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## The Limitation Law Quagmire: Is There a Perpetual Right to Institute an Action in Court Under a Contract of Employment?

### Introduction

As a general principle of law, where a statute provides for the institution of an action within a prescribed period, the action ought not to be instituted after the time prescribed by such statute. Accordingly, where an action becomes statute-barred, a claimant who would have had a cause of action automatically loses the entitlement to enforce such right by judicial process, because the right is considered extinguished by law.

The rules of limitation are founded on consideration of public policy that requires there to be an end to litigation, as a right of action should not inure in a person in perpetuity. The objective is to compel a litigant to be diligent in timeously seeking remedy in a Court of law, in the event of a breach or violation of any right, interest, contract, statute or custom.

In keeping with the 'settled' position of the law, Nigerian Courts, including the Supreme Court, have customarily upheld any provision of statute limiting the time within which an action may be instituted.

However, as is customary, with every general there are exceptions and the National Industrial Court of Nigeria (the "**NICN**") in its recent decisions of: Suit No. NICN/LA/402/2018 – Lilian Nnenna Akumah v. First Bank of Nigeria Plc ("**Akuma case**") and Suit No. NICN/LA/553/2018 – Mr. Godson Ikechukwu Nkume v. First Bank of Nigeria Ltd ("**Nkume case**") (together referred to as "**the Decisions**") – have sought to establish a radical departure from the historic position of the law, by excluding the application of statutes of limitation to disputes emanating from employment relationships.

Given the significant impact of the Decisions on the jurisprudence of limitation laws in Nigeria, this article aims to consider the Decisions in a bid to determine whether the new exception to the general rule is well founded.

## The Decisions

### Akuma Case

The facts of this case are that, by a General Form of Complaint dated 27<sup>th</sup> July 2018, Lilian Akuma ("the Claimant"), instituted an action against her former employer, First Bank Plc, ("the Defendant"). The Claimant's claim was predicated on the alleged unlawful termination of her employment contract with the Defendant by a letter dated 21<sup>st</sup> October 2008 and the alleged refusal to pay her employment emoluments/terminal benefits.

In response to the suit, the Defendant, by a Notice of Preliminary Objection ("PO") sought an order of the NICN to dismiss and/ or strike out the suit on the grounds that, *inter alia*, the cause of action was statute barred having been extinguished pursuant to Section 8 (1)(a) of the Limitation Law. Cap. L67, Laws of Lagos State, 2003. For ease of reference, the relevant provision of the Law is reproduced below:

"8(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;"

The Defendant contended that the cause of action arose on 21<sup>st</sup> October 2008 and by virtue of the express provisions the Limitation Law of Lagos State, the limitation period for commencing the suit elapsed on or about the 21 October 2014 and the Claimant's cause of action became extinguished and statute barred with effect from that date, thereby depriving the NICN of the jurisdiction to entertain the suit.

Following the hearing of the PO, the Court held that the matter was not statute-barred and went ahead to dismiss the Defendant's PO. In arriving at its ruling, the Court considered the contract of employment not to be a simple contract as stipulated by the law. More curiously however, the Court held that the provision of S. 8(1)a of the Limitation Law of Lagos State, has no application to contracts of employment. In its ruling, the NICN, per Justice (Dr) I. J. Essien, stated as follows:

" ....While I agree with learned counsel that before July 2019 the decisions were unanimous that as regards limitation of action law, where an action is instituted outside the period stipulated for an action to be instituted such action is likely to be dismissed, see the case of **Ibrahim v. Judicial Service Commission** [1998] 14 NWLR (pt 584) pg.1. However the position of the law has since changed after the decision in the case of **NRMAFC & 2 ORS v. Ajibola Johnson** [2019]2 NWLR (pt. 1656) 247 at 270-271 the Supreme Court was emphatic that limitation of action does not apply to contract of service. The defendant counsel has tried to argue that the above cited Supreme Court decision does not apply to the present case because it was decided based on the S. 2 (a) of the Public Officers Protection Act. While the present case, is considered under S. 8(1) a, of the Limitation Law of Lagos State. That distinction is neither here nor there. Both statutes are statutes of limitation of action. The subject matter of what they deal is contract of employment. Therefore both statutes stand side by side in so far as it relates to limitation of action in contract of employment. While one is a federal

*enactment the other is a state law. The decision of the Supreme Court on any of the statute must of necessity guide a court of record in the application of any of those enactment on the subject matter of limitation of action in contract of employment. It is for this reason that the distinction sought to be made by the defence counsel is hereby discountenanced."*

## **Nkume case**

Mr. Godson Ikechukwu Nkume ("the Claimant") was an employee of First Bank Plc ("the Defendant") for a period of 35 years prior to his retirement on 14<sup>th</sup> February 2018. In the course of his employment with the Defendant in 2006, armed robbers raided the bank and shot his legs. He was hospitalized and thereafter advised to refrain from driving after he got discharged from hospital care.

By originating processes dated 30<sup>th</sup> October 2018, the Claimant instituted an action against the Defendant, claiming: (i) the sum of N9, 678,002.98 [nine million six hundred and seventy eight thousand two naira, ninety eight kobo] being the principal and interests on moneys spent by Claimant in hiring a driver which the Defendant undertook to pay, but never did; and (ii) monetary compensation for the injuries sustained during the armed robbery attack, in line with Group Personal Accident Insurance policy for the Defendant's employees.

The Defendant responded to the Claimant's claims by stating that the matter was statute barred pursuant to Sections 8(1)(a) and 9(1) of the Limitation Law of Lagos State, as the alleged wrongdoings arose in 2006 and July 2007, while the action was commenced on 30<sup>th</sup> October 2018 – more than 12 years after accrual of the cause of action for the gunshot injuries and 11 years after accrual of the cause of action for hiring of the driver.

In its judgment, the NICN discountenanced the Defendant's defence that the claim was statute barred. The court took the view that the Defendant's contention that the cause of action was statute barred was misconceived and in reiterating the position in the Akuma case, stated as follows:

*"...statutes of limitation of actions have been held not to apply to contracts of service. See **National Revenue Mobilization Allocation and Fiscal Commission & Ors. v. Ajibola Johnson & Ors.** This decision was applied by this Court in the case of *Lilian Nnenna Akumah v. First Bank of Nigeria Plc, Suit no. NICN/LA/402/2018*, which ruling was delivered on 10th October 2019"*

## **Consideration of the Decisions**

The Decisions establish a general bar in the orthodox application of statutes of limitation in employment related disputes. By implication, any dispute arising from an employer - employee relationship, will not be caught by any limitation period prescribed by law. The NICN's rationale for the non-applicability of statute of limitations is primarily hinged on the judgment of the Supreme Court in the case of **N.R.M.A.&F.C. v. Johnson [2019] 2 NWLR 247 (Part 1656)** (the "NRMA&FC" Case).

In the NRMA&FC case, the Respondents were employed by the Appellant, an agency of the Federal Government of Nigeria. However, upon a change of government, their employments were suspended and subsequently withdrawn. The Respondents instituted an action against the appellant agency that resulted in the protracted litigation to the Supreme Court. At the apex Court, one of the issues determined was whether the limitation of action period provided under the **Public Officers Protection Act, Cap 379, Laws of the Federation of Nigeria, 1990**, is to protect officers in civil service for any wrongdoing to citizens, if the action is not instituted within the stipulated three months. The Supreme Court, per Ariwoola J.S.C, at pages 269 -271, held:

*“Ordinarily, the purpose of the public officers protections law is to protect officers in civil liability for any wrongdoing that occasions damages to any citizen, if the action is not instituted within three months, after the act, default or neglect complained of..... The law is designed to protect only the officer, who acts in good faith and does not apply to acts done in abuse of office and without semblance of legal justification.*

*There is no doubt, a careful reading of the respondents' claim will show clearly that it is on contract of service. It is now settled law, that section 2 of the Public Officers Protection Act does not apply to cases of contract.”*

A careful reading of the Supreme Court's decision confirms that the issue resolved in the NRMA&FC case was specifically the applicability of Public Officers Protection Act. In a plethora of cases, the apex court has recognized certain exceptions to the protection provided for under the Public Officer Protection Act, as follows: (a) instances of continuance of damage or injury; (b) situation where the public officer acted outside the bound of his office or outside his statutory or constitutional duty; (c) cases of recovery of land; (d) **breaches of contract**; (e) claims for work and labour done; and (f) good faith. See: **A-G RIVERS STATE v. A-G BAYELSA STATE & ANOR (2013) 3 NWLR (PT 1340) 123; FGN v. ZEBRA ENERGY LTD. (2002) 18 NWLR (PT 798) 162. Nigerian Ports Authority v. Construzioni General, Farsura Cagefar Spa & Anor (1974)1 All NLR (Pt.2) 463; Osun State Government v. Dalami Nigeria Ltd (2007) 9NWLR (Pt.1038) 66.**

Thus, in the NRMA&FC case the apex court merely reiterated the existing position of case law that the Public Officers Protection Act was enacted to protect a public officer from detraction and unnecessary litigation but will not deprive a party deserving of justice where the acts of a public officer amount to an abuse of office and in certain other cases, such as a breach of contract.

The NRMA&FC case did not extend its consideration to general application of limitation laws to contracts of employment.

## Closing Thoughts

The NICN relied on the NRMA&FC case without considering the point that the Public Officers Protection Act which prescribed the limitation period in that case, is generally not applicable in cases of breach of contract and thus formed the basis of the apex courts judgment. In effect, the NICN failed to consider the peculiarity of the facts in the NRMA&FC case which made it distinguishable from those in the Decisions.

The law is settled that a decided case is only an authority for the peculiar issues in the case and it must be considered and utilised in the light of its own peculiar facts and circumstances (see: **Yabatech v. M.C.D. Ltd. (2014) 3 NWLR (Pt. 1395) 616**). We respectfully take the view, therefore, that the NICN erred when it found that limitation laws were generally not applicable to contracts of employment.

The NICN is a court of first instance, consequently the Decisions are liable to be tested on appeal, with the leave of the Court, to determine whether in view of the already existing judicial decisions of more superior courts of record, it will be set aside or in the alternative whether it would form part of a novel exception to the application of statutes of limitation.

Pending the outcome of any such appeal(s), we consider that an alternative defence that may avail a defendant that is confronted with a delayed claim emanating from an employment relationship is the defence of laches and acquiescence. The equitable defence pertains to conduct from which it can be inferred that a party has waived his/her rights to bring a claim. In order for the defence of laches to operate such lapse of time must be coupled with the existence of circumstances that make it inequitable to enforce the claim. In the absence of such circumstances, the delay will be immaterial.

Notwithstanding this, we are of the view that the historical basis of statutes of limitation continues to justify the desire to have such statutes as part of the legal jurisprudence in Nigeria. This is because the application of limitation periods prevents potential defendants from being subject to unfair prosecution and ensures that a claimant is not guilty of delay. Of particular concern in a legal system where limitation laws are made inapplicable, is that after the passing of many years, crucial evidence which may avail the defendant would likely have been lost. Furthermore, other relevant evidence such as eyewitness testimony may be unavailable particularly where written statements were not made at the time the cause of action arose.