

SUPREME COURT OF NIGERIA

24TH SEPTEMBER, 1999. SC. 84/1997.

**CORAM:- A. G. KARIBI-WHYTE, I. L. KUTIGI, S. U. ONU,
U. A. KALGO, S. O. UWAIFO, JJSC**

JOHN EBOSEDE EMIANTOR APPELLANT
AND
1. THE NIGERIAN ARMY
2. THE CHIEF OF ARMY STAFF
3. THE DIRECTOR, NIGERIAN RESPONDENTS
ARMY MEDICAL CORPS
4. THE UNIVERSITY OF BENIN
5. PROFESSOR AYO BINITE

ACTIONS - Cause of action - Is the entire set of facts - Giving rise to an enforceable claim.

LIMITATION OF ACTIONS - Statute bar - Action for damages for libel - Filed after the period of over 6 years - Is statute barred.

LIMITATION OF ACTIONS - Torts - Damages for libel - Action filed after the period of 6 years - Cannot be enforced - Because the Statute of Limitation removes the right.

TORTS - Libel - Limitation period - Publication is what gives the cause of action - The date the plaintiff became aware of the libel about him - Is not relevant in the computation of period of limitation.

FACTS

The plaintiff/appellant was a second lieutenant in the Nigerian Army based in Yaba, Lagos. He was sponsored by the Army to study medicine at the University of Benin. Sometime in 1982, the University conducted a medical board on the appellant. Thereafter, it reported to the Nigerian Army that due to appellant's mental condition at that time, he

could not be allowed to continue his medical studies in the University. An Army board proceedings was conducted on the appellant after which he was retired for being a psychiatric patient suffering from "Permanent paranoid psychosis". He then filed this action against the respondents claiming inter alia, 20 million naira special and general damages for libel published by the respondents to the effect that the appellant was a psychiatric patient.

The appellant filed a statement of claim. Respondent did not file any statement of defence at the trial. Rather, the 1st - 4th respondents filed motion praying that the suit be dismissed for being statute-barred. The motion was granted leading to a dismissal of 2 out of the 3 reliefs claimed by the appellant. His appeal to the Court of Appeal was dismissed. Being dissatisfied, appellant has further appealed to the Supreme Court.

ISSUE FOR DETERMINATION

"..... the Court of Appeal erred in law in upholding the trial judges ruling in that the dates 10-9-82 and 8-2-83 held by them to be the dates of accrual of causes of action in this suit were not the dates of publication but the ostensible dates of making of the alleged libellous documents"

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

Cause of action

1. In law, a cause of action is the entire set of facts or circumstances giving rise to an enforceable claim. See Ibrahim v. Osim (1987) 4 NWLR (pt 67) 965. It also includes all those things necessary to give a right of action and every fact which is material to be proved to entitle the plaintiff to succeed. See Patkun Ind. Ltd v. Niger Shoes Ltd (1988) 5 NWLR (pt 93) 134 Joachimson v. Swiss Bank Corpu (1921) 3 KB 110 at 128. (p. 2750 D)

Torts - Damages for libel

2. An action for damages for libel as in this action is an action founded on

tort. Therefore if it is filed outside the period of 6 years after the accrual of the cause of action, the action cannot be enforced. The reason for this is that the statute of Limitation in Law, removes the right of action, the right of enforcement, the right of judicial relief and leaves the plaintiff with a bare and empty cause of action which he cannot enforce. See Egbe v. Adefarasin (1987) 1 NWLR (pt. 47) 1; And the period for computation commences to run as soon as the cause of action arose. See Savanah Bank v. Pan Atlantic Shipping and Transport Agency (1987) 1 NWLR (pt. 49) 212. (p. 2751 A)

Limitation of actions - Statute bar

3. In this appeal, it appears to me clearly that the period of six years will commence to run from the 30th of April 1983 as disclosed in the writ of summons and deposed to in the respondents' affidavits in support of their motions, as that was the actual date when the cause of action arose. And from that date- 30th April 1983- to date when the appellant filed his writ of summons on 15th August 1989 a period of 6 years and 4 months had elapsed rendering the action statute-barred. (p. 2751 C)

Torts - Libel - Limitation period

4. In any case, in an action for libel, it is not the mere writing of libellous matter complained of that is important, it is the publication of the libel which in itself gives the cause of action. And by publication is meant the making known of the defamatory matter to some person other than the person of whom or about whom it is written. See Nsirim v. Nsirim (1990) 3 NWLR (pt. 138) 285; Hebdith v. Macilwaine & Ors (1894) 2 QB 54 at 61; Keefe v. Walsh (1903) 2 I.R. 706. This means that the date when the appellant became aware of the libel about him, is not relevant for the purpose of computation of the period of limitation in this case. In conclusion, I find that the action filed by the appellant against the respondents in the trial court was statute-barred and the Court of Appeal was right in affirming the decision of the trial court to that effect. Accordingly, I find no merit in this appeal and it is hereby dismissed. (p. 2752 E)

REPRESENTATION

John Ebosedede Emiantor Appellant in person
Respondents are absent and not represented

B CASES REFERRED TO

Akintola v. Anyiam (1961) 3 ALL NLR 508
Ibrahim v. Osim (1987) 4 NWLR (pt 67) 965
Patkun Ind. Ltd v. Niger Shoes Ltd (1988) 5 NWLR (pt 93) 134
Joachimson v. Swiss Bank Corpu (1921) 3 KB 110 at 128
Egbe v. Adefarasin (1987) 1 NWLR (pt. 47) 1
Nsirim v. Nsirim (1990) 3 NWLR (pt. 138) 285
Hebdith v. Macilwaine (1894) 2 QB 54 at 61
Keefe v. Walsh (1903) 2 I.R. 706
Enang v. Adu (1981) 11-12 SC.25 at 42
Okagbue v. Romaine (1982) 5 SC. 133 at 170-171
Oseyeme v. The State (1966) NMLR 399
Wankey v. The State (1993) 5 NWLR (part 295) 542 at 552

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STATUTE REFERRED TO

Limitation Law of Bendel State 1976 s. 4 (1) (a)

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LEAD JUDGMENT BY KALGO JSC

The appellant was the plaintiff at the trial court. He took out a Writ of Summons on the 15th August, 1989 against the respondents as defendants in the Benin High Court in the former Bendel State seeking for the following reliefs:-

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"(i) A DECLARATION that the plaintiff had/has "NO PERMANENT PARANOID PSYCHOSIS" nor was/is he ever a psychiatric patient of the 5th Defendant, BUT was/is mentally fit and sane to be in the Nigerian Army (the 1st Defendant) and to undergo Medical Training in a University as at 30/4/83 and thereafter till date.

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(ii) N20,000.000 (Twenty Million Naira Only) as SPECIAL and GENERAL DAMAGES for LIBEL published by the Defendants of, and concerning the plaintiff in the 1st Defendant's "MEDICAL BOARD

PROCEEDINGS - ALL RANKS" of 10/9/82 AND in the 1st Defendant's letter Ref. No. NA/226/MS of 8/2/83 titled: "RETIREMENT ON MEDICAL GROUNDS NA OFFICER 2LT JOHN EMIATOR (N/6428)" both to the effect that the plaintiff had "PERMANENT PARANOID PSYCHOSIS" and /or that the plaintiff was a psychiatric PATIENT of the 5th Defendant.

(iii) A PERPETUAL INJUNCTION restraining the Defendant from further publication of such or other similar LIBEL of, and concerning the plaintiff".

He filed a statement of claim of 39 paragraphs on the 20th of May, 1990. The respondents did not file any statement of defence at the trial. However, on the 27th of March, 1990, the 4th defendant/respondent filed a motion on notice praying the trial court to dismiss the action on the ground that it was statute-barred. The application reads as follows:-

"TAKE NOTICE that this Honourable Court will be moved on Wed. the 2nd day of May, 1990 at the hour of 9 O'clock in the forenoon or so soon thereafter as counsel may be heard on behalf of the 4th Defendant/Applicant praying for:

An order dismissing this action on the ground that it is statute-barred by virtue Section 4 (1) (a) of the limitation Law Cap. 89 Vol. IV of Bendel State, 1976, in that:

(a) On the face of the plaintiffs Writ of Summons this action is in respect of alleged causes of action which accrued on 30/4/83, 10/9/82 and 8/2/83 respectively.

(b) This action ought to have been commenced by the plaintiff within 6 years from the dates on which the alleged causes of action accrued as prescribed by Section 4 (1) (a) of the limitation Law, 1976 of Bendel State.

(c) That having been commenced by the Plaintiff on 15th August, 1989 (i.e. after the expiration of 6 years from the dates on which alleged causes of action accrued), this action is statute-barred and should be dismissed.

AND for such further or other orders as this Honourable Court may deem it fit to make in the circumstances".

Again on the 31st of January, 1991, the 1st, 2nd and 3rd defendants filed a similar application praying for:-

"An order to dismiss the writ summons and statement of claim of the plaintiff/Respondent in this suit on the ground that the suit is statute barred by virtue of S. 4 (1) (a) of the Limitation Law Cap. 89 Vol. IV Laws of Bendel State 1976".

The two motions were then heard by the learned trial judge on the same day 6th February, 1991 at the same time and adjourned for a ruling. In a considered ruling delivered on the 12th of April, 1991, the learned trial judge Obi J., held thus:-

"The motions are granted as prayed but only in relation to the claim for damages and injunction which are accordingly dismissed. Relief (1) for declaration in the form sought in the Writ of summons and statement of claim is unaffected by this dismissal order".

The appellant was dissatisfied with this order and he filed a Notice of Appeal in the Court of Appeal Benin on 2 grounds on 23rd April 1991. He later filed with the leave of the Court of Appeal Benin, and amended Notice of Appeal containing 3 main grounds of appeal with 38 paragraphs as particulars of error to ground 2. He thereafter filed a brief of 135 pages together with another 5 page document titled "General Format of this brief" and another 20 page document on "further authorities to be used in arguing the appeal". The respondents did not file any brief in this court and at the hearing of this appeal on 28th June 1999 only the appellant was present. He argued his appeal in person and adopted his brief of argument. Earlier on the 24th June 1999, the appellant filed what he called "written submission by me in lieu of my oral court address at the hearing if I am unable to be physically in court". This document is another brief itself and was produced in very small print.

I have carefully considered these "extra" documents filed by the appellant in addition to his 99 page brief and found them to be irrelevant and unnecessary in this appeal. Further more none of them is required by the rules of this court to be filed nor was any special leave of this court obtained prior to filing them. To that extent they are immaterial to this appeal and I discountenance them in the consideration of this appeal.

I am now left with the appellant's brief pages 18-20 thereof was headed "issues for determination". I have gone through these 3 pages of the brief and found that the contents were not set out properly as listed issues for determination as required by the court rules. They consisted of 4 paragraphs containing various allegations concerning the conduct of the case at the trial and in the Court of Appeal. It was only in the 3rd paragraph that he wrote something which has the semblance of what can be referred to as issue for determination. In that paragraph he stated thus:-

"..... the Court of Appeal erred in law in upholding the trial judges ruling in that the dates 10-9-82 and 8-2-83 held by them to be the dates of accrual of causes of action in this suit were not the dates of publication but the ostensible dates of making of the alleged libellous documents"

This, in my view, is the main issue for determination in this appeal gleaned from the grounds of appeal filed by the appellant. Once the issue of cause of action is determined in this appeal, everything else is subsidiary to it.

The appellant's case was essentially one of libel against the defendants, and a declaration that he is mentally fit to undergo medical training in the University of Benin. The case did not go to trial and no pleadings were filed by the defendants/respondents at the trial. But from the affidavits filed by the parties in the motions which were heard by the trial court, the result of which gave rise to this appeal, the facts seemed to be like this. The appellant was a 2nd Lieutenant in the Nigerian Army based in Yaba, Lagos, before 1982. He was sponsored by the Nigerian Army to study medicine at the University of Benin. Sometime in 1982, the University of Benin after conducting a medical board on the appellant reported to the Nigerian Army that due to his mental condition at the time, he could not be allowed to continue his medical studies in the University. The Nigerian Army thereafter commenced "Nigerian Army board proceedings (all ranks)" on the appellant and as a result, finally decided to retire him on medical grounds due to the fact that he was a psychiatric patient suffering from "Permanent paranoid psychosis". The appellant

then brought this action against those concerned in the Nigerian Army and the University of Benin.

In the two motions filed by the respondents at the trial, they prayed the trial court to dismiss the appellant's action on the grounds that the appellant has failed to file his action within 6 years of the accrual of the cause of action required by the provisions of section 4 (1) (a) of the Limitation Law 1976 of Bendel State. From the writ of summons filed by the appellant in the trial court, on 15th August 1989 and in which he claimed damages of N20,000.000.00 from the respondents, it is very clear that he was relying on the publications allegedly made by the respondents on 10th September, 1982 and 8th February, 1983. And the tort of libel arises from anything written, printed or published which reflects adversely on the character or conduct of another person, and is published without any lawful justification or excuses. Akintola v. Anyiam (1961) 3 ALL NLR 508.

In law, a cause of action is the entire set of facts or circumstances giving rise to an enforceable claim. See Ibrahim v. Osim (1987) 4 NWLR (pt 67) 965. It also includes all those things necessary to give a right of action and every fact which is material to be proved to entitle the plaintiff to succeed. See Patkun Ind. Ltd v. Niger Shoes Ltd (1988) 5 NWLR (pt 93) 134 Joachimson v. Swiss Bank Corpu (1921) 3 KB 110 at 128.

In this appeal the appellant relied on the publications mentioned in his writ of summons to found his cause of action. The respondents in their affidavits at the trial clearly indicated that by the dates mentioned in the writ of summons, the cause of action must have arisen at the latest on 30/4/1983. Therefore by the provisions of the Limitation Law (cap. 89) of Laws of Bendel State 1976, applicable to the case, the period of 6 years within which the action should have been filed had elapsed, and the action having been filed only on 15th August 1989 is therefore statute-barred. Section 4 (1) (a) of the said Limitation Law provides:-

"4 (1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say -

(a) *"Actions founded on simple contract or tort"*.

An action for damages for libel as in this action is an action founded on tort. Therefore if it is filed outside the period of 6 years after the accrual of the cause of action, the action cannot be enforced. The reason for this is that the statute of Limitation in Law, B removes the right of action, the right of enforcement, the right of judicial relief and leaves the plaintiff with a bare and empty cause of action which he cannot enforce. See Egbe v. Adefarasin (1987) 1 NWLR (pt. 47) 1; And the period for computation commences to run as soon as the cause of action arose. See Savanah Bank v. Pan C Atlantic Shipping and Transport Agency (1987) 1 NWLR (pt. 49) 212.

In this appeal, it appears to me clearly that the period of six years will commence to run from the 30th of April 1983 as disclosed D in the writ of summons and deposed to in the respondents' affidavits in support of their motions, as that was the actual date when the cause of action arose. And from that date- 30th April 1983- to date when the appellant filed his writ of summons on 15th August E 1989 a period of 6 years and 4 months had elapsed rendering the action statute-barred

In Egbe v. Adefarasin (supra) at page 20 of the report, Oputa JSC asked "How does one determine the period of Limitation?" He pro- F ceeded to say:-

"The answer is simple - by looking at the Writ of Summons and the statement of claim alleging when the wrong was committed which gave the plaintiff a cause of action and by comparing the date with the date on which the Writ of summons was filed. This can be done without taking oral evidence. If the time on the Writ is beyond the period al- G lowed by the Limitation Law then the action is statute-barred".

Applying this principle to the present case, it is very clear that the 3 dates that appear pre-eminently on the writ of summons are 10/9/ H 82, 8/2/83 and 30/4/83, and the last date was only relevant to the declaration and not the libel. I have also examined the statement of claim and found that the same dates as in the writ of summons also featured in it

except that other dates for taking various actions were also mentioned which are not relevant to the libel action. Therefore even if the 30/4/83 is taken as the relevant date when the cause of action arose, the appellant's action having been filed on 15th August 1989, is more than the 6 years allowed by the Limitation Law and therefore statute-barred.

The appellant contended very strongly in his brief and his oral argument that the Limitation Law is not applicable to his case because he was only made aware of the false representations made against him by the respondents sometime in 1984. This does not appear to agree with the contents of the letter of his counsel Exhibit "K" attached to his counter-affidavit to the motion of 1st-3rd respondents on page 92 of the record, which says:-

"Our Client has informed us that following some false representation made about him to his employers by the University of Benin where he was studying, that his employer have now served him a notice of retirement on medical grounds, Our client feels that there is a conspiracy to label him as a psychiatric case and he vehemently says that he has no record of mental illness".

This letter was dated 26th May, 1983, and the contents showed clearly that the appellant was fully aware of the "false representations" by respondents on him before that date.

In any case, in an action for libel, it is not the mere writing of libellous matter complained of that is important, it is the publication of the libel which in itself gives the cause of action. And by publication is meant the making known of the defamatory matter to some person other than the person of whom or about whom it is written. See Nsirim v. Nsirim (1990) 3 NWLR (pt. 138) 285; Hebdith v. Macilwaine & Ors (1894) 2 QB 54 at 61; Keefe v. Walsh (1903) 2 I.R. 706. This means that the date when the appellant became aware of the libel about him, is not relevant for the purpose of computation of the period of limitation in this case.

In conclusion, I find that the action filed by the appellant against the respondents in the trial court was statute-barred and the Court of Appeal was right in affirming the decision of the trial

court to that effect. Accordingly, I find no merit in this appeal and it is hereby dismissed. In view of the circumstances of this appeal and the fact that the respondents did not file any papers in this court and were conspicuously absent at the hearing of the appeal, I make no order as to costs.

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KARIBI-WHYTE JSC

I have had the privilege of reading the judgment of my learned brother Umaru Atu Kalgo, JSC in this appeal. I agree with his conclusion that the action of the Appellant is statute barred. I therefore also hereby dismiss the appeal.

I make no order as to costs.

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KUTIGI JSC

I read in advance the judgment just rendered by my learned brother Kalgo, J.S.C. I agree with his reasoning and conclusions. The facts are not in dispute. It is clear on the facts that the Plaintiff/Appellant's action is statute barred by virtue of the provisions of Section 4(1) (a) of the Limitation Law of Bendel State. The trial High Court and the Court of Appeal were therefore right to have so found. The appeal is accordingly dismissed with no order as to costs.

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ONU JSC

I have had the advantage of reading the leading judgment of my learned brother Kalgo, JSC before now in draft. I agree entirely with his reasoning and conclusions that the appeal lacks merit and must perforce fail.

It having been ascertained on the face of the Plaintiff's Writ of Summons that the cause of action giving rise to the appeal herein accrued on 30/4/83, 10/9/82 and 8/2/83 respectively and that it (the action) ought to have been commenced by him within 6 years of the accrual

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thereof pursuant to Section 4 (1) of the Limitation Law (Cap. 89) Vol. IV Laws of Bendel State, 1976. Consequently, the action having been commenced by the Plaintiff on 15th August, 1989 (i.e. after the expiration of 6 years from the dates on which the alleged causes of action accrued), the conclusions arrived at by the trial court and the Court of Appeal that this action is statute-barred and should be dismissed are, in my judgment unimpeachable. The two decisions are concurrent findings of fact which in the absence of their being shown to be erroneous or constitute a miscarriage of justice or in any way amount to a violation of some principles of law or procedure, ought not to be disturbed by this Court. See Enang & Ors. v. Adu & Ors. (1981) 11-12 SC.25 at 42; Okagbue v. Romaine (1982) 5 SC. 133 at 170-171; Oseyeme v. The State (1966) NMLR 399 and Wankey v. The State (1993) 5 NWLR (part 295) 542 at 552

On Limitation Act or Law which is applicable to the instant case, Section 4 (1) (a) of Cap. 89 therefore provides as follows:-

"4 (1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say -

(a) Actions founded on simple contract or tort."

It is clear from the wording of this section that once a case of contract or tort is brought after 6 years of the cause of action, such action is statute-barred and the court has no jurisdiction to entertain it. See Egbe v. Adefarasin (1985) 1 NWLR (Part 3) 549. See also Ajayi v. Military Administrator of Ondo (1997) 5 NWLR (part 504) 237 at page 254 in which it was held inter alia as follows:-

"The issue of whether or not an action has been statute-barred is one touching upon the jurisdiction of the court. For once an action has been found to be statute-barred, although a plaintiff may still have his cause of action, his right of action, that is, his legal right to prosecute that action has been taken away by statute. In that circumstance, no court has jurisdiction to entertain his action."

It has also been a settled principle of law that a statute of limitation begins to run from the moment a cause of action arose (see Sanda v. Kukawa Local Government (1991) 2 NWLR 379) and it is not an answer

for a party to rely on his absence from within the jurisdiction or absence of court with jurisdiction to hear the matter: See Solomon v. African Steamship Co. 9 NLR 99. Thus, where an action is statute-barred as in the instant case, 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 (part 308) 637 and Ekeogu v. Aliri (1991) 3 NWLR (part 179) 258.

The action giving rise to the case herein on appeal having accrued on 30/4/83, 10/9/82 and 8/2/83 respectively and the appellant herein had not commenced his action until 15th August, 1989, namely, after the expiration of six years from the dates on which the alleged cause of action accrued, the Appellant's actions became statute-barred. From all available authorities, it would appear clear that the courts are not prepared to liberalize the provisions of any Limitation Act or Law. This view is supported by the case of Lasisi Fadare v. Attorney-General of Oyo State (1982) 4 SC.1 (per Sowemimo, JSC as he then was).

It is for the above reasons and those more elaborately set out in the leading judgment of my learned brother Kalgo, JSC that I too dismiss this appeal and make the same consequential orders as to costs contained therein.

UWAIFO JSC

I read in advance the judgment of my learned brother Kalgo JSC. For the reasons he has given I agree with the conclusion reached that the action is statute-barred. I too find no merit in the appeal and dismiss it.