

SUPREME COURT OF NIGERIA
10TH JUNE, 1994, SC. 249/1990
CORAM:- M. L. UWAIS, O. OLATAWURA,
E. O. OGWUEGBU, S. U. ONU, Y. O. ADIO, JJSC.

JOHN EBOIGBE PLAINTIFF/APPELLANT
(For himself and on behalf
of 6 other members of his family)
AND
THE NIGERIAN NATIONAL
PETROLEUM CORPORATION DEFENDANT/RESPONDENT

ACTIONS - *Non-maintainable actions - Limitation of actions - Where an action is commenced after the limitation period - The action is not maintainable.*

CONFLICT OF LAWS - *Applicable statute - Limitation of actions - Conflicting provisions of the state law and the NNPC Act - Which of the statutes is applicable*

LIMITATION OF ACTIONS - *Time begins to run from accrual of cause of action - Where 12 months limitation period is prescribed under the Act - Need to commence action within that period.*

LIMITATION OF ACTIONS - *Application to dismiss an action for being statute barred - Where the action was commenced after 6 years - When two separate statutes relied upon specified 1 year and 6 years limitation period respectively - The action is statute barred prima facie.*

LIMITATION OF ACTIONS - *Plaintiff who might have a cause of action - Loses the right to enforce it - Where the action is statute barred.*

PRACTICE & PROCEDURE - *Running of period of limitation of an action - Negotiation between the parties - Whether period of limitation ceases to run by virtue of the negotiation.*

STATUTES - *Limitation of actions - Provisions of the Bendel State Law and the NNPC Act thereon - Properly analysed.*

TORTS - *Damage to crops - Claim for N200,000.00 special and general damages - Where the action is statute barred - Whether it is maintainable.*

WORDS & PHRASES - *“Notwithstanding anything in any other enactment” - Used in s.11 (1) of the NNPC Act - In relation to limitation of actions - Whether any other Law or Act can prevent time from running during negotiations.*

FACTS

The Plaintiff/Appellant filed an action against the Defendant/Respondent before the defunct Bendel State High Court Abudu, claiming N200,000 being special and general damages for the Respondent's destruction of Appellant's economic crops. The Respondent filed an application for dismissal of Appellant's claim for being statute barred under two separate statutes namely:-NNPC Act that specified 12 months limitation and the Limitation Law of Bendel State which prescribed 6 years. The trial court found for the Appellant on the ground that the Respondent was estopped from raising or relying on the aforesaid laws.

Respondent's appeal to the Court of Appeal was allowed as that court held that the action was statute barred. Appellant has now appealed to the Supreme Court to determine whether the Respondent is estopped from taking the benefit of any statute of limitation in view of its entire conduct. Appellant urged the court to take into consideration certain provisions of the Bendel State Limitation Law such as s.21 that states that time should not begin or continue to run where a party is under disability.

HELD *(Unanimously dismissing the appeal)*

1. Time begins to run from the date that the cause of action accrues. The cause of action, generally, accrues on the date on which the incident, giving rise to the cause of action, occurs and, in the case of

section 11 (1) of the Nigerian National Petroleum Corporation Act, 1977, an action in relation to an incident giving rise to the cause of action must be instituted within twelve months next after the act, neglect or default complained of or, in the case of a continuance of the damage or injury, within twelve months next after the ceasing thereof. Proceedings must be begun, normally, by the issue of a writ of summons within the period prescribed by the relevant statute. (P.75 L24))

2. In this case', the appellant's crops were allegedly damaged or destroyed in February, 1979. In Accordance with the principles February, 1979, was the date on which the appellant's cause of action accrued. It was common ground that the appellant instituted the present action in June, 1985. Bearing the provision of section 11 (1) of the Nigerian National Petroleum Corporation Act, 1977 and section 4 (I) (a) of the Limitation Law, Cap. 89 of the Laws of Bendel State of Nigeria, 19764 which prescribed six years limitation period in mind, the action instituted by the appellant was, prima facie, statute-barred. (P. 75 .L35)

3. Where an action is statute-barred, a Plaintiff who might have had a cause of action loses the right to enforce the cause of action by judicial process because the period of time laid down by the limitation law for instituting such an action has elapsed. An action commenced after the expiration of the period, within which an action must be brought, stipulated in a statute of limitation is not maintainable. In short, when the statute of limitation in question prescribes a period, within which an action must be brought, legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period. (P.76 L41)

4. As for the period during which the parties engaged in negotiation, the law is that when in respect of a cause of action, the period of limitation begins to run, it is not broken and it does not cease to run merely because the parties engage in negotiation. The best cause for a person to whom a right has accrued is to institute an action against the other party so as to protect his interest or right in case the negotiation fails. (P.76 LI9)

5. In the light of the expression: “Notwithstanding anything in any other enactment” in section 11 (1) of the Nigerian National Petroleum Corporation Act, 1977, it is sufficient, for the present purpose, to state that there was nothing in the Act or the Law to prevent time from running during negotiations between the parties in this case. (P. 76 L38)

6. The provisions of the Limitation Law suspending the running of the limitation period prescribed in the Law do not apply as the provisions of section 11(1) of the Nigerian National Petroleum Corporation Act, 1979, are applicable notwithstanding anything in any other enactment. (P. 78 L20)

NOTABLE POINTS OF INTEREST ***OGWUEGBU JSC***

1. Computation of time

A statute of limitation begins to run from the moment the cause of action arose. It is immaterial that a party was absent from the jurisdiction or that there was no court within the jurisdiction to entertain the claim. Illiteracy will not avail an intending Plaintiff. In computing time when the statute of limitation begins to run, the day the cause of action arose is as a rule excluded and the day of filing the action is included. (P81 L19)

ONU JSC

2. Limitation of actions - Admission of liability during negotiations

“Should the 1977 Act in section 11 (1) and (2) have had no application at all in the instant case (which is not conceded), a falling back on the Limitation Law, 1976 Cap. 89 Laws of Bendel State, 1972 would still not avail the Plaintiff, having failed to show that he suffered any disability in law as would make time not to run against him. See NWADIARO V. SHELL PETROLEUM (1990)5 NWLR (Part 150) 322 C. A. In the above case, it was the statement of the law that in considering whether an action is statute-barred that negotiations between parties will not stop the time from running, is subject to the qualification that where there has been admission of liability during

negotiations and all that remains is fulfilment of the agreement, it cannot be just and equitable that the action would be barred after the statutory period of limitation giving rise to the action of the defendant were he to resile from his agreement during the negotiations. In the instant case, there is nothing to indicate that there has
 5 been an admission of liability during negotiations, if any, let alone fulfilment or settlement of same. In any case, the Act in the instant case does not admit of the type of qualification referred to above nor does it make room for exception.” (P. 84 L1)

10 **REPRESENTATION**

Mr. O. Omosotowe for the Appellants.

Mr. G.O. Ohen for the Respondent.

15 **CASES REFERRED TO**

Egbe v. Yusuf, (1992)6 N.W.L.R. (Pt. 245) 1

Sanda v. Kukawa Local Govt. (1991) 2 N.W.L.R. (Pt. 174) 379

Odubeku v. Fowler (1993) 7 N.W.L.R. (Pt. 308) 637

Ekeogu v. Aliri (1991)3 N.W.L.R. (Pt. 179) 258

20 Gbadamosi Lahan v. The A-G, Western Nigeria (1976) W.N.L.R. 39

Solomon v. African Steamship Co. 9 N.L.R. 99

STATUTES & RULES REFERRED TO

25 Nigerian National Petroleum Corp. Act No. 33 of 1977 s.11 (1) & (2)
 Limitation Law Cap 89 Laws of Bendel State 1976 ss.4 (1) (a), 25(c),
 28, 21

Evidence Act s. 150

Public Authorities Protection Act 1893 s. 1(a)

30 Bendel State High Court (Civil Procedure) Rules O.13 r. 19

NNPC Act Cap. 320 LFN 1990 s. 12 (1) & (2)

Public Officers Protection Ordinance (Act) Cap. 168 s.2

LEAD JUDGMENT BY ADIO JSC

35 The appellant, in the High Court of the defunct Bendel State of Nigeria, Abudu Judicial Division, instituted legal proceedings against the respondent. The writ was filed on the 13th June, 1985 and the appellant’s claim was for N200,000 being special and general damages for the destruction, by the respondent, of the economic crops of

the appellant at Uvbenise, Orhionmwon Local Government area of Bendel State. Pleadings were duly filed and exchanged by the parties. The respondent then filed an application for an order dismissing the appellant's claim on the ground that the appellant's action was statute-barred under the following Laws:-

(a) section 11 (1) and (2) of the Nigerian National Petroleum Corporation Act, No.33 of 1977; and

(b) Section 4 (1) (a) of the Limitation Law, Cap. 89 of the Laws of Bendel State of Nigeria, 1976.

The preliminary objection was set down for hearing. It was duly heard and, in his ruling, the learned trial Judge dismissed the application. He held that appellant's contention that respondent was estopped from raising or relying on the aforesaid Laws was valid. Dissatisfied with the ruling, respondent appealed to Court of Appeal.

The Court of Appeal allowed the appeal. The court below held that the appellant's action was incompetent and it dismissed it.

Dissatisfied with the judgment of the court below, the appellant has appealed to this court. The parties, in accordance with the rules of this court, filed and exchanged briefs. Each party formulated, in his/its brief, one issue for determination. The main and only issue formulated in the appellant's brief, which was based on the ground(s) of appeal, is sufficient for the determination of this appeal and it is as follows:- *"Whether considering the entire conduct and representations of the defendant, especially as highlighted by the plaintiff's Statement of Claim, the defendant is not estopped from taking the benefit and/or advantage of any statute of limitation."*

The court below gave consideration to the aforesaid issue and came to the conclusion that, on the state of the pleadings, the respondent could in the circumstances of this case take advantage of and rely on the provisions of sections 11(1) and (2) of the Nigerian National Petroleum Corporation Act and section 4(1) (a) of the Limitation Law, Cap. 89 of the Laws of Bendel State. The view of the court below, on the point, as stated in its judgment, was inter alia, as follows:- *"The cause of action in this suit, therefore, accrued and actionable a day after the respondent's crops were damaged in February, 1979 while the action was brought on 13th June, 1985. This was clearly in excess of twelve months permitted by section 11 (1) of Act 33 of 1977; whether the time commenced running from accrual of cause of action in 1979 or from the brake down of negotiations between the parties. On either interpretation the suit was time barred..."*

The case of Iga & Ors. v. Chief Amakiri & Ors. (1976) 11 S.C.1. (supra) and section 150 of the Evidence Act do not, in the circumstance of this case, call for consideration. The reason why they are not to be considered being that by any interpretation placed on the date of accrual of the cause of action the respondent's delay was more than twelve months allowed by the statute; it necessarily follows that their cause of action was statute-barred... The appellant's letter of 16/4/84 is of no consequence. This letter was a reaction to the letter caused to be written by a Solicitor to protest against the appellant's disclaim of liability... This cannot be construed as re-opening of negotiation which had been effectively terminated... it is neither an excuse under the relevant enactment that the respondent was an illiterate or the literates amongst his family were not immediately available... The statute of limitation does not cease to run from the date of accrual of the cause of action irrespective of the status of the parties. "

The foregoing statement by the court below covered related matters such as the effect, if any, which the alleged conduct of the respondent warranting its being estopped from relying on the relevant statutes of limitation herein before mentioned: illiteracy of some members of the appellant's family; travelling by some members of the appellant's family for a certain period from the place where the alleged destruction of the crops occurred to somewhere within Nigeria; and negotiation which involved exchange of correspondence between the parties for a certain period before it broke down, should have in the determination of the merit or otherwise of the appellant's claim. The contention for the appellant was that in view of the contents of the letters addressed to him by the respondent and taking into consideration certain things allegedly done by the respondent or its agents pursuant to the claim of the appellant, the respondent should not be allowed to reply on or take advantage of the statutes limitation. Some members of the appellant's family were illiterates and others travelled out of the place where the destruction of the crops occurred to a place within Nigeria during the relevant period and those aspects of the matter ought to be taken into consideration for the determination of the question whether the action of the appellant was statute-barred. In particular, it was also contended for the appellant, that the period during which the parties engaged in negotiation ought to be excluded. The respondent's contention was that illiteracy of some members of the appellant's family and the fact that some of them travelled out of the local government area to a place within Nigeria for a certain period were completely irrelevant to the question whether the appellant's claim was statute-barred. It was further contended that the exchange of correspondence between the parties and anything done by the

respondent as a result of the negotiation, were all part of the negotiation and that in any case, negotiation by the parties could not in law, stop the time from running once it had started running from the time that the cause of action had accrued. It was the respondent's case that the cause of action accrued in February, 1979 when the crops were allegedly destroyed and since the appellant instituted his action in June, 1985, the action was statute-barred by section 11(1) and (2) of the Nigerian National Petroleum Corporation Act, 1977, and section 4(1) (a) of the Limitation Law. 5

The first question which comes to mind is the nature of section 11 (1) and (2) of the legislation known as the Nigerian National Petroleum Corporation Act, 1977. As the provisions impose a limitation of time upon existing right of action, they are statutory provisions having the same effect as a statute of limitation. See *Egun v. Yusuf* (1992) 6 NWLR (Pt. 245) 1. Section 11 (1) and (2) of the Act provide as follows:- 10

"11. (1) Notwithstanding anything in any other enactment, no suit against the corporation, a member of the Board or an employee of the corporation for any act done in pursuance or execution of any enactment or law, or of any public duties or authority, or in respect of any alleged neglect or default in the execution of such enactment or law, duties or authority, shall lie or be instituted in any court unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuance of damage or injury, within twelve months next after the ceasing thereof. 15

(2) No suit shall be commenced against the Corporation before the expiration of a period of one month after written notice of intention to commence the suit shall have been served upon the Corporation by the intending plaintiff or his agent: and the notice shall clearly and explicitly state the cause of action, the particulars of claim, the name and place of abode of the intending plaintiff and the relief which he claims." 20

The next question is when does time begin to run for the purposes of a statute of limitation? Time begins to run from the date that the cause of action accrues. See *Sanda v. Kukawa Local Government*, (1991) 2 NWLR (Pt 174) 379. 30

The cause of action, generally, accrues on the date on which the incident, giving rise to the cause of action, occurs and, in the case of section 11(1) of the Nigerian National Petroleum Act, 1977, an action in relation to an incident giving rise to the cause of action must be instituted within twelve months next after the act, neglect or default complained of or, in the case of a continuance of damage or injury, within twelve months next after the ceasing thereof. Proceedings must be begun, normally, by the 35

issue of a writ of summons within the period prescribed by the relevant statute.

In this case, the appellant's crops were allegedly damaged or destroyed in February, 1979. In accordance with the principles stated above, February, 1979 was the date on which the appellant's cause of action accrued. It was common ground that the appellant instituted the present action in June, 1985. Bearing the provisions of section 11(1) of the Nigerian National Petroleum Corporation Act of 1977 and section 4(1) (a) of the Limitation Law, Cap. 89 of the Laws of Bendel State of Nigeria, 1976, which prescribed six years limitation period in mind, the action instituted by the appellant was prima facie, statute-barred. Where an action is statute-barred a plaintiff who might have had a cause of action loses the right to enforce the cause of action by judicial process because the period of time laid down by the limitation Law for instituting such an action has elapsed. See *Odubeko v. Fowler* (1993) 7 NWLR (Pt.308) 637. An action commenced after the expiration of the period, within which an action must be brought, stipulated in statute of limitation is not maintainable. See *Ekeogu v. Aliri* (1991) 3 NWLR (Pt.179) 258. In short, when the statute of limitation in question prescribes a period, within which an action must be brought, legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period. See *Sanda's case supra*.

The next question is whether there are circumstances, in this case, warranting the relaxation or complete non-application of the provisions of the relevant limitation laws. Certainly, illiteracy of some members of the appellant's family is totally irrelevant because ignorance of the law is not an excuse. As for the period during which the parties engaged in negotiation, the law is that when in respect of a cause of action, the period of limitation begins to run, it is not broken and it does not cease to run merely because the parties engaged in negotiation. The best cause for a person to whom a right has accrued is to institute an action against the other party so as to protect his interest or right in case the negotiation fails. If, as in this case, the negotiation does not result in a settlement or in an admission of liability, the law will not allow the time devoted to negotiation to be excluded from the period which should be taken into consideration for the determination of the question whether a claim has been statute-barred. Negotiation by the parties does not prevent or stop time from running. The following is the statement, on the point, by Fatayi-Williams, J., (as he then was) in *Gbadamosi Lahan v. The Attorney-General, Western Nigeria*, (1961) WNLR. 39; (1963) 2 SCNLR 47 which, I think, was correctly decided:-

"After perusal, I am unable to find anything in the Act to prevent

time from running during negotiations between the parties for the consideration of the claim. This is clearly a case where the Government had been slow in formulating its attitude towards a claim."

I will later, in this judgment, deal with certain provisions of the said Limitation Law which suspend the running of time in certain circumstances in the light of the expression: "*Notwithstanding anything in any other enactment*" in section 11 (1) of the Nigerian National Petroleum Corporation Act, 1977. It is sufficient, for the present purpose, to state that there was nothing in the Act or the Law to prevent time from running during negotiations between the parties in this case.

With reference to the allegation that some members of the appellant's family travelled from the place of the incident to somewhere within the country and stayed there for some time, that fact is irrelevant to the issue involved in this case which is whether the appellant's action was statute-barred. See *Solomon v. African Steamship Co.* 9 NLR 99.

In the case of the alleged conduct of the respondent which, according to the appellant, should estop the respondent from raising or relying on the Laws of limitation, the appellant cited *Ige & ors v. Chief Amakiri* (1976) 11 SC. at p. 13 and referred to section 150 of the Evidence Act. The law does not prohibit parties to a dispute from engaging in negotiation for the purpose of settling the dispute. Except where as a result there is what can be reasonably regarded as a settlement of the dispute or an admission of liability on the part of a defendant, the limitation time continues to run. If one considers the contents of all the letters written by the parties in this case to each other along with the action, if any, taken by the respondent or its agent or servant during the relevant period, it is quite clear that there was nothing in the manner in which the respondent conducted the negotiation which could estop it from relying on or raising the statutes of limitation. See *Gbadamosi Lahan's case*, supra. In *Hawlett v. London County Council* (1908) 24 J.L.R. 331 the letters which the parties addressed to each other contained suggestions for a settlement, the sum which the plaintiff would be willing to accept, and requests for particulars. When negotiation broke down, the plaintiff instituted an action and the defendant relied on section 1 (a) of the Public Authorities Protection Act, 1893, which prescribed a limitation period of six months. It was held, on appeal, that the defendant was not estopped from relying on the Act. The situation in the respondent's case in this matter was not as bad as the situation in *Hawlett's case* and the defendant in that case was not estopped from relying on the statute of limitation.

Another significant aspect of this case was that the appellant did

not institute the present action until after one year and some months after the respondent had made it abundantly clear that it was not going to pay the appellant for the appellant's crops allegedly destroyed by the respondent. In a letter dated 1st February, 1984 the respondent told the appellant that he would not be paid any compensation because his claim was not
5 convincing. As a result, the appellant addressed another letter to the respondent. The respondent replied that letter and stated in the said reply dated 9th March, 1984: *"In the absence of any more facts we are regarding the matter as closed."* The reply dated 16th April, 1984 was sent by the respondent to another letter of the appellant. In that reply, the respondent
10 stated that the case had been referred to its Legal Department and that it hoped to get the appellant informed of any development soon. There had been no development and the respondent had not addressed any further letter of the appellant. The appellant issued a writ to commence this action against the respondent in June 1985, that is about fourteen months after it
15 had been made clear to the appellant that the respondent did not admit liability. Whatever right the appellant had was completely statute-barred at the time he commenced this action.

The appellant urged this court to take into consideration the provision of section 25(c) of the Limitation Law which provide that time should
20 not begin to run until the plaintiff has discovered the fraud, where fraud is alleged, or his mistake; section 28 of the Law which empowers a court to refuse the relief on the ground of acquiescence: and section 21 of the Law which provides that time should not begin or continue to run when a party is under disability. Whatever may be the merit, if any, of the submission,
25 the provisions of the Limitation Law suspending the running of the limitation period prescribed in the Law do not apply as the provisions of section 11 (1) of the Nigerian National Petroleum Corporation Act, 1979, are applicable notwithstanding anything in any other enactment.

The appeal does not succeed. It is hereby dismissed with N1,000.00
30 costs to the respondent. The judgment of the court below is affirmed.

UWAIS JSC

I have had the advantage of reading in draft the judgment read by
35 my learned brother Adio, J.S.C. I entirely agree with the judgment and do not wish to add anything.

Accordingly, the appeal fails and it is hereby dismissed with N1,000.00 costs to the respondent.

UWAIS JSC (PRONOUNCEMENT)

The Honourable Justice Olajide Olatawura, who sat with us on the 14th day of March, 1994 to hear this appeal retired on the 3rd day of May, 1994. Before his retirement, he took part in the conference which we held on the 23rd day of March, 1994 on the appeal and he was of the opinion 5 that the appeal should be dismissed.

In accordance with the proviso to section 258 subsection (2) of the Constitution of the Federal Republic of Nigeria 1979 Cap. 62. I hereby pronounce the opinion of Honourable Justice Olajide Olatawura that the appeal be dismissed. 10

OGWUEGBU JSC

The only issue in this appeal as rightly formulated in the appellant's brief of argument is whether, considering the entire conduct and representations of the defendants especially as highlighted in the plaintiff's statements of claim, the defendants are not estopped from taking the benefit or advantage of any statute of limitation. 15

The action was instituted in a representative capacity. The plaintiff on record represented others named in the suit. The plaintiff/appellant conceded that he was statute barred both in his statement of claim and in his brief of argument. This is borne out by paragraphs 5 and 6 of the statement of claim. In paragraph 5 of the statement of claim the plaintiff/appellant averred that on or about the 18th of July, 1979 the defendants and their servants in the course of laying pipes destroyed the greater part of his farms 25 which contained many economic trees, cash and food crops.

He further averred that apart from himself and Sunday Eboigbe who are literate, the other five are illiterates. That he left home on or about September, 1979 for Northern Nigeria where he stayed for about four years and returned in July, 1983: that it was on his return in July, 1983 he learnt 30 for the first time from his illiterate relations how the defendants during their operations, destroyed and or bulldozed the greater part of their farms. He wrote a letter to the defendants on 20th July, 1983 informing them of the damages they had done to their family farms. Both parties were engaged in correspondents, the last being the one written by the defendants to the plaintiff dated 16th April, 1984 informing the plaintiff that the matter had 35 been referred to their legal department and that they would be informed of further development.

Not hearing from the defendants the plaintiff filed the action giving

rise to this appeal on 13th June, 1985 in the High Court of the then Bendel State holden in Abudu claiming N200.000.00 special and general damages from the defendants.

After filing their statement of defence, the defendants brought an application under Order 13 rule 19 of the Bendel State High Court Civil Procedure Rules for an order *“to strike out the action on the ground that (sic) is statute barred.”* The learned trial Judge Gbemudu, J. in a reserved ruling, dismissed the defendants’ application. The defendants were dissatisfied with the ruling of the learned trial Judge and appealed to the Court of Appeal, Benin Judicial Division. The court below allowed the appeal of the defendants. The plaintiff has appealed to this court against the decision of the Court of Appeal.

The defendant grounded their application to strike out the suit on two enactments namely Sections 11 (1) and (2) of the Nigerian National Petroleum Corporation Act No.33 of 1977 (Section 12 (1) & (2) Cap 320. Vol. XVIII Laws of the Federation of Nigeria, 1990) and Section 4(1)(a) of the Limitation Law Cap: 89, Laws of Bendel State of Nigeria, 1976. The action was determined on the basis of the above laws. The plaintiff/appellant has urged the court to hold that the conduct and representations of the defendant/respondents should estop them from taking advantage of the provisions of the above enactments which placed time bars on his right of action.

What was the conduct or representation made by the respondents which would debar them from taking advantage of the law? On 20th July, 1993 the plaintiff wrote a letter to the defendants in Lagos informing them of the damage they had done to Eboigbe Family farms. This was followed by a reminder dated 4th August, 1983. Following plaintiff’s letter of 20th July, 1983, the defendant sent their representative in the person of Mr. Ajike Onwuka who carried out on the spot check on the alleged destruction of economic trees, food and cash crops. On 2nd September, 1983, the plaintiff wrote a third letter to the defendants thanking them for sending Mr. Onwuka and requested for an early payment of compensation. He wrote reminders on the 26th September and 10th November, 1983 respectively.

The defendants wrote a letter dated 27th September, 1983 to the Permanent Secretary, Ministry of Agriculture and Nature Resources, Benin City asking for a photo-copy of Schedule No. CE/OPL/31/79-80.

On 6th December, 1983 and in reply to the plaintiff’s letter of 10th November, 1983, the defendants wrote to the plaintiff informing him of their letter to the Ministry of Agriculture and Natural Resources, Benin City.

There were other letters exchanged by both parties and on 1st Febru-

ary, 1984 the defendants wrote to the plaintiff informing him that his claim for compensation was not convincing and in a subsequent letter the defendants informed the plaintiff that the matter had been referred to their legal department. When plaintiff and his people failed to hear any more from the defendants, he filed the action which led to this appeal.

Having regard to Section 12(1) of the Nigerian National Petroleum Corporation Act Cap. 320, Laws of the Federation of Nigeria, 1990, time had run against the plaintiff/appellant by the 20th of July, 1983 when he wrote his first letter to the defendants. Subsections (1) and (2) of Section 12 of the Nigerian National Petroleum Corporation Act read as follows:-

“(1) Notwithstanding anything in any other enactment, no suit against the Corporation, a member of the Board or any employee of the Corporation for any act done in pursuance or execution of any enactment or law, or of any public duties or authority, or in respect of any alleged neglect or default in the execution of such enactment or law, duties or authority, or in respect of any alleged neglect or default in the exaction of such enactment of law, duties or authority, shall be or be instituted in any court unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuance of damage or injury within twelve months next after the ceasing thereof.

(2) No suit shall be commenced against the Corporation before the expiration of a period of one month after written notice of intention to commence the suit shall have been served upon the Corporation by the intending plaintiff or his agent; and the notice shall clearly state the cause of action, the particulars of the claim, the name and place of abode of the intending plaintiff and the relief which he claims.” (Italic is for emphasis only)

Under the above provision, time within which the appellant could bring an action started to run from February, 1979. Since the appellant did not commence his action until 13th June, 1985, he was statute barred under this enactment. A statute of limitation begins to run from the moment the cause of action arose. It is immaterial that a party was absent from the jurisdiction or that there was no court within the jurisdiction to entertain the claim. See *Solomon v. African Steamship Company* 9 NLR 99. Illiteracy will not avail an intending plaintiff.

In computing time when the statute of limitation begins to run, the day the cause of action arose is as a rule excluded and the day of filing the action is included. See *Morris v. Richards* (1881) 45 L.T. 210.

In any case the question of computation of time does not call for consideration in this appeal having regard to the averments of the plaintiff

who did not bring his action until about six years and four months from the time the cause of action arose i.e. February, 1979 and the action was instituted in June, 1985. The plaintiff was even within jurisdiction when the cause of action arose in February, 1979 and only left home in September, 1979.

5 Section 4(1) of the Limitation Law, Cap. 89, Laws of the former Bendel State of Nigeria, 1976 is also of no assistance to the plaintiff. It is excluded by Section 12(1) of the Nigerian National Petroleum Corporation Act supra. In view of Section 12(1) of the said Act, the action of the plaintiff/appellant could not be maintained. See *Musa v. General Manager*
10 *Nigerian Railway*. 4 NLR 70.

For the above reasons and the fuller reasons in the lead judgment of my learned brother Adio, J.S.C. I hold that the appeal fails. It is therefore dismissed with N1,000.00 costs to the respondent.

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ONU JSC

I have had the advantage of reading in draft the judgment of my learned brother Adio, J.S.C. just delivered. I am in entire agreement with him that the appeal lacks merit and ought to be dismissed.

20 I only wish to humbly contribute the following views of mine in emphasis.

The sole issue which in the appellant's view, is for our determination is:

25 *"Whether, considering the entire conduct and representations of the defendant especially as highlighted by the plaintiffs statement of claim, the defendant is not estopped from taking the benefit and/or advantage of any statute of limitation."*

Of the legislations which apply to the limitation period, in this action. to wit;

30 Section 11 (1) and (2) now re-enacted in Section 12(1) and (2). Cap. 320 Laws of the Federation of Nigeria. 1990) of the Nigerian National Petroleum Corporation Act. No. 33 of 1977 and Section 4(1) of the Limitation Law, Cap 89 of 1976, Bendel State, it will suffice to rely on the former which relevantly provides inter alia as follows:-

35 Notwithstanding anything in any other enactment, no suit against the corporation, a member of the Board or any employee of the Corporation for any act done in pursuance or execution of any enactment or law, or of any public duties or authority, or in respect of any alleged neglect or default in the execution of such enactment or law, duties or authority, shall

lie or be instituted in any court unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuance of damages of injury within twelve months next after the ceasing thereon.

(2) No suit shall be commenced against the corporation before the expiration of a period of one month after written notice of intention to commence the suit.....” (Italic above is mine for emphasis). 5

From the foregoing, this statute of limitation as with other such statutes, beings to run from the moment a cause of action accrues, not when it is discovered. It is therefore not an answer for a party, as the appellant in the instant case, to rely on his absence from within the jurisdiction or absence of court within the jurisdiction to hear the matter. See Solomon v. African steamship Company 9 NLR 99. The appellant and members of his family in their Statement of Claim and as rightly conceded by them in their brief of argument, at the time the alleged crops were damaged on the family land in February, 1979, were aware of the accrual of their rights but neglected or abandoned the pursuit of same in a law court until 13th June, 1985 - a period in excess of the 12 months stipulated by the Act (ibid), which must be strictly construed. 10 15

It is immaterial, in my view also that those of the appellants who remained at home when 1st appellant traveled to the Northern States at the time the cause of action accrued, whether afflicted by ignorance or illiteracy, could not pick up the gauntlet but instead allowed the period prescribed by the Act to pass idly by while no action was filed in court to enforce those rights. See Micheal Obiefuna v. Alexander Okoye (1961) 1 All NLR 275; (1961) 1 SCNLR 144; Solomon v. African Steamship Company Limited (supra); Wills v. Earl of Home (1993) 2 Ch. 545 and Egbe v. Adefarasin (No.1) (1985) 1 NWLR (Pt.3) 549. In the Obiefuna v. Okoye case (supra) the plaintiff, a motor-cyclist, was seriously injured in a collision with a police vehicle (Black Maria) driven by the defendant, a Police Constable in the course of his duties. The injury occurred on May 24th, 1958. 20 25 30 The plaintiff was not finally discharged from hospital until January, 1959 and he did not commence an action claiming damages for the injuries caused to him by the defendant's negligence until 31st March, 1959.

It was contended on the defendant's behalf that as a public officer acting in the course of his lawful duty at the time the accident occurred, he came within the provisions of the Public Officers Protection Ordinance, Cap. 168 section 2, which stipulates that such an action was barred if not commenced “*within three months next after the act, neglect or default complained of.*” 35

Counsel for the plaintiff contends that the injury had not ceased until it became permanent on 17th January, 1959 and therefore, the action was commenced within the limitation provided by section 2 of the Public Officer's Protection Ordinance (now Act).

It was held, *inter alia*, that the defendant was, at the time of the
5 accident, a Public Officer within the meaning of section 2 of the Public Officers' Protection Ordinance (Act). The purported communication with a view to a negotiation entered into in the instant case between the plaintiffs and the defendant would, in my view, be of no avail to the plaintiff in the face of express provisions in the Limitation legislation in this case, the
10 Nigeria National Petroleum Corporation Act, section 11(1) and (2) of 1977.

Should the 1977 Act in section 11 (1) and (2) have had no application at all in the instant case (which is not conceded), a falling back on the Limitation Law, 1976 Cap. 89 Laws of Bendel State, 1972 would still not
15 avail the plaintiff, having failed to show that he suffered any disability in law as would make time not to run against him. See *Nwadiaro v. Shell Petroleum* (1990) 5 NWLR (Pt.150) 322 C.A.

In the above case, it was the statement of the law that in considering whether an action is statute-barred negotiations between parties will not stop the time from running, is subject to the qualification that where there
20 has been admission of liability during negotiations and all that remains is fulfillment of the agreement, it cannot be just and equitable that the action would be barred after the statutory period of limitation giving rise to the action of the plaintiff were he to resile from his agreement during the negotiations. In the instant case, there is nothing to indicate that there had been
25 an admission of liability during negotiations, if any, let alone fulfillment or settlement of same. In any case, the Act in the instant case does not admit of the type of qualification referred to above nor does it make room for exceptions.

In the result, the court below was right to have dismissed the plaintiffs' case as being statute-barred. It is for these and the fuller ones set out in the judgment of my learned brother, Adio, J.S.C. that I also will dismiss the appeal and make the same consequential orders including those relating to costs.

Appeal dismissed.