

SUPREME COURT OF NIGERIA
30TH APRIL, 1999. SC. 178/1992
CORAM:- S. M. A. BELGORE, M. E. OGUNDARE, S. U. ONU,
G. O. ACHIKE, U. A. KALGO, JJSC

LEVENTIS TECHNICAL LIMITED PLAINTIFF/APPELLANT
AND
PETROJESSICA ENTERPRISES LTD.... DEFENDANT/RESPONDENT

***AGENCY** - Carriage by sea - Agent of the carrier - Is entitled to take advantage of Arts. 3(6) of the Hague Rules - Which makes the Present action against it statute-barred.*

***CARRIAGE OF GOODS** - Carriage by sea - The Hague Rules - Applicable by virtue of section 2 of the Carriage of Goods by Sea Act - When it will apply.*

***CARRIAGE OF GOODS** - Carriage by sea - Limitation of action - Art. 3 (6) of the Hague Rules - The Provisions bars any claim for short-delivery - Brought against the carrier or ship one year after delivery.*

***CARRIAGE OF GOODS** - Carriage by sea - Agent of the carrier - Is entitled to take advantage of Arts 3(6) of the Hague Rules - Which makes the Present action against it statute barred.*

***LIMITATION OF ACTIONS** - Carriage by sea - Limitation of action - Art. 3 (6) of the Hague Rules - The Provisions bars any claim for short-delivery - Brought against the carrier or ship one year after delivery.*

***LIMITATION OF ACTIONS** - Carriage by sea - Agent of the carrier - Is entitled to take advantage of Arts 3(6) of the Hague Rules - Which makes the Present action against it statute barred.*

***STATUTES** - Carriage by sea - The Hague Rules - Applicable by virtue*

of section 2 of the Carriage of Goods by Sea Act - When it will apply.

STATUTES - *Carriage by sea - Limitation of action - Art. 3 (6) of the Hague Rules - The Provisions bars any claim for short-delivery - Brought against the carrier or ship one year after delivery.*

FACTS

The plaintiff/appellant sued the defendant/respondent on the 9th August 1984 at the Federal High Court, Benin City, claiming the delivery of the 138 crates of Gas cookers short delivered at Burutu port as at March, 1978 as shipping agent of Facship Lines Limited; or the sum of N92,745.39 (Ninety-two thousand, seven hundred and forty-five Naira, thirty-nine kobo) being the value of the said 138 crates of Gas Cookers. The plaintiff, a dealer in technical goods, sometime in 1977 placed order, through its London office, for some consignments of electric and gas cookers. The goods were shipped through the Facship Lines in Spain and for delivery at the Lagos Port. The goods however arrived at the Burutu Port and were cleared by the defendant who acted throughout as the agent of Facship Lines. The Plaintiff was unaware of the arrival of the goods at the Burutu port until sometime in 1978. After payment to the defendant of all sums of money demanded by the later for demurrage, etc, the plaintiff took delivery of the cooker in March, 1978. There was, according to the Plaintiff a short delivery of 138 crates of gas cookers valued at N92,745.39. Following protracted but unsuccessful negotiations between the plaintiff and the defendant the former instituted the present action. The defendant in its defence averred inter alia, that the action was statute-barred by virtue of carriage of Goods by Sea Ordinance cap.29 Laws of the Federation of Nigeria and Lagos 1958 Since the action was not brought within 1 year of the delivery of the goods to the plaintiff as required. At the conclusion of trial, the learned trial judge dismissed the action. Being dissatisfied, the Plaintiff appealed unsuccessfully to the Court of Appeal, Benin Division. The plaintiff has now further appealed to the Supreme Court. The appeal was decided on a lone issue.

ISSUE FOR DETERMINATION

"2. Whether the learned Justices of the Court of Appeal were justified in holding that the plaintiff's action was statute barred, thus mis-interpreting the legal effect of Article 3 Rule 6 of Carriage of Goods by Sea Act. Cap. 29 and Section 2 Laws of the Federation of Nigeria 1958."

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

Carriage of goods - Carriage by sea

1. The learned trial Judge held that the Hague Rules applied by virtue of Section 2 of the Carriage of Goods by Sea Act, Cap. 44 Laws of the Federation of Nigeria 1990. I think the learned Judge was in slight error here. Section 2 which provides:

"2. Subject to the provisions of this Act, the Rules shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in Nigeria to any other port whether in or outside Nigeria. (Underlining is mine)

applies only where a ship carries goods from a port in Nigeria to any other port whether in or outside Nigeria. In the present case the goods were carried from a port outside Nigeria to a port in Nigeria. The Court below is, however, right to hold that what applied the Hague Rules in the present action is clause 2 of the Bill of Lading (Exhibit A) titled "Paramount Clause". That error of the learned trial Judge does not, however, vitiate the correctness of his decision that the Hague Rules apply in this case. (p. 900 E)

Carriage by sea - Limitation of actions

2. Now Article 3 Rule 6 of the Hague Rules reads:

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

The provisions of this Rule are clear and unambiguous and present no difficulty in interpretation. Applying it to the facts of this case, the Plain-

tiff, as receiver of goods, lost any claim for short-delivery on the carrier or ship one year after delivery to him, that is, 31st March 1979 at the latest. He brought his action in August 1984, well outside the period laid down in the Rule. (p. 901 C)

B

Agency - Carriage by sea

3. Had this action been against the carrier, that is Facship Lines Ltd. or the ship, it is admitted for the Plaintiff that the defence of limitation would be unassailable. The contention here is that as the Defendant was not the carrier it could not take advantage of the Rule. I think this contention is misconceived. It is settled law that the act of an agent in the course of his employment, is the act of his principal. It follows, therefore, that where the principal can take advantage of a statutory provision when sued, his agent, where sued, can also take advantage of that provision. I think the two Courts below are clearly right in their decisions that the Defendant was entitled to take advantage of Article 3 Rule 6 of the Hague Rules and that the present action against it was statute-barred and to E dismiss same. (p. 902 B)

NOTABLE POINTS OF INTEREST

OGUNDARE JSC

F *1. Action against the agent of a disclosed principal is wrong*

This action in any event would have stood dismissed having regard to the first ground on which it was originally dismissed, that is, that the Defendant as agent of a disclosed principal, the action was wrongly instituted against it. That conclusion has not been challenged in this appeal.

G (p. 903 C)

ACHIKE JSC

2. Agency by estoppel - How created

H In law, the agent is simply the conduit-pipe between the principal and a third party for all the agent's lawful acts performed in the course of his employment as an agent. There is the finding of the learned trial Judge, confirmed by the pleadings and evidence, that the defendant/respondent

was an agent, having held itself out to that effect to the appellant. In my opinion, the learned trial judge was correct in making that finding because in law where one person holds another out as being his agent or allows a person to represent himself as his agent though no such agency exists in fact, the other person will be precluded from denying the existence of this agent's authority to act on his behalf. This relationship, I think, creates an agency by estoppel. See Saul Raccah v. Standard co. of Nigeria 4 NLR 48 and Aibna & ors v Alber Farhat 14 NLR 17. Therefore, the defence of limitation period would avail the respondent. (p. 907 E)

REPRESENTATION

A. S. Okeaya-Inneh, SAN with A. O. Okeaya-Inneh for the appellant
F. E. Ayanka-Wilson (Mrs.) with P. A. Wilson for the respondent

CASES REFERRED TO

Saul Raccah v. Standard co. of Nigeria 4 NLR 48
Aibna & ors v Alber Farhat 14 NLR 17
Osayeme v. The State (1966) NMLR 199
Sanyaolu v. The State (1976) 6 SC. 37
Wankey v. The State (1993) 5 NWLR (Part 295) 542 at 552
Okagbue v. Romaine (1982) 5 SC. 133 at 170
Elike v. Nwankwoala (1984) 12 SC. 301 at 325

STATUTE AND RULES REFERRED TO

Carriage of goods by Sea Act, cap. 44 Laws of the federation of Nigeria, 1990; s.2.
The Hague Rules, Art 3 (6)

LEAD JUDGMENT BY OGUNDARE JSC

The Plaintiff, a dealer in technical goods, sometime in 1977 placed H order, through its London office, for some consignments of electric and gas cookers. The goods were shipped through the Facship Lines in Spain and for delivery at the Lagos Port. For some unexplained reasons

12. *The Plaintiff avers and will maintain at trial that neither the ships nor Facship Lines Limited inform Plaintiff of the appointment of the Defendant as their agent at any time.*"

The Defendant, in its statement of defence, replied -

"4. *Regarding paragraph 3 of the Statement of Claim, Defendant admits that it (Defendant) is a Company registered in Nigeria with liability limited by shares.*

5. *Further to paragraph 3 of Plaintiff's Statement of Claim, Defendant firmly denies ever having, now or at any time in the past anything whatsoever to do with the Stewardcil of vessels.*

6. *Defendant admits, regarding paragraph 3 of plaintiff's Statement of Claim, that it managed Port facilities and sheds allocated by the Nigerian ports Authority and that Defendant held itself forward as so managing.*"

and went on to plead thus:

"26. *This action was not brought within 1 year from March, 1978, which was the date the consignment was delivered to the Plaintiff, and accordingly the action is barred by virtue of Carriage of Goods by Sea Ordinance Cap. 29 Laws of the Federation of Nigeria and Lagos 1958.*

27. *In any case Defendant pleads that the cause of action referred to in the Writ of Summons and paragraph 37 of Plaintiff's Statement of Claim accrued to the Plaintiff more than 6 years before the date of the commencement of this action. In the premises, action against the Defendant was and is barred by virtue of the Limitation Act 1966.*

28. *Further, by reason of the matters aforesaid the title of the Plaintiff to the said goods has been extinguished by virtue the limitation Act 1966.*

29. *WHERE for the Defendant avers that the Plaintiff is not entitled to claim against it as stated in paragraph 37 of his Statement of Claim and that the claim is misconceived, frivolous, speculative and ought to be dismissed with substantial costs."*

Evidence was led on both sides at the conclusion of which, and after addresses by learned counsel for the parties, the learned trial Judge,

in his judgment, found -

1. That the Defendant was at the material time the agent of the ship-owners, Facship Lines Ltd. in Nigeria.

B 2. That the Defendant as agent of a known and disclosed principal, the Facship Lines Ltd. could not be held liable to the plaintiff for short-delivery or non-delivery of the 138 crates of gas cookers in issue in this case.

C 3. That the 138 crates of gas cookers should have been delivered on or before 31st March 1978 when the cause of action arose.

4. That as the Writ of summons was taken out on 9th August 1984, a period of over 6 years after the cause of action arose, the action was statute-barred by virtue of the Carriage of Goods by Sea Act, Article 3 Rule 6 of the Schedule thereto.

D Concluding his judgment, the learned Judge said:

"The net result of all I have been saying therefore, is that this action fails, one because the Defendants are not the proper party to be sued being agents of a disclosed principal and, two because the action
E *was instituted out of time; it is statute barred. The action should therefore be dismissed and sit is hereby dismissed."*

F Being dissatisfied with this judgment the Plaintiff appealed unsuccessfully to the Court of Appeal. The plaintiff has now further appealed to this Court upon two grounds of appeal which read:

"1. That the learned Justices of the Court of Appeal erred in Law in confirming the judgment of the learned trial Judge in the issue of disclosed principal which was not established.

PARTICULARS OF ERROR

G a. When the Defendant did not adduce positive evidence oral or written establishing this assertion.

H b. When the learned Justices of the Court of Appeal assumed the establishment or proof of disclosed principal by a purported arrangement by Defendant with Nigerian Ports Authority in providing port facilities for ships carrying goods to Burutu Port.

c. When there was no positive evidence of the Defendant/Respondent to substantiate the agency of Facships ships as to port facilities.

ties, Ware-housing and other facilities averred.

d. That there existed presumed agency by the Court of Appeal in the Defendant/Respondent as to what to do with the custody of the goods delivered at Burutu.

e. That there existed presumed intention or inferred intention in the Respondent to receive the said goods and to deliver same on their behalf, that is, the vessels or ships.

f. That the Respondent who took it upon herself to release the goods on payment of fees did so as agent of the carrier i.e. the Vessels.

g. That the learned Justices of the Court of Appeal erroneously confirmed the judgment of the trial Judge by equating pleading as evidence or proof of same i.e. agency of a disclosed principal.

h. The trial Judge and the Justices of the Court of Appeal relied on presumed agency based on speculation and/or possibility.

2. That the learned Justices of the Court of Appeal erred in Law holding the provisions as to Carriage of Goods by Sea Act applicable was not section 2 of the Act but paramount clause (Clause 2) of the relevant bills of lading Exhibits 'A', 'K' and 'K1'.

PARTICULARS OF ERROR

(a) When section 2 of the Act i.e. carriage of goods by sea Act Cap. 29, 1958 Laws of the Federation predicated the definition of carrier in Article 1 Schedule.

(b) When there was no evidence pleaded or adduced embracing the Defendant/Respondent within Article I and Article II Schedule 1 (a), (e), (1), 2, 3, of Cap 29 of the Law.

(c) There was no evidence of contract of agreement of carriage oral or written tendered at trial envisaged by the said Law."

The parties filed and exchanged their respective briefs of arguments. Upon a preliminary objection taken at the oral hearing of the appeal to the effect that the appeal was incompetent in that no leave of Court to appeal was sought and obtained, and after hearing counsel on this objection, we held that ground (1) was a ground of mixed law and fact and leave to appeal not having been sought nor obtained thereto, the ground was struck out as being incompetent. We, however, upheld the

competence of the appeal on Ground (2).

The question for determination as framed in the brief of the Plaintiff and adopted by the Defendant reads:

"2. *Whether the learned Justices of the Court of Appeal were justified in holding that the plaintiff's action was statute barred, thus mis-interpreting the legal effect of Article 3 Rule 6 of Carriage of Goods by Sea Act. Cap. 29 and Section 2 Laws of the Federation of Nigeria 1958.*"

The main thrust of the argument of learned leading counsel for the Plaintiff is that Article 3 Rule 6 of the Hague Rules incorporated into the Carriage of Goods by Sea Act, Cap. 44 Laws of the Federation of Nigeria, 1990 only protects the carrier and the ship and not the agent of the ship owners. It is conceded that carrier includes the shipowner. It is however submitted that as the Defendant is not a ship owner it is not covered by the Act.

I find no substance in this appeal. There is a specific finding of the Court of trial, and affirmed by the Court below, that the Defendant was, in respect of the delivery of goods to the Plaintiff in March 1978 at the Burutu Port, agent of the carrier of the goods, that is, Facship Lines Ltd. This finding, not open to be set aside by this Court in this appeal - there is no appeal against it - remains binding on the plaintiff. **The learned trial Judge held that the Hague Rules applied by virtue of Section 2 of the Carriage of Goods by Sea Act, Cap. 44 Laws of the Federation of Nigeria 1990. I think the learned Judge was in slight error here. Section 2 which provides:**

"2. *Subject to the provisions of this Act, the Rules shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in Nigeria to any other port whether in or outside Nigeria.* (Underlining is mine)

applies only where a ship carries goods from a port in Nigeria to any other port whether in or outside Nigeria. In the present case the goods were carried from a port outside Nigeria to a port in Nigeria. The Court below is, however, right to hold that what applied the Hague Rules in the present action is clause 2 of the Bill of Lading

(Exhibit A) titled "Paramount Clause". That Clause provides:

"Paramount Clause.

The Hague Rules contained in the international Convention for the Unification of certain rules relating to Bills of Lading, dated Brussel the 25th August 1924 as enacted in the country of shipment shall apply to this contract. When no such enactment is in force in the country of the shipment, the corresponding legislation of the country of destination shall apply, but in respect of shipment to which no such enactments are compulsorily applicable, the terms of the said Convention shall apply."

That error of the learned trial Judge does not, however, vitiate the correctness of his decision that the Hague Rules apply in this case.

Now Article 3 Rule 6 of the Hague Rules reads:

"Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods."

The provisions of this Rule are clear and unambiguous and present no difficulty in interpretation. Applying it to the facts of this case, the Plaintiff, as receiver of goods, lost any claim for short-delivery on the carrier or ship one year after delivery to him, that is, 31st March 1979 at the latest. He brought his action in August 1984,

well outside the period laid down in the Rule. Had this action been against the carrier, that is Facship Lines Ltd. or the ship, it is admitted for the Plaintiff that the defence of limitation would be unassailable. The contention here is that as the Defendant was not the carrier it could not take advantage of the Rule. Had this action been against the carriage, that is Facship Lines Ltd. or the ship, it is admitted for the plaintiff that the defence of limitation would be unassailable. The contention here is that as the defendant was not the carrier it could not take advantage of the Rule.

I think this contention is misconceived. It is settled law that the act of an agent in the course of his employment, is the act of his principal. It follows, therefore, that where the principal can take advantage of a statutory provision when sued, his agent, where sued, can also take advantage of that provision. I think the two Courts below are clearly right in their decisions that the Defendant was entitled to take advantage of Article 3 Rule 6 of the Hague Rules and that the present action against it was statute-barred and to dismiss same. I agree entirely with the Court below when, per Adio JCA, as he then was, it said:

"On the question whether, as the Rules protect a carrier, the respondent could not take advantage of protection given in Article III of rule 6 of the Rules, the position is that the Respondent, being an agent of the carrier (Facship Lines Ltd.,) for the purpose of delivering the goods to the appellant could take advantage of the protection given in article III Rule 6 of the Rules. The act of an agent, for a particular purpose, is the act of the principal. The situation is, in law, as if it was the principal that did what the agent did or omitted to do. The common law rule is expressed in the maxim: Qui Per Alium Facit, per Seipsam facere Videtur which means: He who does an act through another is deemed in law to do it himself. That is why a person cannot escape legal liability merely because he has done what he did through an agent. The act of the respondent in releasing or delivering the goods to the appellants regarded as the act of the principal, Facship Lines Ltd., that was the carrier and was, therefore, protected by Article III rule 6 of the Hague Rules set out

in the Schedule to the Carriage of goods by Sea Act, Cap. 29 of the Laws of the Federation of Nigeria, 1958. The paramount Clause in each of the Bills of lading in this case (Exhibits 'A', 'K' and 'k1') incorporated the terms and limitation contained in the Hague Rules and as the appellant's action was not brought within one year after the delivery of the goods or of the date when the goods should have been delivered it is statute-barred. See Kaycee (Nigeria) Ltd. v. Prompt shipping Corporation & Anor. (1986) 1 NWLR (pt. 15) 180 at pp. 192 and 193.

This action in any event would have stood dismissed having regard to the first ground on which it was originally dismissed, that is, that the Defendant as agent of a disclosed principal, the action was wrongly instituted against it. That conclusion has not been challenged in this appeal.

I dismiss this appeal and affirm the judgment of the Court below. I award N10,000.00 costs to the Defendants.

BELGORE JSC

The provisions of the Hague Rules, Article 3 Rule 6 leave no ground for ambiguity as to limitations of action. The carrier and the ship shall be discharged from all liability in respect of loss or damage to the cargo unless the suit in respect of such loss or damage is brought within one year after delivery of the goods or date when the goods should have been delivered. Where the principal can take advantage of a statutory relief, the agent can avail himself of that advantage. The concurrent findings of the two courts below are clearly in accord with law and cannot be assailed. I therefore, find no merit in this appeal and for the fuller reasons in the lead judgment of my learned brother, Ogundare, JSC., I also dismiss it with N10,000.00 costs to the respondent.

ONU JSC

I had the preview of the judgment just delivered by my learned brother Ogundare, JSC and with it I am in entire agreement that the appeal is devoid of any merit and ought to fail.

I wish to add a word or two of mine in expatiation as follows:-

At the conclusion of the case before the learned trial Judge, which the court below eventually upheld, he concluded his judgment, inter alia, as follows:-

B *"The net result of all I have been saying therefore, is that this action fails, one because the Defendants are not the proper party to be sued being agents of a disclosed principal and, two because the action was instituted out of time; it is statute barred. The action should therefore be dismissed and it is hereby dismissed."*

C The lone question outstanding for our determination as submitted in the brief of the plaintiff (appellant herein) and adopted by the Defendant (respondent herein) is;

D *"2. Whether the learned Justices of the Court of Appeal were justified in holding that the plaintiff's action was statute-barred thus misinterpreting the legal effect of Article 3 Rule 6 of the Carriage of Goods by Sea Act Cap. 29 and section 2 Laws of the Federation of Nigeria 1958."*

E Now, Article 3 Rule 6 of the Hague Rules, the interpretation of whose provisions we are here concerned with, stipulates as follows:-

F *"Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or if the loss or damages be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection."*

G *In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one*
H *year after delivery of the goods or the date when the goods have been delivered."*

In the case of any actual or apprehended loss or damage, the carrier and the receiver shall give all reasonable facilities to each other

for inspecting and tallying the goods." (*underlining is mine*).

In answering the question set out above in the affirmative, thus confirming the decision of the trial court, the Court of Appeal held inter alia as follows:

"The act of an agent, for the particular purpose, is the act of the principal. The situation is, in law, as if it was the principal that did what the agent did or omitted to do. The common law rule is expressed in the maxim:

Qui Per Alium Facit, Per Seipsam facere videtur which means: He who does an act through another is deemed in law to do it himself. That is why a person cannot escape legal liability merely because he has done what he did through an agent. The act of the respondent in releasing or delivering the goods to the appellant is regarded as the act of the principal, Facship Lines Ltd, that was the carrier and was, therefore, protected by Article III rule 6 of the Hague Rules set out in the Schedule to the Carriage of Goods by Sea Act Cap. 29 of the Laws of the Federation of Nigeria, 1958. The paramount Clause in each of the Bills of lading in this case (Exhibit "A", "K" and KI") incorporated the terms and limitation contained in the Hague Rules and as the appellant's action was not brought within one year after the delivery of the goods should have been delivered it is statute-barred. See Kaycee (Nigeria Ltd. v. Prompt Shipping Corporation & Anor. (1986) 1 NWLR (Part 15) 180 at pages 192 and 193." see also T. J. Solomon v. African Steamship Co. Ltd 9 NLR 99.

The decisions of the two courts below from which I have quoted above are concurrent findings of facts of those courts which this court has not made it a habit of disturbing unless there is some miscarriage of justice or a violation of some principles of law or procedure. See Osayeme v. The State (1966) NMLR 199; Sanyaolu v. The State (1976) 6 SC. 37; Wankey v. The State (1993) 5 NWLR (Part 295) 542 at 552; Okagbue v. Romaine (1982) 5 SC. 133 at 170 and Elike v. Nwankwoala (1984) 12 SC. 301 at 325, to mention but a few. I cannot agree more with both decisions.

The appellant in the instant case having delayed for over 5 years before taking out a writ in August, 1984 against the respondent claiming

the cost of 138 crates of gas cookers etc, short delivered as at 31st March, 1979, or, in the alternative N92,745,39 being the value of the 138 crates, its action became time-barred by reason of Article 3 Rule 6 of the bill of lading which was the contract between the appellant and the ship owner and which incorporated Article 3 rule 6 of the Hague Rules.

For the reasons I have given and the more comprehensive ones set out in the leading judgment of my learned brother Ogundare, JSC, I too dismiss this appeal and award the same costs as contained therein.

C

ACHIKE JSC

I have had the advantage of the preview of the leading judgment just delivered by my learned brother, Ogundare, JSC and I entirely agree with him that the judgment is devoid of merit. Nevertheless, I wish to make some brief contribution.

Only two grounds of appeal were put forward in this appeal, Grounds 1 and 2, shorn of their particulars, read as follows:

E *"1. That the learned Justices of the Court of Appeal erred in Law in confirming the judgment of the learned trial Judge in the issue of disclosed principal which was not established."*

F *2. That the learned Justices of the Court of Appeal erred in Law holding the provisions as to carriage of Goods by Sea Act Applicable was not section 2 of the Act but paramount clauses (clause 2) of the relevant bills of lading Exhibits 'A', 'K' and 'KI'."*

G Upon a preliminary objection that ground one was incompetent in that being a ground of mixed facts and law leave of court to appeal on it was necessary, and no such leave having been sought and obtained the said ground was incompetent. This objection was taken at the hearing and having been upheld, ground 1 was struck out.

H On the remaining ground 2, the issue postulated by the appellant was that respondent's claim was statute-barred. The only question that called for consideration was the applicable law that would govern the issue of the action being statute-barred. Section 2 of the Carriage of Goods by Sea Act, Cap 44 Laws of the Federation of Nigeria 1990 was

relied on by the trial Judge. But it did not apply as it deals with carriage of goods by sea form any port in Nigeria to any other port whether in or outside Nigeria.

It was clearly the Hague Rules contained in the International Convention that was applicable in the circumstances of this case by reason of the paramount clause 2 contained in the Bill of Lading. Article 3 Rule 6 of the Hague Rules, save in some exceptional circumstances, stipulates that action against the carrier and the ship shall be discharged from all liability in respect of loss or damage unless the suit in respect thereof is brought within one year after delivery of the goods or the date when the goods would have been delivered. In the instant case, the goods were allegedly short-delivered to the appellant on 31st March 1978 whereas the action was commenced in August 1984 . i.e. well-over after six years. It was manifest that the action was statute-barred.

Appellant, however, submitted that had the action been against the carrier i.e. the principal herein (Facship Lines Ltd) or the ship the plea of limitation of action would succeed but not in the circumstances of this case where the suit was brought against the respondent, the agent, who ought not to take advantage of the limitation period. No doubt, this submission is misplaced. In law, the agent is simply the conduit-pipe between the principal and a third party for all the agent's lawful acts performed in the course of his employment as an agent. There is the finding of the learned trial Judge, confirmed by the pleadings and evidence, that the defendant/respondent was an agent, having held itself out to that effect to the appellant.

In my opinion, the learned trial judge was correct in making that finding because in law where one person holds another out as being his agent or allows a person to represent himself as his agent though no such agency exists in fact, the other person will be precluded from denying the existence of this agent's authority to act on his behalf. This relationship, I think, creates an agency by estoppel. See Saul Raccah v. Standard co. of Nigeria 4 NLR 48 and Aibna & ors v Alber Farhat 14 NLR 17. Therefore, the defence of limitation period would avail the respondent. I so hold.

In the result, the second issue for determination on whether or not the action was statute-barred is resolved against the appellant. The two issues having been resolved against the appellant the appeal fails, and I hereby dismiss it with N10,000.00 costs to the respondent.

B _____

KALGO JSC

C I have read in draft the judgment just delivered by my learned brother Ogundare JSC and I agree with him that there is no merit in the appeal and ought to be dismissed. I however wish to re-emphasis the salient point that was the bone of contention in the appeal in the following paragraphs.

D In his brief of argument in this court, the learned appellant's counsel formulated two issues which were also adopted by the respondent in its brief. The issues were raised from the only two grounds in the Notice of Appeal filed against the judgment of the Court of Appeal, Benin on the 17th of February, 1992.

E At the hearing of this appeal in this Court on 2nd February, 1999, the learned counsel for the respondent raised a preliminary objection to the competence of ground one from which issue one was raised, on the grounds that the appellant did not in accordance with section 213 (3) seek constitution or obtain leave of the court below or this court to ap-
F peal on that ground, which contained mixed law and fact. The learned counsel for the appellant conceded that this was so. Consequently, issue one was struck out leaving issue two which reads:-

G *"2. Whether the learned Justices of the Court of Appeal were justified in holding that the plaintiff's action was statute barred, thus mis-interpreting the legal effect of Article 3 Rule 6 of the Carriage of Goods by Sea Act Cap. 29 and section 2 Laws of the Federation of Nigeria 1958."*

H The learned trial judge in his judgment found that the appellant's action was instituted outside the period of one year prescribed by Article 3 of rule 6 of Hague as enacted by the Carriage of Goods by Sea Act (Cap. 29) and therefore statute-bared. The provisions of Section 2 of the Act

applies only to the carriage of goods by sea in ships carrying goods from any port of Nigeria to any other port whether in or outside Nigeria. In this case, the ship was carrying goods from a port outside Nigeria - Spain, and so the rules that apply to the carriage of the goods, are in cause 2 of the paramount clause and these are contained in each bill of lading, in this case Exhibits "A", "K" and "KI". And according to the terms and conditions laid down in the Hague Rules Article 3 Rule 6 set out in the schedule to the Act, the appellant's action should have been brought within one year after the delivery of the goods or of the date when the goods should have been delivered, failing which it would be statute-barred. In this case the appellant filed this action more than six years after the delivery of the goods. B C

The learned trial judge had also found in his judgment that the respondent was an agent of a disclosed principal (Facship Lines Ltd), and this finding was not appealed against. The respondent dealt with the appellant in the delivery of the goods for and on behalf of the carrier Facship Lines Limited, the disclosed principal. The act of the respondent for this purpose is also the act of Facship Lines Limited in Law. Therefore the respondent as agent of a disclosed principal could properly take advantage of the protection afforded the principal (Facship Lines Limited) under the provisions of Article 3 rule 6 of Hague Rules. D E

The operative provisions of rules 6 of Article 3 of the Hague Rules which are relevant to this issue read:- F

"In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods have been delivered." (underlining mine) G

This provision is very clear and unambiguous. The "carrier" in this case includes the respondent who is the agent of a disclosed principal (Facship Lines Limited). From the evidence on the record, the goods in this case, (Crate of gas and electric cookers and hot plates) were delivered to the appellant in March, 1978, and the appellant took out its writ of summons against the respondent claiming for short delivery of the goods on the 9th of August, 1984, a period of more than six (6) years after delivery. There- H

fore since the appellant's suit was filed more than one year after delivery, there was non-compliance with the said provisions of rule 6 of Article 3 of the Hague Rules and the respondent must be discharged of all liability in respect thereof. I accordingly so hold.

B For these and more detailed reasons given by my brother Ogundare JSC in the leading judgment, I also dismiss this appeal, affirm the decisions of the lower courts and abide by the order of costs made in the said judgment.

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