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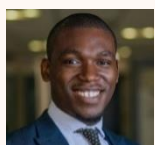
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## TEMPLARS ThoughtLab

# The Applicable Limitation Law in Oil Spill Cases - *Need for Judicial Certainty*

## Introduction

For more than two decades, Nigerian courts have grappled with a fundamental but unsettled question: **Which limitation law applies to oil-spill claims in Nigeria?** The controversy arises from a unique intersection of federal and State legislation, coupled with the exclusive jurisdiction of the Federal High Court over oil and gas matters.

Five structural features of Nigerian law have combined to create this uncertainty. First, limitation periods are generally creatures of State legislation. Second, most oil-spill claims are commonly – whether correctly or not – brought under federal statutes such as the **Oil Pipelines Act 1990 (“OPA”)** and the **Petroleum Act (“PA”)** as applicable. Third, neither of these federal statutes prescribes any limitation periods for claims brought under them. Fourth, they also do not expressly exclude the application of State limitation laws. Finally, jurisdiction over oil-spill claims lies exclusively with the Federal High Court, rather than State High Courts.

These factors have produced divergent judicial approaches and a measure of unpredictability for litigants, counsel, and courts. In fact, a school of thought has emerged suggesting that limitation periods do not apply at all to oil-spill claims, thereby allowing such claims to be initiated indefinitely.

This article undertakes a systematic review of the relevant appellate decisions on this subject. Its purpose is to demonstrate the correct limitation regime applicable to oil-spill claims brought before the Federal High Court and to advocate for a clearer, more consistent judicial position.

## The Concept of Limitation of Actions

The principle of limitation of actions is one that is firmly rooted and recognised under Nigerian law, as in much of the common law world. It is to the effect that the right of a party to bring a claim before a court of law is not indefinite but is subject to certain time limits. If a claim is not filed within the period prescribed by law, the putative claimant loses the right to take legal action, and the claim becomes barred by statute. The essence of a statute of limitation is to encourage the diligent pursuit of claims and to discourage the litigation of obsolete and stale claims.

One of the leading authorities on the principle of limitation under Nigerian law is the case of **Oba Aremo II v. Adekanye**,<sup>1</sup> where the Supreme Court, per Edozie, JSC, explained the notion of limitation of action. More recently the Supreme Court noted that "[t]he settled position of the law is that every enforceable right has a prescribed period within which an action may be brought. The right to enforce an action does not exist in perpetuity but [is] generally limited by statute. That is the essence of statute of limitation."<sup>2</sup> However, as discussed below, the body of case law in this area of law has created practical difficulties for litigants, counsel, and indeed the courts themselves especially when confronted with the interplay between State limitation laws, federal enactments and the subject-matter jurisdiction of the Federal High Court.

## Applicable Limitation Laws in Nigeria

There are three potentially applicable general limitation statutes in Nigeria: the Limitation Laws of the various States, the Federal Limitation Act 1966, and the English Limitation of Actions Act of 1623.

### The Limitation of Actions Act 1623

Prior to Nigeria's independence in 1960, the common law principles, doctrines of equity and the statutes of general application ("**SOGA**") in force in England as of 1<sup>st</sup> January 1900 were received into Nigeria and are collectively known as the Received English Laws. The latter became, and remains, a source of law in Nigeria pursuant to the Interpretation Act.<sup>3</sup> For our present purposes, the relevant SOGA is the English Limitation Act of 1623 (the "1623 Limitation Act"). The 1623 Limitation Act continues to apply in the States that are yet to enact their limitation statute.<sup>4</sup>

Section 315 of the Constitution of the Federal Republic of Nigeria, 1999 (the "**Constitution**") contains a "savings provision" which preserves existing laws that were in force immediately before the Constitution entered into force. The section, however, provides that such existing laws shall continue to apply with such modifications as may be necessary to bring them into conformity with the Constitution and shall be deemed to be either (i) an Act of the National Assembly, if it is a law with respect to any matter on which the National Assembly is empowered by the Constitution to make laws or (ii) a State law, if it is a law with respect to any matter on which a House of Assembly is empowered by the Constitution to make laws.

<sup>1</sup> *Oba Aremo II v. Adekanye* [2004] 13 NWLR (Pt. 891) 572 at 592 [D]-[F]. See also *Atunrase v. Sunmola* [1985] 1 NWLR (Pt.1) 105 at 120 [C] per Oputa JSC.

<sup>2</sup> *Folarin v Agosto* [2023] 11 NWLR (Pt. 1896) 559 at 585 [F].

<sup>3</sup> Section 32(1) of the Interpretation Act 1964.

<sup>4</sup> For example, in *Bank of the North v. Ganaa* [2004] LPELR-12568(CA), the Court of Appeal per Obadina, JCA held that, "it is undisputed that the English Limitation Act, 1623 which was in force in England on 1<sup>st</sup> of January 1990, is also applicable in Plateau State." Similarly, in *Faran v. Kano* [2017] LPELR-43626(CA) the Court of Appeal per Hussaini, JCA held that the 1623 Limitation Act is the applicable statute of limitation in Adamawa State.

Incidentally, the limitation of action is a matter which the House of Assembly is empowered by the Constitution to make laws. Thus, the 1623 Limitation Act applies as a State law, i.e. as a law in respect of a matter on which a State's House of Assembly is empowered by the Constitution to make laws.

### **State Limitation Laws**

By reason of Nigeria's legislative structure, the National Assembly is responsible for the enactment of federal laws that are within its legislative competence as defined by the Constitution, while each State's House of Assembly is responsible for the enactment of State laws that are within their legislative competence. The matters that are within the legislative competence of the National Assembly are the matters in the Exclusive Legislative List or the Concurrent Legislative List. On their part, the States' Houses of Assembly make laws on the matters in the Concurrent Legislative List. But that is not all.

All matters that are not listed in either the Exclusive Legislative List or the Concurrent Legislative List are referred to as "Residual Matters" and come within the exclusive legislative competence of the State Houses of Assembly. The National Assembly has no powers to make laws on such matters.<sup>5</sup>

Limitation of action is a residual matter that is not contained in the Exclusive or Concurrent List. It is therefore outside the legislative competence of the National Assembly, which is why the National Assembly has not and cannot enact a general limitation statute applicable throughout the whole of the federation of Nigeria. Accordingly, the Houses of Assembly of the various States have exclusive legislative competence to enact general limitation laws for causes of action arising in each State. Representative examples of limitation laws enacted by State Houses of Assembly include the Lagos State Limitation Law, 1966; the Rivers State Limitation Law, 1988; the Limitation Law of Delta State, etc.

As noted earlier, the 1623 Limitation Act applies in the States that do not have their own limitation statute. However, once that State has enacted a Limitation Law, the 1623 Limitation Act ceases to apply to such State. In *Chigbu v. Tonimas (Nig) Ltd.*,<sup>6</sup> the Supreme Court was asked to determine the correct limitation statute applicable to the claim at issue as between the 1623 Limitation Act and the Imo State Limitation Edict of 1994. The Supreme Court per Tobi, JSC stated without equivocation that the latter law applied because where a local statute is available and applies to a particular local situation, courts of law have no jurisdiction to go all the way to England to search for an English statute.

### **The Federal Limitation Act, 1966**

There is also the Limitation Act 1966 (the "Federal Limitation Act"). The Federal Limitation Act 1966 is the equivalent of the various States' Limitation Law and only applies in the Federal Capital Territory, Abuja – which is the equivalent of a "State" for the purpose of the federal seat of Nigeria.

### **The Power of the National Assembly to Make Specific Limitation Provisions**

Although Houses of Assembly of the various States have exclusive legislative competence to enact general limitation laws, it should, however, be noted that item 68 of the Exclusive Legislative List authorises the National Assembly to make laws on matters incidental or supplementary to any other matter mentioned elsewhere in the Exclusive Legislative List e.g., "mines and minerals".

<sup>5</sup> A.-G., *Ogun State v. Aberuagba* [1985] 1 NWLR (Pt. 3) 395 at 405 [C]-[D]; A.-G., *Abia State v. A.-G., Fed.* [2006] 16 NWLR (Pt. 1005) 265 at 380 [D]-[E].

<sup>6</sup> *Chigbu v. Tonimas (Nig) Ltd.* [2006] 9 NWLR (Pt. 984) 189 at 213 [B]-[D].

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In the exercise of its legislative powers, the National Assembly may therefore validly prescribe a limitation period which applies exclusively to the specific subject matter of the legislation at issue. Thus, where a validly enacted federal statute contains a limitation provision, such provision shall specifically apply to claims brought under that statute and shall prevail over the general limitation statute enacted by the States. This explains why there are various federal laws relating to “mines and minerals” that contain their own specific limitation periods.<sup>7</sup> However, where such statute is silent on limitation of action, causes of action arising thereunder are subject to the general limitation statutes enacted by the States, irrespective of the nature of the claim.

### ***The OPA and PA***

As noted above, both the OPA and the PA are federal statutes enacted by the National Assembly. However, neither contains limitation periods in respect of claims brought thereunder; and they do not also expressly exclude the applicability of the general limitation statutes. It is for this reason that the Court of Appeal in **SPDC v. Dodoye West**,<sup>8</sup> held that oil spill claims under the OPA and the PA are not exempted from limitation.

As previously noted, the Federal High Court, not the States' High Court or that of the Federal Capital Territory (Abuja), is the appropriate forum to hear and determine oil spill claims under Nigerian law, irrespective of whether the claims are brought under the common law or under a federal statute.<sup>9</sup>

This has, however, led to the question of whether State limitation laws can apply to claims brought under federal enactments in the Federal High Court. Unfortunately, Nigerian courts have not been consistent in their consideration of this question.

### ***Authorities that refuse to apply State Limitation Laws to Oil Spill Claims***

One of the earliest cases where the Nigerian Court of Appeal held that State limitation statutes cannot apply to oil spill claims was **SPDC v. Farah & Ors**,<sup>10</sup> where the issue was whether the suit was statute-barred. The Court of Appeal held per Onalaja, JCA that, “*It is even erroneous to apply the State Limitation Law to the Petroleum Act which is Federal Act whilst the Limitation Law is the law of the State.*”

<sup>7</sup> For example, the following federal statutes all contain their own specific limitation provisions: the Nigerian National Petroleum Corporation (NNPC) Act, 1977 in section 12(1); the National Oil Spill Detection and Response Agency (Establishment) (NOSDRA) Act, 2006 in section 20(2); and the Petroleum Industry Act 2021 in section 307(2); etc.

<sup>8</sup> *SPDC Co Ltd v. West* (2018) LPELR-44290(CA).

<sup>9</sup> Section 251(1)(n) of the Constitution and section 7(1)(n) of the Federal High Court Act confer exclusive jurisdiction on the Federal High Court over civil causes or matters relating to mines and minerals including oil fields, oil mining, geological surveys and natural gas.

<sup>10</sup> *SPDC v. Farah & Ors* [1995] 3 NWLR (Pt. 382) 148 at 200 – 201 [H]-[E].

This was followed by the 2014 decision of the Court of Appeal in **Benson v. Mobil Producing (Nig) Unlimited**.<sup>11</sup> In that case, the Court of Appeal held that a right of action created under the OPA could not be curtailed by the 1623 Limitation Act, which was earlier in time, and that the English Limitation Act of 1623 had been supplanted altogether and had therefore ceased to apply in Nigeria following the enactment Federal Limitation Act. The Court of Appeal also held that the Bayelsa State Limitation Law could not curtail the exercise of a right of action conferred by a federal enactment.

There is also the 2021 case of **Sampson & Ors v. SPDC**,<sup>12</sup> where the Court of Appeal per Owoade JCA relied on **Farah** and stated that the State Limitation Law did not bar the claimants from bringing a claim under a federal statute for an oil spill claim.

Finally, there is **Nigerian Agip Oil Co. Ltd v. Erekeosima & Ors**,<sup>13</sup> where the Court of Appeal was asked whether the Rivers State Limitation Law applied to an oil spill claim brought under the OPA. The Court of Appeal stated, inter alia that the Rivers State Limitation Law, being a State law could not apply to matters within the Exclusive Legislative List. Thus, the Rivers State Limitation Law could not apply to the oil spill claim brought under the OPA, a federal enactment.

In our view, the major shortfall in the line of reasoning expressed in those cases is that it begs the question, what is the applicable limitation statute if a State limitation statute does not apply? For instance, in **Sampson**, the Court of Appeal took the view that, "... in a matter as this case under the exclusive jurisdiction of the Federal High Court, in the absence of a Federal Law on Limitation period in actions for tort, the English Statute of Limitation 1623 should apply by virtue of the provision of Section 32 (1) of the Interpretation Act." Contrarily, in **Benson** the Court of Appeal held that neither the Limitation Law of Bayelsa State nor the 1623 Limitation Act applied to the case. Given that the Federal Limitation Act only applies in Abuja, the position in **Benson**, when stretched to its logical conclusion, is that oil spill claims brought pursuant to the OPA and/or the PA will not be subject to any limitation at all. Similarly, the Court in **Erekeosima** simply refused to apply the Rivers State Limitation Law and did not even consider whether the 1623 Limitation Act or the Federal Limitation Act applied to claims brought under the OPA and/or the PA.

In our view, it cannot be the case that a plaintiff has a perpetual right to bring an oil spill claim under those statutes. That would make nonsense of the long line of appellate court decisions that provide the essence and rationale for the enactment of limitation statutes. We are therefore aligned with the authorities that apply State limitation statutes to oil spill claims.

### **The line of cases that applies State Limitation Laws to Oil Spill Claims**

The only known Supreme Court decision on the point is **Asaboro & Anor v Pan Ocean Oil Corporation (Nig) Ltd & Anor**.<sup>14</sup> Here, the Supreme Court upheld the reasoning of the Court of Appeal to the effect that the claimants' claims for compensation under the PA and the Petroleum Drilling and Production Regulations (i.e. under federal laws) were statute barred because the federal enactments under which the claims were brought did not expressly exclude the applicability of State limitation law.

<sup>11</sup> *Benson v. Mobil Producing (Nig) Unlimited* [2014] All FWLR (pt. 722) 1821.

<sup>12</sup> *Sampson & Ors v. SPDC* [2021] LPELR-53314(CA).

<sup>13</sup> *Nigerian Agip Oil Co. Ltd v. Erekeosima & Ors* [2023] LPELR-60874 (CA). Another case where the Court of Appeal took this position is *Walter Okoni v. Nigerian Agip Oil Company Ltd* [2013] All FWLR (Pt. 686) 605.

<sup>14</sup> *Asaboro & Anor v Pan Ocean Oil Corporation (Nig) Ltd & Anor* [2017] 7 NWLR (Pt. 1563) 42; [2017] LPELR-41558 (SC).

The Court of Appeal was asked to revisit this issue in the case of **Nigerian Agip Oil Co Ltd v. Ogbu**,<sup>15</sup> which was commenced in the Federal High Court. The key question was whether the Rivers State Limitation Law applied to a claim brought under the OPA (i.e. a federal statute) for compensation for damage caused by the emission of noxious and lethal chemical and oil waste. The Court of Appeal relying on **Asaboro**, applied the Rivers State Limitation Law. In particular, the Court of Appeal held that “except as limited by the Act itself, the local Limitation Law of the State shall apply. Indeed, even in matters of Oil Prospecting Licence, it applies, i.e. the Limitation law of a State applies to actions under the Oil Pipelines Act being tried by the High Court.”<sup>16</sup> The Court of Appeal also made clear that **Asaboro** applied notwithstanding that the case emanated from the State High Court.

Another instructive decision is that of **SPDC v. Zedie Williams**,<sup>17</sup> where the Court was asked to determine whether the Limitation Law of Bayelsa State applied to a claim in respect of damage allegedly caused by an oil spill. The trial court relied on **Benson** and held that the Limitation Law of Bayelsa State did not apply to oil spill matters. On Appeal, the Court of Appeal held that **Benson** was reached *per incuriam*, having failed to consider the Supreme Court's decision in **Asaboro** and the Court of Appeal's decision in **Sunday Etim v. Inspector Gen. Of Police**.<sup>18</sup>

Another decision that merits consideration is **SPDC v. West**,<sup>19</sup> which was brought under the OPA for damage allegedly suffered as a result of an oil spill in Rivers State. The claim was issued in 2013, seven years after the damage was said to have occurred in 2006. The trial court rejected the defendant's argument that the claim was time-barred on the basis of the five-year limitation period contained in the Rivers State Limitation Law. The Court of Appeal allowed the appeal and held that the suit was statute barred.

There is also the case of **Opuokolo & Ors v. SPDC**,<sup>20</sup> where the claims were brought under the OPA in respect of oil spills which were said to have occurred in Rivers State. The first instance court held that the claims were time-barred because they were filed 11 years after the accrual of the causes of action, and the five-year limitation period under section 16 of the Rivers State Limitation Law applied. On appeal, the claimant argued that the State limitation law was “in conflict with the Federal Law” (i.e. the OPA) and that it was therefore unconstitutional to apply the State limitation law. The Court of Appeal rejected this argument and upheld the trial court's reliance on the Rivers State Limitation Law.

In our view, the position taken by the Supreme Court in **Asaboro**, and followed by the Court of Appeal in **Ogbu**, **Zedie Williams**, **West** and **Opuokolo**, is the correct position under Nigerian law.<sup>21</sup> Although **Asaboro** was filed at the Delta State High Court and not the Federal High Court, in our view, it remains the authoritative position of the law in Nigeria to the effect that: State limitation statutes apply to claims brought pursuant to federal enactments such as the OPA and the PA.

The English Limitation Act of 1623 no longer applies in a State which has enacted its own Limitation Law in 1988. Instead, it is the State Limitation Law that applies to any cause of action accruing within the territory of the State, including those arising under a federal law such as the OPA, **the Petroleum Industry Act (“PIA”)** or the PA (as applicable). The only time a State Limitation Law would not apply is

<sup>15</sup> *Nigerian Agip Oil Co Ltd v Ogbu* [2017] LPELR-45217(CA); [2019] 35 WRN 133.

<sup>16</sup> *Ogbu*, pp173-174.

<sup>17</sup> *SPDC v. Zedie Williams* (2017) LPELR-49294 (CA).

<sup>18</sup> *Sunday Etim & 4 Ors. v. Inspector Gen. of Police & 2 Ors.* (2001) 11 NWLR (Pt.724) 266 at 283 G-A.

<sup>19</sup> *SPDC v. Dadoye West* [2018] WRN 119; [2018] LPELR-44290 (CA).

<sup>20</sup> *Opuokolo & Ors v. SPDC* [2022] LPELR-57301 (CA).

<sup>21</sup> Please see also *Etim v I.G.P.* [2011] NWLR (Pt. 724) 266; *SPDC Co Ltd v Wilcox* [2018] LPELR-49285 (CA); *Chief Goodluck C.R. Meburu* (2013) LPELR – 21889.

where the federal law giving rise to the cause of action expressly excludes its application, or where the State Limitation Law is otherwise in conflict with the federal law.

Further, in **Benson, Sampson and Erekeosima**, the Court of Appeal's reasoning relied on the assumption that there was a conflict between the relevant State limitation law and the federal statute giving rise to the claim. In our opinion, there was no such conflict, and the Court of Appeal's reasoning was not well considered. As noted earlier, limitation is a residual matter that falls outside the scope of the Exclusive Legislative List and therefore the State Houses of Assembly are empowered to make general limitation laws that apply to causes of action accruing within the relevant State. The National Assembly in exercise of their powers under the Exclusive Legislative List could have included a limitation provision in the OPA or the PA but, crucially, chose not to do so. Nor did it expressly exclude limitation in respect of claims under the OPA. In the absence of any provision on limitation, there is therefore no conflict with State limitation law.

Before we end, it is worthy of note that the Commercial Court in England and Wales has been asked the same question on at least two separate occasions and in relation to Nigerian law. After taking benefit of the opinion of eminent Nigerian practitioners, the Court on both occasions came to the same conclusion.

The first is the case of *Harrison Jalla and others v. STASCO and SNEPCo*,<sup>22</sup> decided on 28 February 2023. In this case, Mrs. Justice O'Farrell DBE arrived at the conclusion that under Nigerian law, a State limitation statute applies to claims brought under federal enactments and to proceedings before the Federal High Court in the State. The Court specifically relied on the Supreme Court decision in **Asaboro**, and that of the Court of Appeal in **Ogbu, West**, and **Elim**.

More recently, the same court was asked the same question in *Alame and others v. Shell PLC and Renaissance Africa Energy Limited*,<sup>23</sup> decided on 20 June 2025. Mrs. Justice May DBE also arrived at the conclusion that the Limitation Law of the relevant State applies to claims brought before Federal High Court whether under the OPA, the PA, the PIA or under the common law. Such consistency is commendable and worthy of emulation.

## Conclusion

The weight of Nigerian case law - anchored by the Supreme Court's decision in **Asaboro** - supports the position that State limitation laws apply to oil-spill claims brought before the Federal High Court, including claims under the OPA, the PIA and the PA. This is the correct legal position.

Because the federal petroleum legislations do not prescribe limitation periods or exclude State limitation statutes, there is no conflict between the federal legislations and State limitation laws. Accordingly, claims arising within a State are governed by that State's limitation regime.

A consistent judicial approach is urgently needed to dispel uncertainty and ensure predictable outcomes for litigants, operators, and affected communities. Until appellate courts speak with one voice on this issue, the guidance from **Asaboro** and its progeny provides the clearest and most reliable roadmap.

**If you require any further clarification, do not hesitate to contact us.**

<sup>22</sup> *Harrison Jalla v. SPDC* [2023] EWHC 424 (TCC).

<sup>23</sup> *Alame v. Shell PLC* [2025] EWHC 1539 (KB).