

**SUPREME COURT OF NIGERIA**  
29TH JUNE, 2001. SC. 10/1997  
**CORAM:- U. A. KALGO, S. M. A. BELGORE,**  
**E. O. OGWUEGBU, S. U. ONU, S. O. UWAIFO, JJSC.**

JULIUS BERGER NIGERIA PLC ..... APPELLANT  
AND  
R. I. OMOGUI ..... RESPONDENT

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***ACTIONS** - Cause of Action - Date of arising - Relevant date when the cause of action accrued - Is misconceived by appellant (H 1)*

***ACTIONS** - Statute bar - Plaintiff's action was filed within time - And is not statute barred (H 2)*

**FACTS**

The respondent's fuel distribution tanker, was involved in an accident along Sapele/Warri Road junction with a trailer belonging to the appellant on the 5th. of August, 1981. Soon after the accident the appellant undertook to repair the respondent's tanker and as a result towed the tanker to its workshop in Sapele. Later the appellant changed its mind and instead of effecting the repair itself asked the respondent to remove the tanker to its workshop, repair it and submit the repair bill to the appellant's insurance company for settlement. This the respondent refused to do. The appellant therefore asked the respondent to furnish it with an estimate of the cost of repairs so that the amount can be released to him. This was done by the respondent but it became impossible to recover the said cost from the appellant.

Because of this the respondent filed an action in 1981 which succeeded. The appellant was then ordered to pay him the sum of N32,000.00. The appellant paid the said judgment debt but refused to release the respondent's tanker to enable him carry out the repairs despite repeated demands. The respondent therefore filed this action in the Sapele High Court. The appellant raised a preliminary objection to the

trial on the ground that it was statute barred. The trial judge after hearing the preliminary objection ruled that the action was statute-barred and dismissed it accordingly. The respondent's Appeal to the Court of Appeal was successful. The Appellant has therefore appealed to the Supreme Court.

**ISSUE FOR DETERMINATION**

*"Whether the Appellant's claim is statute barred by virtue of the provision of Section 4 of the limitation law Cap. 89 Laws of the Bendel State 1976 (applicable to Delta State)."*

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

***Cause of Action - Date of arising***

1. Therefore by the combined effect of paragraphs 4 and 5 of the respondent's counter-affidavit and paragraphs 12 and 13 of the Statement of Claim which have not been denied by the appellant, I am satisfied that the cause of action for this second instant action in Suit No. S/31/93 arose on the 4th of April 1992. The question of the return of the respondent's tanker could not have arisen on 5/8/81 when the accident happened particularly as it was the appellant who towed away the tanker to its workshop for repairs. It could also not be on 21/8/81 as learned counsel for the appellant submitted in his brief, because the letter dated 21/8/81 requesting the respondent to remove the tanker from the appellant's workshop was written during the arguments on the repairs of the tanker and before the action in suit No. S/58/81 was filed. (p. 2244 B)

***Actions - Statute Bar***

2. There is no doubt that the instant action was based on claim on tort allegedly committed by the appellant. According to s. 4(1)(a) of the Limitation Law (Cap. 89 of Laws of Bendel State) 1976, applicable to Delta State at the material time, the action must be filed within 6 years of the time when the cause of action arose. The action was filed on the 26th of March 1993. It was filed within time and is therefore valid, competent and maintainable. (p. 2244 F)

## **NOTABLE POINT OF INTEREST**

### **UWAIFO JSC**

#### *1. Detinue - How it arises - Nature of the action*

In detinue, the cause of action does not accrue until there has been a demand for the return of the goods in question and a definite refusal to deliver them up. Detinue is a continuing cause of action which accrues at the date of the wrongful refusal to deliver up the goods and this continues until delivery up of the goods or judgment in the action for detinue. The action is in the nature of an action in rem in which the plaintiff may sue (1) for the value of the chattel as assessed and also damages for its detention; or (2) for the return of the chattel or recovery of its value as assessed and also damages for its detention; or (3) for the return of the chattel and damages for its detention. (p. 2254 B)

### **REPRESENTATION**

Oscar A. Umasagboh Esq. for the appellant.

E.O. Atohengbe Esq. for the respondent.

### **CASES REFERRED TO**

Onwuka & Anr v. R.I. Omogui (1992) 3 NWLR (Pt. 230) 393.

Egbe v. Adefarasin (1987)1 NWLR (Pt. 47)1.

Omotayo v. N.R.C. (1992) 7 NWLR (Part 234) page 471 at 483

Afolayan v. Ogunrinde (1990) 1 NWLR (Part 127) 369 at 373

Sodipo v. Lemmin Kainen oy (1992)8 NWLR (Part 258)

Odubeko v. Flower (1993) 7 NWLR (Part 308) 637 at pages 666-667.

Fadfare & Ors v. Attorney-General of Oyo State(1982) 4 SC. 1

### **STATUTE REFERRED TO**

Limitation Law Cap 89 Laws of Bendel State 1976; s. 4(1)(a)

### **LEAD JUDGMENT BY KALGO JSC**

The only issue to be determined in this appeal as formulated by the appellant in its brief and adopted by the respondent is:-

*"Whether the Appellant's claim is statute barred by virtue of the provision of Section 4 of the limitation law Cap. 89 Laws of the Bendel State 1976 (applicable to Delta State)."*

This case may properly be regarded as one with chequered history and it appears to me pertinent and desirable to set out, albeit briefly the facts and circumstances which gave rise to it for a better understanding of the situation.

The respondent's Fuel distribution tanker, of Styer make, used for the distribution of Kerosene was involved in an accident along Sapele/Warri Road Junction at Okirigwe with a trailer belonging to the appellant on the 5th of August 1981. Soon after the accident, the appellant undertook to repair the respondent's tanker and as a result towed the tanker to its workshop in Sapele. Later the appellant changed its mind and instead of effecting the repairs itself, it asked the respondent to remove the tanker to his workshop, repair it and submit the repair bill to the appellant's insurance company for settlement. The respondent refused to do so and stood by the earlier agreement and undertaking by the appellant to carry out the repairs. Realising this stand, the appellant again changed gear and asked the respondent to furnish it with an estimate of the cost of repairs and the amount would be released to the respondent. The respondent promptly complied with this last request but all effort to collect the money from the appellant to carry out the repairs by the respondent failed. As a result of this unending tussle the respondent filed an action in 1981 in the Sapele High Court which went up to the Court of Appeal Benin and finally to the Supreme Court in 1992 where he (respondent) succeeded and the appellant was ordered to pay him the sum of N32,000.00. The appellant paid the said judgment debt but refused to release the respondent's tanker to enable him carry out the repairs despite repeated demands. The respondent therefore filed this action in the Sapele High Court, which is the subject of this appeal and in which he claimed from the appellant:-

*"1. An order for the delivery up by the Defendant to the plaintiff of the plaintiffs vehicle, a Styer Diesel Tanker Lorry with Registration No. LP7875 or payment by the Defendant to the plaintiff of the sum of N537,000.00 (five hundred and thirty-seven thousand Naira) being the*

value thereof.

2. *Interest on the amount found to be due to the plaintiff from the Defendant at the rate of 30% per annum from 24/4/92 (the date of commencement of demand for return of the vehicle until the entire sum is fully liquidated, or interest at such rate and for such period as this Honourable Court may deem fit.*" B

The parties filed and exchanged pleadings. In paragraph 13 of the Statement of Defence dated 14/12/93, the defendant/appellant averred thus:-

"13. *The Defendant shall before or at the trial of this case raise by way of preliminary objection on point of Law and apply to this Honourable Court to dismiss the action on the ground that the action/claim is statute-barred.*" C

Thereafter on the 16th of March 1994, the appellant filed a motion D on notice supported by an affidavit praying the trial court for:-

"(1) *An order setting down the preliminary objection an pointof law raised in the paragraph 13 of the Statement of Defence for hearing/arguments;*" E

(2) *An order dismissing the action on the ground that it is statute barred, in accordance with section 4 Limitation Law, Cap. 89 Laws of Bendel State of Nigeria 1976 (applicable in Delta State).*

The respondent filed an 11 paragraph counter-affidavit. The motion was heard on 30th of May 1994 by the learned trial judge Nwulu J, F and on 17th June 1994, he ruled that the respondent's action was statute - barred and he dismissed it accordingly. The respondent was dissatisfied with the ruling and he appealed to the Court of Appeal, Benin Division. The Court of Appeal heard the appeal and allowed it. It set aside the G orders of the trial court and remitted the case back to Delta State high Court for trial by another Judge other than Jwulu J. The appellant appealed from that decision to this court.

As I stated earlier in this judgment, the only issue for determination in this appeal is whether the action of the respondent in the trial court was statute - barred. H

It is common ground that the parties' vehicles were involved in an

accident on the 5th of August 1981. The appellant admitted liability for causing the accident, towed the respondent's vehicle to their workshop and undertook to carry out the repairs on the respondent's vehicle. When the appellant refused to honour the undertaking, the respondent sued them in court for cost of repairs and loss of use which case ended in the Supreme Court and the appellant was ordered to pay a total of N32,000.00 to the respondent. The appellant paid the amount as ordered. This case was suit No. S/58/81 in the Sapele High Court, CA/B/89/85 in Court of Appeal Benin and SC. 163/1987 in the Supreme Court. The judgment of the Supreme Court was delivered on the 27th of March 1992. See Onwuka & Anr V R.I. Omogui (1992) 3 NWLR (pt.230) 393.

It is not in dispute that the first suit No. S/58/81 and the present suit No. S/31/93 filed by the respondent are both connected with the accident which took place on 5/8/81. But suit No.S/58/81 which finally ended in the Supreme Court on 27th March 1992 in the respondent's favour had nothing to do with the claim of returning the respondent's tanker to him. It was only for cost of repairs and loss of use. The respondent stated this clearly in paragraph 10 of his Statement of Claim, which in his counter-affidavit paragraph 5, he urged the trial court to refer to in deciding the motion. It is also evident from the affidavits filed in the motion before the trial court that the question of the respondent asking the appellant to return the tanker to him (respondent) for repairs did not arise. In fact according to paragraphs 4, 10, and 11 (ii) of the appellant's Statement of Defence, it was the appellant who requested the respondent by letter dated 21/8/81 to remove the tanker from their workshop and the respondent refused to do so. Therefore it could not be correct to say that the respondent, before filing the suit no. S/58/81 had demanded from the appellant the return of his damaged tanker.

But after the Supreme Court settled the question of the claim for cost of repairs and damages for loss of use of the tanker on 27th March 1992, the respondent would be free to demand for his tanker from the appellant to carry out the repairs to it. And this is what he said he had done as he stated in paragraphs 12 and 13 of his Statement of Claim, which are properly linked to paragraphs 4 and 5 of his counter-affidavit.

Paragraphs 12 and 13 of the Statement of Claim read:-

12. *After the judgment of the Supreme Court, the Plaintiff demanded from the Defendant the sum adjudged due to him for repair of his vehicle and loss of use and also demanded from the Defendant return of his vehicle to enable him effect the necessary repairs and put the vehicle to use. This the plaintiff did through his Solicitors, Solomon Asemota & Co who wrote various letters to the Defendant dated 16/4/92, 24/4/92, 4/8/92 and 16/10/92 and also visited the Defendant's office along NPA Express-way, Warri. The Defendant is hereby given notice to produce the said letters which will be relied upon by the plaintiff at the trial.*

13. *The Plaintiff avers that the Defendant has paid to him the money for repair of the vehicle and loss of use, but has failed, refused and/or neglected to deliver up his vehicle to him despite the afore-said demands, hence this present action. Plaintiff will at the trial rely on the covering letter dated 24/4/92 by which Defendant's Solicitors Femi Okunnu & Co., forwarded a cheque to plaintiff's Solicitors, Solomon Asemota & Co.*

And paragraph 4 and 5 of the counter-affidavit also read:-

4. *That I am advised by B. O. Orhewere Esq., and I verily believed that the cause of action in this suit occurred in 1992 when the defendant refused to return my Vehicle to me after the Supreme Court decision delivered on the 27th day of March 1992. The said decision is now reported in Onwuka and another v. Omogui (1992) 3 NWLR (pt 230) 393.*

5. *That the events which led to the cause of this present suit has been stated in the Statement of Claim filed by me in this suit. I urge this Honourable Court to refer to the Statement of Claim and defence filed by the Defendant at the hearing of this motion.*

It is clear from paragraph 14 of the Statement of Claim above that after the Supreme Court judgment, the respondent through his counsel wrote 5 letters to the appellant apart from personal calls, demanding the return of his tanker, but the appellant refused. But in a reply to the 2nd letter dated 24/4/92, the appellant paid the judgment debt, but refused to

return the tanker.

I am of the firm view, that in the circumstances of this case, after the Supreme Court judgment in the respondent's favour on the cost of repairs and damages for loss of use, the respondent was perfectly entitled to claim the return of his tanker so as to effect the necessary repairs on it. And any refusal or denial on the part of the appellant who had the custody of the tanker since after the accident in August 1981 will afford a cause of action for which a remedy is available in court. **Therefore by the combined effect of paragraphs 4 and 5 of the respondent's counter-affidavit and paragraphs 12 and 13 of the Statement of Claim which have not been denied by the appellant, I am satisfied that the cause of action for this second instant action in Suit No. S/31/93 arose on the 4th of April 1992. The question of the return of the respondent's tanker could not have arisen on 5/8/81 when the accident happened particularly as it was the appellant who towed away the tanker to its workshop for repairs. It could also not be on 21/8/81 as learned counsel for the appellant submitted in his brief, because the letter dated 21/8/81 requesting the respondent to remove the tanker from the appellant's workshop was written during the arguments on the repairs of the tanker and before the action in suit No. S/58/81 was filed.**

**There is no doubt that the instant action was based on claim on tort allegedly committed by the appellant. According to s. 4(1)(a) of the Limitation Law (Cap. 89 of Laws of Bendel State) 1976, applicable to Delta State at the material time, the action must be filed within 6 years of the time when the cause of action arose. The action was filed on the 26th of March 1993. It was filed within time and is therefore valid, competent and maintainable. See Bello v. A.G. Oyo State [1986] 5 N.W.L.R. (Pt. 45) 828; Egbe v. Adefarasin [1987] 1 N.W.L.R. (pt. 47) 1 Eboigbe v. NNPC [1994] 5 N.W.L.R. (pt. H 347) 649.**

The Court of Appeal, per Ige, J.C.A. and concurred in by Akintan and Nsofor J.J.C.A. had this to say:

*"I agree with the Appellant that the vehicle was never wrongfully*



*detained by the respondent until 24/4/92 when the appellant first demanded for the return of his vehicle. The respondents had the vehicle in their custody from the date of accident and when negotiations broke down, the plaintiff/appellant did not collect the vehicle from the respondents' premises until the issue of cost of repair was finally settled by the Supreme Court in 1992.....*

*This in my view settles the question of the time the cause of action arose in this case. Time begins to run against the Plaintiff/Appellant as from 24/4/92 and when this date is compared with the date on the writ of summons, the Plaintiff's action in Suit No. S/31/93 is not statute - barred at all. Action was taken within 12 months."*

I entirely agree with this finding of the Court of Appeal in this matter. I answer this issue in the negative and against the appellant.

As this is the only issue raised for the determination of this court and was resolved against the appellant, this appeal lacks merit and is hereby dismissed. I accordingly affirm the decision and orders of the Court of Appeal made on 15th day of March 1996. I however add that the case should be heard expeditiously as it was filed since 1993. I award the costs of N10,000.00 against the appellant in favour of the respondent.

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#### **BELGORE JSC**

I read in advance the judgment of my learned brother, Kalgo JSC. I agree that the only issue for determination should be resolved against the appellant. The action is not statute barred and the appeal therefore fails. I also dismiss it with N10,000.00 costs to respondent.

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#### **OGWUEGBU JSC**

I have had the advantage of reading in advance the draft of the judgment just delivered by my learned brother kalgo, JSC and I agree with his opinions on the sole issue for detrmination in this appeal. The facts of the case have been set out fully in the leading judgment. I will not go over them in detail but will mention such facts that will lead to a better understanding of this short contribution.

The plaintiff filed an action for negligence against the appellant as 2nd defendant in Suit No. S/58/81: **Omogui v. onwuka & Or.** in Sapele High Court for special and general damages for cost of repairs to and loss of use of his vehicle. The claim arose out of an accident involving the plaintiff's diesel kerosine tanker and the 2nd defendant/appellant's trailer on 5th August, 1981. That action terminated in this court on 27th March, 1992: (SC.163/1987) reported in (1992) 3 NWLR (Pt. 230) 393. It was in favour of the plaintiff. He later filed another action against the defendant (appellant) at the Sapele High Court for the delivery up of his diesel kerosine tanker or payment by the defendant of the current value of the said vehicle. The action leading to the present proceedings was filed after the defendant had paid the damages awarded in the earlier suit and the plaintiff thereafter made written demands for the return of his vehicle and the defendant refused to return it.

The defendant filed its statement of defence and averred as follows in paragraph 12:

*"The defendant shall before or at the trial of this case raise by way of preliminary objection on point of law and apply to this Honourable Court to dismiss the action on the ground that the action/claim is statute barred."*

A motion for an order dismissing the action was duly filed and argued. In the ruling delivered on 17th June, 1994, the learned trial judge, Nwulu J. upheld the objection and dismissed the plaintiff's action. The plaintiff's appeal to the Court of Appeal was allowed, the order of dismissal of the suit was set aside and the case was remitted to the High Court for trial by another judge. The defendant has appealed to this court against the judgment of the court below contending that the cause of action accrued on 21st August, 1981 when it requested the plaintiff to remove his vehicle from its premises and not 24th April, 1992 when the plaintiff demanded the return of his vehicle.

There is a misconception on the part of the defendant and the learned trial judge as to the nature of an action in detinue and when the cause of action in detinue accrues to a plaintiff. Detinue is a wrongful retention of the possession of goods and the wrong arises upon the de-

tention of the chattel after demand for its return by the person entitled to its immediate possession has been made. See *General & Financial Facilities Ltd. V. Cooks Cars (Romford) Ltd. (1963) NMLR 644.*

The next question is whether there is a cause of action in detinue on 26th March, 1993 when the plaintiff filed the suit in the High Court. In other words, when exactly did the cause of action in this case arise for the purpose of computation of the six year limitation period prescribed in section 4 of the Limitation Law of Bendel State applicable to the case. This question appears technical but it is a point of substance in this appeal. In an action of detinue as in other action of tort, limitation law runs from the time when the cause of action arose. Consequently, if nothing has happened to give rise to an action of detinue, there is no period of time which can operate to extinguish the title of the real owner. If there is a demand by the owner from the person in possession of the chattel and a refusal on the part of the latter to give it up, then in six years the remedy of the owner is barred. See *Egbe v. Adefarasin (1987) 1 NMLR (pt.47) I*. The facts of this case are peculiar and illustrate very clearly the legal essentials of a right of action in detinue.

The demand was for the return of the vehicle through the plaintiff's counsel by various letters dated 24/4/92, 4/8/92, 7/9/92 and 16/10/92. These letters were written after the judgment of this court on 27/3/92 in the earlier case. In my opinion and based on the above principle, the cause of action in this case accrued to the plaintiff in October, 1992 when the defendant manifested a concluded intention to detain the vehicle. The conclusion therefore at which I arrived is that on 26th March, 1993, when the plaintiff filed the action leading to this appeal, is less than six years. The action therefore can be maintained. I affirm the decision of the Court of Appeal and dismiss the appeal with N10,000.00 costs in favour of the plaintiff.

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ONU JSC

I am in entire agreement with the judgment of my learned brother Kalgo, JSC just delivered that the appeal herein lacks merit and must therefore fail.

In expatiating on the case as was eventually argued, I wish to first of all set out the lone issue (adopted by either side) for determination. It states:

"Whether the Appellant's claim is statute barred by virtue of the provisions of Section 4 of the Limitation Law Cap. 89 Laws of the Ben-  
del State 1976 (applicable to Delta State). On the ground that the cause  
of action arose on 21st August, 1981."

The Respondent as Plaintiff filed an action for negligence against the Appellant as 2nd Defendant in the High Court, Sapele in Suit No. S/58/81:  
R.I. Omoigui v. Onwuka & Anor. The Plaintiff/Respondent had claimed  
in that case against defendant/appellant special and general damages for  
trespass for cost of repairs to and loss of use of his vehicle, a Styr diesel  
Kerosene tanker and Defendant/Appellant Mercedes Benz trailer on the  
5th August, 1981 following a collision involving their two vehicles at  
Okorigwe junction, Sapele.

The learned trial Judge dismissed the Plaintiff/Respondent's claim. The Court of Appeal sitting on appeal, allowed the appeal of the Plaintiff/  
Respondent by setting same aside. The Supreme Court to which the  
Defendant/Appellant appealed upheld the decision of the Court of Appeal. This decision is reported in : Onwuka v. Omoigui (1992) 3 NWLR (part  
230) 393.

The Plaintiff/Respondent (hereinafter referred to as Respondent simpliciter) in another action No. S/31/93 brought in 1993 claimed against the Defendants/Appellant' (hereinafter called the Appellant) in the Sapele High Court for the delivery up of the Styr Diesel Tanker or payment therefore to him (Respondent) the current value of the vehicle clearly set out in the Writ of Summons and the Statement of Claim. The appellant on its part filed a Statement of Defence which with leave, it amended wherein at page 14 it pleaded thus:

"13 The Defendant shall before or at the trial of this case raise by way of a preliminary objection on point of law and apply to this Honourable Court to dismiss the action on the ground that the action/Claim is statute-barred."

The case went to trial but first with the application first argued. Nwulu,

J. in his ruling dated 17th June, 1994, upheld the application by dismissing the action as being statute-barred.

In deciding whether or not this action is caught by a Statute of Limitation one has to examine two factors viz:

(a) Is there a cause of action?

B

(b) When does the cause of action arise?

The term cause of action is defined by Jowitts Dictionary of English Law at pages 39-40 as follows:

*"The facts or combination of facts which give rise to a right to sue. Thus, in the case of some tort (e.g. trespass) the cause of action is the wrongful act, in the case of some other torts (e.g. negligence), the cause of action consists of two things-the wrongful act and the consequent damage. The phrase is of importance chiefly with reference to the Limitations Act, 1939 and the jurisdiction of certain courts. Thus time begins to run when the cause of action arises (unless postponed by reason of fraud, mistake, acknowledgement etc)...."*

In Egbe v. Adefarsin (1987) 1 NWLR (part 47) 1 at page 20 paragraphs D - E, Oputa JSC said:

*"Now let us examine the meaning of cause of action. It is admittedly an expression that defies precise definition. But it can safely be defined as the fact or facts, which establish or give rise to a right of action. It is the factual situation which gives a person a right to judicial relief."*

See also Omotayo v. N.R.C. (1992) 7 NWLR (Part 234) page 471 at 483, paragraphs A-B per Ubaezonu JCA. This Court held in Nosiru Bello & Ors. V. Attorney General of Oyo State (1986) 5 NWLR (part 45) 828 thus:

*"A cause of action is a bundle of aggregate of facts which the law recognises as giving the Plaintiff a substantive right to make a claim against the relief or remedy being sought."*

This Court also stated in the case of Afolayan v. Ogunrinde (1990) 1 H NWLR (part 127) 369 at 373 that:

*"The popular meaning of the expression "Cause of Action" is that particular act of the Defendant which gives the Plaintiff his cause of*

complaint.

(a) *There may however, be more than one good and effective cause of action arising out of the same transaction*

(b).....

B (c) *The cause of action accrues upon the happening of the*  
LATTEST OF SUCH FACTS:

(d).....

And in Akilu v. Fawehinmi No.2 (1989) 2 NWLR (Part 102) 122  
C this Court defined a cause of action to mean "every fact which is material to be proved to entitle the Plaintiff to succeed or all those things necessary to give a right to relief in law or equity."

See also SODIPO V. LEMMIN KAINEN OY (1992) 8 NWLR (part 258) and EGBE V. ADEFARASIN (supra) at 20. There is no disputing the fact  
D that following the accident on 5th August, 1981, the Appellant promised to repair the Respondent's vehicle and towed same to their yard and it has remained or ought to have remained there till date. The need for the return of his vehicle arose when the Respondent demanded for it from  
E the Appellant and the appellant refused to return same to him. This demand as can be seen was made on 24/4/92 after the Supreme Court had settled the issue of damages for costs of repairs and loss of use in Onwuka v. Omoigui in the reported case cited above vide (1992) 3 NWLR (pt  
F 230) 393.

Applying the principles in the above cited cases to the facts of the case on hand, I am of the confirmed view that the Respondent had a cause of action, his cause of action being the claim for the return of his vehicle from the Appellant. It is worthy of note to emphasise that the  
G Appellant neither denied being in possession of the Respondent's vehicle nor has it made a case of an impossibility or difficulty in returning it regardless of its opinion of its age etc. The initial act of the Appellant in towing the vehicle to their workshop was with the Respondent's consent  
H albeit premised on what later turned out to be misleading assurances by the Appellant that they would repair it. The question of a wrong being committed at that time on the issue of the Appellant's possession of the Respondent's vehicle was out of the question. Thus, the question of

returning or demanding the return of the vehicle by the Respondent could not have been an issue at that time namely, on 5th August, 1981 when the accident occurred and the appellant took possession of the vehicle for the reasons earlier stated. The ownership of the vehicle was not an issue at any time, neither was the entitlement of the Respondent to its possession until he made a demand for it. That was the position by the 21st August, 1981 when the appellant altered its position and now requested the respondent to remove his vehicle, a request he firmly refused, insisting instead that the issue of the responsibility for repairs be settled first. In other words, the case clearly is not based on any allegation of detainee as to render relevant a case founded on wrongful detention of property.

On the question as to when the cause of action arose Section 4(1) (a) Limitation Law, Laws of Bendel State, 1976 (Cap 89) provides that the time for an action in tort of this nature is to be brought within 6 years. In other words, if an action in tort is not commenced within the said 6 years, it is no longer maintainable. In the case on hand, I am of the view that it was upon the determination of the liability of the Appellant and the payment of the sum adjudged to the Respondent for the repairs of his vehicle, that the Respondent demanded for his vehicle from the Appellant to enable him carry out the repairs. The Appellant refused to return the vehicle to the Respondent and therein arose the cause of the present action. In the case of EBOIGBE V. NIGERIAN NATIONAL PETROLEUM CORPORATION (1994) 5 NWLR (Pt.347) 649 the single issue that arose for the determination of the Supreme Court was whether, considering the entire conduct and representations of the respondent especially as highlighted by the Statement of Claim, the Respondent is not estopped from taking the benefit and/or advantage of any statute of limitation. This Court held at page 659 of the Report, inter alia, as follows:

*"The next question is when does time begin to run for the purpose of a statute of Limitation? Time begins to run from the date on which the cause of action accrues. The cause of action generally accrues on the date on which the incident giving rise to the cause of action occurs. Proceedings must begin, normally by the issue of a writ of summons*

*within a period prescribed by the relevant statute."*

See also Mrs G.A.R. Sosan and Ors. v. Dr. M.B. Ademuyiwa (1986) 3 NWLR (Pt. 27) 241 and Odubeko v. Fowler (1993) 7 NWLR (Pt. 308) 637 at pages 666 - 667, paragraphs F-A of the latter where I held inter

B alia as follows:

*"Between 1946 when the cause of action accrued and the time the appellant took out his Writ of Summons on 16th November, 1977, it was clearly thirty-one years of inaction - call it acquiescence - when appellant did nothing to assert his rights. See Atunrase v. Sunmola (supra). The effect of the law of (Limitation Law, Lagos State) is in my view not only that the appellant could not sue at the time he went to court, but that by failure to abide by the provisions of section 21 of the same Law which provides that:*

D *"21. On the expiration of period fixed by this law for any person to bring an action to recover land, the title of that person to the land shall be extinguished.' See Sosan v. Dr. M.B. Ademuywa SC. 3/1984 of 16/5/86; (1986) 3 NWLR (Pt.27) 241. The appellant was therefore suing*  
E *the respondents in 1977, late in the day, to revive a dead claim. Appellant's action thereby became statute-barred. See Fadfare & Ors. v. Attorney-General of Oyo State (1982) 4 SC/ 1 at page 8."*

Thus, in the case in hand, the wrong which was committed by the Appellant which gave the Respondent a cause of action occurred on 16/10/92  
F when demand was made for the return of the vehicle, the Styr Diesel tanker, from the Appellant and it was filed on 26/3/93 barely 5 months after the last letter of demand. I am of the firm view therefore that the Appellant's argument that time began to run either from 21/8/88 the date  
G on which the Appellant requested the respondent to come and collect the vehicle in question or on 5/8/81 the date on which the accident which led to the issuance of the writ in Suit No. S/58/81 which was decided by this Court in R.I.Omoigui v. Onwuka (supra) occurred. Those dates should  
H be discountenanced as at then the cause of action had not arisen. Indeed, as can be seen, the need for the return of the Respondent's vehicle arose in 1992 not on the day of the accident when in fact the appellant towed the accidented vehicle to its premises. It having been clearly shown that



the Respondent voluntarily left his vehicle in the custody of the appellant pending the determination of the Appellant's liability in negligence in Suit NoS.5/58/81: R.I. Omoigui v. Linus Onwuka, the Respondent's vehicle was never wrongly detained until 16/10/92 when he first demanded for its return.

It is for the above reasons and those fully and articulately contained in the leading judgment of my learned brother Kalgo, JSC with which I entirely agree that I too dismiss this appeal and abide by the consequential orders relating to costs contained therein.

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### UWAIFO JSC

I agree with the judgment of my learned brother Kalgo JSC for the reasons he has given. He has stated the facts of the case and I do not consider it necessary to go over them in any detail.

I shall, however, only state the facts very tersely. The appellant damaged the respondent's vehicle and requested that it be taken into its workshop for repairs which the respondent did. This was in August 1981. The appellant later changed its mind and asked the respondent to take it away and effect repairs himself. The respondent insisted on the appellant fulfilling its obligation as previously arranged. He then fought his case for damages for cost of repairs and loss of use as result of the accident up to this court and won in March 1992: see *Onwuka & anor v. Omoigui (1992) 3 NWLR (Pt. 230) 393*.

Thereafter, the sum awarded was paid by the appellant to the respondent but despite demands by the respondent for his vehicle to be released to him so that he can repair and put it in use, the appellant refused.. The demands were made in writing between April and October, 1992. The respondent then sued apparently in detinue. This was in March 1993. The appellant before trial raised a preliminary objection that the action was statute-barred. The learned trial judge (Nwulu, J) upheld the objection on the basis that the cause of action arose in August, 1981 and dismissed the suit. The Court of Appeal (Benin Division) allowed the appeal against that decision.

The appellant has pursued its objection maintaining that the cause

of action arose in August 1981. The basic error made by the trial judge on a rather elementary issue of law is that he was unable to distinguish between the tort of negligence as a cause of action arising from the accident of August, 1981 and the tort of detainue as a cause of action arising from the refusal of the appellant to surrender the vehicle after due demand. In detainue, the cause of action does not accrue until there has been a demand for the return of the goods in question and a definite refusal to deliver them up. Detainue is a continuing cause of action which accrues at the date of the wrongful refusal to deliver up the goods and this continues until delivery up of the goods or judgment in the action for detainue. The action is in the nature of an action in rem in which the plaintiff may sue (1) for the value of the chattel as assessed and also damages for its detention; or (2) for the return of the chattel or recovery of its value as assessed and also damages for its detention; or (3) for the return of the chattel and damages for its detention: see *Ordia v. Piedmont (Nig.) Ltd. (1995) 2 NWLR (Pt. 379) 516 at 526-527*; *General and Finance Facilities Ltd. v. Cooks Cars (Romford) Ltd (1963) 314 at 318-319*.

It is therefore obvious that the cause of action accrued from sometime in October, 1992. This action was brought in March, 1993 barely 4 months after the cause of action accrued. From what I have shown, this cause of action is definitely different and separate from that based on negligence in the earlier action against the appellant. That of negligence arose from the very day of the accident. The lower court clearly came to the right decision. For these reasons and those stated by my learned brother Kalgo JSC, I find no merit whatsoever in this appeal. I accordingly dismiss it and affirm the decision of the lower court. I will add that the case should receive expeditious hearing as the delay so far is a scandal to the cause of justice. I award costs of N10,000.00 in favour of the respondent.

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