

**SUPREME COURT OF NIGERIA**  
 17TH APRIL, 1998. SC. 221/1993  
**CORAM: S. M. A. BELGORE, M. E. OGUNDARE, E. O.**  
**OGWUEGBU, U. MOHAMMED, A. I. IGUH, JJSC.**

RHEIN MASS UND SEE .....		APPELLANTS
SCHIFFFAHRSKONTOR GMBH		
THRO: ITS AGENT		
BRAWAL SHIPPING (NIG.) LTD		
DEUTSCHE BANK AG .....	2ND DEFENDANT	
AND		
RIVWAY LINES LIMITED .....		RESPONDENT

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**ACTIONS** - *Limitation - Reckoning of the statutory period - What is barred after the statutory period is the action - Proper of definition of "action" and "cause of action"*

**ACTIONS** - *Limitation - Admiralty jurisdiction enforceable in rem - Exemption from the provisions of S. 7(1) of the Limitation Act - The Plaintiff's cause of action being one within the Admiralty jurisdiction which is enforceable in rem - The action taken to enforce its right though in personam - Is exempted from the provisions of S. 7(1).*

**ADMIRALTY** - *Cause of action enforceable in rem - Where the plaintiff proceeds by action in personam - It would not alter the nature of the cause of action - Since the question whether the action is to be in rem or in personam is one of mere procedure*

**JURISDICTION** - *Admiralty jurisdiction of the Federal High Court - Where the plaintiff claims that it made some disbursements on account of various vessels as ship agent - And has not been reimbursed - The cause of action is one falling within the admiralty jurisdiction of the Federal High Court.*

**STATUTES** - *Interpretation - S.7 (3) of the Limitation Act - Interpretation of "cause of action" to mean "action" - Such an interpretation will only lead to absurdity - There is no place for the incorporation of the mischief rule in this case.*

**WORDS & PHRASES** - *"Action" and "cause of action" - How properly defined.*

### **FACTS**

The plaintiff/respondent on December 23, 1986 issued a writ of summons out of the registry of the Federal High Court Lagos claiming inter alia: "The sum of DM262,800 plus interest at the rate of 15% until judgment and 5% thereafter until the total judgment debt is liquidated jointly and severally from the 1st and 2nd Defendants" The Plaintiff is a shipping company incorporated in Nigeria with its head office in Lagos. The 1st defendant/appellant is a German shipping company with its registered office in Bremen, Germany. The 2nd defendant is a German bank. In September, 1973, the Plaintiff and the 1st Defendant entered into a joint venture agreement by which they established a joint venture shipping Company known as North Europe West Africa Lines Limited (NEWA LINES, for short).

Under the agreement the plaintiff was appointed general agent to all NEWA LINES Vessels that called at West African ports and was entitled to remuneration by way of agency commission of 1.5 percentum for all inward and outward bound freights. In February 1978, the said joint venture agreement was mutually terminated and upon accounts taken of the joint venture business, the plaintiff claimed that a sum of DM262,800 was due and payable to it for services rendered under the agreement to various vessels. It was agreed by the parties that this sum be deposited by the 1st defendant with the 2nd defendant.

The 1st defendant did not pay, hence the Plaintiff instituted the present proceeding. The 1st defendant did not file a statement of defence. It filed a notice of preliminary objection in the nature of demurrer praying the court to dismiss the action on various grounds which include

the lack of jurisdiction of the Federal High Court to entertain the suit as the case was not one properly cognizable within S.7 of the Federal High Court Act, that the action was caught by the Limitation Act in that the action was brought eight and half years after the cause of action arose and that the contract was founded on illegality and therefore unenforceable by virtue of S.3 of the Exchange Control Act, 1962. The learned trial judge ruled against the 1st defendant in respect of the first two objections and found in its favour in respect of the third (illegality). Dissatisfied with parts of the ruling, the parties appealed to the Court of Appeal, which court dismissed the appeal of the 1st defendant. The appeal of the plaintiff was allowed and a retrial was ordered. The 1st defendant dissatisfied with the judgment of the Court of Appeal has further appealed to the Supreme Court raising 2 issues which was narrowed down to a single issue.

### **ISSUE FOR DETERMINATION**

*Whether Plaintiff's action comes within the exemption clause in section 7(3) of the Limitation Act, 1966.*

**HELD** (Unanimously dismissing the appeal per lead judgment of **OGUNDARE JSC**)

### ***Reckoning of the statutory period***

1. In my respectful view what is barred after the statutory period is the action. But the statutory period is reckoned from the accrual of the cause of action giving rise to the action. One must, therefore, begin by defining the word "action" and the expression "cause of action."

The word "action" is defined in section 68 of the Act as follows:

*"'action' includes any proceeding (other than a criminal proceedings) in a court established by law".*

The expression "cause of action" is not defined in the Act. It has, however, been judicially defined in a number of cases. In SAVAGE v. UWAECHIA (1972) 3SC.225,232, (1972) ANLR 255, 261 Fatayi-Williams JSC (as he then was) delivering the judgment of this Court, had this to say:

"A cause of action is defined in Stroud's Judicial Dictionary as the entire set of circumstances giving rise to an enforceable claim. To our mind, it is, in effect, the fact or combination of facts which give rise to a right to sue and it consists of two elements - the wrongful act of the defendant which gives the plaintiff his cause of complaint and the consequent damage. As Lord Esher said in Cooke v. Gill (1873) L.R. 8 C. P. 107 and later in Read v. Brown (1888) 22 Q.B.D. 128 (C.A.), it is every fact that it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. (see also Kusada v. Sokoto Native Authority, S.C. 131/68 delivered on 13th December, 1968, where the definition in Read v. Brown (supra) was referred to with approval." (p. 781 E)

**D Admiralty jurisdiction of the Federal High Court**

2. Plaintiff claims that it made some disbursements on account of various vessels, as ship agent, for and on behalf of the Defendant and has not been reimbursed. These are the facts giving rise to his cause of action. As found by the two Courts below and as conceded by Mr. Agbakoba, and quite rightly in my view, this cause of action is one falling within the admiralty jurisdiction of the Federal High Court - See S.1(1) (p) Administration of Justice Act (England) and sec. 2(2) Admiralty Jurisdiction Act, No. 59, 1991; The West Port (No 3) (1966) 16 L1 L.R. 342; King Ren Shipping and Trading co. Ltd. v. Amatameso Shipping Agencies (1979) FNLR 182. (p.782 G)

**G Cause of action enforceable in rem**

3. It follows that Plaintiff's cause of action is one enforceable in rem. In my respectful view, the fact that this cause of action can be enforced by action in personam where Plaintiff proceeds, as in this case, against the Defendant, owner of the vessels concerned in the joint venture agreement, would not alter the nature of the cause of action. See R. v. Judge of City of London Court (1892) 1 QB 273, 295 where Lord Esher, M.R. observed -

*"If there is a collision between two ships on the high seas, that*

*the Admiralty Court has jurisdiction to deal with the liability of the owners of those ships is true, and it can exercise that jurisdiction either by action in rem or by action in personam. Given the jurisdiction, the question whether the action is to be in rem or in personam is one of mere procedure."*

That being so, the conclusion I reach is that the cause of action in this case is one enforceable in rem. (p. 783 H)

***Interpretation of Statutes - S.7 (3) of the Limitation Act***

4. Mr. Agbakoba would want this Court to interpret "cause of action" to mean "action". But such an interpretation will only lead to absurdity. It is a cause of action that is enforceable in rem and not an action. Moreover, it is a cardinal rule of interpretation which has been accepted in numerous cases in this country, that if the words of the statute are in themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense, as the words themselves in such case best declare the intention of the legislature. See: Asuquo v. The State (1967) 1 ALL NLR 123; Adejumo v. Governor of Lagos State (1972) 3 SC. 45. I do not think there is a place for the incorporation of the Mischief Rule in this case. The combined effect of sub-sections (1) and (3) of section 7 will not support the kind of interpretation suggested by Mr. Agbakoba..

(p. 784 F)

***Admiralty jurisdiction which is enforceable in rem***

5. Sub-section (3) exempts a cause of action within the Admiralty jurisdiction which is enforceable in rem from the provisions of sub-section (1) of section 7 of the Act. And as Plaintiff's cause of action in the instant case is one within the Admiralty jurisdiction which is enforceable in rem, it follows that this action taken by the Plaintiff to enforce its right, though in personam, is exempted from the provisions of section 7(1). I agree with the two Courts below that Plaintiff's action taken 81/2 years after the accrual of the cause of action in this case is not statute-barred. (p. 785 B)

## NOTABLE POINTS OF INTEREST

### OGWUEGBU.JSC

#### *1. Definition of action in rem and action in personam*

- B An action in rem is a piece of legal machinery directed against a ship alleged to have been the instrument of wrongdoing in cases where it is sought to enforce a maritime or statutory lien or in a possessory action against the ship whose possession is claimed. A judgment in rem is a judgment good against the whole world. This does not mean that the vessel is the wrong doer but that it is the means by which the wrongdoer (its owner) has done wrong to some other party. It is the means by which the wrongdoer is brought before the court as a defendant. It is an accepted legal theory that an action in rem is procedural. The purpose is to secure the defendant owner's personal appearance. An action in personam is directed against the person at fault and is dependent entirely upon the plaintiff being able properly and effectively to serve a summons on the defendant in connection with the legal complaint against the defendant particularly when the parties are in different jurisdictions. Therefore, the maritime shipping industry contains within its sphere the concept of legal action available to an injured party through the machinery of the Admiralty jurisdiction which allows, under certain clearly defined circumstances, the vessel to be sued in rem. An action in rem can be concluded by a judgment in rem. The shipowner may take part in the proceedings if he considers it appropriate to defend his property. It is essentially an action against his property (in rem) not against him. Thus, it can be seen that the distinction between action in rem and action in personam is procedural only. Except in certain claims, the same cause of action may give rise to both actions depending on which action the plaintiff initiates having regard to the procedural difficulties involved.
- (p. 789 A)

H

### MOHAMMED.JSC

- 2. Liability in personam could be enforced through an action in rem*  
the appellants' liability in personam could be pursued through an action in

rem against the ship or its owners, agent, hirer or charterer. Since the vessels on account of which the disbursement were made are no longer available within the jurisdiction of the Federal High Court for the respondents to have proceeded against them, the respondents are therefore right under the law to proceed in an action in personam against the appellant B who authorised the disbursements and I agree that the action can be enforced through a proceeding in rem. It is therefore within the context of section 7 (3) of the Limitation Act 1966. (p. 792 A)

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### **REPRESENTATION**

Olisa Agbakoba for the Appellant

Respondent is absent and not represented by counsel

D

### **CASES REFERRED TO**

SAVAGE v. UWAECHIA (1972) 3SC.225,232, (1972) ANLR 255, 261

Kusada v. Sokoto Native Authority (1968) 1 ALL NLR 377; (1968) E ANLR 366;

Bello v. Attorney-General Oyo State (1986) 5 NWLR 828

Tukur v. Government of Gongola State (1989) 4 NWLR 517

Thomas v. Olufosoye (1986) 1 NWLR 669.

F

King Ren Shipping and Trading co. Ltd. v. Amatameso Shipping Agencies (1979) FNLR 182.

Asuquo v. The State (1967) 1 ALL NLR 123

Adejumo v. Governor of Lagos State (1972) 3 SC. 45

G

Lawal v. G. B. Ollivant (1972) 3 SC 124

Aya v. Henshaw (1972) 5 SC. 87

Ifezue v. Mbadugha (1984) 1 SCNLR 427

Awolowo v. Shagari (1979) 6-9 SC 51

Toriola v. Williams (1982) 7 SC 27

H

IBWA v. Imano (Nig.) Ltd (1988) 3 NWLR 633

NBN Ltd. v. Weide & Co. (Nig.) Ltd. (1996) 8 NWLR 150

Obeta v. Okpe (1996) 9 NWLR 401.

**STATUTES REFERRED TO**

Federal High Court Act, 1973 S. 7(1) (d)

Administration of Justice Act (of England) 1956 ss. 1(i) (p) Limitation

B Act No. 88 of 1966, s. 7(1) and (3)

Exchange Control Act, 1962 ss. 3, 7, and 9

Admiralty Jurisdiction Act, No 59, 1991; s 2(2) (p)

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**LEAD JUDGMENT BY OGUNDARE JSC**

The Plaintiff is a shipping company incorporated in Nigeria; it has its head office in Lagos. The Plaintiff offers its services to other shipping companies in and outside Nigeria. The 1st Defendant (hereinafter is referred to as Defendant simpliciter) is a German shipping company with its registered office in Bremen, Germany. The 2nd Defendant is a German bank.

In September 1973, the Plaintiff and the 1st Defendant entered into a joint venture agreement by which they established a joint-venture shipping company known as North Europe West Africa Lines Limited (NEWA LINES, for short). Under the agreement, the Plaintiff was appointed general agent to all NEWA LINES Vessels that called at West African ports and was entitled to remuneration by way of agency commission of 1.5 per centum for all inward and outward bound freights. In February 1978, the said joint-venture agreement was mutually terminated and, upon accounts being taken of the joint Venture business, the Plaintiff claimed that a sum of Dm 262,800 was due and payable to it for services rendered under the agreement to various vessels.

As the Defendant would not pay, the Plaintiff on December 23, 1986 issued a Writ of summons out of the registry of the Federal High Court Lagos claiming, as per paragraph 46 of its statement of claim filed on 12th March 1987, as hereunder:

*"(a) The sum of DM262,800 plus interest at the rate of 15% until judgment and 5% thereafter until the total judgment debt is liquidated jointly and severally from the 1st and 2nd Defendants and*

*(b) The sum of N30, 120,33 from the 1st Defendant as per the Writ of summons OR 65% of the sum of N30,120.33, being the 1st Defendant's share of the loss and/or litigation/Court expenses on the afore-said NEWA LINES 'Vessels' operation"*

Rather than file a statement of defence in reply to the plaintiff's pleadings, the Defendant brought a motion praying the trial High Court for orders:

*"I. That the processes originating this suit, that is to say the particulars of claim and statement of claim be set aside on the grounds that even if all the facts alleged therein were true (which is not conceded) the plaintiff cannot maintain these proceedings because the cause of action is time-barred.*

*II. That this Suit be set aside on the grounds that the Court lacks jurisdiction to adjudicate the merits of this case, the case not been (sic) one properly cognizable within S7. of the Federal High Court Act.*

ALTERNATIVELY

*III. That these proceedings be stayed on the grounds that the subject-matter of dispute viz Monies lodged in the 2nd Defendant's Bank in West Germany, is not within the jurisdiction and the appropriate and convenient Forum for the proper adjudication of this suit is West Germany.*

*IV. That these proceedings be transformed to the Lagos State High Court on the grounds that this Honourable Court lacks jurisdiction to adjudicate the merits of the plaintiffs claim by virtue of S7 of the Federal High Court Act."*

After taking arguments from learned counsel for the parties, the learned trial Judge, in a well considered ruling, found:

*"(i) On the issue of jurisdiction, I hold that this matter is one in respect of which this court is clothed with Admiralty jurisdiction under section 7(1) (d) of the Federal High Court Act 1973; the subject matter being one concerning disbursement in respect of ships - a matter concerning which a High Court in England will under section 1(1) (p) of the Administration of Justice Act (of England) 1956 assume Admiralty jurisdiction;*

(ii) *On the issue of whether this action is statute-barred, I find that notwithstanding that the cause of action fully arose in March 1978 following the dissolution of the contract between the parties and the taking of accounts, the delay of 8 1/2 years (to 3rd December 1986) before the action was instituted, is not fatal to the action since it is an Admiralty cause which section 7(3) of the Limitation Act 1966 exempts from the 6-year limitation period stipulated under section 7(1) of the Limitation Act 1966; and*

(iii) *The contract, between the Plaintiff and the 1st Defendant whereby the Plaintiff was to disburse funds in Nigeria in Naira later to be reimbursed in West Germany in Dms, is, without the approval of the Minister of Finance, clearly in breach of the provisions of the Exchange Control Act 1962, particularly sections 3, 7 and 9 being founded on an illegality and for that reason, unenforceable through any Court in Nigeria."*

and adjudged -

*"This application therefore succeeds only on the ground that it is unenforceable on account of illegality. It fails on the grounds of jurisdiction and time limitation.*

*The substantive action is therefore dismissed."*

Dissatisfied with parts of the ruling, the parties appealed to the Court of Appeal. The Plaintiff appealed against that part of it which declared the 1978 joint-venture agreement illegal and the Defendant appealed against the part that held that the action was not statute-barred. The Court of Appeal allowed Plaintiff's appeal and ordered that "the case be retried before another Judge of the Federal High Court who should order the defendants to file a statement of defence and where necessary allow parties to adduce evidence with a view to interpreting the provisions of the Exchange Control Act, 1962 to the peculiar facts of this case in ascertaining whether the said law applies or not." The Court dismissed the Defendant's cross-appeal thus affirming the decision of the trial High Court that the action was not statute-barred.

The Defendant has further appealed to this Court against that part of the judgment of the Court below declaring the action not statute-

barred. The Notice of Appeal contains two grounds of appeal which, without their particular, read as follows:

"1. *The learned Justices of the Court of Appeal erred in law in holding that the Respondent (sic) suit was an admiralty action enforceable in rem even though it was found to be an admiralty action in personam.* B

2. *The Court of Appeal was wrong to hold that S. 7(3) of the Limitation Act 1966 applied to save the Respondent's case from the 6 year time bar.*"

And in the written brief of argument filed pursuant to the rules of this Court the Defendant set out the following two questions as calling for C determination in this appeal.

"(i) *Does the Limitation Decree No. 88 of 1966 that exempts from it's six year time-bar 'causes of action within the Admiralty jurisdiction enforceable in rem include within this exemption causes of action D enforceable in personam'?*

(ii) *If not, what is the effect of this on the Judgment of the Court of Appeal which established that so long as a claim is enforceable in rem, a plaintiff's action need not be an action in rem before S. 7(3) of the Limitation Act applies.* E

The Plaintiff formulated the questions as follows:

"1. *Whether the Respondent's cause of action is an admiralty cause enforceable in rem. In other words, could the vessels in connection F with which the cause of action (disbursements were made) arose, have been arrested by a proceeding in rem at the instance of the Respondent if they were within jurisdiction at the time this action was commenced against the Appellants.*

2. *Whether a Plaintiff having a cause of action within the admiralty jurisdiction enforceable in rem can sue in Personam.* G

3. *Whether a plaintiff having a cause of action in admiralty enforceable in rem must sue in rem before section 7 (3) of the Limitation Act 1966 applies.* H

The two sets of questions raise substantially the same issue, and that is, whether Plaintiff's action comes within the exemption clause in section 7(3) of the Limitation Act, 1966.

The sum total of the submissions for the Defendant is that Plaintiff's action is an Admiralty action in personam which is outside the purview of section 7(3) of the Limitation Act. Mr. Agbakoba learned counsel for the Defendant, in his oral submission before us, concedes it  
 B that the cause of action in this case is one enforceable in rem. While further conceding that there is a difference between "action" and "cause of action" he nevertheless urges us to interpret the latter expression as used in section 7 (3) of the Limitation Act to mean action.

It is, on the other hand, contended in the brief of the Plaintiff  
 C that the claim being one cognisable within section 1(i) (p) of the Administration of Justice Act 1956 (England) and section 2(2) (p) of the Admiralty jurisdiction Act, it is a cause of action in admiralty enforceable in rem within the context of section 7(3) of the Limitation Act 1966. It is  
 D further submitted that provided that the claim is enforceable in rem, the action itself need not be in rem before section 7 (3) applies. It is explained that the Plaintiff need not to have sued in rem before claiming the benefit under section 7(3).

The success or otherwise of this appeal revolves on the interpretation to be put on section 7 (3) of the Limitation Act, 1966. In order to resolve this issue it is better to set out section 7 in extenso. It reads:

"7. - (1) *The following actions shall not be brought after the  
 F expiration of six years from the date on which the cause of action accrued -*

- (a) *actions founded on simple contract;*
- (b) *actions founded on quasi-contract;*
- (c) *actions to enforce a recognizance;*
- G (d) *actions to enforce an arbitration award, where the arbitration agreement is not under seal or where the arbitration is under any enactment other than the Arbitration Act;*
- (e) *actions to recover any sum recoverable by virtue of any en-*  
 H *actment other than -*
  - (i) *a penalty or forfeiture or sum by way of penalty or forfeiture,*
  - (ii) *a sum due to a registered company by any member thereof under its articles of association.*

(ii) *an amount recoverable against concurrent wrong does under any civil liability enactment for the time being in force relating to concurrent wrong doers.*

(2) *Subsection (1) of this section shall apply to an action to recover a seaman's wages.* B

(3) *Save as provided in subsection (2) of this section, this section shall not apply to any cause of action within the Admiralty jurisdiction which is enforceable in rem.*

(4) *Subject to the provisions of section 8 of this Decree, an action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued.* C

(5) *An action for an account shall not be brought in respect of any matter which arose more than six years from the commencement of the action.* D

(6) *No arrears of interest in respect of any debt shall be recovered after the expiration of six years from the date on which the interest became due."* (underlinings are mine for emphasis)

**In my respectful view what is barred after the statutory period is the action. But the statutory period is reckoned from the accrual of the cause of action giving rise to the action. One must, therefore, begin by defining the word "action" and the expression "cause of action."** E

The word "action" is defined in section 68 of the Act as follows: F

*"'action' includes any proceeding (other than a criminal proceedings) in a court established by law".*

The expression "cause of action" is not defined in the Act. G  
It has, however, been judicially defined in a number of cases. In SAVAGE v. UWAECHIA (1972) 3SC.225,232, (1972) ANLR 255, 261 Fatayi-Williams JSC (as he then was) delivering the judgment of this Court, had this to say: H

*"A cause of action is defined in Stroud's Judicial Dictionary as the entire set of circumstances giving rise to an enforceable claim. To our mind, it is, in effect, the fact or combination of facts which give*

*rise to a right to sue and it consists of two elements - the wrongful act of the defendant which gives the plaintiff his cause of complaint and the consequent damage. As Lord Esher said in Cooke v. Gill (1873) L.R. 8 C. P. 107 and later in Read v. Brown (1888) 22 Q.B.D. 128 (C.A.), it is every fact that it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. (see also Kusada v. Sokoto Native Authority, S.C. 131/68 delivered on 13th December, 1968, where the definition in Read v. Brown (supra) was referred to with approval."*

C See also KUSADA V. SOKOTO NATIVE AUTHORITY (1968) 1 ALL NLR 377; (1968) ANLR 366; Aliu Bello & Ors. v. Attorney-General Oyo State (1986) 5 NWLR 828 where Karibi-Whyte JSC at p. 876 observed:

"I think a cause of action is constituted by the bundle or aggregate of facts which the law will recognise as giving the Plaintiff a substantive right to make the claim against the relief or remedy being sought. Thus the factual situation on which the Plaintiff relies to support his claim must be recognised by the law as giving rise to a substantive right capable of being claimed or enforced against the Defendant. In other words, the factual situation relied upon must constitute the essential ingredients of an enforceable right or claim - see Trower & Sons Ltd v. Ripstein (1944) A.C. 254 at p. 263; Read v. Brown 22 Q.B.D. 128, Cooke v. Gill (1873) L.R. 8 C.A. 107, Sugden v. Sugden (1957) ALL ER. 300; Jackson v. Spittal (1870) L.R. 5 C. P. 542. Concisely stated, any act on the part of the defendant which gives to the Plaintiff his cause of complaint is a cause of action."

See further: Tukur v. Government of Gongola State (1989) 4 NWLR 517; Thomas & Ors. v. Olufosoye (1986) 1 NWLR 669.

Turning to the case on hand, **Plaintiff claims that it made some disbursements on account of various vessels, as ship agent, for and on behalf of the Defendant and has not been reimbursed.** H These are the facts giving rise to his cause of action. As found by the two Courts below and as conceded by Mr. Agbakoba, and quite rightly in my view, this cause of action is one falling within the admiralty jurisdiction of the Federal High Court - See S.1(1) (p)

**Administration of Justice Act (England) and sec. 2(2) Admiralty Jurisdiction Act, No. 59, 1991; The West Port (No 3) (1966) 16 L1 L.R. 342; King Ren Shipping and Trading co. Ltd. v. Amatameso Shipping Agencies (1979) FNLR 182.** It is conceded before us by Mr. Agbakoba, that in the enforcement of this cause of action, Plaintiff could proceed either against the vessels concerned or against their owner(s) or both. Where Plaintiff proceeds against the vessel, the action is one in rem and where he proceeds against the owner, the action is one in personam. Defining the expression "action in personam", Coker JSC, delivering the Judgment of this Court in Nigerian Ports Authority v. Panalpina (1973) 5 SC. 77 at pp. 96-97; (1973) ANLR 408, 422 observed:

*"Etymologically an action in personam is an action brought against a person, an action to compel him to do or not to do a particular thing or take or not to take a particular course of action or inaction. Actions for damages in tort or for breaches of contract are clearly directed against the person as opposed to actions which are brought for the purpose of declaring or challenging a status, like proceedings under the matrimonial laws of the country or of legitimacy or an admiralty action directed against a ship or the res (and so known as an action in rem) or the like. Generally therefore, all actions which are aimed at the person requiring him to do or not to do or to take or not to take an action or course of conduct must be and are actions in personam."*

And in Anchor Ltd. v. The Owners of the ship ELENi 1 PSC 14, 15; Nigerian shipping cases Vol. 1 p. 42, Foster Sutton, FCJ defined "action in rem" as follows:

*"An action in rem is one in which the subject matter is itself sought to be affected, and in which the claimant is enabled to arrest the ship or other property, and to have it detained, until his claim has been adjudicated upon, or until security by bail has been given for the amount, or for the value of the property proceeded against, where that is less than the amount of the claim."*

**It follows that Plaintiff's cause of action is one enforceable in rem. In my respectful view, the fact that this cause of action can**

be enforced by action in personam where Plaintiff proceeds, as in this case, against the Defendant, owner of the vessels concerned in the joint venture agreement, would not alter the nature of the cause of action. See R. v. Judge of City of London Court (1892) 1

B QB 273, 295 where Lord Esher, M.R. observed -

*"If there is a collision between two ships on the high seas, that the Admiralty Court has jurisdiction to deal with the liability of the owners of those ships is true, and it can exercise that jurisdiction either by action in rem or by action in personam. Given the jurisdiction, the question whether the action is to be in rem or in personam is one of mere procedure."*

That being so, the conclusion I reach is that the cause of action in this case is one enforceable in rem.

D I now turn to the Limitation Act. While sub-section (1) of section 7 prohibits the bringing of an action after the expiration of the statutory period therein provided, sub-section (3) creates an exemption from the provisions of sub-section (1). Sub-section (3) for ease of reference, E reads:

*"Save as provided in sub-section (2) of this section, this section shall not apply to any cause of action within the Admiralty jurisdiction which is enforceable in rem. (Underlinings are mine)*

F Mr. Agbakoba would want this Court to interpret "cause of action" to mean "action". But such an interpretation will only lead to absurdity. It is a cause of action that is enforceable in rem and not an action. Moreover, it is a cardinal rule of interpretation which has been accepted in numerous cases in this country, that if the words G of the statute are in themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense, as the words themselves in such case best declare the intention of the legislature. See: Asuquo v. The State (1967) 1 H ALL NLR 123; Adejumo v. Governor of Lagos State (1972) 3 SC. 45; Lawal v. G. B. Ollivant (1972) 3 SC 124; Aya v. Henshaw (1972) 5 SC. 87; Estate of Soule v. Johnson (1974) 12 SC 121; Ifezue v. Mbadugha (1984) 1 SCNLR 427; Awolowo v. Shagari (1979) 6-9 SC 51; Toriola v.

Williams (1982) 7 SC 27; IBWA v. Imano (Nig.) Ltd & Anor (1988) 3 NWLR 633; NBN Ltd. v. Weide & Co. (Nig.) Ltd. (1996) 8 NWLR 150; Obeta v. Okpe (1996) 9 NWLR 401. I do not think there is a place for the incorporation of the Mischief Rule in this case. The combined effect of sub-sections (1) and (3) of section 7 will not support the kind of interpretation suggested by Mr. Agbakoba..

Sub-section (3) exempts a cause of action within the Admiralty jurisdiction which is enforceable in rem from the provisions of sub-section (1) of section 7 of the Act. And as Plaintiff's cause of action in the instant case is one within the Admiralty jurisdiction which is enforceable in rem, it follows that this action taken by the Plaintiff to enforce its right, though in personam, is exempted from the provisions of section 7(1). I agree with the two Courts below that Plaintiff's action taken 81/2 years after the accrual of the cause of action in this case is not statute-barred.

Consequently, I find no merit in this appeal which I hereby dismiss with N10,000.00 (ten thousand naira) costs. As there is no appeal against that part of the judgment of the Court below on the question of illegality, I say nothing on that issue except to say I affirm the order made by the Court below.

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### **BELGORE JSC**

I find no merit in this appeal and for the reasons in the judgment of Ogundare, J.S.C., which I adopt as mine, I also dismiss it with N10,000.00 costs to the respondent.

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### **OGWUEGBU JSC**

I had a preview of the judgment just read by my learned brother Ogundare, J.S.C. For the reasons given by him I too will dismiss the appeal.

The main issue for determination the appeal is whether the plaintiff's action comes within the provision of section 7(3) of the Limi-

tation Act, No. 88 of 1966.

The facts of this case have been lucidly set out in the lead judgment of my learned brother Ogundare, J.S.C I will not repeat them except where I consider necessary. When the first respondent and the B appellant mutually terminated the agency agreement and upon accounts taken of the joint business, the sum of D.M.262,800 or the naira equivalent of about N148,810.87 was found due and payable to the respondent for services rendered under the agreement. It was agreed between the parties that this sum be deposited by the 1st appellant with the 2nd appellant. C The respondent incurred other expenses totalling N30.120.33 during the life of the joint venture in defending maritime claims against the vessels of the venture. These amounts were not paid by the 1st appellant hence the present proceedings.

D The 1st appellant did not file a statement of defence. He filed a notice of preliminary objection in the nature of a demurrer praying the court to dismiss the action on various grounds which include the lack of jurisdiction of the Federal High Court to entertain the suit as it was in the E nature of an admiralty action which is enforceable in rem, that the action was caught by the Limitation Act in that the action was brought eight and half years after the cause of action arose and that the contract was founded on illegality and therefore unenforceable by virtue of section 3 of the F Exchange Control Act, 1962.

The learned trial judge found in favour of the respondent in respect of the first two objections and ruled against him in respect of the third. He held that the Federal High Court had jurisdiction to entertain the plaintiff's suit as it was in the nature of an Admiralty action which is G enforceable in rem and that the action not being a simple contract but an Admiralty claim, time did not run against it.

Both parties appealed to the Court of Appeal. The court below dismissed the appeal of the 1st appellant herein who was 1st respondent/H cross-appellant in that court. The appeal of the respondent who was appellant in that court was allowed and a retrial was ordered. The 1st defendant was dissatisfied with the judgment of the Court of Appeal and appealed to this court.

The main issue for determination in this appeal is whether the plaintiff's action came within the provision of section 7(3) of the Limitation Act, No. 88 of 1966.

In the course of the oral submissions before us, Mr. Agbakoba, learned appellant's counsel conceded that the cause of action in the present proceedings is one enforceable in rem. He further conceded that there is a distinction between "action" and "cause of action". That notwithstanding, he urged the court to construe section 7(3) of the Limitation Act, 1966 to mean "action".

The following submission was made on behalf of the respondent in its brief of argument:

"..... *The appellants misconstrued the purport of section 7(3) of the Limitation Act, 1966. The issue raised by the subsection and as rightly decided by the Courts below is not whether the plaintiff's action is in rem but whether the plaintiff's cause of action is enforceable in rem. The necessary question which arises from a proper interpretation of the subsection is what is a cause of action within the admiralty jurisdiction enforceable in rem? ..... The Respondent's cause of action as endorsed on its claim (see page 121 of the Records) is disbursements made on account of various vessels as ship agent for and on behalf of the appellant. This fact is not controverted. The question before the Court therefore is whether a claim for disbursements is cognisable in the Courts having Admiralty jurisdiction.*" Learned counsel is right to some extent.

I will set out the relevant provisions of the Federal High Court Act, Cap 134, Laws of the Federation of Nigeria, 1990 and the Limitation Act, No. 88 of 1966.

Federal High Court Act:

"7 (1) *The Court shall have jurisdiction in civil causes and matters:*

- (a) .....
- (b) .....
- (c) .....
- (d) *of Admiralty jurisdiction."*

Limitation Act:

"7(1) The following actions shall not be brought after the expiration of six years from the date of which the cause of action accrued -  
(a) actions founded on simple contract;

- B
- (b) .....
- (c) .....
- (d) .....
- (e) actions to recover any sum recoverable by virtue of any enactment other than -

- C
- (i) .....
- (ii) .....
- (iii) .....
- (2) Subsection (1) of this section shall apply to an action to

- D
- recover a seaman's wages.
- (3) Save as provided in subsection (2) of this section, this section shall not apply to any cause of action within the Admiralty jurisdiction which is enforceable in rem.

- E
- (4) .....
- (5) .....
- (6) .....
- (The underlining is for emphasis)

- F
- Section 7(1) (d) of the Federal High Court Act and section 7(3) of the Limitation Act are relevant in the determination of this appeal.

- G
- By virtue of section 24 of the Federal High Court Act Cap. 134 Laws of the Federation of Nigeria, 1990, the admiralty jurisdiction of the Federal High Court is as prescribed in section 1 (1) of the Administration of Justice Act, 1956 (England). By section 1(1) (p) of the said Act, the admiralty jurisdiction of the High Court includes jurisdiction to hear and determine any claim by a shipper, charterer or agent in respect of disbursements made on account of a ship and a ship's agent can include a
- H
- fee for his services in his claim in respect of disbursements made on account of a ship. See The Westport (140-3) (1966) Lloyd's Rep. 342. There is therefore no doubt that the plaintiff's claim in the present proceedings is within the Admiralty jurisdiction of the Federal High Court.

This brings me to the definition of action in rem and action in personam. An action in rem is a piece of legal machinery directed against a ship alleged to have been the instrument of wrongdoing in cases where it is sought to enforce a maritime or statutory lien or in a possessory action against the ship whose possession is claimed. A judgment in rem B is a judgment good against the whole world. This does not mean that the vessel is the wrong doer but that it is the means by which the wrongdoer (its owner) has done wrong to some other party. It is the means by which the wrongdoer is brought before the court as a defendant. It is an accepted legal theory that an action in rem is procedural. The purpose is C to secure the defendant owner's personal appearance.

An action in personam is directed against the person at fault and is dependent entirely upon the plaintiff being able properly and effectively to serve a summons on the defendant in connection with the legal com- D plaint against the defendant particularly when the parties are in different jurisdictions. Therefore, the maritime shipping industry contains within its sphere the concept of legal action available to an injured party through the machinery of the Admiralty jurisdiction which allows, under certain E clearly defined circumstances, the vessel to be sued in rem. An action in rem can be concluded by a judgment in rem. The shipowner may take part in the proceedings if he considers it appropriate to defend his property. It is essentially an action against his property (in rem) not against F him.

Thus, it can be seen that the distinction between action in rem and action in personam is procedural only. Except in certain claims, the same cause of action may give rise to both actions depending on which G action the plaintiff initiates having regard to the procedural difficulties involved.

The general restriction limiting the time within which actions founded on contract or tort must be brought does not apply to any cause of action H within the Admiralty jurisdiction of the Federal High Court which is enforceable in rem except an action to recover a seaman's wages. See section 7(3) of the Limitation Act reproduced above. The plaintiff's cause of action gave rise to a maritime lien in favour of the plaintiff on the

vessels in connection with which the disbursements were made and the lien so created could be enforced by an action in rem against the vessels to which the lien attached. Since the plaintiff's cause of action was within the Admiralty jurisdiction of the Federal High Court and enforce-  
B able in rem, the proceedings in personam initiated by the plaintiff in this case did not rob the cause of action the exemption granted it by section 7(3) of the Limitation Act.

In this case the vessels in respect of which the cause of action  
C arose were no longer available within jurisdiction of the court and the only mode of invoking the jurisdiction of the court is by proceeding in personam. See The Volant (1842) 166 E.R. 616 at 618 and The Cargo Ex Port Victor (1901) P. 243 at 254.

I therefore hold that the claim of the plaintiff is within the ex-  
D emption contained in section 7 (3) of the Limitation Act.

For the above reasons and the more detailed reasons given in the judgment of my learned brother Ogundare, J.S.C. the appeal fails and I hereby dismiss it. I abide by all the consequential orders made in the lead  
E judgment including the order as to costs.

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### MOHAMMED JSC

I have had a preview of the judgment just read by my learned  
F brother Ogundare, J.S.C. in draft and I agree with him that this appeal has no merit and ought to be dismissed. The Federal High Court had held that the Plaintiffs/Respondents' suit was an Admiralty cause enforceable  
G in rem which, by virtue of section 7 (b) of the Limitation Act, 1966, was exempt from the statutory time-bar stipulated for actions filed after six years. The Court of Appeal upheld the decision of the trial Federal High Court.

There is no dispute over the fact that the claim of the Plaintiff, in  
H this case, arose out of disbursements made by the Plaintiff on account of the 1st Defendant's sea-going vessels. On the authority of S. 1 (1) (p) of the English Administration of Justice Act, 1956 disbursements made on account of a ship is within the Admiralty jurisdiction.

The appellants here submitted that the action of the respondent was in personam against the appellants in their personal capacity. Learned counsel for the appellant argued that an admiralty action in rem is totally different in nature from an admiralty action in personam. It is not possible for an action in personam to be enforced as an action in rem and vice versa.

Learned counsel for the respondents submitted that the respondents' action was in personam against the appellants in their corporate capacity and being a cause of action based on disbursements made on account of various vessels as ship agent for and on behalf of the appellants the action is within the admiralty jurisdiction of the Federal High Court. See Administration of Justice Act (1956) (England) and also A.M.C. v. N.P.A. (1987) 1 NWLR (Pt. 51) 475 at 476.

I agree with the respondents counsel that a cause of action enforceable in rem is a cause of action or claim which can be enforced against the res by means of legal process in a court having admiralty jurisdiction. There is considerable authority for holding that the admiralty court exercises a jurisdiction in personam in certain cases. It does so whenever there is a remedy by proceeding in rem but then the damages are limited to what is recoverable from the value of the res. Lord Esher had held in the case of R. v. Judge of City of London Court (1892) 1 Q. B. 273 at 295, that where the Admiralty Court has jurisdiction it may exercise it either by an action in rem or in personam. Given the jurisdiction, the question whether the action is to be in rem or in personam is one of mere procedure.

In a recent case of The St Elefterio (1957) 2 ALL E.R. 374 the plaintiffs issued a writ claiming damages arising out of bills of lading relating to the carriage of goods in the defendants' steamship vessel, 'St Elefterio', and caused a warrant to be issued under which the ship was arrested. The defendants moved to set aside the writ and warrant of arrest, contending that on the true construction of s. 1 (I) (h) and section 3 (4) of the Administration of Justice Act, 1956, the court had no jurisdiction in rem to entertain the action. Wilmer J held that the provision of the Act confers the right to proceed in rem against the ship in respect of

which the cause of action is alleged to have arisen or any ship in the ownership of the person who would be liable in an action in personam.

Coming back to the case in hand, the appellants' liability in personam could be pursued through an action in rem against the ship or  
B its owners, agent, hirer or charterer. Since the vessels on account of which the disbursement were made are no longer available within the jurisdiction of the Federal High Court for the respondents to have proceeded against them, the respondents are therefore right under the law to proceed in an action in personam against the appellant who authorised  
C the disbursements and I agree that the action can be enforced through a proceeding in rem. It is therefore within the context of section 7 (3) of the Limitation Act 1966.

For these reasons and fuller reasons in the judgment of my learned  
D brother, Ogundare J.S.C., this appeal has failed and it is dismissed by me. I abide by the consequential orders made in the lead judgment including the assessment of costs.

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E

### IGUH JSC

I have had a preview of the leading judgment just delivered by my learned brother, Ogundare, J.S.C. and I agree entirely with the reasoning and conclusions therein reached. I have nothing more to add.  
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Consequently, I too, dismiss this appeal.

I abide by the order for costs contained in the said judgment.

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