NATURE AND SCOPE OF STATUTES OF LIMITATION UNDER NIGERIAN LAWS

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DECLARATION

I, **ANTHONY RALUCHUKWU IBE,** with registration number **GOU/U21/LAW/379,** declare that this work was duly and diligently carried out by me in the Faculty of Law, Godfrey Okoye University, Enugu.

The primary and secondary sources used to carry out this legal research, are acknowledged appropriately and referenced, within this project. This work is an original and has not been submitted in part or in full for the award of any degree in this or any other Faculty of Law within and outside Nigeria.

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CERTIFICATION

I, **ANTHONY RALUCHUKWU IBE,** with registration number **GOU/U21/LAW/379,** certify that this research essay was done by me, with the direct and diligent supervision of Assoc. Prof. Friday O. Iloh, has been approved by the staff of the Faculty of Law, Godfrey Okoye University, Enugu. To the extent that the requirements for a Bachelor's degree in law (LL.B) are partially met.

Aside from the sources cited in this search project, this research work is an original work and has not been presented in part or in full, for any degree of this University or any other University.

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DEDICATION

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LIST OF ABBREVIATIONS

CA	Court of Appeal
Cap	Chapter (of the Laws of the Federation or State)
CFRN	Constitution of the Federal Republic of Nigeria
FCT	Federal Capital Territory
LFN	Laws of the Federation of Nigeria
LPELR	Law Pavilion Electronic Law Reports
NLR	Nigeria Law Reports
NWLR	Nigerian Weekly Law Reports
NNPC	Nigerian National Petroleum Corporation
PAPA	Public Authorities Protection Act
POPA	Public Officers Protection Act
Pt	Part (of a law report volume)
s / ss	Section / Sections
SC	Supreme Court of Nigeria

ABSTRACT

This study examines the nature and scope of statutes of limitation under Nigerian law, with particular attention to the structural fragmentation arising from the coexistence of the Public Officers Protection Act (POPA), Cap P41, Laws of the Federation of Nigeria 2004, and the diverse body of state limitation legislation governing civil actions across the federation. The aim of the study is to provide a comprehensive and critical doctrinal analysis of the Nigerian limitation law regime, to identify the legal inconsistencies and structural inadequacies that undermine its operation, and to propose specific legislative and judicial reforms capable of producing a limitation framework that is coherent, equitable, and consistent with modern constitutional values. The doctrinal research methodology is adopted throughout, relying on primary sources comprising the Limitation Act (Cap 522, LFN 1990), the Limitation Law of Lagos State (Cap L67, Laws of Lagos State 2015), the Public Officers Protection Act, and the authoritative decisions of the Supreme Court and Court of Appeal, supplemented by secondary sources including textbooks, peer-reviewed articles, and institutional reports. The study finds, first, that the limitation law regime in Nigeria rests on sound and enduring policy foundations — the public interest in the finality of litigation, the preservation of evidence, and the protection of defendants from indefinite liability — but that those foundations are undermined in practice by a piecemeal legislative structure in which thirty-six states and the Federal Capital Territory each operate under distinct limitation regimes, producing a jurisdictional lottery in which the survival of a civil claim may depend more on the geographical location of the parties than on the merits of the dispute. Second, the study finds that POPA's three-month window, while judicially ameliorated by a body of exceptions developed by the Supreme Court — including exclusions for employment relationships, land recovery claims, and bad-faith conduct — remains constitutionally precarious and disproportionately burdensome in cases of latent or complex wrongs. Third, the study finds that the discovery rule and the tolling exceptions for legal disability, fraudulent concealment, and acknowledgment of debt, though adequate in their basic architecture, are insufficiently developed and inconsistently applied across jurisdictions, leaving meritorious claimants without remedy in cases where rigid application of the accrual rule produces manifest injustice. The study recommends: the enactment by the National Assembly of a single, comprehensive Limitation of Actions Act applicable across the federation; the fundamental reform of POPA to extend its primary period to not less than twelve months and to incorporate a date-of-knowledge provision for latent damage cases; the statutory entrenchment of judicial exceptions to POPA's protective reach in cases of bad faith or ultra vires conduct; the vesting in courts of a structured discretion to extend limitation periods in personal injury and latent damage cases modelled on sections 11 to 14A of the United Kingdom Limitation Act 1980; and the consolidation and clarification of the tolling exceptions in a unified national statute to address the lacuna created by supervening disability in cases of catastrophic personal injury.

CHAPTER ONE

GENERAL INTRODUCTION

1.1. Background to the Study

One of the most severe but most litigious aspects of civil procedure and substantive law is the application of Statutes of Limitation. The principle, in its simplest form is a practical recognition that the administration of justice should be able to take into consideration the lapse of time. A cause of action, however worthy of itself at the time of its establishment, can not be permitted to lie unsatisfied against a possible defendant. The doctrine has three imperative policy objectives, which are often summed up in the maxims: Interest reipublicae ut sit finis litium (it is in the general interest that there should be an end of litigation), the importance of securing that evidence is preserved and the memory of witnesses remains credible, and the importance of avoiding oppressing potential defendants with an unending series of claims (qui tam). Traditionally, the statutory basis of the Nigerian legal system as a result of common law reception derives the statutory basis of limitation directly as a result of English law-making sources[1]. This historical reliance is the reason of the first organization and the nomenclature of the time-barring legislation in Nigeria. The legislative power was decentralized after independence and this saw the passage of different Limitation Laws by the different State Houses of assembly. Although this was based on the federal structure, it created a complex jurisdiction. At the same time, certain federal laws were still maintained, in particular, the Public Authorities Protection Act (PAPA). The inflexible, much-deplored, twelve months' time limit of PAPA to bring suit against public officers and against statutory bodies is an element of exceptionalism, and, in the case of public services, it gives precedence to continuity of service rather than to the overall limitations of time. This foundation

[1]*Limitation Act of 1623.*

in Nigeria was developed as a more complicated, almost stratified system. The heterogeneity of legislature that comes as a result of this compels the study in hand. A litigant in Nigeria today needs to go through a maze, in which breach of contract, a tortious negligence, and even an action to recover land, might have different time constraints depending on the state in which the accrual of action takes place, and most importantly, who is the defendant. This two-level structure of federal specificity (PAPA) and state generality (State Limitation Laws) is the point of convergence. It frequently leads to the legal uncertainty, which is when cases are not ruled according to the merits of the claim but on a technical finding of the statute that is applicable. This is a significant uncertainty that invalidates the twin objectives of legal certainty and predictability which the limitation laws are expected to achieve. This particular piece of work gives a comprehensive account of this difficult law scene. It does not simply repeat the statutory provisions but provides a detailed theoretical argument as to the reason why various categories of claims have been assigned various time limits. A review of the obligatory nature of application of these important legislations, with special consideration to the judicial quest to reconcile the obligatory, time barring nature of PAPA to the constitutional right to justice. The outcome is a very heterogeneous, complex, and even confusing legal environment. Although the idea is good, to make cases finalized and defendants not subject to claims expired long ago, it is not always easy on the implementation side. Which law applies? Is it that the time began to run yesterday, or three years ago? These are not just questions in the books; these are the distinction between a citizen who is worthy of his/her day in court and the courtroom door being closed on them forever. Through historical developments and breaking the time-barring of civil actions down into different periods of application in different laws, this study aims to streamline the existing principles, bring out the anomalies and finally uncover the complexities of operations that exist in the Nigerian law on time-barring of civil actions. Such thorough analysis is not just an academic undertaking, but it is an essential move towards lobbying the legal changes needed to integrate these laws and make the process of civil justice more effective and fairer.

1.2. Statement of Problem

The principal goal of the Statutes of Limitation is to provide the legal finality and to protect the persons against the needs to defend the stale claims that have been lost by passage of time. But in the Nigerian legal system, this noble concept is greatly hampered by a disjointed nature of legislation and structural incoherence and inconsistency that eventually hinder the foreseeable and equitable administration of justice. The issue in the preceding research is complex: Inconsistency and Jurisdictional Clash in Legislation. The main concern lies in the fact that there is a dual regulatory regime of the strict federal Public Authorities Protection Act (PAPA) and the diverse state limit legislations. PAPA arbitrarily stipulates a short, rigid deadline (in most cases 12 months) to respond to actions against the officers and institutions of the state, which actually introduces a class difference among litigants. This is quite different with longer periods (usually three to six years) allowed under State Limitation Laws in regard to claims between private citizens. The resultant effect is a jurisdictional nightmare wherein the courts have to consume much time and effort to figure out which law, federal or state, should be applied to this specific act to obstruct substantive justice over a simple technicality of the identity of the defendant. Inequality of Implementation and Probability of Inequality. These laws are binding in nature and thus once the time elapses a claim is killed regardless of the true condition of the plaintiff. Even the shorter of the periods under PAPA, generally, is likely to cause unequal results, when the cause of action is latent, or when the injured person is bound by no immediate knowledge or even access to counsel. This rigidity may be regarded as contraventing the spirit of the right to access to the court replacing the merits of an action with strict adherence to calendar dates. Ambiguity in Judicial Interpretation and Problems of Interpretation. The two statutes have complicated legal life in the country in that the judicial system has been compelled to perform intricate balancing exercises leading to a significant amount of judicial contradictions on: The true date of accrual of cause of action. The clear definition of a public authority according to PAPA. The room to use the doctrine of continuous injury or the rule of discovery to escape the severity of short limitation periods.

Overall, the issue is in the fact that the present heterogeneous structure of Statutes of Limitation in Nigeria, being the result of historical reception and decentralization of legislation, does not offer the clarity, uniformity and the flexibility needed to create a modern justice delivery system that is fair and equitable. In this study, these discrepancies in the law are to be demystified, criticized as well as solutions to them are to be proposed.

1.3. Research Questions

The following research questions guide this study:

1. How has the dual legislative regime of the Public Officers Protection Act and the various state limitation laws created jurisdictional fragmentation in the governance of civil limitation periods in Nigeria, and what are the legal consequences of that fragmentation for the accrual, computation, and enforcement of time-bar provisions across different causes of action?

2. To what extent have the Nigerian courts, through their interpretation of the mandatory and jurisdictional character of limitation statutes, struck an appropriate balance between the obligation of finality imposed by those statutes and the constitutional right of access to

justice guaranteed under the 1999 Constitution[2], particularly in cases where the strict application of the three-month window under POPA produces substantive unfairness?

3. Are the existing statutory and judicial mechanisms for suspending or tolling the limitation period — including the exceptions for legal disability, fraudulent concealment, acknowledgment of debt, and the emerging discovery rule — adequate to mitigate the rigidities of the general accrual rule, and what specific legislative reforms are required to render those mechanisms comprehensive, consistent, and equitable across the Nigerian federation?

1.4. Aim and Objectives

Aim

The aim of this study is to provide a comprehensive and critical doctrinal analysis of the nature and scope of statutes of limitation under Nigerian law, to examine the structural incoherence of the existing dual federal-state legislative regime, and to identify targeted legal reforms capable of producing a limitation framework that is uniform, equitable, and consistent with the constitutional right of access to justice.

Objectives

In pursuit of the foregoing aim, this study sets out to achieve the following three objectives:

1. To trace the historical development of limitation law in Nigeria from its English common law origins through the colonial reception of the Limitation Act of 1623, to the enactment

[2] *Section 36(1)*, the Constitution of the Federal Republic of Nigeria 1999 (as amended).

of the Limitation Act[3] and the state limitation laws, and to examine how this evolution has produced the present fragmented dual-track legislative regime; to analyse the substantive operation of the principal limitation statutes POPA, the federal Limitation Act, and the Limitation Law of Lagos State across the main heads of civil action in contract, tort, and land recovery, with particular attention to the periods of limitation, the rules on accrual of the cause of action, the mandatory and jurisdictional character of the time-bar, and the procedural requirements for raising and responding to a limitation defence.

2. To examine and critically evaluate the judicial exceptions and tolling doctrines developed by the Supreme Court and Court of Appeal — including the exclusions to POPA's protective reach, the continuing tort doctrine, the discovery rule, and the exceptions for legal disability, fraudulent concealment, and acknowledgment of debt — in order to assess the extent to which those doctrines adequately protect claimants from the rigidities of the general accrual rule and from the disproportionate burden of the three-month window under POPA.

3. To formulate specific, evidence-based legislative and judicial recommendations for the reform of the Nigerian limitation law regime, including the enactment of a unified national Limitation of Actions Act, the reform of POPA, the introduction of a structured judicial discretion to extend limitation periods in appropriate cases, and the consolidation and clarification of the tolling exceptions.

1.5. Scope and Limitations

[3] Cap 522, LFN 1990.

Scope of the Study

This study is confined to the doctrinal analysis of statutes of limitation as they govern civil actions in Nigeria. It encompasses the following areas of substantive law and legislative instruments: the Public Officers Protection Act (Cap P41, LFN 2004) as the primary federal limitation statute; the Limitation Act (Cap 522, LFN 1990) as it applies to the Federal Capital Territory; and the Limitation Law of Lagos State (Cap L67, Laws of Lagos State 2015) as a representative and influential model of state-level limitation legislation. The study examines the full range of civil causes of action to which these instruments apply, including contractual and quasi-contractual claims, tortious actions (encompassing torts to the person, torts to property, and defamation), and actions for the recovery of land and the enforcement of judgment debts. It further encompasses the judicial doctrines governing the commencement and suspension of the limitation period — including the accrual rule, the continuing tort doctrine, the discovery rule, and the tolling exceptions for legal disability, fraudulent concealment, and acknowledgment of debt — as developed by the Supreme Court and Court of Appeal across the relevant period of Nigerian legal history.

The study does not purport to provide a provision-by-provision survey of the limitation legislation of all thirty-six states of the federation. Rather, it uses the Lagos State framework as the primary reference point for state-level analysis, supplemented by reference to the federal Limitation Act, on the basis that the Lagos State law is both the most fully litigated and the most widely influential state limitation statute in Nigeria, and that its provisions are broadly representative of the principles adopted by the majority of other states, most of which have modelled their legislation on the English Limitation Act of 1939.

Limitations of the Study

Three principal limitations attend this research. First, the breadth of Nigeria's legislative structure means that the study cannot undertake a jurisdiction-by-jurisdiction comparison of every state limitation law. While the Lagos State legislation is used as the principal state-level reference, variations in other states — particularly those in the northern part of the federation and those in states with distinct property law traditions — may produce outcomes that differ from the analysis set out in this study. Practitioners advising on limitation questions in those jurisdictions should conduct a jurisdiction-specific statutory audit before relying on the principles articulated here. Second, the study is entirely doctrinal in its methodology and therefore does not incorporate empirical data from interviews with legal practitioners, litigants, or judges on the practical operation of limitation law in Nigerian courts. The gap between the formal law as stated in statutes and judicial decisions and the informal practices that shape how limitation defences are raised, argued, and decided in practice is a significant one, and a future empirical study addressing that gap would make a valuable contribution to the literature. Third, the study does not extend to limitation provisions in criminal law, administrative law, or specialist federal legislation such as the tax statutes, the Investments and Securities Act, or intellectual property legislation, except where those provisions directly illuminate the civil law principles under examination.

1.6. Significance of the Study

The importance of this work is reflected in the field of academics, courts, and legislation:

The academic essay is an integrated and holistic synthesis of a scaffolded field of the law that can be regarded as a reference work by students, scholars, and legal practitioners who want to gain a comprehensive insight into the historical, theoretical, and practical interplay of state and federal limitations laws.

The research will provide a refined scope of developing the approaches to interpret the ambiguous and conflicting areas in judicial precedents by revealing the ambiguous aspects and inconsistency in the judicial precedents to understand the complex limitation questions, particularly the jurisdictional issues between PAPA and State Laws. This will help lawyers in giving advice to clients as well as help judges to give more predictable and consistent decisions.

The analysis of the inflexibility of the Public Authorities Protection Act and the inexistence of the homogeneity of the standards across states gives the empirical and theoretical foundation of the required change of law. This paper helps prove the strong thesis that the limitation laws should be harmonized, which has a good chance of becoming one single, current, and fair federal law facilitating certainty and access to justice.

Finally, by elucidating the regulations that control the lifespan of legal claims, the research improves popular understanding of their rights and duties, which results in vigilance and prevents the unfair extinguishing of the legitimate claims by a notorious statutory time frame.

1.7. Research Methodology

This study adopts the doctrinal research methodology. This methodology is based on a systematic and qualitative analysis of legal propositions by the examination of primary and secondary sources to ascertain the existing law. By utilizing this library-based approach, the research focuses on the "law as it is" (*lex lata*) to provide a coherent statement of the legal rules governing the nature and scope of statutes of limitation. The analytical framework of this approach is based on the strict examination of primary legal sources, which are the administrative powers of the research. These mainly involve the legislations of the Nigerian law with special attending to the Public Authorities Protection Act (PAPA) and representative State Limitation Laws, and the authority judicial precedents of the Supreme Court and the Court of Appeal. These are main sources which are supplemented by secondary ones such as special purpose textbooks, treatises and scholarly articles in peer-reviewed journals.

1.8 Literature Review

The principle of the Statutes of Limitation in Nigeria has its philosophical basis in the justifiable maxim *vigilantibus et non dormientibus jura subveniunt,* which states that the law is there to guard the vigilant and not the sleepwalkers of their rights. This conceptual framework has consistently been cited by scholars as a requirement of so-called legal hygiene, which is needed to prevent litigation becoming an unlimited liability on the state and the defendant. The main character of these statutes, as Okutepa notes, is to give a certain timeframe after which no further redress at the court will be possible, thus performing the dual purpose of guaranteeing defendants that their litigation will not resemble the proverbial dead man's hand (the evidence may have decayed, the memory may have faded) and by the state to guarantee that the litigation will finish (interest reipublicae ut sit finis litium).[4]

On the determination of the legality of such enactments, much of the legal literature in Nigeria differentiates between an enactment which precludes a remedy and one which precludes a right. As a rule, Nigerian limitation laws are procedural in nature; they do not extinguish the underlying right but only deprive the claimant of his judicial means to do so. In consequence, a statuted barred

[4] JS Okutepa, *The Law of Limitation of Actions in Nigeria* (2nd edn, Intec Printers 2011) 45.

debt is a moral obligation, and cannot be recovered by a refund suit, when voluntarily relinquished by a debtor. But there is an analytical move away that is critical when it comes to recovery of land. By different state statutes, like the Limitation Law of Lagos State, the lapse of the statutory period (usually 12 years) not only bars the remedy, but it practically extinguishes title in the original proprietor.[5] This procedural to substantive conversion of property rights is one of the areas of the scholarly discussion of the security of titles in Nigeria.

The limitation laws in Nigeria have a disjointed nature as opposed to a cohesive national code. Since limitation is a part of procedural law, it is in the concurrent list of legislation, and thus to creates a two-tier system. Activities in the Federal Capital Territory (FCT), and those that come under exclusive federal jurisdiction are regulated by the Limitation Act (Cap 522, LFN 1990), with each state having made its own Limitation Laws, in general following the English Limitation Act of 1939. Such fragmentation requires a strict choice-of-law study by legal professionals because the simple contracts or tort periods might differ on interstate lines. Lawyers, such as Adedeji, state that such variety in legislation can be a sort of a lottery of jurisdiction whereby the survival or extinction of a claim rests largely on the geographic origin of the cause of action.[6]

The key factor in the enactment of these statutes is the identification of the cause of action that is the time-based commencement of the time restriction clock. According to judicial authorities, cause of action is the totality of the facts which give rise to a claim that is enforcible; the time that the cause of action starts to run is the very moment when a claim is enforced. This accrual is a matter of high litigation on particularly the case of continuing damage or continuing trespass. The

[5] See s 16 of the *Limitation Law of Lagos State*, Cap L67, Laws of Lagos State 2015; see also *Sanda v Kukawa Local Government* [1991] 2 NWLR (Pt 174) 379.
[6]CA Adedeji, 'The Nature of Limitation Laws in Nigerian Civil Jurisprudence' (2020) 4 *Journal of Commercial Law* 112.

aforementioned courts have always maintained that in cases of a continuing wrong, the cause of action renews on a daily basis, but once the wrongdoing had stopped, then the statutory period commences in earnest. Lack of initiation proceedings within this window creates a vacuum of jurisdiction since the court loses its authority to adjudicate on the merits of the case as in the case of *Woher v Sambo*[7] and *Aremo II v Adekanye*.[8]

If there is anything quite controversial in the context of the Nigerian limitation law then, it is the Public Officers Protection Act (POPA). In the past, this federal law rendered an almost unbreakable shield on behalf of the public officers in that any measure against them must be initiated within a strict three months time. This has since been dramatically reduced by contemporary scholarly and judicial tendencies. The Supreme Court has cut sturdy exceptions by declaring that the three-month bar is not applicable in cases involving contracts of service or cases in which the claimant seeks review of recovered land, or cases in which the acting officer did so in bad faith, or not in the color of his or her official duty. This development represents a judicial determination to ensure that statutes are not used in order to cover administrative banditry as witnessed in the cases of *NRMA & FC v Johnson*[9] and *Ibrahim v Judicial Service Committee, Kaduna State.*[10]

A major debate in the constitution is whether these statutes are violations of Section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria which provides the right to a fair hearing. Critics propose that a statute of limitation has the effect of operating as an unconstitutional ouster clause to the presentation of a case by a litigant in front of a judge. However, the general scholarly and judicial opinion is that such laws are regulatory and not prohibitory. The courts have held that

[7] [2002] 14 NWLR (Pt 787) 256
[8] [2004] 13 NWLR (Pt 891) 572
[9] [2019] 2 NWLR (Pt 1656) 247
[10] [1998] 14 NWLR (Pt 584) 1

the right to a fair hearing is not a license to indefinite delay on the part of the court, but the statutes are in the overall best interest of justice since they are able to have a trial where the evidence is fresh and thus, the judicial process remains uncompromised.[11]

To reduce the severity that these regulations may bring about, the scope of the Nigerian law captures a number of safety valves referred to as the tolling exceptions. These include legal disability cases e.g. a minor or person of unsound mind in which the time limit does not start unless the disability is removed. Moreover, a defendant who has fraudulently suppressed the cause of action is given an exception to the limitation period until such a plaintiff finds the fraud, or would have found it on reasonable diligence. There is also a written recognition of a debt or a part-payment by a debtor which has the effect of re-establishing the statutory clock, thus giving a new period of six years on the date of such recognition. These exceptions, although giving an illusion of fairness, the overall trend on the literature suggests that the legislative harmonization to create a more standardized and available framework of all litigants in the federation of Nigeria is necessary.[12]

[11] O Owolabi, 'Constitutionalism and the Validity of Limitation Statutes in Nigeria' (2018) 12 *Nigerian Bar Journal* 88.

[12] *Eboigbe v NNPC* [1994] 5 NWLR (Pt 347) 649.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1. Conceptual Clarification and Legal Basis

The Nigerian jurisprudence concerning the temporal boundaries of a litigation is essentially based on the principle that law is applied to protect the vigilant but not the dormant; the Latin maxim perfectly describes it: *vigilantibus et non dormientibus jura subveniunt*. This is far more than a technicality and is considered to be a prerequisite of what is called legal hygiene, without which litigation would be a bottomless liability on both the state and the defendant. These laws help maintain the integrity of the judicial process by ensuring that conflicts are resolved within a reasonable duration of time to ensure that the trials are conducted when the evidence is still fresh and the memories of the witnesses are believable.

These statutes have a legal foundation on the fact that they have been used as an essential regulatory tool that enhances the finality of law. This is also confirmed by the maxim *interest reipublicae ut sit finis litium*, meaning "it is in the interest of the state that there be an end to litigation". It signifies that public welfare and legal stability require lawsuits to have a definitive conclusion, preventing indefinite legal disputes and promoting judicial efficiency. The doctrine, therefore, has three imperative policy purposes, namely, the preservation of evidence, finality of claims, and the protection of the potential defendants against an open-ended sequence of oppressive claims.

2.1.1. Definition of Statutes of Limitation and Time Bar

A Statute of Limitation is an official act of legislature that stipulates a particular and limited time in which legal action must be taken against one after the cause of action has occurred. These laws are commonly described in Nigerian law as statutes of repose, which are aimed at giving a certain date limit to possible liability and to avoid the weaponization of the judicial process by bringing in claims which have become old or even fraudulent. The Supreme Court has, in its ruling in the locus classicus of *Sanda v Kukawa Local Government,*[13] stated that the main nature of a limitation law is that it is to deter fraud, and that judicial machinery be used reasonably, thus preventing the renaissance of grievances long forgotten by the lapse of time.

The procedure with which this specific consequence is succeeded by is called Time Bar. It is a jurisdictional cut-off point under which the law will not permit a court to hear a suit. Analytically, a time-bar is jurisdictional, as opposed to a mere defense. When any given claim is established to have been statute-barred, the court is effectively deprived of adjudicatory capacity to consider the substantive merits of a given case, regardless of the merit of the plaintiff's grievances. The right may still remain in an abstract or moral sense, but the law remedy is killed, which enforces the law that the law is beneficial only to the alert.

2.1.2. Distinguishing Limitation from Laches and Acquiescence

The difference between the statutory character of the limitation and the principles of fairness in case of Laches and Acquiescence are critical analytical conditions required in this study. Although the two frameworks can be used to penalize delay, they differ in their legal foundations. Statutes of Limitation are rigid, compulsory, and non-negotiable; they work on a mathematical calculation

[13] [1991] 2 NWLR (Pt 174) 379

of time since the accrual date. They are "black-letter" laws, which do not consider "fairness" or "hardship" of a specific case, so long as the term of the statute has passed.

On the contrary, Laches is a fair doctrine that can be applied mainly in situations where there is no statutory time restriction or in cases where the use of a statute will be unfair. As opposed to the clock of limitation which is strict, Laches requires two elements to be considered valid and they are: (i) unreasonable delay on the part of the plaintiff, and (ii) prejudice or a reversal of position on the part of a defendant. According to Onokah, Laches is at the discretion and conscience of the court whereas limitation is at the mandate of the legislature.[14]

Equally, Acquiescence is a conduct-based bar wherein a person knowing his or her rights allows the other individual to violate his or her rights in full deliberation that he or she may not bring it up. In Nigerian land law, it is depicted in, *Akpan v Cookey*[15], the plaintiff operating within the twelve-year time limit in which a land recovery lawsuit could be enforced could find their claim defeated if the plaintiff in question allowed the defendant to continue with the development of the land in good faith, the defendant under the equitable plea of acquiescence would defeat the plaintiff's claim.[16]

2.1.3. Historical Development of Limitation Laws in Nigeria

The historical development of limitation laws in Nigeria is a story of colonial reception, localization, and federal disintegration. Before the British rule was imposed, the traditional African legal systems tended to follow the principle that time does not run against a debt or a claim. But upon the arrival of the colonial government, Nigeria inherited the English common law tradition.

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[14] MC Onokah, *Family Law* (Spectrum Books Ltd 2003) 88.
[15] (1913) 2 NLR 100
[16] IO Smith, *The Constitution of the Federal Republic of Nigeria: Annotated* (Ekowatch Publications 1999) 55.

The basic statutory intervention was the *English Limitation Act of 1623* which was imported into the Nigerian protectorates as a Statute of General Application that was in effect in England on 1 January 1900. This Act established the set period of six years on simple contracts and torts, which are still a standard of the Nigerian civil proceedings.

After the attainment of independence, legislative control over the issue of limitations became decentralized, which further illustrated the process of transforming Nigeria into a federal state. The first indigenous comprehensive act was the *Limitation Act of 1966*, which was limited in the first place to the Federal Territory of Lagos. As Nigeria evolved into a federation with thirty-six states, the State House of Assembly in each of the states had the legislative ability to pass state limitation laws. The majority of these laws, such as the *Limitation Law of Lagos State,* are highly influenced by the *English Limitation Act of 1939,* though they are a localized effort to control the extent of legal claims. The history of unified received law, toward a fragmented state-centric regime, reflects the complications of the present state of the law, especially in the specialized and usually draconian protections afforded by the Public Officers Protection Act.[17]

2.2. The Rationale and Policy Objectives of Limitation

The statutory restrictions on the timelines of starting legal proceedings are not a haphazard creation of the legislation but, instead, a carefully crafted tool of government policy intended to promote the effective dispensation of justice. The rationale of limitation in Nigerian law is built on a three-legged basis, including (i) safeguarding the interest of the state in finality, (ii) safeguarding the

[17] JS Okutepa, *The Law of Limitation of Actions in Nigeria* (2nd edn, Intec Printers 2011) 12.

integrity of evidence, and (iii) protecting persons against the psychological and economic impact of constant legal exposure.

2.2.1. The Principle of Interest Rei Publicae Ut Sit Finis Litium (Public Interest in Finality)

The Latin maxim is known as the *interest reipublicae ut sit finis litium*, which means "it is in the interest of the state that there be an end to litigation”, and is the foremost policy aim of limitation laws. This principle implies that the state is interested in the provision of the reasonable time period to resolve the legal conflict to be able to sustain social order and economic predictability. The courts in Nigeria have continuously held that the hanging of the "Sword of Damocles" indefinitely and hanging over the heads of the citizens is not conducive to a stable society as shown in the case of the *Eboigbe v NNPC.*[18]

Administratively, this would be a disaster to the judiciary as litigants could choose to revive old scores whenever they wished to do so. The law guarantees that judicial resources are utilized with a focus on the current disputes that directly influence the current socio-economic climate and have prescription of a "shelf-life" for causes of action. This definitiveness is critical to the commercial sector most especially, where businesses need to be in a position to put their financial books to rest without the fear of liability that comes as a result of a transaction that was made many decades ago.

2.2.2. Preventing Stale Claims and the Need for Evidence Preservation

One of the major practical reasons behind the statutes of limitation is that it helps to avoid stale claims. A stale claim is one whose quality of evidence has been destroyed by the flow of time, and hence, an effective trial by the court is virtually unfeasible. The law acknowledges that over the

[18] [1994] 5 NWLR (Pt 347) 649

years, the physical evidence will be lost or destroyed, and more to the point, the memory of witnesses, the lifeblood of oral testimony, is not trustworthy, as the law accepts, and is liable to distortion over time.

In litigation in Nigeria, where oral evidence is frequently of key importance, a risk of witness fading is a major issue of concern. Limitation laws, however, serve as a protection to the integrity of the judicial process as such. The law requires the plaintiffs to bring their cases when the facts are still fresh, and the evidence can still be accessed, hence the court's findings of fact have a credible foundation. This policy goal is consistent with the idea of fair hearing provided by the Constitution because a trial organized two decades after an occurrence is seldom fair to a defendant who is no longer able to trace the witnesses who could otherwise provide a strong defense.[19]

2.2.3. Protecting Potential Defendants from Indefinite Liability

The third principle of limitation policy is the safeguarding of potential defendants against being oppressed by indefinite liability. It is essentially unfair to enable a plaintiff to squat on his rights and then strike at his own discretion, usually when the defendant has destroyed documents or relocated based on the seeming non-existence of a claim. This is especially the case where the Public Service Protection Act (POPA) is applied to safeguard the protection of the human beings against being diverted by the shadow of the past when executing the current state activities as it was found in case of the *Ibrahim v Judicial Service Committee, Kaduna State*[20], that the protection of human beings as well as the artificial (statutory) person is guaranteed when the suit is brought more than three months after the act.

[19] O Owolabi, 'Constitutionalism and the Validity of Limitation Statutes in Nigeria' (2018) 12 *Nigerian Bar Journal* 88-90.
[20] [1998] 14 NWLR (Pt 584) 1.

This can also be explained using the economic theory of opportunity cost. When people and business organizations are always responsible for past deeds, they tend not to venture into new things or invest capital, as they are unsure of their actual economic position. The law gives people an opportunity to proceed with their lives and businesses by giving them the assurance that what they have done in the past, unless disputed within the legislative period, can no longer be used as a foundation for a judicial punishment. This protection has not been offered in support of the fact that the defendant may be wrong; it is merely an appreciation of the fact that the law must come to the understanding that the peace of the living must, in the end, put aside the past grievances.[21]

2.3. Mandatory Nature and Effect on Court Jurisdiction

The obligatory character of statutes of limitation implies that they are not simply guidance provisions or malleable rules of procedure, but are hard, peremptory statutory provisions that require unquestioning obedience. These statutes are judicial in nature in that after the time frame within which an action must be taken has lapsed, the right to avail oneself of the temple of justice to a remedy is essentially cut off. The time element in Nigerian civil procedure is taken with some degree of seriousness, which results in incompetence by the adjudicating body. This part offers a very detailed discussion of the overlap between the lapse of time and the competency of the court, addressing the highly ambiguous legal nature of limitation both as a shield and a sword in the processes.

2.3.1. Limitation as a Jurisdictional Bar Versus a Defense

[21] JS Okutepa, *The Law of Limitation of Actions in Nigeria* (2nd edn, Intec Printers 2011) 52.

Within the context of Nigerian civil jurisprudence, there is an abyss of debate and contention in the form of a difference between a juristic bar and a statutory defense. A statute of limitation is technically a defense, which requires a defendant in his Statement of Defense to plead under the various Rules of Court present throughout the Federation. When a defendant does not bring out the issue of limitation as soon as possible, then he/she risks being held to have waived the protection. But there is something unique in the law of limitation, which is that when once duly invoked and proved, its influence extends beyond the province of mere pleading and touches the very root of the judicial power.

It has always been enshrined in the Supreme Court, primarily in its landmark ruling of *Sanda v Kukawa Local Government*[22], that limitation law is a threshold question that would have established the competency of the court. The most accepted view of the nature of the analytical task is that jurisdiction is the lifeblood of adjudication; without it, any judicial exercise, however scrupulously conducted, would be a nullity. A statute-of-limitations clause does not always eliminate the plaintiff on his/her cause of action (the factual basis of the claim) in vacuo. However, it is an effective elimination of the right of action, which is the legal ability of the plaintiff to exercise the coercive power of the court. As a result, although the law requires the defendant to raise the defense by pleadings, the successful invocation of the statute acts as a complete bar to the jurisdiction of the court over the subject matter. The court is thus barred from engaging in an academic exercise of assessing the merits of a claim which has already been declared as stale by the law.

2.3.2. Consequences of Filing a Suit Outside the Prescribed Period

[22] [1991] 2 NWLR (Pt 174) 379

The most undesirable effect of filing a suit after the applicable Limitation Law is the immediate extinction of the judicial recourse. In the case of failure by the plaintiff to exercise his or her rights within the statutory time frame, the law assumes the plaintiff has abandoned his or her claim and is thus obliged to repose by the defendant. The greatest judicial impact in this regard is that the suit will be dismissed. The Supreme Court in *Eboigbe v NNPC,*[23] indicated that, in a situation where a suit is discovered to be statute-barred, the right course of action is to dismiss it and not strike it out. The reason is that once a claim has been barred by the statute, it is dead and cannot be reclaimed; the result of a dismissal means that it is final and that the plaintiff may not therefore seek to re-litigate the same matter through the back door of a different court.

In addition, when a suit is filed beyond the stipulated time, the right to judicial consideration of the merit of the case is lost in totality. It means that the court has no legal idea about the suffering of the plaintiff claimed, the seriousness of the wrong committed by the defendant, and any moral reason that the plaintiff may have in favor of the delay. At this point, the legislation takes the place of the balance of equity with the accuracy of the calendar. The "Time Bar" as is seen by Okutepa, is a finality mechanism that transforms a possible legal liability into a historical fact that may not be sued.[24] Through the application of these repercussions, the Nigerian legal system protects defendants from the dilemma of having to defend themselves against charges, whereby the lapse of time has left the procurement of a fair trial impossible to do, thus preserving the integrity of the judicial process.

[23] [1994] 5 NWLR (Pt 347) 649

[24] JS Okutepa, *The Law of Limitation of Actions in Nigeria* (2nd edn, Intec Printers 2011) 60.

CHAPTER THREE

THE STATUTORY FRAMEWORK OF LIMITATION LAWS IN NIGERIA

3.1. Overview of Governing Legislation

The legislative framework that informs the restriction of activities in Nigeria is essentially established on the federalism of the country, which requires a dual track system of enactment. In contrast to other jurisdictions, which use a single national code, the limitation laws in Nigeria are scattered through federal laws and multiple state legislations, and that creates a tangled net of time-based regulations. Such fragmentation is a direct result of the constitutional separation of powers provided in the 1999 Constitution, according to which procedural issues are often inherent in the remit of the residual or concurrent legislative authority of the states, whereas certain safeguards of federal agents and state institutions are specifically a cost of the National Assembly.

In any particular case, it is the preliminary test of status and geography that defines the scope of a certain limitation period: the type of parties involved and the location where the action took place. This discussion gives an in-depth picture of the main federal and state tools that constitute the time-bar statutory environment in Nigeria, and evaluates the conflicting purposes of these tools and the jurisdictional challenges they pose to the contemporary litigant.

3.1.1. Federal Laws: The Public Officers Protection Act (POPA)

The largest and most aggressively disputed legislation at the federal level is the Public Officers Protection Act (POPA). This Act, initially adopted under the colonial period and still contained in the Laws of the Federation of Nigeria (LFN) 2004, creates a specialized and restrictive limitation period of actions taken against public officers. Section 2(a) of the Act provides that any action, prosecution or proceeding against any individual, in respect of any act that was done in good faith pursuant to or performance of any Act or Law, or of any duty or authority vested in any person shall be instituted within three months after the act, neglect or default which is the subject of complaint.[25]

The character of POPA is protective and peremptory, and it is aimed at securing the administrative machineries of the state against the distractions of stale litigation. The legislative purpose is to allow the public servants to carry out their activities without fear of being sued by the court due to incidents that happened long ago, whereby evidence was stored or lost. But the extent of this cover is painstakingly narrowed down by judicial interpretation. The Act merely shields an officer acting in the colour of office and in good faith under clarification by the Supreme Court. In the case of *Ibrahim v Judicial Service Committee, Kaduna State*[26] The three-month protection is lost by an officer who acts with malice, or who acts without the statutory authority vested in his or her office, or in a way that is itself a continuing damage.

The Nigerian contemporary jurisprudence has also contributed to the discussion about POPA by devising major exceptions. As an example, the courts have always maintained that the Act is inapplicable to contracts of service (employment disputes) and claims to recover land. This judicial construction of the area covered by the statute is an analytical sensitivity to the perceived draconian quality of a three-month window, so that the safeguarding of public officers would not be turned into a tool of injustice and total aversion to constitutional rights of redress.

3.1.2. State Laws: Focus on the Limitation Laws of Key States (Lagos and Abuja FCT)

In addition to the specialized federal protections, general restriction of civil actions is regulated by state-specific legislations, which have a far expanded temporal definition than POPA. The

[25] *Public Officers Protection Act*, Cap P41, Laws of the Federation of Nigeria (LFN) 2004, s 2(a).
[26] [1998] 14 NWLR (Pt 584) 1.

Limitation Law of Lagos State (Cap L67, Laws of Lagos State 2015) is a text that can be used as an example of state-level regulation. This law is strongly affected by the English Limitation Act of 1939 and assigns a period of limitation depending on the substantive character of the claim. Section 8 of the Law stipulates the six years limitation as regards actions based on simple contracts or torts; at the same time, Section 16 provides twelve years as the limitation in respect of recovery of land.[27]

Of particular note in the Lagos State framework is its provision of extinguishment of title. In the case of land, as opposed to other orders where the statute only prevents the remedy, the expiry of the twelve-year period actually extinguishes the title of the original owner, and conveys the right to the person in adverse possession. This illustrates that the law of limitation is substantive and, as such, it concerns property rights.

On the contrary, the main governing law of the Federal Capital Territory (FCT), Abuja, is the Limitation Act (Cap 522, Laws of the Federation of Nigeria 1990). Even though it was passed by the National Assembly, its usage in the FCT is comparable to that of a state law. The FCT Act is in the same form structure as the Lagos State law; however, the act is frequently referred to in case law on the particulars of the accrual of cause of action in trust property and enforcement of judgments.

These separate state and FCT legislations point to the fragmented nature of Nigerian limitation jurisprudence. A litigant in Lagos has to maneuver through another statutory instrument compared to a litigant in Abuja or Enugu. Such absence of uniformity in the laws causes a lottery of jurisdiction whereby the success of an action on breach of contract or personal injury might solely

[27] *Limitation Law of Lagos State*, Cap L67, Laws of Lagos State 2015, ss 8 & 16.

rely on the state law that applies to the transaction. This means that the statutory framework makes the legal practitioners carry out a very thorough statutory audit before proceeding to court, since failure to locate the right governing law may result in a suit being struck at the first instance level.

3.2. Limitation Periods for Contractual and Quasi-Contractual Actions

The time management of the contract is a part of the Nigerian commercial jurisprudence whereby the wheels of commerce and credit are propelled at an appropriate speed. Under the Nigerian legal regime, a litigant does not have one exclusive duration of time he can take to initiate an action on breach of contract; the duration is determined with care with regard to the form of the contract, whether it is a simple agreement or a formal action, as well as the nature of the obligation that is formed. This restrictive procedure guarantees that more serious legal tools receive a longer span of enforceability, which is associated with their perceived permanence and a conscious motive of the parties involved.

3.2.1. Simple Contracts and Debt Recovery

An ordinary contract, whether concluded orally or supported by a writing without the necessity of a seal, would be subject to a severe six-year time span that would apply to any state among the Federation as well as to the Federal Capital Territory. In accordance with the rules of Section 8 of the Limitation Law of Lagos State and Section 7 of the Limitation Act (Abuja), any lawsuit based on a simple contract or a recovery of any debt should be commenced within six years following the date on which the cause of action had accrued.[28] The accrual in cases of debt recovery is a very significant time-triggering factor; it is typically defined as the particular time when an evident

[28] *Limitation Law of Lagos State*, Cap L67, Laws of Lagos State 2015, s 8(1)(a); see also *Limitation Act*, Cap 522, LFN 1990 (FCT), s 7.

request to be paid has been sent and declined, or the time limited by the agreed date or the performance of contracts has elapsed.

Analytically, this six-year window is a sort of commercial clearing house, where the financial disputes can be determined, yet the records are available, and the accounting entries can still be made. In case a creditor does not file a writ and lets this period pass, the debt is considered statute-barred. The moral obligation to pay up the debt might still exist, but the judicial machinery is practically unavailable to the creditor, and so denies the creditor a right of action. However, there is a big safety valve in the law which will allow the statute not to be invoked as a shield against bad faith; the limitation period may be renewed or reset in case the debtor admits the debt in writing or makes some part-payment. The result of such an act is a new date of accrual and a new start of the six-year clock from the date of the acknowledgment or payment, and the creditor maintains his right to judicial redress.[29]

3.2.2. Specialties and Formal Contracts

The area of limitation law is greatly enlarged by the subject of litigation being part of specialties, i.e., formal contracts that have been sealed with, e.g., deeds, covenants, and some types of bonds. Understanding the increased seriousness and the formalities of law which accompany the performance of a document under seal, Nigerian law attributes these tools a significantly longer life span. The time within which actions may be taken against a contract under seal in most Nigerian jurisdictions is twelve years, as compared to the time of action against simple contracts.[30] The logic behind this lengthiness of period is that the obligations that are usually included in formal instruments, like mortgages, complicated corporate indentures or land-related covenants, are long-

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[29] JS Okutepa, *The Law of Limitation of Actions in Nigeria* (2nd edn, Intec Printers 2011) 45.
[30] *Limitation Law of Lagos State*, s 12.

term obligations requiring the country of judicial redress to be longer. In the case of *Adedeji v National Bank of Nigeria*[31], according to the court, the performance of an agreement as an act raises the obligation over the temporary character of a mere commercial transaction, and so the interests of the creditor should be more strongly safeguarded. In addition, this group includes quasi-contractual acts and acts to enforce a recognizance, and these are treated by the law in a proportionate manner. The Nigerian statutory framework has preserved the necessary balance of requirements between the swift turnover in the day-to-day business and the stability of legal business transactions with high stakes when the period is twelve years. A practitioner who has wrongly defined the nature of the contract may well put a suit to death; an action taken on the eighth year on what the court has decided is a simple contract will be struck out on the grounds of a want of jurisdiction, notwithstanding the merits of the breach.[32]

3.3. Limitation Periods for Tortious Actions

In the jurisprudential environment of Nigeria, the use of limitation to tortious acts is a highly divisive point of convergence between the rights protection requirements of human beings and the legal finality requirements. Torts are civil wrongs and do not require the presence of a contract and include a wide range of injuries, starting with physical injuries to the individual and ending with the infringement of proprietary rights and a slandered reputation. The lawful range of these actions is, broadly speaking, governed by the rule of six years, but the law does identify certain types upon

[31] [1989] 1 NWLR (Pt 96) 212.
[32] O Owolabi, 'Constitutionalism and the Validity of Limitation Statutes in Nigeria' (2018) 12 *Nigerian Bar Journal* 88.

which the nature of the injury, and especially the injury to the human body, requires a rather swift method of legal action.

3.3.1. Torts to the Person (Negligence and Personal Injury)

The temporal control of the activities that are the result of personal injury is interrupted by a huge deviation from the common six-year long window. Although general negligence claims, including claims of purely economic loss or damage to property, are generally subject to a six-year period under Section 8 of the Limitation Law of Lagos State, those cases that involve the destruction of personal injuries to the plaintiff are limited to three years.[33] This is a smaller window, which can be attributed to a policy in legislation that physical injuries and the medical evidence necessary to demonstrate or prove that an injury was caused by an accident are highly perishable, and that the best assessment of the facts to determine the cause and effect relationship between an accident and an injury is best done with the facts still fresh.

The personal injury cases are normally a subject of a close judicial examination when it comes to the accrual of the cause of action. Even when the clock typically starts to tick at the time of injury, the modern Nigerian jurisprudence keeps paying more attention to the knowledge of the plaintiff. In *Eboigbe v NNPC*[34] The Supreme Court noted that the time limitation period is absolute as soon as it starts running, but in cases of latent injuries, like medical negligence or environmental pollution, the issue of when the plaintiff knew or should have known of the injury is the crucial safety valve on the road to equity. The inability to take action within this three-year period leads

[33] *Limitation Law of Lagos State*, Cap L67, Laws of Lagos State 2015, s 8(2); see also *Limitation Act*, Cap 522, LFN 1990 (FCT), s 7(2).
[34] [1994] 5 NWLR (Pt 347) 649.

to the complete waiving of the right to damages, which increases the time requirement within the mandatory character of the time-bar in a personal lawsuit.

3.3.2. Torts to Property (Trespass and Conversion)

Infringement of proprietary rights in chattels and land, such as trespass, conversion, and detinue are limited by a period of six years. The clock of limitation starts under the different statutory regimes adopted by different states at the point where the wrongful interference is committed with the property. In an example of a conversion claim, the cause of action arises when the defendant presents an intent to gain dominance over the plaintiff's goods in a manner that is not congruent with the rights of the plaintiff.

One such characteristic of property torts is the doctrine of continuing trespass. Unlike a one-time conversion, an ongoing trespass that is in the form of the illegal building of a structure on the land of another creates a new cause of action every day the trespass continues. As in *Aremo II v Adekanye*[35] The statute can prevent recovery of damages suffered more than 6 years before the claim, but does not preclude the plaintiff from bringing an injunction claim or damages due to the continuing interference within the current 6 year window. This distinction is necessary such that the law of limitation as a statute of repose does not accidentally create a license of perpetual interference with the private property by wrongdoers.

3.3.3. Defamation and Malicious Prosecution

The time-period over which defamation, including libel and slander, can be sued is usually six years in most jurisdictions in Nigeria. The cause of action in defamation cases is vested immediately upon publication, i.e., the moment the statement which is defamatory is sent to a third

[35] [2004] 13 NWLR (Pt 891) 572.

party. The digital age has brought the so-called multiple publication rule, according to which, with every subsequent delivery of a defamatory link, the time indicator of the restriction may be started anew. However, courts employ a high level of scrutiny by pushing the plaintiff to seek immediate redress on their reputation so that they can avoid adjudication of old resentments where the real effect on the social status of the plaintiff is no longer present.[36]

On the other hand, a cause of action in malicious prosecution must be accrued on the basis of a successful termination of the criminal or civil action of the underlying criminal or civil action in favour of the plaintiff. As a result, the six-year clock starts with the end of the prosecution - i.e., at the date of acquittal or the date on which the charge is struck out and not at the start of the malicious act. This provision prevents the plaintiff from being forced to initiate a civil action in the presence of the prosecuted action. The law allows the imperative of finality to offset the practical fact that the evidence of malice and the lack of reasonable cause can be entirely evaluated only when the first ordeal of the law is over.[37]

3.4. Limitation Periods for Land and Real Property Recovery

The most significant use of limitation law in Nigeria is the regulation of time bars in any case of land and real property. Since the arrangement of land is culturally, economically, and socially significant to the Nigerian environment, the law gives a more liberal time frame for recovery compared to personal or business activities. But this type of limitation is peculiarly extinctive; as in contract and tort, the statute commonly only forbids the remedy without the right, in land cases,

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[36] JS Okutepa, *The Law of Limitation of Actions in Nigeria* (2nd edn, Intec Printers 2011) 40-42.
[37] O Owolabi, 'Constitutionalism and the Validity of Limitation Statutes in Nigeria' (2018) 12 *Nigerian Bar Journal* 92.

the effect of the lapse of time by the statute is normally the extinction of the title of the owner. This part analyses the statutory window of land recovery and the recovery of obligations out of judgment debts and annuities.

3.4.1. Actions for the Recovery of Land

In line with the tradition set by the English Limitation Act of 1939, most of the states in Nigeria have a twelve-year limitation period relating to any action to recover land. In accordance with Section 16 of the Limitation Law of Lagos State and Section 15 of the Limitation Act (Abuja), any person shall not be brought to action by them to recover any land after a period of twelve years since the right of action accrued.[38] The cause of action accruing in this case is inextricably connected with the principle of adverse possession; the clock starts to run not only after the owner abandons the land, but at the moment when another individual acquires the land in a way that cannot be reconciled with the title that the former owner holds.

The analytical difference between land limitation and land use limitation is in the substantive impact. By the Lagos State Law, Section 21, the expiry of the period of twelve years will not present merely a procedural defence by the occupant; it will almost put off the title of the original owner. This principle was strictly followed in *Ajibona v Kolawole*,[39] in which the court affirmed that a person in possession, who had passed the statutory period, takes a title against the whole world, including the former owner. This characteristic of the law is a strong social policy tool, ensuring that land, which is an extremely limited and crucial resource, is not in a state of endless litigation or neglect. It should be noted though, that where the land is in state possession

[38] *Limitation Law of Lagos State*, Cap L67, Laws of Lagos State 2015, s 16; see also *Limitation Act*, Cap 522, LFN 1990 (FCT), s 15.
[39] [1996] 10 NWLR (Pt 476) 22.

(government), certain jurisdictions have a time limit of twenty or thirty years, implying the greater responsibility of the state as regards the public lands.[40]

3.4.2. Actions on Judgment Debts and Annuities

Another body of the scope of limitation laws is the enforcement of the judgment debts, i.e., the financial obligations that are established on the basis of a final court order. One of the false beliefs with regards to litigation in Nigeria is that once a judgment is gotten it is an everlasting one. Quite on the contrary, the law limits such judgments to a twelve-year restriction on the enforcement of the same. According to the different state limitation laws, no activity shall be pursued on any type of judgment once the period of twelve years has passed since the judgment became effective.[41]

Moreover, the legislation separates the principal amount and the interest calculated on a judgment. Although the main debt can be recovered over a period of twelve years, any steps to recover arrears of interest in the event of any judgment debt are normally limited to a period of six years as of the date when the interests were due. This restriction is to make sure that a creditor of judgment does not charge the debtor on its judgment more than ten years merely on the pretext of collecting insanely high interest on the debt. In the same way, measures to recover arrears of an annuity, or the amount of money regularly paid annually to a person, which is usually for the rest of their life, are also limited within a period of six years. These provisions keep the piling up of old financial obligations, which might make a defendant bankrupt, and thus the philosophy of statute of repose continues to be upheld even in the circumstances concerning judicial order.[42]

[40] JS Okutepa, *The Law of Limitation of Actions in Nigeria* (2nd edn, Intec Printers 2011) 48-50.
[41] *Limitation Law of Lagos State*, s 20.
[42] O Owolabi, 'Constitutionalism and the Validity of Limitation Statutes in Nigeria' (2018) 12 *Nigerian Bar Journal* 101.

CHAPTER FOUR

COMMENCEMENT, SUSPENSION, AND EXCEPTIONS

4.1. Commencement of the Limitation Period

The effectiveness of any statute of limitation must depend wholly on the correct identification of the terminus a quo - the very moment when the statutory clock starts to run. Nigerian civil jurisprudence does not permit the issue of when the limitation period is commenced to be discretionary upon the court or subject to the individual tastes of the litigating parties. Instead, it is a rigorous working of positive law, activated by certain factual events which the courts have invariably recognized and enforced for decades. It has been the constant rule of the courts, from time immemorial, that, when the period has commenced to run, it cannot be stayed without a positive statutory measure to that effect, as was decided by the Supreme Court in the famous case of *Sifax (Nig.) Ltd. v. Migfo (Nig.) Ltd.*[43] The determination of the commencement date is thus an essential component of analysis which must be carried out on the verge of any limitation enquiry because a mistake in its determination is not merely a matter of form but can be determinative of the claim as a whole.

4.1.1. The General Rule: Accrual of the Cause of Action

The general principle of the Nigerian laws of limitation, irrespective of the federal or territorial jurisdiction, is that time starts to run on the date of accrual of the cause of action.[44] In all the Nigerian acts of limitation, such as the Limitation Law of Lagos State (Cap L67, Laws of Lagos State 2015) and the Limitation Act (Cap 522, LFN 1990), this principle of foundation is easy to state but often perplexing in its application to the diverse situations of litigation.

A cause of action can be defined as a fact of settled Nigerian law, which is a combination of facts that entitles the plaintiff to judicial relief. In *Adimora v. Ajufo and P.N. Udoh Trading Co. Ltd. v. Abere*[45]*,* The Supreme Court authoritatively stated that a cause of action accrued to the extent of limitation where there is a person who can complain in the form of a competent plaintiff; there is

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[43](2018) 9 NWLR (Pt 1623) 138.

[44]Limitation Law of Lagos State, Cap L67, Laws of Lagos State 2015, s 8(1)(a); Limitation Act, Cap 522, LFN 1990 (FCT), s 7.

[45]Adimora v Ajufo (1988) 3 NWLR (Pt 80) 1; P.N. Udoh Trading Co. Ltd. v Abere (2001) 11 NWLR (Pt 723) 114.

a person who can be complained against in the form of a competent defendant; and all other facts have taken place on which the plaintiff can complain. It is the convergence of these three elements that signifies the moment of accrual, and it is out of that very moment that the statutory clock commences to run.

Practically, the Nigerian courts determine the date of accrual by conducting a forensic analysis of the Writ of Summons and the Statement of Claim that the plaintiff had filed. As the Supreme Court firmly established in *INEC v. Ogbadibo Local Govt.*[46] the court does not inquire into the Statement of Defence or any other pleading of the defendant when arriving at this preliminary determination; it will look only to the time when the plaintiff became entitled to a remedy on the facts as he asserts in his or her own pleadings. This is in line with the adversarial philosophy of the Nigerian court system. The cause of action in a contractual action is not deemed to accrue upon the date of the execution of the contract, but the date of breach. In a tortious action, it normally accrues on the date when the damage was initially caused to the plaintiff. Another significant implication of this rule is that a plaintiff may not artificially postpone the accrual of a cause of action by refusing to know that a wrong has been committed upon which the law ought to have known about by a reasonably diligent person.

The justification of the linking of the establishment of the limitation period to the accrual of the cause of action is highly entrenched in the two policy goals of the statutes. On the one hand, it is certain and predictable, as both parties are aware, objectively, when their respective rights and responsibilities crystallise. Conversely, it meets the public interest in finality of litigation, as it fixes the date of commencement of litigation by reference to factual events other than the personal

[46](2015) CLR 7(a) (SC).

awareness of the plaintiff, and thereby avoids the postponement of proceedings indefinitely by the plaintiff on the ground that he is ignorant of the facts, which are reasonably ascertainable.[47]

4.1.2. Particular Rules on the Continuing Torts and Recurring Damage.

The above strict rule of one-time accrual has a major exception when it comes to continuing torts. In cases where the wrongful act at issue is not a special, finished act but a continuing or sustained injury, Nigerian law acknowledges a new cause of action to be de die in diem -by day to day-so long as the wrong persists. This is a very practical exception, and the superior courts have cautiously defined this exception to avoid injustice of a limitation period running as wrong is still being actively committed.

This doctrine was dealt with by the Supreme Court with a certain degree of clarity in *Aremo II v. Adekanye.*[48] When it was declared that in cases where damage or injury is of a continuous nature, the time during which it is ultimately determined that the wrongful act is being committed does not commence the running of the period of limitation in the final and ultimate sense. The implication of this parameter in practice is extensive. In instances of continued trespass, e.g., the unlawful possession of the land of another or the setting up and upkeep of an encroaching building, there will be a new cause of action daily so long as the trespass is continued. On a like basis, when the nuisance is privately emanated, as where the fumes of factories continue to be emitted, or the noise is unreasonable, or the pollution of a watercourse is continued, the plaintiff accrues a fresh right to sue on each day the nuisance is committed.

[47]JS Okutepa, *The Law of Limitation of Actions in Nigeria* (2nd edn, Intec Printers 2011) 22.
[48][2004] 13 NWLR (Pt 891) 572.

This doctrine has been notable especially in those actions taken under the Public Officers Protection Act (POPA). The three-month limitation period in POPA can be lifted in case it is established that the action alleged is a continuing wrong or a continuing harm, which provides the plaintiff with a new cause of action within three months of the time when the last instance of the continuing wrong took place.

The courts have, however, been keen to make sure that this exception is not exploited to make the short period that has been stipulated under POPA useless.

One of the most important distinctions which the courts have drawn with great care is the difference between a continuing injury and the continuing effect of a single, complete injury. Where a defendant does an act wrongful in itself, and the consequences of the act continue to plague the plaintiff many years after the act has been caused does not then turn that act into a tort of continuation. Since the court in *Obiefuna v. Okoye*[49] declared that the wrong is absolute as soon as it is committed, the limitation period starts at that point, and the fact that the harmful impact of the wrong has continued since that time does not reset the clock. A builder who builds an encroaching wall finishes his tortious act on the date of completion; that the wall still casts a shadow, or blocks access, years later is the continuing consequence of a tort, not a continuing tort. This difference, though in certain instances hard to apply to the facts, is necessary to the prevention of the continuing tort doctrine of swallowing up the general rule of accrual.

4.1.3. The Discovery Rule: Application in Cases of Latent Damage

Limitation law as applied to latent damage cases is one of the most controversial and equitably sensitive aspects of the law. Latent damage is the damage or breach that happens at a certain point

[49](1961) 1 All NLR 357.

but is hidden from the plaintiff at a later period in life, usually years or even decades later. Classic cases are the flawed construction of a building that only turns out to be structurally unsound many years after it was built, the entry of a toxic material into land which only results in negative health effects many years later, or a medical negligence case where a foreign object has been left within a patient during surgery, which is only discovered following a medical examination. Under these conditions, the literal interpretation of the accrual rule, which would start the limitation period on the date of the damage, whether the plaintiff was aware of it or not, could have resulted in a serious unfairness, since a plaintiff might be told that his or her proceedings were time-barred before he or she even had a realistic chance of initiating them.

The common law tradition of Nigeria, based on English law, adhered to the rigid objective test: time elapsed since the date of the damage, regardless of whether the plaintiff was aware of it. This rule was increasingly softened in Nigerian law by a mixture of statutory intervention and judicial innovation, to the present day, generally known as the "Discovery Rule" or the "Date of Knowledge" principle.[50]

The most important intervention at the statutory level is given by the Limitation Law of Lagos State in Section 58 and similar provisions in the other state laws and the Limitation Act.[51] In two types of cases, these provisions delay the start of the limitation period. The former is where the action is founded on the fraud of the defendant. The second is the one in which the defendant has intentionally tried to hide the cause of action. The time in both cases in which the limitation period starts to run is not the date on which the plaintiff actually learned of the fraud or concealment, or the date on which the plaintiff should have learned of the fraud or concealment through the exercise

[50]JS Okutepa, *The Law of Limitation of Actions in Nigeria* (2nd edn, Intec Printers 2011) 66.
[51]Section 58, Limitation Law of Lagos State, Cap L67, Laws of Lagos State 2015; see also s 26, Limitation Act, Cap 522, LFN 1990 (FCT).

of reasonable diligence. The reasonable diligence standard is objective; the plaintiff cannot invoke a lack of inquiry that he himself could have definitely avoided by inquiry where the circumstances aligned to arouse the reasonable notice to the plaintiff that a wrong was committed.

Within the context of negligence and personal injury, the *Shell Petroleum Development Co. (Nig) Ltd v. Jalla*[52] case took a rather conservative stance as it reaffirmed the general principle of a cause of action in relation to environmental tort and that once the damage (e.g., the oil spill) has occurred, the plaintiff must initiate proceedings and do so without delay. The court did not preclude the possibility of the use of a date-of-knowledge principle altogether, but made it explicit that a plaintiff who postpones inquiry will not be able to claim the protection of the discovery rule forever. The rule of discovery, therefore, serves in the perception of the Nigerian courts as a mechanism of a safety valve which is offered to the industrious plaintiff who has indeed been actually barred from an actual discovery of the wrong, as opposed to a general licence to bring claims which have become stale in the name of latent damage.

4.2. Suspension and Postponement of the Limitation Period

The principle of limitation of actions, however peremptory it may be, is not absolute and uncompromising. The law is aware that a mechanical and uniform use of time bars, which do not consider the circumstances of the individual claimant or the actions of the defendant, can have a result that is not only unfair but that is incompatible with the constitutional right to a fair hearing provided under Section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria. To this end, both the Limitation Act (Cap 522, LFN 1990) and the Limitation Law of Lagos State (Cap

[52] (2021) LPELR – 53515(SC).

L67, 2015), and their analogs in other states, contain specific mechanisms by which the statutory clock may be either suspended, i.e., terminated, or postponed, i.e., delayed in commencing at all.

The mechanisms are all referred to by the doctrine of tolling in Nigerian legal scholarship. In its ruling in *Sifax (Nig.) Ltd. v. Migfo (Nig.) Ltd.*[53] the Supreme Court made great progress in interpreting this doctrine by which it had left the former inflexible rule of holding that the computation of time, to be applied in determination of limitations, was suspended in the period in which a suit was pending before the court, even though the suit was ultimately struck out on the ground of lack of jurisdiction or some other defect of procedure. Ltd., where it departed from the previously rigid position to hold that the computation of time for limitation purposes is suspended during the period in which a suit is pending before the court, even where that suit is eventually struck out for want of jurisdiction or some other procedural defect. This was a discovery that a hard-working litigant who has sought their claim in the courts, but has been frustrated in the process, should not be punished by discovering that the time limit has lapsed in the process of bona fide litigation.

4.2.1. Legal Disability of the Claimant (Infancy, Mental Incapacity)

An exception to the limitation period being brought into existence is when the claimant is in a legal state of disability when the cause of action accrues. Legal grounds of this exception lie in Section 35 of the Limitation Law of Lagos State and 2(2) of the Limitation Act.[54] A person is said to be under a legal disability under these conditions: when he or she is an infant, that is, when he or she is a person who has never attained the age of eighteen years, or when he or she is of unsound mind.

[53] (2018) 9 NWLR (Pt 1623) 138.

[54] Section 35, Limitation Law of Lagos State, Cap L67, Laws of Lagos State 2015; s 2(2), Limitation Act, Cap 522, LFN 1990.

The justification of this exception is fair and realistic, as the law assumes that such individuals do not have the required legal capacity to understand the nature and scope of their rights, to retain legal counsel, and to commence and proceed with litigation on their behalf. Placing them under the same hard and fast time constraints as legally competent adults would be to deprive them of any significant right of access to justice, which is inconsistent with the core values of the constitutional order.

Where a legal disability still exists on the date of accrual of the cause of action, the limit period is suspended and never commences running until the disability is removed. In the case of an infant, it happens when the age of eighteen years is reached. In the case of an individual with an unsound mind, the period starts when the individual regains mental competence. The ruling in the case of *Ogunko v. Shelle*[55], affirms the stable judicial practice that in cases where an individual is under a disability at the time the cause of action accrues, the time period of limitations on actions does not commence to run until the individual is no longer under the disability. The consequence is that the law, perceiving the weakness of such individuals, has the clock suspended until such time as they are able to act on their own behalf.

The qualification of significance to this principle is the position where the limitation period should have commenced running prior to the occurrence of the disability. Assuming that, e.g., a claimant has been caused a cause of action at a time of legal competence, and subsequently lapses into an unsound mind, the general rule of most Nigerian statutes is that the supervening disability will not have the effect of suspending a period already begun. The clock does not stop when the disability occurs, unless the statute in question otherwise. The validity of this qualification, though it might

[55] [2004] 6 NWLR (Pt 868) 17.

seem severe in particular cases, is explained by the general policy of certainty: it does not allow the period of limitation to be indefinitely prolonged due to a post-accrual disability and does not destroy legitimate expectations of the defendants.

It is also necessary to add that a legal disability does not influence or decrease the period of substantive limitation itself. In the case where a person under disability has a right to initiate an action, the entire period of limitation applicable to a legally competent person commences on the date of removal of the disability. The disability does not shorten the period; it only delays its commencement. This makes sure that the claimant under disability would not be put in a disadvantaged position compared to a competent adult claimant.[56]

4.2.2. Fraudulent Concealment by the Defendant

The second significant reason as to why the limitation period should be suspended is the just and fair principle that a defendant must not be allowed to enjoy the fruits of their own labour. In cases where the defendant has by fraudulent action misled the plaintiff of the existence of the cause of action or of the facts giving rise to it, the courts of equity as well as the statute deny to the defendant the means of using the limitation period--an aid which is more calculated to protect the industrious but unjustified defendant--to the detriment of the concealment of which they themselves are the creators. This principle is statutorily enshrined in Lagos State by Section 58 of the Limitation Law, and in other state legislation and the Limitation Act.

The Court of Appeal has stated the principle in a very clear way in the case of *Arowolo v. Ifabiyi*[57], in which it was held that the statute of limitations did not run against a plaintiff in a case of

[56] O Owolabi, 'Constitutionalism and the Validity of Limitation Statutes in Nigeria' (2018) 12 *Nigerian Bar Journal* 101.
[57][2002] 4 NWLR (Pt 757) 356.

concealed fraud, provided that a plaintiff is ignorant of the fraud and that there is no negligence that he or she can be attributed with. The court has stressed that the fraud should be an actively concealed one; the fact that the defendant merely committed a tort or breach of contract will not constitute a fraudulent concealment to the extent that it is covered by the limitation statutes. Something additional is needed: there must be an intentional and voluntary concealment of the fact of the claim by the defendant on the part of the defendant, or an intentional violation of the duty, in circumstances which the defendant realized would not otherwise be disclosed to the plaintiff that the latter had a claim against him.

It lies on the shoulders of the claimant to prove the act of fraudulent concealment. The claimant has to prove on the balance of probabilities first, that the defendant concealed the facts which gave rise to the cause of action deliberately; second, that the claimant was unable to have learned of those facts by the exercise of reasonable diligence before the date upon which they came to his or her actual notice or, in the case of time-barred actions, before the primary limitation period expired. The reasonable diligence standard is objective, and does not inquire what the plaintiff was or was not able to discover based upon his or her own peculiarities, but what the prudent and diligent person in the plaintiff's circumstances would have done. When a plaintiff was in a position to discover the fact but did not do so because the means of discovery were within his or her reach, the plaintiff will not be permitted to invoke the concealment exception.

4.2.3. Acknowledgment or Part-Payment of Debt or Liquidated Claim

The law in both actions, based upon contract, and in actions especially, which are actions to recover a debt or other liquidated claim, is of the freshness or renewal of the period of limitation. The principle of the doctrine of acknowledgment and part-payment is based on the practical reality that commercial relationships are dynamic and continuing, and that a creditor who has received some recognition that the existence of a debt continues during the currency of the limitation period should not be punished by the fact that by the time the debtor refuses further payment, the statutory period has elapsed. Sections 37 and 38 of the Limitation Law of Lagos State and Section 23 of the Limitation Act[58] Are the statutory foundations of this doctrine in Lagos State?

To be effective to the extent that it restarts the six-year limitation clock, an acknowledgment must meet three formal conditions. It should, first, be in writing, as oral admissions, however beyond reproach, are too uncertain to answer this aim, and fall short of the test of certainty required by legislation. Second, the debtor should personally sign the written acknowledgment, or the debtor should have an agent who is duly authorised to sign the written acknowledgment on behalf of the debtor. It will not be sufficient to have a document signed by a person who does not have actual or ostensible authority to bind the debtor. Third, the acknowledgment should be absolute in the sense that it should admit the particular debt in a way that suggests, at least by necessary implication, the willingness or intent to pay. A recognition that admits at the same time that it does not impose any liability, or that is hedged by any material qualification, might not enjoy the necessary legal force to revive the period.

The Court of Appeal, when dealing with the doctrine of part-payment in the context of limitation, in Wema Bank Plc v. Owosho[59] It was held that a part-payment of the principal sum or of interest on a debt is a fresh implied recognition of the debt and that in such a case the cause of action was revived and a new period of six years running from the date of the payment was granted to the creditor to institute recovery proceedings. The policy on which this rule rests is good and noteworthy: it helps to avoid a situation in which debtors drag creditors through the air, and with

[58]Sections 37 and 38, Limitation Law of Lagos State, Cap L67, Laws of Lagos State 2015; s 23, Limitation Act, Cap 522, LFN 1990.
[59] [2018] LPELR-43857(CA).

partial payments here and there, lull the creditors into thinking that the debt is being paid, before increasing the limitation defence once the period stipulated by the statute has elapsed. The courts have denied the use of the statute of limitations in this way as a means of fraud or bad faith.

To be effective, both an acknowledgment and a part-payment must be made to the creditor, or to a person empowered to accept them on his behalf, and must concern the particular obligation in respect of which it is desired to have an enforcement taken. A payment, in general, without reference to the debt to which it is applied, will not give life to the period of limitation as to the said debt. The doctrine is also limited only to debts and liquidated claims; it is not applicable to unliquidated claims in tort or claims against specific performance of a contract, in respect of which the general accrual rules are applicable without any alteration.[60]

4.3. Procedural Issues in Raising Limitation

Although the substantive impact of a statute of limitation is the extinction of the right of the plaintiff to pursue an action, its operation in the context of the Nigerian civil procedure is rigidly controlled by the technical provisions of the way of litigation. The time-bar is not an automatic or vacuumuous process; it needs to be summoned and brought to bear using certain procedural mechanisms. The way it is done generates a unique tension between the "mandatory" nature the courts have always given to limitation statutes and the "adversarial" philosophy of the Nigerian civil procedure, according to which the court tends to remain a neutral umpire and leave parties to specify and argue issues arising in the case. This part of the paper looks at the procedural regulations on how a limitation defence is raised and the few but significant exceptions where the court may proceed on its own initiative.

[60] JS Okutepa, *The Law of Limitation of Actions in Nigeria* (2nd edn, Intec Printers 2011) 78.

4.3.1. The Need to Plead Limitation Specifically as a Defence

In the High Court Civil Procedure Rules of the different states of the Federation, and specifically the High Court of Lagos State (Civil Procedure) Rules 2019, and the Rules of the High Court of the Federal Capital Territory (Abuja) Civil Procedure 2018, limitation is categorized as a special defence, which is under the general category of confession and avoidance. This classification is very important. In a defence of confession and avoidance, the defendant does not dispute the alleged facts but rather tries to escape the legal implications of these facts by bringing into consideration a new and overwhelming fact- in this case, the fact that the period of statute has expired. The defendant, in a sense, argues: "Although all the things that the plaintiff claims might be so, the claim is still invalid, as the right to bring the case has expired.

The result of this classification is that the settled state of civil procedure in Nigeria is that a defendant wishing to claim the benefit of a statute of limitation must expressly and unambiguously plead it in the Statement of Defence. Any limitation defence that is not brought to the fore in the pleadings will not be admissible at trial to the defendant, and the court will not take it into account. This necessity is well-established because of the principle of notice and the necessity of avoiding trial by ambush. By mentioning the limitation issue in the pleadings, the defendant offers the plaintiff the chance to serve a Reply in which they may plead the facts that toll or will commence the clock, i.e., the defendant committing fraud, a written acknowledgment of the debt or the plaintiff being of legal incapacity, and thus prove that the action, in fact, is not statute-barred. This is the give and take of pleadings, which enables the matter to be narrowed and argued properly in court.

The Court of Appeal affirmed the consequences of a failure to plead the limitation defence in Adesina v. Ojo.[61] where it was held that a defendant who fails to specifically plead the statute of limitation in the Statement of Defence is generally deemed to have waived the protection that the statute affords. This stance is a result of the factual difference between a limitation defence and an attack on the subject-matter jurisdiction of the court. A matter that goes to the core of the court's power to adjudicate and can be appealed at any time in the proceedings, even on first appeal, is subject-matter jurisdiction, which is based upon the Constitution or a statute and is not conferred by the conduct of the parties. A limitation defence, in contrast, is a statutory privilege which is merely personal, and which the defendant is free to avail themselves of; it does not deprive the court of its jurisdiction in the strict constitutional sense, but is simply a procedural bar to the assertion of that jurisdiction in that case. Since it is a privilege in itself that the defendant is entitled to, it can be omitted or waived.

This difference imposes a big practical weight on both the litigants and legal practitioners. In the case of the counsel of the defendant, the first thing which, when the processes of the plaintiff are received, he must do is to carry out a vigorous, so-called, temporal audit of the Statement of Claim: to ascertain in which date the cause of action accrued, which limitation statute is applicable, and whether the writ was in fact granted within the stipulated time. The limitation defence should be pleaded in the Statement of Defence conspicuously and specifically in case the action is, on its face, out of time. To the plaintiff counsel, acceptance of a Statement of Defence, which includes a limitation plea, gives rise to the duty to give due thought to whether any of the exceptions or tolling clauses apply, and to plead them in the Reply, specifically.[62]

[61][2012] 10 NWLR (Pt 1309) 552.
[62]CA Adedeji, 'The Nature of Limitation Laws in Nigerian Civil Jurisprudence' (2020) 4 *Journal of Commercial Law* 118.

4.3.2. The Court's Power to Apply the Statute Sua Sponte (On its Own Motion)

A highly sensitive and legally subtle procedural issue in the Nigerian law of limitation is whether a judge has the power, in situations where the defendant has failed or has not pleaded the limitation defence, to raise the issue of limitation sui sponem—that is, at his or her own initiative, and not by the prompting of any of the parties, the question brings to a point of direct conflict two underlying principles which lie at the core of Nigerian adjudication: first, that a court should be an impartial mediator, and should not descend into the fray by seeking to make a case which the party has not chosen to make itself; and second, that a court may not properly exercise its jurisdiction in a matter which the law has effectively declared to be out of time, and therefore beyond the capability of the Court.

This tension was resolved in the educative cases of *Elabanjo v. Dawodu and Sanda v. Kukawa Local Government.*[63] out of which these principles of general application can be obtained. The principle on which we begin is that since limitation is, as a general thing, a personal privilege of the defendant, in which case it may be waived, the court ought not, as a matter of course, to take the initiative to apply the statute. In a case where the defendant, either by inadvertence, omission, or by an intentionally chosen policy, has not brought to attention the issue of limitation, the court should, as a matter of course, continue to adjudicate the case on its merits without volunteering the point in favour of the defendant.

There is, however, an important exception to this rule of restraint which may be implied when the plaintiff in his own pleadings, usually the Writ of Summons and the Statement of Claim, has on their face that the action was instituted after the period of limitation had passed. In one of these

[63]Elabanjo v Dawodu [2006] 15 NWLR (Pt 1001) 76; Sanda v Kukawa Local Government [1991] 2 NWLR (Pt 174) 379.

cases, the defect in question is not hidden in the evidence, in the details of the defence; it is on the surface and self-evident in the papers of the plaintiff himself. It has been ruled by the courts that the judge, in such a case, is not completely helpless to act, though he must act with extreme caution and with very great care to the constitutional demands of fair hearing as provided in Section 36(1) of the 1999 Constitution.[64]

The rule of thumb in such a situation is that the court should not simply dismiss the action by merely making the preliminary observation. Instead, there is a set of obligatory procedures to be pursued: the court determines the alleged time defect that is apparent on the face of the record, suspends proceedings on the substantive merits of the claim, and formally requests submissions by counsel on both sides on the limitation issue. The process of doing so guarantees the plaintiff an extreme and fair hearing concerning the matter, including raising any exception to the limitation bar, like the discovery rule, continuing damage doctrine, the fraudulent concealment of the defendant, or a legal incapacity of the plaintiff, before a prejudiced decision can be taken. It also enables the counsel to the defendant to formally adopt and argue the preliminary observation by the court and have the limitation issue squarely on the record as a contested one. The court can make a formal and rational decision on the point only after listening to substantive arguments by both sides.

This procedural protection is indicative of the great concern of the Nigerian legal order that the law has a stake in the finality of litigation and the security of defendants against stale claims without prejudice to the constitutional integrity of the judicial process. As Okutepa has rightly observed, the court's power to act sua sponte is not a licence to adjudicate a limitation issue in

[64]Constitution of the Federal Republic of Nigeria 1999, s 36(1).

chambers or to volunteer a winning defence to an inattentive defendant; it is a narrow and carefully circumscribed power that exists solely to prevent the manifest absurdity of a court proceeding to a full trial on the merits of a claim that is conclusively shown by the plaintiff's own pleadings to have been extinguished by the operation of law.[65]

[65] JS Okutepa, *The Law of Limitation of Actions in Nigeria* (2nd edn, Intec Printers 2011) 91-95.

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS, AND CONCLUSION

5.0. Summary of Findings

1. The statutes of limitation in Nigeria rest on three constitutionally tenable policy objectives — the public interest in the finality of litigation, the preservation of credible evidence, and the protection of defendants from indefinite liability — and have been consistently upheld by the courts as regulatory rather than prohibitory measures not irreconcilably in conflict with the right to fair hearing under section 36(1) of the CFRN 1999 (as amended).

2. The Nigerian limitation law regime is structurally fragmented: the coexistence of thirty-six separate state limitation statutes, the federal Limitation Act, and POPA creates a jurisdictional disparity whereby the applicable limitation period for the same cause of action varies materially with the location of the parties and the identity of the defendant.

3. POPA's three-month limitation window, though moderated by judicial exceptions for employment relationships, land recovery claims, and bad-faith conduct, remains disproportionately burdensome and constitutionally precarious in cases involving latent or complex wrongs against public authorities.

4. Limitation laws are mandatory and jurisdictional in character: once properly pleaded and proved, they divest the court of competence to adjudicate the claim on its merits, though the defence must be specifically pleaded in the Statement of Defence failing which it is treated as waived.

5. The limitation period commences on the accrual of the cause of action as disclosed by the plaintiff's own pleadings; in cases of continuing torts a fresh cause of action arises daily, which the courts have carefully distinguished from the mere continuing consequences of a completed wrong.

6. The tolling exceptions for legal disability, fraudulent concealment, and acknowledgment or part-payment of debt are adequate in their basic framework but insufficiently developed, particularly regarding supervening disability in catastrophic personal injury cases and the application of the discovery rule to latent damage.

5.1. Recommendations

Based on the above findings, the following specific recommendations are made in this study to the legislature, the judiciary, and the legal profession, respectively.

1. A single, comprehensive, and uniform Limitation of Actions Act should be enacted by the National Assembly, as a matter of legislative priority, to cover the entire federation, to replace the currently patchwork of state-specific limitation laws and the out-of-date federal Limitation Act (Cap 522, LFN 1990). This single law must have standard maximum periods of limitation of the main heads of civil action, six years for contract and general tort, three years for personal injury, and twelve years for land recovery and specialty obligation, but must retain the power of the states to make additional provisions in such areas of concurrent legislative jurisdiction. The single national system would also get rid of the jurisdictional lottery that is the bane of multi-state litigation and would substantially lower the cost and complexity of the legal practice.

2. The Public Officers Protection Act must be essentially changed to eliminate the present hard and fast three-month period of limitation by a more calculated and context-sensitive one. We

propose to extend the primary limitation period under POPA to not less than twelve months for all classes of action, which would place it on a more reasonable scale with the periods provided by the state limitation laws to similar claims by individual citizens against other individual citizens. The reformed POPA ought to include a date of knowledge provision, similar to that of current limitation laws in other common law jurisdictions, in case of latent damage, or a complex wrong, which would enable the court to give the plaintiff an extra period with which to establish the nature of the damage was not discoverable within the primary window.

3. The National Assembly needs to address the question of whether the protection granted to the public officers and authorities by the provisions of POPA remains in the constitutional balance between the right of access to justice under the provisions of Section 36(1) of the 1999 Constitution and the legitimate interest of the state in safeguarding the administration of the state against stale claims. We suggest, that the revised POPA expressly state that the statutory authority should not extend its protective range to those cases, in which a bad faith on the part of the officer or authority is established, or are outside the statutory authority, or are fraudulently arrived at, so as to entrench into statutory form the judicial exceptions which the courts have over many decades developed and as such give a certainty and predictability in that

4. A statutory power should be vested in the courts to use a structured judicial discretion to prevent the lapse of time by extending the limitation period in cases involving personal injury and latent damage, in the same way as the discretion that is available to courts in England and Wales, under sections 11 to 14A of the Limitation Act 1980 (United Kingdom). This should be left alone based on a predefined set of statutory criteria, such as the duration and causes of the delay, how much the defendant has been prejudiced, and the behavior of both parties. The proposal to introduce this discretion would put the Nigerian limitations regime closer to international best practice and would

give the courts a principled way of preventing the worst manifestations of injustice that occur under the current rigid regime, without eroding the overall idea of finality.

5. The principles of the tolling of the limitation period in cases of legal disability, fraudulent concealment, and acknowledgment of debt should be consolidated, clarified, and updated in the proposed unified limitation statute. Specifically, it is advisable that the statute must clearly state that a postaccrual disability must suspend the limitation period in instances where the claimant, who was competent at the time of accrual, later becomes incapacitated due to physical or mental disability caused by the same wrong complained of, e.g., in cases of catastrophic personal injury. The status quo, where a supervening disability is not normally sufficient to cause a clock that is already at a start to stop, can create injustice in this situation, and should be changed legislatively.

6. The formal conditions of an effective acknowledgment of debt, that it must be in writing, signed and unequivocal, should be maintained in the proposed unified statute but accompanied by a clause that electronic communications, such as e-mails and instant messages, containing an unequivocal and clear admission of the particular debt, are to be considered sufficient writings to restart the limitation period.

This change would represent the truth of modern commercial communication and would remove the past need for a signed paper document as an instrument of injustice in an era where most business communication is being done electronically.

7. The legal profession, via the Nigerian Bar Association and through the faculties of law throughout the federation, should invest in a continuing programme of continuing legal education aimed at ensuring that legal practitioners of all levels of seniority, are fully familiar with the limitation statutes that apply in their respective jurisdictions and with the procedural requirements

of raising and responding to a limitation defence. The paper has shown that mistakes in the determination of the statute to apply, in computing the date of accrual, and in pleading the limitation defence are continuing to bring unnecessary injustice on the clients, and are leading to reversals of the trial at the appellate stage.

5.2. Conclusion

The law of limitation of actions takes a unique place in the Nigerian legal system. It is at the crossroads of procedural efficiency and substantive justice, of legislative policy and constitutional right, and of the interests of the industrious plaintiff and the safeguard of the innocent defendant. This paper has proved that the principles under which the limitation regime is based are valid, needful, and constitutionally viable. The rule that necessitates a plaintiff to institute his action within a specified time is no arbitrary impediment to justice; it is a deliberate and sensible reaction to the practical needs of a properly working judicial system.

Meanwhile, though, this research has helped to reveal with some precision the very serious structural inadequacies plaguing the Nigerian limitation law landscape in its present shape. The piecemeal nature of the legislative framework, in the thirty-six states and the Federal Capital Territory, the excessiveness of the three-month window in POPA, the underdevelopment of the discovery rule in situations of latent damage, and the lack of a judicial discretion to lengthen the period in situations of hardship are all a collection of legal deficiency that is not fit to be found in a modern and sophisticated law system. These shortcomings have practical and serious repercussions on real individuals: they cause the extinction of meritorious actions on procedural grounds, they create a systemic imbalance between citizens who bring actions against private defendants and citizens who bring actions against state authorities, and they cause a jurisdictional uncertainty that subverts the very principles of predictability and certainty that the limitation statutes were created to promote.

The suggestions presented in this paper are not aimed at destroying the regime of limitation but at making it better and more effective. Such a reformed POPA and extended and more proportionate limit, a systematic judicial discretion to extend the term in suitable cases, and an updated system of how the tolling exceptions actually work would not only yield a more just and equitable regime of limitations as applied individually, but would make the workings of the system more predictable and coherent. The general aim is a limitation law that fulfils, equally, the legitimate interest of the defendants in finality and the legitimate interest of the plaintiffs in getting their grievances heard on the merits.

Hopefully, this research will play a small yet significant role in the current academic and legislative debate regarding the reformation of civil procedure in Nigeria and that its findings and proposals will be valuable to legislators, judges, legal practitioners, and scholars as they strive to achieve a legal system that is not only technically competent, but also truly devoted to delivering justice in all cases before it.

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