



LIMITATION LAWS- A CLOG IN THE WHEEL OF JUSTICE?

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INTRODUCTION

- The law has made provisions in the various limitation statutes in the federation stating the periods within which certain claims must be brought to court, failing which those claims would be statute-barred (i.e., no competent court would have jurisdiction to entertain those claims). Judicial pronouncements as to the rationale behind limitation laws abound; one of such pronouncements is the dictum of his Lordship, Katsina-Alu JCA (as he then was) in the case of **P.N. Uddoh Trading Co. Ltd. v. Abere (1996) 8 NWLR (pt 467) p. 469**. Where the learned Law Lord said: “one of the principles of the statute of limitation is that a person who sleeps on his right should not be assisted by the courts in an action for the recovery of his property. Equity aids the vigilant and not the indolent.
- Currently, all states of the federation have their Limitation laws; but for the purposes of this presentation, we will focus on the Limitation Law of Lagos state, Ch. L84, Laws of Lagos State, 2015 and the public officers’ protection Act cap 379 LFN 2004.

MEANING OF STATUTE OF LIMITATION

- In **Texaco Panama Incorporation v. S.P.D.C. (Nig) Ltd. (2002) FWLR (pt 96) 579 SC**, his Lordship Mohammed JSC (as he then was) commenting on the meaning of statute of limitation had this to say:
 - “A statute of limitation is one which provides that no court shall entertain proceedings for the enforcement of certain right if such proceedings were set on foot after the lapse of a definite period of time, reckoned as a rule from the date of the violation of the right... a cause of action is statute-barred if it is brought beyond the period laid down by the statute within which such action must be filed in court.”
- NB: see also the dictum of Ogundare JSC in the case of **Atolagbe v. Awuni. (1997) 9 NWLR pt. 522**



SALIENT FEATURES OF LIMITATION OF ACTION.

BURDEN TO PROVE LIMITATION OF ACTION

- As a general rule of law, a party who alleges must prove that which he alleges. In relation to the plea of limitation law, it is the primary duty of the defendant to prove that the claimant's action is statute-barred because he is the one that seeks to rely on the plea. (See **S.B.N. Ltd. v. Pan Atlantic Shipping and Transport Agency Ltd. (1987) 1 NWLR pt. 49 at 212**)
- However, this burden can shift to the claimant to prove that the case is not statute-barred. At all times, it is the defendant who must at first instance raise the defence. It is worthy to note that a court can raise the issue suo motu as it touches on jurisdiction. (See **Governor of Kwara State v. Lafiagi (2005) 2 FWLR pt. 264 at 720 CA**).



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SWORD OR SHIELD

- Limitation of action is a shield. It is available to the defendant who uses same as a shield to defend an action against him. (see **Owotosho v. B.O.N Ltd. (2006) 9 NWLR pt. 986 at 573 CA**)



SALIENT FEATURES OF LIMITATION OF ACTION.

ACCRUAL OF CAUSE OF ACTION

- Cause of action refers to the facts and circumstances that gives a claimant the right to seek redress in court. No reference can be made to limitation of action except the date on which the right which is sought to be redressed at law is determined and that date is compared with the time when the party complaining of this right took action. (see the dictum of Oputa JSC in *Egbe v. Adefarasin* (1987) 18 NSCC). The date on which the cause of action accrued is important, but it is entirely by having regard to the facts of the case and can be discerned by evidence.
- It must be noted however that various actions have their separate ways of knowing how and when a cause of action is said to have accrued. For instance, section 38 of the Limitation Law of Lagos state provides as follows:



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38 (1) "Where-

Any right of action has accrued to recover any debt; and

The person liable therefor has acknowledged the debt;

- The right of action will be deemed to have accrued on and not before date of the acknowledgement.
- Thus, time starts to run against the creditor when the debtor acknowledges the debt. Such act of acknowledgement must be in writing and signed by the person making the acknowledgement. Each act of acknowledgement renews the time.
- Also, Section 40 of the Limitation Law of Lagos provides as follows:
 - **40** "where-

There has accrued to any person (other than a mortgage) any right of action to recover land; and

The person in possession of the land acknowledges the title of the person to whom the right of action has accrued;



SALIENT FEATURES OF LIMITATION OF ACTION.

The right of action will be deemed to have accrued on and not before the date of the acknowledgement.

A right of action to recover land will not be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run. (adverse possession). See section 19 limitation law of Lagos.

Thus, such possession must be “Nec Clam”, “Nec Vie” and “Nec Precario” i.e. without force, without stealth or secrecy and without permission. So, a person who was lawfully let into a parcel of land cannot invoke limitation of action as a defence.

NB: See generally sections 38 to 44 of the Limitation Law of Lagos state to know more on acknowledgement.



SALIENT FEATURES OF LIMITATION OF ACTION.

KNOWLEDGE OF ACCRUAL OF RIGHT OF ACTION

- Knowledge on the part of the claimant of the existence of a cause of action is “generally” immaterial, except in specific instances where the limitation law itself requires the claimant to be fixed with the knowledge of the existence of a cause of action. Niki Tobi JSC in the case of **Akibu v. Azeez (2003) 1 SCNJ 393 at 414** had this to say:
 - “knowledge of trespass or adverse possession is not a precondition to a successful plea of the limitation law of Lagos state. In other words, the party who pleads the defence that an action is statute-barred, need not satisfy the court that the plaintiff had knowledge of the trespass or adverse possession.”
- NB: While knowledge of accrual of a right of action under limitation law is irrelevant, same cannot be said about the equitable doctrines of laches and acquiescence.

PERIODS OF LIMITATION FOR CERTAIN CLAIMS

ACTIONS BARRED AFTER 6-YEAR PERIOD.

- The following matters will not be brought after the expiration of 6 years.

Simple contracts

Quasi-contracts

Enforcement of an Arbitration award, where the agreement is not under seal.

Enforcement of recognizance

Tort

Actions to recover arrears of interest on a mortgage or charge

Actions to recover arrears of interest of any debt

Actions against trustees to recover money or other property, or in respect of a breach of trust

SEE section 8 of the Limitation Law of Lagos state for the above listed.

PERIODS OF LIMITATION FOR CERTAIN CLAIMS



ACTIONS BARRED AFTER 12-YEAR PERIOD



An action upon an instrument under seal



An action to enforce an arbitration award where the arbitration agreement is under seal



An action to recover a sum due to a registered company by any member under the articles of association.



SEE Section 12 of the Limitation Law of Lagos state

PERIODS OF LIMITATION FOR CERTAIN CLAIMS

ACTIONS TO RECOVER LAND

- No action will be brought by a state authority to recover land after the expiration of twenty (20) years from the date on which the right of action accrued to the state authority. (for a person, whether artificial or natural; twelve (12) years).

PERIODS OF LIMITATION FOR CERTAIN CLAIMS

ACTIONS CLAIMING DAMAGES FOR SLANDER

- An action claiming damages for slander will not be brought after the expiration of three (3) years from the date on which the cause of action accrued. For defamation, whether slander or libel, the cause of action accrues upon publication or utterance of such libelous or slanderous words. See **Egbe v. Adefarasin (1987) NSCC pt. 1**. See also section 10 Limitation Law of Lagos.

PERIODS OF LIMITATION FOR CERTAIN CLAIMS

ACTIONS AGAINST PUBLIC OFFICERS

- A “public officer” under section 18 of the interpretation Act Cap 123, LFN 2004 means:
 - “a member of the public service of the Federation within the meaning of the Constitution of the Federal Republic of Nigeria 1999, or of the public service of a state.”
- Part 2 of the 5th schedule to the CFRN 1999 as amended copiously defines who public officers are. But for the purposes of this presentation, the part we would adopt is Article 15 of part 2 to the 5th schedule which says:
- “All staff of universities, colleges and institutions owned and financed by the Federal or state Governments or local government councils.



PERIODS OF LIMITATION FOR CERTAIN CLAIMS

Section 2 of the Public Officers' Protection Act cap p41, LFN, 2004 provide as follows:

"Where any action, prosecution, or other proceedings is commenced against any person for any act done in pursuance or execution or intended execution of any Act or Law or of any public duty or authority, or in respect of any alleged neglect or default in execution of any such Act, Law, duty or authority, the following provisions shall have effect-

The action, prosecution or proceeding shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of, or in case of a continuance of damage or injury, within three months next after the ceasing thereof.

PERIODS OF LIMITATION FOR CERTAIN CLAIMS

- The defense created under the Public officers' protection act or law as the case maybe is for public officer who had acted pursuant to his duties as a public officer. The public officer must not act in good faith neither must his act be devoid of malice or bias before he can rely on the defense. The court per Kolawole JCA in **Ekeogu v. Aliri (1990) 1 NWLR pt. 126 pg. 345 CA** stated the conditions which must exist before a public officer can be entitled to the protection of the Public Officers' Protection Act: first, it must be established that the person against whom the action is commenced is a public officer. Secondly, the act done by the appellant in respect of which the action was commenced must be an act done in pursuance of execution or intended execution of any law of any public authority or duty.

PERIODS OF LIMITATION FOR CERTAIN CLAIMS

- Our focus however is to ascertain whether the three months prescribed by Public Officers' Protection Act is not too short for a person to enforce his right at law. We would use the case of *Ekeogu v. Aliri* (supra) as a case study. The bare facts of that case are as follows:

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- The plaintiff, who brings and prosecutes this action by her next friend Benadeth Aliri, is a native of and resident at Umudim Ohelekem Ngor Okpala, Owerri. As at the day of the incident giving rise to this suit, the plaintiff was a Primary five pupil of Community Primary School, Ohekelem. She was then aged eleven (11) years. The defendant was at the date of the incident subject-matter of this suit, a teacher at the said Community Primary School, Ohekelem. On or about the 2nd day of December, 1985, the plaintiff as a pupil of the said Community Primary School Ohekelem, reported for classes. She was a pupil in Class 5 of the said school. On the said date, there was an incident of theft in a nearby Palm Produce depot. The thief was caught and was being beaten up by irate members of the public who gathered as soon as he was caught.

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- The 1st defendant instructed his class pupils, including the plaintiff to go and see how thieves are treated so as to learn a lesson therefrom. The plaintiff together with other pupils in the class obliged and went to the said depot. Soon after the bell rang for resumption of classes and all the pupils, including the plaintiff began to run back towards the class. Suddenly, the defendant picked a cane and began to flog the pupils as they ran into the classroom. As the plaintiff attempted to run into the classroom the defendant's cane landed on her left eye and she cried out in pain and anguish. The plaintiff lost balance and collapsed on the floor. The plaintiff by a Writ of summons dated 20th day of July, 1987 sued the defendant, a period of nineteen months and eighteen days after the occurrence of the incident.

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- On the 12th day of April, 1988, the defendant filed a motion on Notice, praying the court to dismiss the plaintiff's claim on the grounds: "That the action instituted by the plaintiff/respondent against the defendant/applicant is a nullity as it is statutorily time-barred under Section 2 of the Public Officers Protection Law, Cap. 106, Laws of Eastern Nigeria, 1963 as applicable to Imo State." Both the learned trial judge and the learned justices of the court of appeal rejected the defendant's contention and held that the defendant could not be protected under the Act and that he acted outside the scope of his office.

PERIODS OF LIMITATION FOR CERTAIN CLAIMS

- Aggrieved by the decision of the Court of Appeal, the appellant further appealed to the Supreme court. The supreme court HELD THAT there is no dispute that the respondent's action was instituted more than three months after the happening of the act complained of. The only issue to be resolved is whether the two lower courts were right in their conclusion that the act complained of cannot be said to have been performed by the appellant in the execution of his public duty so as to enable him enjoy the protection of the provisions of the Public Officers Protection Law.
- The apex court held further that the words used in this legislation (POPA) are plain and unambiguous and should be given their ordinary and natural meaning. A careful reading of the section shows that its provision apply to an action brought against a public officer for any act done either – (i) in pursuance of execution or intended execution of any Law of public duty or authority, or (ii) in respect of any alleged neglect or default in the execution of Law, duty or authority.
- In its judgement, the court concluded that the suit of the plaintiff was statute-barred having not been brought within three months after the cause of action accrued.

CRITIQUE OF THE PUBLIC OFFICERS' PROTECTION ACT AND EKEOGU v. ALIRI

- The hardship posed by the public officers' protection Act was manifest in the case of Ekeogu v. Aliri. Several writers have criticized section 2 of the POPA on the ground (among others) that it works more injustice than justice. We understand that the rationale behind limitation laws as posited by his Lordship, Katsina-Alu JCA (as he then was) is that: "one of the principles of the statute of limitation is that a person who sleeps on his right should not be assisted by the courts in an action for the recovery of his property. **Equity aids the vigilant and not the indolent.**" but, is 3 months too long a period to shut out a person from asserting a right against a public officer who has wronged him? The answer is NO! In the case of Ekeogu v. Aliri, the plaintiff who was wounded by her class teacher went to treat herself and when she returned from treatment, she simply could not maintain an action against her class teacher because the claim was statute-barred. Her treatment period was not even up to 2 years, it was about one year and 7 months (19 months). In essence, if the law placed the limitation period at 2 years, she would have still been able to maintain an action.

RECOMMENDATION AND CONCLUSION

Recommendations:

-The period of three months as prescribed by the POPA should be made at least three years.

-As regards recovery of land, acknowledgement of the owner's right is somewhat unnecessary. Once a person is in adverse possession for a period of 12 years it suffices. I do not think there is any need for the acknowledgement of the landowner's right to the property, to do so will encourage land banking.

-Once a person's right is breached, he should immediately file an action in court even though out of court settlement is being considered.

RECOMMENDATION AND CONCLUSION

- Conclusion:

No doubt, the limitation laws have their pros and cons. Ultimately, Judges in reaching decisions based on limitation laws should weigh each case on the scale of Justice based on their peculiarities and to ensure that Justice is done and manifestly shown to have been done.

Doing justice is not always to follow the law as it is written hook, line and sinker. Some exercise of discretion should be employed.



THANK YOU

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