

It is therefore clear that **Section 8 (1) and (2) shall govern, control and prevail** over the provision of **Section 7(4).**

Now **Section 8 (1) and (2)** provides as follows:

*“8(1) This section applies to actions claiming damages for negligence, nuisance, or breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under an enactment or independently of a contract or of the provision), where the damages claimed by the plaintiff for the negligence, nuisance, or breach of duty consist of or include damages in respect of personal injuries to a person.*

*(2) Subject to the provisions of this action, no action to which this section applies shall be brought after the expiration of three years from the date on which the cause of action accrued.”*

I have earlier situated the facts of this case and the claims of plaintiff. There is some fluidity in terms of a clear cause of action but these facts are clear and apparent:

1. The defendant operates the car park at the Abuja Modern Market which it allows the public to use for a price of N100 vide **Exhibit A.**
2. The plaintiff utilized the car park of defendant where his car was clamped and he was fined N3000(Three Thousand Naira Only) for “**wrong parking**” vide **Exhibit C.**

Now breach of duty occurs when a duty of care exists and was not followed. For example, breach of duty is an important component in negligence. A duty

of care can arise because of a situation or because of a contract or statute. One of such situations is where the plaintiff and defendant have a business relationship, such as a hotel keeper and a guest, or they have a voluntary relationship such as a person who invites the public on to their property.

In this case, as alluded to above, the defendant operate the parking spaces at their market which they allow the public to use for a fare. A duty of care only exists where there is a relationship that warrants it. A doctor for example has no duty of care to help one manage his finances, so too an accountant has no duty of care to ensure you get treatment for your chronic illness.

In this case, by the nature of the relationship where the defendant invites or allows the public to use its parking facility, a duty of care arises on the part of defendant towards any person who parks his car at the parking space.

If a car is thus parked, after payment of parking fees, it is the duty or legal obligations of the defendant to ensure that the plaintiff enjoys the parking service(s) unfettered, except of course, there are streamlined rules of engagement.

Where a car is “**clamped**” as in this case, and which the claimant contends is wrongful, then the clear implication is that defendant has breached its duty which arises from the voluntary relationship between parties. As stated earlier, breach of duty occurs when a duty of care exists and was not followed. The plaintiff here never envisaged, under the circumstances, where he claimed he parked his car properly that his car would be “clamped” by defendant and a penalty or fee charged for alleged “**wrong parking**” without any form of hearing.

It is clear following the above, that the provision of **Section 8 (1)** applies more appropriately to this case with the implication that any action to which this section applies shall be brought within **three years** from the date on which the cause of action accrued.

In this case, there is no dispute that the **cause of action or complaint of plaintiff occurred in February 2016**. As at that date, a cause of action for limitation statute, begins to run or accrue because the plaintiff from that date became aware that his rights were infringed and there existed a person to sue and one to be sued.

I had earlier stated the formula for determination of when a cause of action is statute barred. It is to situate the date the cause of action arose as disclosed above with the time schedule, that is the period within which a party is allowed to sue. In this case the cause of action arose in February 2016 but the plaintiff filed this action in January 2022 which clearly is beyond or in excess of that donated under **Section 8 (2) of the Limitation Act**.

The plaintiff for reasons that are not clear failed to take action when his rights were allegedly infringed and slept on his right for too long. The Supreme Court in **Arema II V Adekanye (2004) 13 NWLR (pt.944) 60 per Edozie JSC** gave an instructive justification for limitation laws as follows:

- 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.**

Another reason for limitation law is that all limitation statutes, owe their evolution to considerations founded on public policy. There is the principle which is now famous and expressed in latin: *interest rei publicae ut sit finis litium* – it is in the public interest that there should be an end to litigation.” See **Asabro V Pan Ocean Oil Corp (Nig) Ltd (2017)7 N.W.L.R (pt.1563) 42**.

A successful plea of limitation law by a defendant has two debilitating effects against a plaintiffs action. Firstly, a limitation law removes the right of action, the right of enforcement, the right of judicial relief and leaves the plaintiff with a bare and hollow unenforceable cause of action. See **Egbe V Adefarasin (No.2) (supra); Udum V Ugandem (2009) 9 NWLR (pt.1146) 281; Anokunle V Nepa (2007) 15 NWLR (pt.1057) 340**. Secondly where limitation statute is established, a court ceases to be cloth with the jurisdiction to entertain a plaintiffs matter. See **Ajayi V M.I. Admin. Ondo State (1997) 5 NWLR (pt.504) 237; Ibeto Cement Co. Ltd V A.G. Fed. (2008) 1 NWLR (pt.1069) 410**.

The appropriate order(s) to make where case is found to be statute barred shall be streamlined at the end of this Judgment.

Having held that the case is statute barred, no purpose will be served considering the case on merits. In the event that I am wrong and there is an appeal, it will be pragmatic to therefore address the substance of the summons even if it may ultimately turn out to be an academic exercise. The Superior Courts will then have the benefit of the views of the lower court on all issues.

Now in this case, I had earlier situated the facts in this case. I need not repeat them. The defendant may have filed a counter-affidavit but they did not as it were challenge or deny the facts forming the grievance of the plaintiff. What the counter-affidavit however projected is that the case is statute barred, which has already been dealt with; that the claim is a contentious one and that the claimant is not entitled to the Reliefs.

Let me start by saying that an originating summons is one of the modes by which a civil action may be commenced in the High Court. It is merely a method of procedure and not one that is meant to enlarge the jurisdiction of the Court. See **Re King Mellor V South Australian Land Mortgage & Agency Co. (1907) 1 Ch. 72 at 75 – per Neville, J** cited with approval in **National Bank of Nigeria V Alakija & Anor (1978) 9-10 SC 59 at 73 – per Eso, JSC**. The Rules of this Court provide in **Order 2 Rule 3 (2)** provides for the circumstances in which proceedings may be initiated by originating summons.

On the question of the propriety of initiating this action by originating summons, it is generally accepted that originating summons is reserved for cases bordering on the determination of short questions of construction but not matters of such controversy that the justice of the case would demand the settling of pleadings, and should only be applicable in such circumstances as where there is no substantial dispute on questions of fact or the likelihood of such dispute. See **National Bank of Nigeria V. Alakija & Anor Supra and Anatum V. Anatum (1997)9 N.W.L.R (pt.519)49**. It would seem that the emphasis is not on the existence of dispute per se since every case necessarily involves one dispute or the other, but whether there is a substantial dispute of fact relevant to the determination of the issue in controversy. See **Habib Nigeria Bank Limited V. Ochete (2001)F.W.L.R (pt.54)384 at 406-407, Inakoju V. Adeleke (2007)ALL F.W.L.R (pt.353)3 at 202**. In **Ezeigwe V. Nwawulu (2010)ALL F.W.L.R (pt.518)794 at 838-839**, the Supreme Court (per Adekeye, JSC) stated the law succinctly as follows:

**“...The main advantage is simplicity resulting from the elimination of pleadings. The procedure of originating summons is meant to be invoked in a friendly action between parties who are substantially ad idem on the facts and who, without the need for pleadings, merely want, for example, a directive of the court on the point of law involved. The procedure is not meant to be invoked in a hostile action between parties and in which the parties concerned need know beforehand the issues which they are called upon to contend with from the pleadings. There can be disputed facts which originating summons procedure could resolve, but where the disputed facts are substantial, the proper mode of commencing such an action is by writ of summons so that pleadings can be filed. In other words, originating summons procedure is appropriate (only) where there is no substantial dispute of facts between the parties or likelihood of such dispute.”**

In this case, on the facts and materials, there are really no substantial questions or issues of facts. At the risk of prolixity, there is really no dispute that the plaintiff utilized the car parking facility of defendant and they clamped the said vehicle for “wrong parking.” The claimant said this action disrupted his honeymoon plans and caused him pains for which he is claiming damages. As stated earlier, the key elements of this grievance were not challenged or impugned by Defendant.

Now in law, an adversary as the defendant in this case has a duty to controvert facts in an affidavit, otherwise it is regarded as established. See **Long John V Blakk (1998) 6 NWLR (pt.555) 524 at 547A**. Where facts in an affidavit remain unchallenged and uncontradicted, the court is bound to accept those facts as established and as facts deemed to have been admitted and or correct. See **Kotoye v Saraki (1993) 5 NWLR (pt.296) 710 at 723 H**.

It is equally the law that the fact that an affidavit is not challenged, does not mean the court is in all circumstances, bound to accept as true, evidence that is uncontradicted where such evidence is willfully or corruptly false, incredible, improbable or sharply falls below the standard expected in a particular case. See **Neke B.B.B Manufacturing Co. Ltd V ACB Ltd (2004) 2 NWLR (pt.858) 521 at 550**.

On the basis of the authorities above, I have no difficulty in finding that:



1. The plaintiff indeed utilized the parking facilities of Defendant at Wuse Modern Market for consideration in the sum of N100(One Hundred Naira) Only.
2. The defendant clamped the rear tyre of his vehicle for alleged wrong parking.
3. The pictures attached vide **Exhibits B1-B4** situates where the car was parked with no indication that cars cannot be parked there and also situates no obstruction of any right of way as free vehicular movements can be observed.
4. By **Exhibit C**, the car was unclamped after he paid a fine of N3000 vide **Exhibit C**.

As stated earlier these facts were not denied or challenged and I equally don't find them false or incredible; they are thus deemed admitted.

These findings then provide broad factual basis to determine the questions posed and then whether the reliefs sought are availing?

**Question (1) poses the poser whether the defendant can lay claim in the provision of the Section 6(6)(b) of the 1999 Constitution as amended to have levied fine of N3, 000.00 (Three Thousand Naira) against the Claimant.**

I really do not understand the factual and legal basis of this poser. There is no issue or question of construction of any enactment or statute and there is equally nothing before the court to situate that the defendant clamped the car of the claimant and levied the fine was done on the basis of the provision of **Section 6 (6) (b) of the 1999 Constitution**. Question one is vague, equivocal and thus is unavailing in the circumstances.

**Question (2) is whether the defendant was right to have clamped the Claimant's Toyota Camry 2000 model with Registration Number GWA 11 8FB on 9<sup>th</sup> February, 2016 at Wuse Market Abuja wherein the Claimant went to do his lawful business.**

On the facts, the defendant has not put forward any legal basis to support the actions they took in clamping on the vehicle of claimant and imposing a fine before it was released.

If there was any basis or support for the actions they took, no such basis, legal or otherwise was furnished to court to enable this court situate whether it is availing. By the approach the defendant adopted in this case by failing to defend the crux of claimants complaints, they appear to concede tacitly that they have no justification for the actions they took on the date in question.

A limited liability company cannot arrogate to itself powers to charge a person as done in this case for an undefined offence, find the person guilty without a hearing and convict by sentencing the person by imposition of a fine. The actions taken by them are in the circumstances in the absence of any justification, like for example an enabling legislation allowing them to do what they did is therefore wholly unconstitutional and wrongful. **Issue 2** is answered in the affirmative.

**Question 3 poses the question whether the claimant is entitled to specific and general damages claimed against defendant.**

I note that in the reliefs claimed, no amount was claimed in respect of special damages. In the circumstances, it will be entirely academic to explore the availability of the Relief. **Relief (d)** however claims only for General damages in the sums stated therein.

Now in law general damages flow from the wrong complained of and is usually awarded to assuage loss suffered by the plaintiff from the alleged act of the defendant complained of. Put another way, general damages are the kinds implied by law in every breach of legal rights, its quantification however being a matter for the court. See **Corporative Development Bank Plc V. Joe Golday Co. Ltd (2000)14 N.W.L.R (pt.688)506; UBA V. BTL Ind. Ltd (2001)All F.W.L.R (pt.352)1615.**

The Supreme Court in **Lar V. Strling Astaldi (Nig) Ltd (1977)11-12 SC 53 at 63** defined general damages as such damages as may be given when the judge cannot point out to any measure by which they may be assessed, except the opinion and judgment of a reasonable man. See also **Elf Petroleum Nig. V. Umah (2006)All F.W.L.R (pt.343)1761.**

In this case I had found that the defendant clearly breached its duty to the claimant when it clamped his vehicle and fined him before the car was released. The claimant clearly is entitled to some measure of damages here but I cannot situate the basis for the sum of **N20, 000, 000** claimed as damages.

The car may have been clamped with no clear indication when it was clamped but by paragraph 16 of the affidavit, the car was unclamped by 3pm of the same day. The activities of the claimant may have no doubt been disrupted but that does not provide clear factual basis for the amount claimed. If the case is that it disrupted his honeymoon trip to Obudu, there is really nothing before court to support that such trip was even planned and or arranged *ab initio* and the court cannot speculate. There is really nothing putting the court in a commanding height to grant the sums claimed as General damages.

The law is settled that the court should not be carried away by any high sounding figure claimed as general damages. The court must be satisfied that there is compelling evidence to support any award. General damages is not awarded as a largesse or as a benevolent gift; it must be factually and legally supportable. If the claimant wanted something higher, he should claim it under special damages which has to be strictly proved or established.

On the whole for the avoidable dislocations caused to the activities of plaintiff on the date in question, I award the sum of **₦50, 000** as General damages. That is a fair recompense in the circumstances.

On the whole, the questions raised for determination are answered as follows:

- 1. Question (1) is vague, equivocal and is struck out.**
- 2. Question (2) is answered in the affirmative. The defendant was wrong in clamping on claimants car on 9<sup>th</sup> February, 2016 at Wuse Modern Market.**
- 3. Question (3) partially succeeds. The claimant is entitled to general damages in the sum as assessed in the circumstances.**

Flowing from the above, I accordingly make the following orders:

- 1. Relief (a) is vague and equivocal and will be discountenanced.**
- 2. It is hereby declared that the actions of defendant in clamping on claimant's vehicle on 9<sup>th</sup> February, 2016 is wrongful.**
- 3. It is hereby ordered that the defendant refund to the claimant the sum of N3, 000 fine forthwith levied on claimant on 9<sup>th</sup> February, 2016.**

4. It is hereby ordered that the defendant pays the claimant N50, 000 as General Damages for the wrongful actions taken in clamping his vehicle and levying the fine of N3, 000.
5. Relief (e) succeeds only to the extent that the defendant is restrained from acts capable of affecting the lawful and subsisting right of plaintiff over his vehicle as guaranteed under the 1999 Constitution.

To be clear, if the case was not statute barred, the above would ultimately have been the **final orders** that would have enured in this case in favour of claimant. The **Reliefs granted** do not therefore define the final outcome of this case.

In the final analysis, for the avoidance of any doubt, since the case is statute barred, the proper order is to dismiss the action. The law is settled that where the court finds that it lacks jurisdiction to entertain the case on the ground that it is statute barred, the proper order to make in the case is one dismissing the case and not striking it out. See **Egbe V. Adefarasin (No.2)1 N.W.L.R (pt.47)1; Eboigbe V. NNPC (1994)5 N.W.L.R (pt.347)649; N.P.A V. Lotus Plastics Ltd (2005)19 N.W.L.R (pt.959)158; and Multichoice Nig Ltd V. Akpan (2014)LPELR-22681 (CA).**

The action is hereby accordingly **dismissed**.

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*Hon. Justice A.I. Kutigi*

*Appearances:*

1. *B.O. Aleke, Esq., the Plaintiff appears in person.*
2. *A.O. Oghe, Esq., for the Defendant.*