

LIMITATION LAW IN CIVIL ACTIONS¹

It is trite that a limitation law/statute of limitation has the effect of barring a claim after a specified period, where a statute prescribes a period within which an action should be commenced, such statute is known as a limitation law or statute of limitation. An action is said to be statute barred if it is caught up by the limitation period, that is, when the party suing brings his action beyond the time period laid down by the statute.

The limitation law does not apply to criminal actions, the focus of this article is limitation law as it applies to civil action. The primary purpose of limitation law is enshrined in the principles of equity, and is designed to promote justice by preventing surprises, that is, preventing the commencement of actions for claims that have long been abandoned.

HOW COURT DETERMINES WHETHER AN ACTION IS STATUTE BARRED?

In the determining whether an action is statute barred, the courts consider the following:

1. THE PERIOD OF TIME PRESCRIBED BY STATUTES

As a necessary prelude in determining whether an action is statute is barred, the time scale provided in the law is of obvious consequence. Limitation laws are in all jurisdictions, subject to the extant laws applicable in those jurisdictions. For instance, the Limitation law, Cap L67 of Lagos State is the foremost legislation on limitation law in Lagos, which provides limitation period for a number of actions. The following actions have a limitation period of six years from the date on which the cause of action accrued:

- (a) actions launched on simple contract;
- (b) actions founded on quasi contract;
- (c) actions to enforce a recognisance.

The Limitation law of Lagos state also provides that actions bordering on recovery of lands shall have a limitation period of twelve years.

Another notable limitation statute is the Public Officers (Protection) Act. The Public Officers (Protection) Act in its Section 2(a) provides that, an action against a public officer for an act done by such officer in the execution or intended execution of his duty should be commenced within three months after the act, neglect or default complained of.

Section 2 Public Officers (Protection) Act:

“Where any action, prosecution, or other proceeding 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

¹ Efemena Ighorimoto, LLB; BL

default in the execution of any such Act, Law, duty or authority, the following provisions shall have effect-

[Order 47 of 1951.]

Limitation of time

(a) 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:

Provided that if the action, prosecution or proceeding be at the instance of any person for cause arising while such person was a convict prisoner, it may be commenced

within three months after the discharge of such person from prison;"

Essentially, the Courts in determining limitation period will consider the provision of legislations on the subject matter and whether such legislation makes provisions for prescribed periods within which such actions must be commenced.

2. WHEN THE CAUSE OF ACTION AROSE

The law is trite that time begins to run for the purposes of the limitation law from the date the cause of action accrues². It is therefore vital when dealing with limitation law to determine the precise date upon which the cause of action arose, without this basic fact it will be impossible to compute the time. It is therefore important to understand what essentially a "cause of action" is.

In *Anukwu v. Eze*³, the Court of Appeal defined the term cause of action as follows:

"a cause of action means an entire set of circumstances given rise to an enforceable claim. It is the fact or combination of facts which give rise to a right to sue and it consist of two elements namely

- a) The wrongful act of the defendant which gives the plaintiff his cause of complaint and the consequent damage.*
- b) Every fact that would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. See *Kusada v. Sokoto N.A. (1968) 1 All NLR 337, (1968) SCNLR 522; Akilu**

² ASABORO V. PAN OCEAN OIL (NIG.) LTD. (2006) 4 NWLR (PT.971) PG.595, OGUKO V. SHELLEL (2004) 6 NWLR (PT.868) PG.17, AJAYI V. ADEBIYI & ORS (2012) LPELR-7811(SC), FIOGRET LTD v. FATUNDE (2017) LPELR-49893(CA)

³ (2012) 11 NWLR (PT. 1310) @ PG. 74-75 PARAS F- A

v. Fawehinmi (NO. 2) 2 NWLR (Pt. 102) 122; Bello vv. AG. Oyo State (1986) 5 NWLR (Pt. 45) 828

In other words, a cause of action means a bundle or aggregate of facts which the law will recognize as giving the plaintiff substantive right to make the claim against the relief or remedy being sought. Therefore, the factual situation relied upon must constitute the essential ingredients of an enforcement right. Thus, any fact relied upon by the plaintiff resulting from the act of the defendant which gives rise to a justifiable complaint is the cause of the action."

The cause of action simply put refers to the entire set of facts that gives rise to an enforceable claim and it comprises of every material fact which if proven entitles the plaintiff to judgment. The period of time in which the totality of this facts accrue is the material time. For example, in an action for debt recovery, the material time for the purpose of when the cause of action arises, is the time a demand for the said debt is made.

3. WHEN THE ACTION WAS INITIATED

In determining whether an action is statute barred, the courts also consider the time the cause of action arose and compares it with when the time the action was initiated⁴. To do this, the Courts peruse the pleadings filed i.e., the writ of summons/statement of claim or other forms of originating processes. This is done in order to determine when the wrong was committed thereby giving rise to the cause of action and comparing that date with the date on which the action was filed.

Upon this comparison, if the time frame between the date of the cause of action and the date the action was instituted is beyond the period stipulated by the Statutes, then, the consequence is that the action is caught by the period of limitation and statute barred.

CONSEQUENCE OF A STATUTE BARRED ACTION.

Where an action is statute barred, a plaintiff who might have had a cause of action loses the right of enforcement of such action or claim in a court of law as a result of the expiration of the prescribed period. The failure to bring the action within the time stipulated by the statute renders the action invalid and the court without jurisdiction to hear the action. Jurisdiction is said to be the life-wire of any adjudication; where there is no jurisdiction to hear and determine a matter, everything done in such want of jurisdiction is a nullity.

⁴ UBN PLC. V. UMEODUAGU (2004) LPELR-3395 (SC); SPDC LTD V. MEBURU (2013) LPELR-21889 (CA); AYOWORINMI V. N. N. P. C (2010) 8 NWLR (PT. 1197) 616 AT 639 AND N.E.P.A V. OLAGUNJU (2005) 3 NWLR (PT. 913) 620

In essence, once an action is statute barred, the cause of action is extinguished and the right to action, the right of enforcement, right to judicial relief is removed, leaving the party with a bare and empty cause of action which cannot be enforced.

CONCLUSION

The fundamental nature of the limitation statute is premised on the fact that a person should not sleep on his right. The legal right to enforce an action does not exist in perpetuity, rather it is regulated by the provisions of the law; the rationale for this being that a claimant who has slumbered on his rights will not to be assisted in bringing an action whenever he likes despite the lapse of time. Promotion of due diligence is at the core of this principle.

It is for a claimant who wishes to secure his right to exercise due diligence in doing so by bringing his claim within the prescribed period; as a defendant will not be subjected to facing a long stale claim, so as not to amount to an injustice. Essentially, the law will not assist a recalcitrant party in subjecting another party to an injustice. Nonetheless, it must be stated that no defendant would be allowed to take advantage of the limitation law, especially where there is clear evidence of that the delay by the claimant in bringing his action was as a result of fraud, mistake, disability and in certain cases personal injury or death.