IN THE COURT OF APPEAL
CALABAR JUDICIAL DIVISION
HOLDEN AT CALABAR

ON FRIDAY THE 14TH DAY OF JANUARY, 2022

BEFORE THEIR LORDSHIPS:

MOJEED A. OWOADE	-	**JUSTICE, COURT OF APPEAL**
MUHAMMED L. SHUAIBU	-	**JUSTICE, COURT OF APPEAL**
SAMUEL A. BOLA	-	**JUSTICE, COURT OF APPEAL**

APPEAL NO. CA/C/296/2018

BETWEEN:

1. **MOBIL PRODUCING NIGERIA UNLIMITED**
2. **EXXON MOBIL CORPORATION USA**

\- **APPELLANTS**

AND

1. **THE REGISTERED TRUSTEES OF MINERAL RESOURCES AWARENESS INITIATIVE OF AKWA IBOM STATE**
2. **MR. VICTOR MACAULAY AKPAN**

\- **RESPONDENTS**

JUDGMENT
(DELIVERED BY MUHAMMED L. SHUAIBU, JCA)

This appeal is against the Ruling of the Federal High Court, Uyo Judicial Division, Akwa Ibom State, Coram Hon. Justice I. M. Sani, delivered on 25th of May, 2018 dismissing the appellants' notice of

preliminary objection challenging the jurisdiction of the trial court to entertain the suit.

The respondents as plaintiffs before the trial out took out a writ of summons and statement of claim filed on 12/5/2017 claiming declaratory and injunctive reliefs against the defendants jointly and severally.

Upon being served with the originating processes, the defendants now appellants filed a notice of preliminary objection praying the court to dismiss the suit for want of jurisdiction on the grounds inter alia, that the suit is statuted barred and that no reasonable cause of action was disclosed against the 2nd appellant herein. After hearing parties on their respective affidavit evidence, learned trial judge found that the respondents' claim disclosed a reasonable cause of action against the appellants and that since the alleged infraction is ongoing, it cannot be defeated by a plea of limitation of time. Consequently, the preliminary objection was dismissed by the trial court.

Dissatisfied, appellants appealed to this court through a notice of appeal filed on 7/8/2018 containing six (6) grounds of appeal. In arguing this appeal, the learned counsel for the appellants formulated three (3) issues for determination thus:-

1. Whether, from a consideration of the entire facts and circumstances of the suit before the lower court, the suit was not statute-barred and the cause of action completely extinguished pursuant to the provisions of Section 16 of the Limitation Law, Cap 78, Laws of Akwa Ibom State of Nigeria, thereby robbing the lower court of the jurisdiction to entertain same?

2. Without prejudice to issue 1 above, was the lower court seised with jurisdiction to entertain the substantive suit against the 2nd appellant given the fact that the appellant as acknowledge by the respondents' originating processes, is a foreign company that is domiciled outside the territory of the Federal Republic of Nigeria and has no presence or business whatsoever in Nigeria?

3. Without prejudice to issues 1 and 2 hereof, based on the respondents' averments in their statement of claim and the reliefs sought in the suit does the suit disclose any reasonable cause of action howsoever and whatsoever against the 2nd appellant?

The respondents adopt the three issues formulated by the appellants.

Arguing issue No.1 on behalf of the appellants, learned counsel, Obafolahan Ojibara referred copiciously to the respondents' statement of claim to contend that their entire cause of action is predicated on the contractual right in respect of the Standard of Business Conduct said to have been issued by the 2nd appellant in November, 2011. Counsel therefore submitted that the respondents' cause of action in this suit accrued either on or about 15th February, 1970 when the 1st appellant allegedly made its first commercial find in Akwa Ibom and failed to locate its Headquarters thereat or in November, 2011 when the purported Standard of Business Conduct document was published.

Still in contention, counsel argued that the respondents' cause of action which is rooted in an alleged contract has limitation period for instituting an action in Akwa Ibom is five years which has expired. He referred to Section 16 of the Limitation Law of Akwa Ibom State and the cases of EGBE -V- ADEFARASIN (NO.2) (1987)1 NWLR (prt.47) 1, ELEBANJO & 1 OTHER -V- DAWODU (2006) 15 NWLR (prt.1001) 76 at 123 and EBONYI STATE UNIVERSITY & ANOR -V- IFEANYI & ANOR (2016) LPELR - 41051 in urging this court to declare the suit as statute barred.

Assuming but not conceding the fact that the respondents' claim is rooted in the breach of any duty or negligence, counsel submitted that it is not sufficient for respondents to make a blanket allegation of negligence without giving full particulars of items of negligence relied on as well as the duty of care owed to them by the appellants herein. He referred to DIAMOND BANK LTD -V- PARTNERSHIP INVESTMENT CO. LTD & ANOR (2009) LPELR 939 to contend that there is nothing in Section 17 of the Akwa Ibom State Limitation Law that limits, remove or ousts the applicability of Section 16 thereof. Though Section 17 of the extant law creates some kind of exception, it was argued that same applies to an action for damages for negligence, nuisance and breach of duty where such duty exists by virtue of a contract or made by or under an enactment or independently of any contract where the damages claimed by the person for negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries.

On the part of the respondents, learned counsel Onyinye A. Ochi contend that the respondents' claim is founded purely on breach of duty and negligence of the appellants, which duty of care flows from communal neighbourhood relationship that exists between the 1st appellant and the host community, which she carries

out her oil drilling business and other allied matters. In aid, counsel cited and relied on Exhibit HIA 1 and HIA 2 and paragraph 17 of the statement of claim to contend that the suit is not affected by the statute of limitation.

Counsel contend further that the 2nd appellant also placed a duty of care (corporate social responsibility) on the shoulders of the 1st appellant, to its host community, indigenous people of Akwa Ibom State. That duty according to learned counsel flows from communal relationship that exists between the appellant and its host community where the 1st appellant carries on her drilling business. In effect, the contention of the respondents is that the relocation of the appellant's head office to Akwa Ibom State will enhance the revenue generation capacity of the people, increase employment, security and give the indigenous people of Akwa Ibom State the opportunity to aspire to the highest position open to a Nigeria Reliance was placed on ENYIKA –V- SHELL BP PETROLEUM DEVELOPMENT CO. LTD (1997) NWLR (prt.526) 638 to the effect that the doctrine of proximity as the foundation of duty of care in tort is the basis of an action in negligence and the 2nd appellant having placed a duty of care on the shoulders of the 1st appellant,

and the perceived reckless breach of that duty by the 1st appellant gave birth to the substantive suit.

It was thus submitted that having owed a duty of care owed to the indigenous people of Akwa Ibom State, the appellants' continually breached that duty of care and that this duty cannot be negated by the statute of limitation. Counsel relied on KALU -V- GOVT. OF ABIA STATE (2020) LPELR – 50133 and UMAR -V- AHUNWUA (1996) LPELR – 13689 to the effect that negligence is basically a question of fact and therefore each case must be decided based on its peculiar facts.

Counsel finally submitted that the continuous nature of the damage or injury in the instant case makes limitation law inapplicable relying on AREMO II -V- ADEKANYE (2004) 13 NWLR (prt 891) 572 at 593 and A.G. RIVERS STATE -V- A.G. BAYELSA STATE (2013) ALL FWLR (prt.699) 1087 at 1106.

On issue No.2, the contention of the appellants is that since the 2nd respondent is a company registered in the United States of America with its head office at 5959 Las Cohinas Boulevard, Irving, Taxes 75039 – 2290, the lower court had no territorial jurisdiction as the 2nd appellant is neither physically present in Nigeria nor operates through any branch or agent in Nigeria. In aid, counsel relied on

Section 6 6 (b) of the 1999 Constitution (as amended) and the case of ADAMS & OTHERS –V- CAPE INDUSTRIES PLC & ANOTHER (1990) CH 433 at 457.

It was also argued that contrary to the findings of the lower court that 2nd appellant has a physical presence in Nigeria, the 2nd respondent has no business presence in Nigeria. Assuming but not conceding that the 1st appellant is an agent of the 2nd appellant, counsel submitted that there is no legal principle that permits or transfer obligations from one corporate entity to another where the two entities are distinct, not even where the two entities share common ownership or have a subsidiary company relationship. He referred to UNION BEVERAGES LTD –V- PEPSICOLA INTERNATIONAL LTD (1994)3 NWLR (prt.330) 1 at 16.

In response, the respondents relied on Exhibit HIA1, page 1, paragraph 3 on page 141 of the record of appeal to contend that the 2nd appellant admits that the said Exhibit shall be the foundation policy guidelines for her own subsidiaries, either wholly or majority owned. And that the 1st appellant is part and parcel of these subsidiaries. The 2nd appellant also admits in the said Exhibit that it shall be the 2nd appellant's foundational policy guidelines, worldwide (including the 1st appellant), made as regards business operations,

concerning its relationship with their host communities. Counsel therefore submitted that the 2nd appellant in Exhibit HIA1 anticipated her business to go outside the United States of America by using the phrase "for the worldwide Conduct of Business Corporation and its majority – owned subsidiaries". He also argued that the case of ADAMS & OTHERS –V- CAPE INDUSTRIES PLC (supra) is no longer the position of the law in the United Kingdom and that in LUNGOWE –V- VEDANTA RESOURCES PLC, a parent company could be held liable for the actions of a subsidiary on ordinary principles of tort law. Thus, the 2nd appellant, though a foreign company, can be sued or can sue in Nigeria and the lower court is seized with jurisdiction to entertain the suit against the 2nd appellant.

On issue No.3, the appellants' contention is that there is nothing linking the 2nd appellant with the respondents' claim and that for cause of action to lie against a party a nexus must first be established to exist between the action and the party against whom the action lies. Counsel contend that the only legal conduct of the 2nd appellant being complained by the respondents is its alleged ownership of the 1st appellant and therefore controls its operations and management. He submitted that a holding company and its subsidiaries are separate entities with each capable of owning assets

and responsible for its own liability relying on M. O. KANU & SONS CO. LTD -V- U.B.N. PLC (1998)11 NWLR (prt.572) 121 and REV. RUFUS NWUAJOKU ONNEKWUSI & ORS -V- THE REGISTERED TRUSTEES OF THE CHRIST METHODIST ZION CHURCH (2011) 2-3 SC (prt.1)1.

The respondents on their part contended that cause of action means the entire set of facts or circumstance giving rise to an enforceable claim. This includes all those facts necessary to give right of action and every fact which is material to be proved to entitle the plaintiff to succeed. Counsel referred to paragraph 35 of the statement of claim and submitted that same raises some issues of law or fact calling for determination by the trial court.

RESOLUTION

Issue No.1 deals with the nature of the respondents' cause of action as well as the applicability or otherwise of the extant limitation law of Akwa Ibom State of Nigeria. The law is settled that cause of action refers to the facts or combination of facts which a plaintiff must adduce to be entitled to any relief, the action itself is the medium through which the plaintiff litigates his bundle of facts. In other words, a plaintiff's right of action eventuates from the

existence of a cause of action. SIFAX (NIG) LTD –V- MIGFO (NIG) LTD (2018) 9 NWLR (prt.1623) 138.

The law is equally settled that the accrual of a cause of action is the event whereby a cause of action becomes complete so that the aggrieved party can begin to maintain his action. Thus, time begins to run when the cause of action crystallizes or become complete. The right of action accrues when the person that sues becomes aware of the wrong done to him. See MULIMA –V- USMAN (2014) 16 NWLR (prt.1432) 160, and UBN PLC –V- UMEODUAGU (2004) 13 NWLR (prt.890) 352.

The contention of the parties is not on when the cause of action accrued to the respondents but on the nature of the action. While the appellants contended that the cause of action is rooted on simple contract, the respondents maintained that it is founded on breach of duty of care which flows from communal neighbourhood relationship.

In order to ascertain a cause of action, the immediate materials a court should look at are the writ of summons and the averments in the statement of claim. The pertinent averments in paragraphs 13, 15, 16, 34, 35, 38, 69 and 81 of the respondents' statement of claim in this case states as follows:-

"13. *On 16th June 1969, Mobil Producing Nigeria Unlimited (MPN), the (1st defendant) was incorporated to take over/continue the business of MENT. The 1st defendant began production of crude oil in February 15, 1970 in the offshore areas of the then South Eastern State now Akwa Ibom State with a profit sharing ratio of 40% (1st defendant) to 60% (Federal Government of Nigeria represented by NNPC).*

15. *Throughout the period from 1964 to 1970 the 1st and 2nd defendants had not built/set up their corporate office in Lagos State having not succeeded in their exploration activities in the then Northern and Western regions of Nigeria where they first sought to drill oil.*

16. *The plaintiff shall at the trial contend that it was the discriminatory policies of the 1sdt and 2nd defendants against the indigenous people of the Southern Eastern State (now Akwa Ibom State) who are minorities in Nigeria that caused the 1st and 2nd defendants in the plaintiff's state to locate the 1st defendant corporate head office in Lagos, Western Region where it had unsuccessfully explored oil from 1955 – 1961.*

34. *The plaintiffs state further to the above that the defendants consequent upon the publication of the John Ruggie Framework published in March 21, 2011, November now updated to January 2017 published their own "Standards of Business Conduct" prepared by Rex W. Tillerson Chairman of the 2nd defendant which adopted several parts of aforesaid John Ruggie Framework and*

35. *The plaintiffs shall at the trial of this suit rely on the said document titled "Standard of Business Conduct - EXXONMOBIL" issued by Rex. W. Tillerson Chairman of the 2nd defendant in November, 2011 obtained in the defendants' Website "(www.exxonmobil.com)-overview/guiding principles/principles.html." The plaintiffs hereby give the defendant notice to produce the original copy of the said document at the trial of this suit. The said document titled "Standard of Business Conduct" issued by the Chairman of the 2nd defendant regulates the conduct of the business of Exxonmobil and subsidiaries/affiliates worldwide and is binding on Exxonmobil all its subsidiaries/affiliates worldwide including the 1st defendant in this suit."*

38. *The plaintiffs state that the pleaded facts above constitute the bindings contracts between the defendants and the communities in which they operate in Nigeria in the case of Akwa Ibom State where they have majority of their operations in Nigeria.*

69. *The plaintiffs state further to the above that as part of the contract between the 1st defendant and the indigenous people of Akwa Ibom State, the parties herein within 30 days of the receipt of the audited report of the salaries accruable to all the staff of the*

1st and 2nd defendants employed and relocated in Lagos State being the head office of the 1st and 2nd defendants' business in Nigeria and the pay As You Earn (PAYE) income tax and other taxes payable to Lagos State on their behalf by the 1st defendant from November, 2011 when the 2nd defendant prepared and published the document titled "Standard of Business Conduct – EXXONMBIL" as the document that regulates the conduct of business of the 1st and 2nd defendants' extractive oil drilling and producing operations in Nigeria i.e. from the date of judgment of this Honourable Court till the 1st defendant relocates its head office from No. 1 Lekki – Ekpe Express Way Lekki, Lagos State to Uyo, Akwa Ibom State failing which the parties revert to this Honourable court for further directions as shall be just, fair and equitable in the circumstances.

81. *By virtue of the 2nd defendant's document titled "Standard of Business Conduct" issued by her chairman to regulate the conduct of business worldwide including the 1st defendant and which document is not only binding on but also constitutes a contract between them and the plaintiffs, the 1st defendant is bound to relocate her head office of operations in Nigeria to either Eket, Ibeno, Esit Eket and or Onna Local Government Areas of Akwa Ibom State."*

I have stated that the cause of action accrues when the plaintiff gets to know that his enforceable claim or right has come into existence or become a present enforceable demand or right or has arisen and to prove as a fact during trial. From the above averments it is clear that the respondents cause of action accrued when the respondents obtained the document titled "Standards of Business – Exxonmobil in November, 2011 through the 2nd appellant's website: www.exxonmobil.com/overview/guidingprinciples/principles.html. Again, it is beyond any doubt that the respondents' claim as per the above averments are predicated on the alleged contract thereby

created in the standards of Business Conduct mandating the 1st appellant to relocate its head office from Lagos to Akwa Ibom State. This state of affairs is further reinforce by the respondents' main relief in paragraph 90 (a) of the statement of claim thus:-

> "a. ***A DECLARATION that by virtue of the 2nd defendant's document titled "Standards of Business Conduct" issued by the Chairman of the 2nd defendant to regulate the conduct of the 2nd defendant's business worldwide including the conduct of the 1st defendant's business in Nigeria and which document is not only binding on the 1st and 2nd defendants but also constitutes a contract between the defendants and the plaintiff, the 1st defendant is bound to relocate her head office in Nigeria to Akwa Ibom State being the state in Nigeria where she carries on majority of its business as an oil producing company and which state is most adversely affected by the business activities of the 1st defendant as an oil producing company in Nigeria".***

Having held the view that the respondents' claim is rooted in the alleged contract consummated by the standards of Business Conduct which the respondents became aware of it in November, 2011 does the present suit which was filed on 12th May 2017 caught up by limitation law or becomes statute-barred? To be able to enjoy the dividends which recourse to the judicial process affords, a party must commence his action within the period stipulated by the statute. Being a mandatory requirement, legal proceedings cannot be validly instituted after the expiration of the prescribed period. See SANDA –V- KUKAWA LOCAL GOVERNMENT (1991)2 NWLR

(prt.174) 379 and MAIGARI –V- MALLE (2019) 16 NWLR (prt.1697) 69.

By virtue of Section 16 of the Limitation Law Cap. 78 Laws of Akwa Ibom State, 2000, no action founded on contract, tort or any other action not specifically provided for in parts I and II of the said law shall be brought after the expiration of five years from the date on which the cause of action accrued. It was held in plethora of judicial decisions that the crucial consideration is when the cause of action arose and the period of limitation is determined by looking at the writ of summons and the statement of claim alleging when the wrong was committed that gave the plaintiff a cause of action by comparing that date with the date on which the writ of summons was filed. Therefore, upon a scrutiny of the writ of summons and statement of claim, if it is found that there is a cause of action, then the time of its accrual and the time of instituting the action will be considered. See ADEKOYE –V- F.H.A (2008)11 NWLR (prt.1099) 539, OMEMEJI –V- KOLAWOLE (2018) 14 NNLR (prt.1106) 180 and MOBIL PRODUCING UNLIMITED –V- DAVIDSON (2020)7 NWLR (prt.1722)1.

Thus, comparing the time of the accrual of the cause of action and the time of instituting the present action will undoubtly reveal

that the action was filed outside the five years period prescribed by Section 16 of the Limitation Law of Akwa Ibom State.

Contrariwise, learned counsel for the respondents had submitted and the lower court appeared to have been swayed by the said submission that the continued presence/extraction of oil minerals in the affected areas in Akwa Ibom has taken away this action beyond the level of Section 16 of the Limitation Law of Akwa Ibom State. Learned trial judge on page 454 of the record concluded thus:-

> ***"Section 16 of the Limitation Law of Akwa Ibom State does not apply in cases of continuance of damage or injury. This court has the requisite jurisdiction to entertain this suit by Section 17 (1) of the Limitation Law of Akwa Ibom State."***

In arriving at the above, the lower court relied mainly on paragraphs 24 and 25 of the statement of claim which only shows that the appellants carries out profitable oil export in Akwa Ibom State with its attendants negative impact as a result of the extractive and oil producing business. This in my view does not show or disclose a crystallization of any cause of action to the respondents. This is particularly so because a plaintiff's right of action eventuates from the existence of a cause of action. See AGOBORO –V- PAN OCEAN OIL CORPORATION NIGERIA LTD (2017) 7 NWLR (prt.1563) 42. Had the lower court adverted its mind to the

respondents' complaint in this suit which essentially is on the non relocation of the 1st appellant's head office from Lagos to Akwa Ibom, it would have discovered that the respondents are not complaining on any negligence arising from the corporate responsibilities of the 1st appellant.

Furthermore, the general principle is that the tort of negligence arises when a legal duty owed by the defendant to the plaintiff is breached. And to succeed in an action for negligence, the plaintiff must prove by preponderance of evidence that:-

(a) The defendant owed him a duty of care,

(b) The duty of care was breached, and

(c) The defendant suffered damages arising from the breach.

See ANYAH –V- IMO CONCORD HOTELS LTD (2002) LPELR – 512 (SC).

Gleaning from the averments in the statement of claim, the respondents neither pleaded duty of care owed them by the appellants nor the breach of such duty as well as the injury suffered arising from the breach. In consequence thereof, the respondents' action being founded on simple contract and Section 16 of the Limitation Law of Akwa Ibom State, 2000 aptly applies to the instant case. The respondents' action having been filed outside the five

years prescribed by Section 16 of the extant law, the lower court is deprived of jurisdiction because the action is deemed not to exist and thereby incompetent.

Issue No.2 pertains the jurisdiction of the lower court over a foreign company. It is very clear that Section 54 of Companies and Allied Matters Act, only prohibits foreign company from running business in Nigeria without first going through the process of registration or after obtaining an exemption certificate. However, Section 60 (h) of CAMA is emphatic on the rights and liability of a foreign company. It provides:

> ***"60. For the avoidance of doubt, it is hereby declared that –***
>
> (a) .....
>
> (b) ***Nothing shall be construed as affecting the rights or liability of a foreign company to sue or to be sued in its name or in the name of its agent."***

From the above, a foreign company such as the 2nd appellant has the statutory authority to sue or be sued in Nigerian courts. The next germane issue is whether the 1st appellant is a subsidiary of the 2nd appellant and to what extent is the 2nd appellant liable? Generally, a subsidiary company has its own separate legal personality and the act of subsidiary company cannot be imputed to the parent company nor the act of the parent company be imputed to the subsidiary company. Each of them is capable of suing or

being sued in its own name. see UNION BEVERAGE LTD -V- PEPSICOLA INTERNATIONAL LTD (1994) 3 NWLR (prt. 330)1 and ECTHOES OF DEV. (NIG) LTD & ANOR -V- HUDROCHINA HOADONG (NIG) LTD & ANOR (2021) LPELR - 55086.

Finally, issue No.3 which apparently is a fall-out of issue No.2 deals with nexus between the respondents' claim and 2nd appellant. In other words, whether a reasonable cause of action is disclosed against the 2nd appellant. A reasonable cause of action is disclosed once the statement of action sets out the plaintiff's legal right qua the defendant's obligations towards him, and goes further to set out facts constituting the infraction of plaintiff's legal rights or failure of the defendant to fulfill his obligations towards the plaintiff. In OIL RISK & ASSET MANAGEMENT LTD -V- EKITI STATE GOVT. (2020) 12 NWLR (prt. 1738) 203 at 247, the Supreme Court has held that once the statement of claim discloses a reasonable chance that the plaintiff will succeed on his allegations as pleaded, if not traversed a reasonable cause of action would have been disclosed.

I have stated elsewhere in this judgment that the lower court only relied on paragraphs 24 and 25 of the statement of claim to impute continuance of damage or injury without deciphering from the statement of claim the duty of care owed the respondents which

was breached by the appellant as well as the injuries arising from that duty of care owed. Put different, the lower court was wrong to have held that the respondents' claims have disclosed a reasonable cause of action against the 2nd appellant in the absence of a prima facie case or issue.

In the result that the respondents' suit was caught up by the limitation Law of Akwa Ibom State, the jurisdiction of the lower court was effectively ousted. The appeal succeeds and the decision of the trial court is accordingly set aside. Suit NO. FHC/UY/CS/67/2017 is hereby struck out for want of jurisdiction.

Parties to bear their respective costs.

COURT OF APPEAL 18/1/2022 DATE CALABAR DIVISION

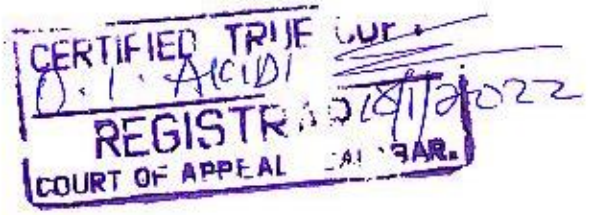
MUHAMMED L. SHUAIBU
JUSTICE, COURT OF APPEAL

CERTIFIED TRUE COPY 18/1/2022 REGISTRAR COURT OF APPEAL CALABAR.

APPEARANCES:

O. Ojibara Esq. Appellants.

O. A. Ochi: Respondents.



CA/C/296/2018

MOJEED ADEKUNLE OWOADE, JCA

I have had the privilege of reading in draft the judgment delivered by my learned brother **MUHAMMED L. SHUAIBU, JCA.**

I agree with the reasoning and the conclusion reached in the judgment. I also agree that the Respondents/Plaintiffs claims do not disclose a reasonable cause of action against the Appellants/Defendants.

I also allow the appeal, I abide with the consequential orders and the order as to costs.

COURT OF APPEAL
18/1/2022
DATE
ILORIN DIVISION

MOJEED ADEKUNLE OWOADE,
JUSTICE, COURT OF APPEAL.

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CA/C/296/2018

SAMUEL ADEMOLA BOLA

I am privileged to have read in draft, the judgment just delivered by my Brother, ***MUHAMMED LAWAL SHUAIBU***, JCA. I am in agreement with his reasoning and conclusion as contained in his decision.

The pleading of the Respondents particularly the statement of claim reveal clearly that the subject matter of this action is within the realm of contract. In other words, it was action founded on contract. It is equally established from the averments of the statement of claim that the cause of action arose in November, 2011 when the Respondents obtained the document *"standard of business – EXXONMOBIL through the 2nd Appellant's website"*. Section 90(a) of the Statement of Claim states that the *"document is not only binding on the 1st and 2nd Defendants but also constitutes a contract between the Defendants and the Plaintiff ....."*. No other averment in the Claimants pleading speaks louder as to the gravamen of the cause of action between the parties and the nature of the cause of action created whether contractual of tortuous liability case.

Was the Respondents' case caught by effluxion of time? Section 16 of the Limitation Law Cap 78 Laws of Akwa Ibom State provides that no action founded contract, tort or any other action, not specifically provided for in parts I and II of the Law shall be brought after the expiration of five years from the date on which the cause of action accrued. The Respondents became aware of the cause of action in November, 2011 while substantive action was instituted in May, 2017, six years and six months after the accrual of the cause of action. Any action which is filed after the

period allowed by a statute, action is not maintainable and the operation of the limitation law leaves the Plaintiff with a right of action which is dead in law. Accordingly, no court will have jurisdiction to entertain the action. See the case ***SYLVA VS. INEC (2015) 16 NWLR (1986) 576 @ 630.***

It is in the light of the foregoing reasons and other reasons fully stated in the lead judgment that I conclude and hold that the Respondents' action is statute barred. The Respondents' action was dead on arrival at the court below having been caught with the limitation law.

Consequently, this appeal succeeds and the decision of the lower court is hereby set aside. *Suit No. FHC/UY/CS/67/2017* struck out for lack of jurisdiction.

Parties to bear their respective costs.

COURT OF APPEAL
18/1/2022
DATE
CALABAR DIVISION

SAMUEL ADEMOLA BOLA
JUSTICE, COURT OF APPEAL

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