

**STATUTORY LIMITATION PERIOD AND THE LEGAL BASIS FOR SUSPENSION
OF TIME COMPUTATION: A REVIEW OF *SIFAX NIGERIA LIMITED
V MIGFO NIGERIA LIMITED***

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INTRODUCTION

The limitation period for the commencement of a law suit is the interval within which a suit must be brought before a competent court of law for redress, failure of which renders the suit incompetent to be adjudicated upon, owing to the expiration of the period prescribed by law. In a situation where the stipulated time has elapsed, such a suit is said to be statute barred.¹ It is trite in law that a suit that is caught in the web of a limitation law is not maintainable in a court of Law.² The principle of law that a suit is statute barred is aimed at precluding a litigant with a valid right of action and cause of action,³ who has slept on such rights over a specified period of time, from bringing such suits for adjudication and disposing off the courts of stale cases.⁴

Nigerian courts have severally held that different factors will not, in whatsoever manner, affect, prevent or stop the running of time for the purpose of the limitation period of a case. These factors include negotiation,⁵ illiteracy of parties,⁶ move for settlement of disputes,⁷ absence of parties from jurisdiction,⁸ and the absence of a court of law within jurisdiction to entertain a claim.⁹

However, on Monday, April 27, 2015, the Court of Appeal, Lagos Judicial Division, made a seeming reversal of this trend in the case of *Sifax Nigeria Limited & 4 Ors v Migfo Nigeria Limited & Anor*.¹⁰ The judgment is to the effect that there are some factors (in this case, a pending court action) which could put a stop on the computation of time for the purpose of determining whether an action is statute barred or not.

This review aims at considering this novelty; whether or not it is right to put into consideration some circumstances in determining the period when a cause of action arose and when the right of action thereto is lost. Put in another way, this review takes a second look at the judgment of the learned Justices who sat on the case¹¹ with a view to considering the legal basis for holding that, in determining whether an action is statute barred, computation of time should be suspended or put in abeyance in case of a pending court action. The review agrees that while the reasoning of the appellate court was sound, it has however left

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1. See *Egbe v Adefarasin* (1985) 1 NWLR (Pt 3) 549; *Odubeko v Fowler* (1993) 7 NWLR (Pt 308) 637; *Muomah v Spring Bank Plc* (2009) 3 NWLR (Pt 1129) 553
2. See *Ekeogu v Aliri* (1991) 3 NWLR (Pt 179) 258
3. In this sense, a right of action is the right of standing to sue, otherwise referred to as *Locus Standi*. A cause of action on the other hand can simply be described as a factual situation relied upon by a party to support a claim, and recognized by law as giving rise to a substantive right capable of being enforced against another party. The facts a plaintiff must prove to win each specific cause of action are referred to as elements. Cause of action elements may vary greatly, or may overlap substantially, depending on the circumstances of the case. See generally *Emiator v Nigerian Army* (1999) 12 NWLR (Pt 631) 362; *Agbanelo v Union Bank Of Nigeria Ltd* (2000) 4 SC (Pt 1) 233; *Ayonronmi v Nnpc* (2010) 8 NWLR (Pt 1197) 616 at 639; *Adesanya v President of Nigeria & Anor* (1981) 1 A11 NLR; *Gani Fawehinmi v I.G.P* (2002) 7 NWLR (Pt 767) 606, *Gambioba & Ors v Insesi & Ors* (1961) ALL NLR 584 and *Olawoyin v AG of Northern Nigeria* (1961) A11 NLR 269
4. *Thomas v Olufosoye* (1986) 2 SC 325
5. See the Dictum of Fatayi Williams J (as he then was) in *Gbadamosi Lahan v AG Western Nigeria* (1963) 2 SCNLR 47 wherein reliance was placed on *Hawlett v London County Council* (1908) 24 JLR 331
6. *Eboigbe v NNPC* (1994) 5 NWLR (Pt 347) 649
7. *Nwadiaro v Shell Petroleum* (1990) 5 NWLR (P 150) 322 CA
8. *Solomon v African Steamship Co.* (1928) 9 NLR 99
9. *ibid*
10. (2015) LPELR 24655 (CA)
11. These were Hon. Justices Joseph S. Ikyegh, Chinwe E. Iyizoba and Samuel C. Oseji (JJ. COA)



open several other issues needed to be addressed by the Supreme Court (in case an opportunity for such arises). The review is broadly divided into three parts – the first part briefly states the facts of the case under consideration; the second discusses the reasoning of the Court of Appeal's judgment; while the last points out the implication of the judgment.

BRIEF FACTS OF THE CASE

The facts of the case as found by the trial court was that following the desire to concede and handover the management of Terminal 'C' Tin Can Island Port, Apapa, Lagos by the Nigerian Government,¹² there was a joint effort to prepare a Memorandum of Understanding (MOU) dated 27/07/2005 between the 1st appellant and the respondents for submission to the BPE.¹³ One of the terms of the MOU was the incorporation of a joint venture company (which was included in a joint venture agreement) by them in case they emerge the preferred bidders. The MOU was thus submitted by the 1st appellant to BPE on behalf of others. They eventually emerged the favourite bidder. While the respondents were expectant of a meeting to discuss the ensuing modalities, the 5th appellant was secretly promoted and incorporated.¹⁴ The Port was eventually handed over to the 5th appellant by BPE/NPA.

Subsequent to their knowledge and consequent search at the Corporate Affairs Commission (CAC), the respondents obtained the certified true copies of the incorporation documents on 20/07/2006.¹⁵ Efforts to resolve the issues broke down among the parties. This led the respondents to file a suit at the Federal High Court (FHC) and judgment given in their favour. The judgment was affirmed at the Court of Appeal but the suit was struck out at the Supreme Court.¹⁶ Consequent upon this, the respondents commenced an action afresh at the Lagos State High Court on 18/07/2012. The appellants who were defendants in the lower court, realising that the 6 years limitation period for certain actions had elapsed, filed a motion on notice¹⁷ praying the court to strike out the suit for being statute barred. The Court ruled against the application and held that the suit was not statute barred. The dissatisfaction with the said ruling led the appellants to appeal to the Court of Appeal.

JUDGMENT AND ANALYSIS

Broadly speaking, the two major issues considered by the Court of Appeal revolve round limitation of action and non-joinder of parties. The first part, limitation of action, is however the focus of this review.¹⁸ The major legal issues as it concerns the issue of limitation period as deducible from the judgment of the appellate court are the following:

- a. Firstly, when is a right of action in a suit said to be lost? Does a right of action in a suit become automatically extinguished upon the completion of the statutorily limited period?

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12. This was to be effected by her agencies to wit, the Bureau for Public Enterprises (BPE) and the Nigerian Ports Authority (NPA)
 13. The 2nd to 5th appellants were Dr. Taiwo Afolabi, Mr Babatunde Olanrewaju Afolabi, Otunba Micheal Olatunde Olowu and Ports and Cargo Handling Services Company Limited respectively. Denca Services Limited was the 2nd respondent in the case
 14. This was done by the 1st, 3rd and 4th appellants to the exclusion of the respondents
 15. The CTCs revealed that the 1st and 3rd appellants were the only shareholders and directors of the 5th appellant. This was contrary to the terms of the MOU between the 1st appellant and the respondents
 16. The Supreme Court struck it out on the ground that the FHC had no jurisdiction to entertain the matter. It may be apposite to point out here, like the Court of Appeal rightly observed, that the Supreme Court should have simply transferred the suit from the FHC to the appropriate State High Court instead of an order of striking out for lack of jurisdiction since the case has been concluded on merit by the two lower courts. See s 22 Federal High Court Act, 2005; s 15 of the Court of Appeal Act; s 22 of the Supreme Court Act; *Aluminium Manufacturing Co. Ltd v NPA* (1987) 11 NWLR (Pt 51) 475; *Dumez (Nig.) Plc v UBA Plc* (2006) 14 NWLR (Pt 1000) 515 at 526; *Believers Fisheries Dredging & Anor v UTB Trustees Ltd* (2010) LPELR (3864) CA; *Nyienakuna v University of Uyo* (2014) LPELR (22657) CA
 17. This was brought pursuant to s 8 of the Lagos State Limitation Law
 18. It is submitted that the reasoning of both courts in finding unmeritorious the contention of the defendants/appellants, on the non-joinder of NPA and BPE as necessary parties, was right. This is particularly so considering the long – age dictum of Oputa JSC (of blessed memory) in *Green v Green* (1987) 3 NWLR (Pt 61) 480 on the distinction between proper parties, desirable parties and necessary parties. Besides, it is trite that non-joinder of parties will not defeat a cause of action. See *Coker v Adeyemo* (1968) NMLR 323; *Peenok Investments Ltd v Hotel Presidential* (1982) 12 SC; *Okoye v Nigerian Construction & Furniture Co. Ltd* (1991) 6 NWLR (Pt 199) 501



- b. Secondly, are there specific circumstances or actions that a court of law ought to consider in determining the period when a cause of action arose and when a right to action to same is lost?
- c. Whether there are no Nigerian authorities on all fours with the case at hand to warrant the courts to place reliance on a foreign authority to arrive at their decision, in holding that the computation of time in respect of the limitation period in a particular suit has been suspended or put in abeyance in particular circumstances?

It is noteworthy that the judgment of the court was unanimous. The lead judgment was delivered by Hon. Justice Samuel C. Oseji, JCA. The court adjudged the appeal to be unmeritorious and dismissed it accordingly. It held that the suit was not caught by the Lagos State Limitation Law, 2003.

The court reasoned that generally speaking, a right of action is automatically lost in a suit upon the expiration of the statutorily stipulated period.¹⁹ However, specific circumstances may provide an exception to this general principle (e.g. a pending court action as in this case). In the court's view, there is a mischief which limitation laws seek to achieve. It is to discourage stale claims that arose as a result of the inactivity of a party. This might cause evidence in the case to disappear or create lapse of memory of the witnesses in the case. This places the opponent at a disadvantage in meeting the case in court.²⁰ The court held that the respondents in the case had not tarried or slept on their rights.

It is important to emphasise that the case under consideration raises a recondite issue in Nigerian jurisprudence. The novelty is as to whether a limitation enactment applies to an action while pending in court. This implies determining whether or not the period of the pendency of a suit in court will be included or excluded in computing a limitation period.

It is trite that time begins to run from the date when the cause of action accrued.²¹ It is also trite that a cause of action arises from the time when a breach of any duty or act occurs which necessitates the party affected to seek a court action to protect the threatened or actual breach of duty.²² The holding of the appellate court that an action is said to be statute barred after the lapse of the prescribed limitation period corresponds with the position of law. Such an action is generally not sustainable.²³ This is also the opinion of the courts in other jurisdictions.²⁴

The Court of Appeal in *Sifax Nigeria Limited v Migfo Nigeria Limited* in making a significant exception to the general rule held that time stops to run during the pendency of a court action. The Court, per Samuel Oseji JCA held as follows:

Nonetheless, I am of the humble view that the postulation of the learned author relied on by the learned trial judge to the effect that time ceases to run when the plaintiff commences legal proceedings in respect of a cause of action in question is persuasive on this recondite area of law and it accords with justice and common sense. When an aggrieved person commences an action within the period prescribed by the statute and such action is subsequently struck out for one reason or the other without being heard on the merit or subjected to an outright dismissal, such an action is still open to be recommenced at the instance of the Claimant and the limitation period shall not count during the pendency of the earlier Suit. In other words, computation of time

19. *Asaboro v Pan Ocean Oil (Nig) Ltd* (2006) 4 NWLR (Pt 971) 595; *Ogunko & Ors v Shelle* (2004) 6 NWLR (Pt 868) 17

20. *SPDC Ltd v Sarah* (1995) 3 NWLR (Pt 382) 148; *Duzu v Yunusa* (2010) 10 NWLR (Pt 1201) 80

21. See *Sanda v Kukawa Local Government* (1991) 2 NWLR (Pt 174) 379

22. See dictum of Hon. Justice Iguh JSC in *Woherem v Emeruwa* (2004) ALL FWLR (Pt 221) 1570

23. *Ekeogu v Aliri* (n2)

24. See for instances the *Kapetan Markos Case* (1986) 1 Lloyd's Rep 211; *Manby v Manby* (1876) 3 Ch 101



during the pendency of an action shall remain frozen from the filing of an action until it is determined or abates.²⁵

The appellate court in coming to its decision that the case of the respondents was not caught by Section 8 (1) (a) of the Limitation Law of Lagos State, 2003 considered a number of cases. It would be of essence to consider some of these cases. This is important so as to fully grasp the issues in contention and whether there was a previously decided case on all fours with this case.

The first of these was the case of *Eboigbe v NNPC*.²⁶ The major issue considered by the Supreme Court in the case was whether or not the entire conduct and representations of the respondent especially as highlighted by the statement of claim does not prevent her from taken advantage of the statute of limitation.²⁷ In summary, the facts have to do with a claim of destruction of farm produce and property against the respondent by the appellant,²⁸ discovered in February, 1979. The appellant claimed that his brothers who were within jurisdiction, who could have taken court action were illiterates. On his return, various correspondences were exchanged between the parties. These correspondences were with a view to negotiation and settlement of the issues involved. In February 1984, the respondent, upon a consideration of the case of the appellant, unequivocally stated that no compensation would be paid to the appellant.

The appellant instituted an action in June 1985. The respondent, inter alia, raised the issue of limitation of action against the appellant. The Supreme Court was then to decide whether the excuses of the appellant, to wit, absence from jurisdiction, illiteracy of parties and exchange of correspondence with a view to settlement or negotiation, constitute a justification to preclude the respondent from taken advantage of the limitation statutes. Hon. Justice Yekini Adio JSC who read the lead judgment dismissed the contentions of the appellants. While relying on various authorities,²⁹ he held that the law does not prohibit parties to a dispute from engaging in negotiation for the purpose of settling the dispute. But in the absence of a settlement of the dispute or an admission of liability on the part of a defendant, the limitation time continues to run. He concluded that there was nothing in the manner in which the Respondent conducted the negotiation which could estop it from relying on or raising the statutes of limitation.³⁰ The judgment of the court was that the excuses of the appellants were not justifiable either in law or equity. It is therefore contended that *Eboigbe's* case was not on all fours with the case under review.

Another case considered by the Court of Appeal was *City Engineering Nigeria Ltd v Federal Housing Authority*.³¹ It is apposite to state that the major issue considered by the Supreme Court in this case was a determination of when limitation period starts to run for the purpose of enforcing an arbitral award; is it at the date of the accrual of the original cause of action or the date of the arbitral award? Hon. Justice Michael Ogundare JSC who read the lead judgment in the case held, while he considered previously similar cases,³² that the period of limitation for the purpose of enforcement of an arbitral award starts to run from the date when the cause of action arose and not when the award was made unless it contained a *Scott v Avery*³³ clause.³⁴ Clearly therefore, *City Engineering Nigeria Ltd's* case was distinguishable from the *Sifax Nigeria Limited's* case.

25. At pages 63-64

26. *ibid* (n 6)

27. In this case, s 11 (1) (2) of the NNPC Act No 33 of 1977 and s 4 (1) (a) of the Limitation Law, Cap 89 Laws of Bendel State of Nigeria, 1976 were the major statutes in contention

28. The appellant was the plaintiff at the trial Court while the respondent was the defendant

29. Some of these include *Egbe v Adefarasin* (n 1); *Obiefuna v Okoye* (1961) 1 ALL NLR 357; *Adeyemo v Adegboyega & COP* (1973) Vol 3 (Pt II) ECCLR 991; *Riches v DPP* (1973) 2 ALLER 935

30. At pages 660, paras D – F. The Court relied also on *Hawlett v London County Council* (n 5)

31. (1997) 9 NWLR (Pt 520) 224

32. The Hon. Justice relied on the case of *KSUDB v Fanz Construction* (1990) 4 NWLR (Pt 142) 1. He distinguished *City Engineering's* case from other cases like *Murmansk State Steamship Line v Kano Oil Millers* (1974) 12 SC 1 and *Obembe v Wemabod Estates* (1977) 5 SC 115

33. (1856) 5 HLC 811

34. This clause is to the effect that there would be no judicial intervention in a dispute agreed to be resolved through arbitration unless and until the arbitral award has been finally given



Similarly, the court examined the Court of Appeal's decision in *Kolawole Ind. Co. Ltd v AGF & Ors.*³⁵ Suffice it to mention that the judgment of the court in this case was majorly, *inter alia*, to establish the fact that a defence founded on limitation of time can be raised at any point in time.³⁶ This is because such a defence challenges the competence of the suit and the jurisdiction of the court to entertain it.³⁷ The issue as to the status of a pending court action in relation to a limitation statute was not considered. Thus, this case is also evidently distinguishable from the case under review.

Furthermore, the appellate court evaluated the case of *Ports & Cargo Handlings Services Co. Ltd v Migfo.*³⁸ The main issue for consideration by the Supreme Court in the case was on the jurisdiction of the Federal High Court in relation to certain admiralty matters.³⁹ All other issues in the case were discarded. It is therefore also submitted that this case was also not on all fours with the case under consideration.

The last case which had a significant influence on the judgment of the court was the case of *Alhaji Haruna Kassim v Hermann Ebert (Trading as Cash Stores).*⁴⁰ Due to the significance of this case to the court's judgment, a brief of its facts needs to be considered. As found by the trial court, the facts entailed a simple contract between the parties. The plaintiff sold goods to the defendant on credit on 03/05/1957. When the defendant defaulted in paying, the plaintiff sued for debt recovery. On 18/01/1963, the court ordered that pleadings be exchanged.⁴¹ The plaintiff did not give further instructions to his counsel. This hindered his counsel from filing the statement of claim. On 31/05/1963, the claim was struck out at his instance.⁴² Subsequently, he brought an interlocutory application to relist the suit on 04/12/1963.⁴³ The defendant contended that the suit was statute barred.⁴⁴

The main contention before the Supreme Court was whether or not the limitation statute applied to the relisted suit. Hon. Justice Adetunbo Ademola CJN, who read the lead judgment, relied on the pronouncement of Lord Jessel M.R. in *Re Clagett's Estate, Fordham v Clagett*⁴⁵ where it was stated that:

A cause is said to be pending in a court of justice when any proceeding can be taken in it. That is the test. If you can take any proceeding, it is pending.⁴⁶

The court therefore held that the suit struck out could be revived as it was to be moved to the hearing cause list from the general cause list it was hitherto, after been struck out.⁴⁷ The court reasoned that the revival of the action was a continuation of the action struck out, which would count in favour of the renewed action at the court with the requisite jurisdiction.⁴⁸ Though, *Alhaji Haruna Kassim's Case* was not on all fours with *Sifax Nigeria Limited's Case*, it is contended that the subject matters for determination in both cases were substantially the same. One of the noticeable distinctions between both cases was the fact that the former was struck out on grounds of failure to file statement of claim (which

35. (2012) 14 NWLR (Pt 1320) 221

36. See *Kolo v FBN Plc* (2003) 3 NWLR (Pt 886) 216

37. See *Adekoya v Federal Housing Authority* (2008) 11 NWLR (Pt 1099) 539; *Olagunju v PHCN Plc* (2011) All FWLR (Pt 582) 635

38. (2013) NWLR (Pt 1333) 555

39. The case was on the true import of s 251 (1) (g) of the 1999 Nigerian Constitution (as amended). See the lead judgment of Hon. Justice Suleiman Galadima

40. (1966) ANLR 54

41. The plaintiff was ordered to file his statement of claim within 40 days while the defendant was to file his statement of defence thereafter, for same number of days

42. The court ordered: '*claim struck out with liberty to apply for relisting without payment of further summons fee*'

43. The court granted this prayer on 13/12/1963. The plaintiff was ordered to file his statement of claim within 3 weeks of the order while the statement of defence was to be filed 4 weeks thereafter

44. The major argument of the defendant was that the order of 'liberty to relist' given by the court means relisting within the limitation period i.e. 6 years. The plaintiff on the other hand contended that the suit was not a new suit and not entirely different from the one initially struck out

45. (1882) 20 Ch D 637

46. *ibid* 653. This case was also applied in the case of *Renner v Thensu & ors.* (1926-29) F. Ct 498

47. See *Panalpina World Transport (Nig) Ltd v J. B. Olandeen International & ors.* (2010) 19 NWLR (Pt 1226) 1; *Alor v Ngene* (2007) All FWLR (Pt 362) 1836

48. See *Waterline Nigeria Limited v Fawe Services Limited* All FWLR (Pt 163) 88; *Abey v Alex* (1999) 14 NWLR (Pt 637) 148



was also at the instance of the plaintiff's counsel), while the latter was struck out for want of requisite jurisdiction of the trial court. Similarly, the former involved a suit for debt recovery while the latter revolved round a breach of contract (or agreement). Another was the fact that the plaintiff in the former case had the leverage from the court to relist without payment of further summons fee while the latter case was to be instituted afresh after being struck out (though not amounting to a dismissal) by the apex court.

Apart from the above, one apparent denominator common to both cases was defence of limitation raised by counsel for the defendants. Again, the subject matter in both cases arose from a form of agreement. Also, the determination of the main issue of contention in both cases - limitation period, touches on the jurisdictional competence of the court. Upholding the argument of limitation statute in both cases is sufficient to dispose off and discard all other issues of contention between the parties. Besides, both cases had the legal genesis of an action alleged of being statute barred after being struck out. This writer is therefore in agreement with the reliance placed on *Alhaji Haruna Kassim's Case*.

The writer is also of the view that the reliance placed by the trial and appellate court on a foreign authority, a textbook, is in order. It is trite that foreign authorities have only persuasive effect on Nigerian courts but they are immensely useful when there are no direct Nigerian authorities on an issue. It is admitted that it is only decisions of Nigerian superior courts that have binding effect on lower courts on the basis of the doctrine of *stare decisis*.⁴⁹ This is aimed at ensuring consistency, predictability, certainty, uniformity and stability in the development of Nigerian legal jurisprudence. The foreign authority in contention in *Sifax's* case was a textbook, *Limitation Period*, by Professor Andrew McGee.⁵⁰ The learned author stated:

...time ceases to run when the plaintiff commences legal proceedings in respect of the cause of action in question. It is general principle of some importance that the bringing of an action stops the running of time for the purpose of that action only.⁵¹

It was therefore contended that a case pending in court puts a stop on the running of time for the purpose of that particular action only. Thus, two or more causes of action may arise from a single transaction.⁵² One cause of action may be caught by a statute of limitation while the other survives. In *Lefevre v White*⁵³ cited by the erudite author,⁵⁴ Popplewell, J. held that in an action for personal injury, the pendency of the action stopped from running for the purpose of the limitation period. But such limitation ceases to exist against a suit brought by the plaintiff against the insurers after the defendant became bankrupt. This was irrespective of the fact that the suit was filed outside the limitation period.⁵⁵

Even though in *Alhaji Haruna Kassim's Case*, the apex court did not equivocally state that because the case was struck out with liberty to relist, it amounted to putting time on suspension, it is submitted that the pronouncement of the Supreme Court was to this effect. This is because the case was merely pending and could be revived by simply transferring it from the general cause list to the hearing cause list.⁵⁶

Another issue considered in the judgment of the court is the issue of statutory interpretation of the provisions of Section 8 (1) (a) of the Lagos State Limitation Law, 2003. The section bars actions founded on simple contract after 6 years. Hon. Justice Joseph S. Ikyegh JCA in his concurring judgment posited that the Mischief Rule of statutory interpretation should be brought to bear. The Mischief Rule implies a

49. See *Inakoju v Adeleke* (2007) 4 NWLR (Pt 1025) 423; *Yahaya v State* (2002) 3 NWLR (Pt 754) 289

50. (7th Edition, Sweet & Maxwell, 2014)

51. See page 21, *ibid*

52. In some cases, both civil and criminal causes of action may arise from a single transaction

53. (1990) 1 Lloyds Rep. 569

54. This was also reflected in the concurring judgment of Hon. Justice Joseph S. Ikyegh JCA

55. See also *Virgo Steamship co. v Skaarup Shipping Corporation* decided on 21/06/88 cited by the Author, see pp. 22-23 (fn. 78)

56. See also the rewarding dictum of Hall, J. in *Renner v Thensu & ors* (n 46) 78 which was to the effect that there were cases in the old court of Chancery that had been tried for fifty or hundred years and were still pending.



consideration of the mischief the said enactment intended to cure or address.⁵⁷ The appellants contended that the said provision of the Limitation Law was unambiguous and clear, thus, requiring a literal interpretation.⁵⁸ This writer contends that besides the introduction of the Mischief Rule, which was rightly applied in the case, the Law itself is clear as to the exceptions to the provisions of Section 8 (1) (a).⁵⁹ Even though it was not considered in the lead judgment, the concurring judgment of Hon. Justice Joseph S. Ikyegh JCA appreciably examined it.

Section 13 of the Lagos State Limitation Law exempt claims for equitable relief from limitation period.⁶⁰ Similarly, Section 58 is to the effect that limitation period can be postponed in cases of fraud. Subsection (1)(b) suspends application of limitation period to actions 'concealed by the fraud of any such person until the fraud is discovered or could with reasonable diligence have been discovered'. The writer agrees with the conclusion of the appellate court that based on the findings of the trial court, the reliefs of the respondents are equitable in nature and therefore exempted from the Limitation Law. The provisions of Section 8 are subject to those of Section 58.⁶¹

In addition, it is contended that the appellate court, in addressing the legal basis for holding that the computation of time should be put in abeyance, should have also considered the role of equity to a significant extent. Though the lead judgment made mention of the need for justice and common sense,⁶² much was not said about the role or essence of equity in the determination of the suit. Many of the principles of equity have evolved to mitigate the harshness of Common Law. One of the most apposite equity maxims applicable to the case is: *Equity aids the vigilant and not the indolent*.⁶³ In the words of Lord Camden L.C in *Smith v Clay*:⁶⁴

A court of equity has always refused its aid to stale demands, where a party has slept upon his right and acquiesced for a great length of time. Nothing can call forth this court into activity, but conscience, good faith and reasonable diligence; where these are wanting, the court is passive and does nothing.⁶⁵

Similarly is the equity maxim that *he who comes to equity must come with clean hands*. This relates to the behavior of the plaintiff prior to the suit.⁶⁶ These two equity maxims should have constituted one of the bases of the appellate court's judgment. This is of extreme importance so as to aid the courts in properly deciding cases wherein the reliefs prayed from the courts are not equitable but declaratory in nature, but the party in question has not slept or tarried on his right to institute an action in court. It is however commendable that the learned justices took note of the promptitude of the respondents to seek redress in court at the FHC in 2006 within the same year the cause of action arose, as well as at the Lagos State High Court within two months of the striking out of the earlier case by the Supreme Court.

57. See *Elabanjo v Dawodu* (2006) 15 NWLR (Pt 1001) 76

58. *Awolowo v Shagari* (1979) 6–9 SC. 51; *NDIC v Okem Enterprises* (2004) 10 NWLR (Pt 880) 107

59. See the provisions of sections 13 and 58 of the Lagos State Limitation Law, 2003

60. The section provides that: 'sections 8, 9 and 11 shall not apply to any claim for specific performance of a contract or for an injunction or other equitable relief'

61. See s 7 which exempts cases of disability, acknowledgment, part payment, fraud and mistake. See also *Adekeye v Akin – Olugbade* (1987) 3 NWLR (Pt 60) 214

62. Page 33 of CTC of judgment on file with the Author

63. Such delay is known as laches. See the dictum of Lord Selbourne in *Lindsay Petroleum Co. v Hurd* (1874) LR 5 PC 221

64. (1767) 3 BRO.CC 639

65. See also *Nwakobi v Nzekwu* {1964} 1 WLR 1019; *Ibeziako v Abutu* (1954) 3 ENLR 24

66. See *Loughran v Loughran* (1934) 292 US 216



IMPERATIVES AND IMPLICATIONS OF THE JUDGMENT

To conclude this analysis, if the case under consideration is eventually appealed to the Supreme Court and the apex court is persuaded to uphold the judgments of both lower courts, there are various questions that need to be considered in the process. Three of such questions are:

- a. Would it mean that the exceptions to the application of a limitation statute are inexhaustive? In another sense, apart from a pending court action as in the present case, are there other circumstances which would warrant the suspension of a limitation period from running? Is the situation to be considered on a case by case basis?
- b. It is conceded that the Lagos State Limitation Law, 2003 exempt suits with equitable reliefs. Assuming, arguendo, that a particular suit contains only declaratory but not equitable reliefs, would the court be persuaded to still exempt the application of a limitation statute if the party involved acts promptly and does not sleep on his rights?
- c. What are the factors or principles to guide the courts in arriving at the legal basis for determining circumstances that will warrant putting the limitation period in abeyance in future novel cases, which are clearly distinguishable from all the previously considered cases?

A court judgment may have socio-political and constitutional implications. The constitution is the grundnorm from which all other authorities derive their powers and obligations.⁶⁷ The Nigerian Constitution clearly separates the powers of the three arms of government.⁶⁸ As noted in the concurring judgment of Hon. Justice Joseph S. Ikyegh JCA, acceding to a contention that computation of time should not be put in abeyance for court pending actions will, apart from being unfair, unjust and prejudicial to the right to court of claimants,⁶⁹ jeopardise the constitutional intent of the doctrine of separation of powers. This will place the judicature in indirect control of the legislature under the guise of a limitation law. This will amount to a violation of various sections of the 1999 Constitution.⁷⁰ Besides this, it is also against the intent of Chapter II of the Constitution which provides for the Fundamental Objectives and Directive Principles of State Policy.⁷¹ It is therefore contended that in the event that the apex court overturns the judgment of the Court of Appeal, such will arguably be required to be re-addressed by it.

It is important to comment on the duration the case took before it ran its full course to the Supreme Court at the first instance before it was struck out. The suit was initially commenced at the Federal High Court in Lagos in 2006. It took six years before it was then struck out by the apex court on ground of want of requisite jurisdiction by the Federal High Court. After being reinstated in June 2012, it took another three years before the Court of Appeal could deliver its judgment on an interlocutory appeal. The number of years it will take before the Supreme Court will give judgment (if appealed) is uncertain. It is saddening to note that throughout these 9 years, the merits of the case have not been heard. In the event that the case at this interlocutory stage is being appealed, one then imagines the total number of years it will subsequently take the suit to run its full course if litigated to the apex court on its merits. The delay is quite discouraging to investment and the necessary authorities have to seriously address this if the country is serious about attracting investment into the economy.

67. See s 1 (1) and (3) of the 1999 Nigerian Constitution which is the supremacy clause of the Constitution.

68. See ss 4–6 thereof

69. See s 6 (6) (b) of the Constitution. See also *Ogli Oko Memorial Farms Ltd & anor v Nigerian Agricultural and Cooperative Bank Ltd & anor* (2008) 4 SCNJ 436; *State of Indiana Ex Rel Andrew Kostas v W. Johnson* 168 ALR 1118

70. These includes 1 (1) and (3) – the supremacy clause; 4 (8) – which subjects National Assembly powers to judicial review; and 6 (6) (b) – empowers a court to determine any question as to the civil rights and obligations of a person

71. See ss 13, 14 (1), 17 (1) and 23 of the Constitution



The judgment in *Sifax's* case is invariably a triumph of substance over technicality. It would have been inconceivable for the case of the respondents to have been defeated on the ground of its being statute barred when the respondents had promptly, without let, approached the courts for the ventilation of their rights. The judgment will also give a breather to several other litigants in courts with the realisation that as long as their cases are pending in courts, time will stop to run against them until the case is “determined or abates”.

CONCLUSION

Undoubtedly, the case of *Sifax Nigeria Limited & 4 Ors v Migfo Nigeria Limited & Anor* raises a recondite legal issue in Nigerian jurisprudence. The Court of Appeal has been courageous in thinking outside the box to strike a balance between the provisions of a limitation law and the need to justly and fairly dispose off the case before it. It is hoped that the Supreme Court will soon have an opportunity to consider some of the issues examined in this review and grant relief to innumerable litigants that have been shackled in several ways by the chain of technicalities.

