

COURT OF APPEAL LAGOS DIVISION
THURSDAY 27TH OF MAY, 1999. CA/ L/266/97
CORAM: A. O. IGE, P. O. ADEREMI, I. C. NZEAKO, JJCA

JOSEPH A. ALAO APPELLANT
AND
NIGERIAN INDUSTRIAL
DEVELOPMENT BANK RESPONDENT

JUDICIAL PRECEDENTS - Stare decisis - Purport - It is to the effect that lower courts are bound - By decision of Supreme Court (H1)

JUDICIAL PRECEDENTS - Smith v. Selwyn - Application - The rule in that case law is no longer applicable in Nigeria - As it denies aggrieved person - The right to seek redress (H2)

ACTIONS - Statutes - Limitation - Where statute prescribes period for instituting action - Proceedings cannot be initiated after the period (H3)

ACTIONS - Limitation - Computation - The period of limitation begins to run - From the date when cause of action accrued (H4)

ACTIONS - Limitation - Statute bar - Proof - Defendant must prove that right to enforce cause of action has been lost - By not bringing it within time stipulated by law (H5)

FACTS

Before the High Court of Lagos State, plaintiff/appellant instituted this action claiming against defendant/respondent, special and general damages for wrongful termination of appellant's appointment. Upon being served with the writ of summons and statement of claim, respondent filed notice of preliminary objection urging the court to dismiss appellant's action on the ground that same was statute barred and that the rule in Smith v. Selwyn is no longer applicable in Nigeria.

After taking arguments on both sides, the court sustained the preliminary objection and consequently struck out the suit as being

statute barred. It held that the case law rule is no longer applicable. Dissatisfied, appellant filed a notice of appeal at the Court of Appeal, Lagos Division contending that the case law rule is very much applicable in the country.

ISSUES FOR DETERMINATION

1. Whether the trial Judge was right when he struck out this suit on the ground that this action is statute barred since the rule in *Smith v. Selwyn* (1914) 3 K.B. 98 no longer applies in Nigeria.

2. Whether the trial Judge was right in basing his ruling on a serious point of law without giving either parties the opportunity of addressing him on same.

HELD (Unanimously dismissing the appeal per **ADEREMI JCA**)

JUDICIAL PRECEDENTS - Stare decisis - Purport

1. Let me say straightaway that Nigerian Courts preserve and follow, *stricto sensu*, the common law doctrine of stare decisis - which literally translated means that a lower court must for all times hold itself bound by the decisions of a higher court or better put by the decisions of the Highest court of the land until they are seen to have been overruled. The highest court of our land undoubtedly, is the Supreme Court. Such decisions of the Supreme Court can only be annulled by legislation, or a Decree or by rules regulating the practice and procedure as given by the judicial decision of the Supreme Court itself given intra judicially when it is satisfied that its previous decision was reached per incuriam or that it would perpetuate injustice. It follows that it is only the Supreme Court, sitting as a full court that can depart from its previous decisions. (p. 1274 E)

JUDICIAL PRECEDENTS - Smith v. Selwyn - Application

2. The only conclusion I can reach and which I reach is that the English Common Law Rule in *Smith v. Selwyn* is no more applicable in Nigeria. To hold otherwise is to deny an aggrieved person the right to seek a redress in the citadel of justice. The

Limitation Law with all its excruciating weight will be allowed to descend on him prostrate having been tied down by that rule. Even in England where process of seeking justice is not tardy as here, the rule in Smith v. Selwyn has in their collective wisdom been rendered out of operation. To encourage its application in this country giving the prevailing conditions is to allow for the rolling out of a clog in the wheel of administration of justice. (p. 1276 F)

ACTIONS - Statutes - Limitation

3. My understanding of the two issues is that they are posing the question whether in law the action is statute barred. The law is settled that where a statute prescribes a period for instituting an action, proceedings cannot be instituted after the prescribed period. (p. 1277 E)

ACTIONS - Limitation - Computation

4. Again, the law is sacrosanct that the period of limitation will begin to run from the date when the cause of action accrued. (p. 1277 F)

ACTIONS - Limitation - Statute bar - Proof

5. It is equally a well stated principle of law that the onus is on the defendant who contends that an action is statute-barred to plead and prove that the right to enforce that cause of action has been lost for the reason of not bringing it within the time stipulated by the law. (p. 1277 G)

CASES REFERRED TO

Ojikutu v. A.C.B. (1968) 1 All N.L.R. 40

Rossek v. A.C.B. (1991) 8 NWLR (Pt. 112)

Fulani v. Idi (1990) 5 NWLR (Pt.150) 311

A.G. Federation v. Dawodu (1995) 2 NWLR (Pt.380) 7 12

Haco Ltd. v. Udeh (1959) NMLR 61

Yonwuren v. Modern Signs (Nig.) Ltd. (1985) 1 NWLR (Pt.2) 244

Ojokobo v. Alamu (1987) 3 NWLR (Pt.61) 377

Okonkwo & Ors. v. Obunseli & Anor. (1998) 7 NWLR (Pt.558) 502

Olanrewaju v. Arewa (1998) 11 NWLR (Pt.573) 239

Obiefuna v. Okoye (1961) 1 All NLR 357

Egbe v. Adefarasin (1985) 1 NWLR (Pt.3) 549

Sanda v. Kukawa Local Government & Anor. (1991) 2 NWLR (Pt.174) 379

Aina v. Jinadu (1992) 4 NWLR (Pt.233) 91

^B Omotayo v. Nig Railway Corporation (1992) 7 NWLR (Pt.254) 471

STATUTES REFERRED TO

Interpretation Act 1964, s. 8

^C Constitution of Federal Republic of Nigeria, s. 33(5)

Criminal Code, s. 5

Torts Law 1987 of Anambra State, s. 5(1)

REPRESENTATION

^D Chief V. A. Odunaiya, for the Appellant

Respondent not represented

LEAD JUDGMENT BY ADEREMI JCA

^E In the court below the plaintiff (hereinafter referred to as the appellant) per his writ of summons, claimed against the defendant (hereinafter referred to as the respondent) as follows:-

“1. The plaintiff’s claim is for the sum of N500,000.00 being special and general damages for the wrongful termination of the plaintiff’s appointment as an accountant with the defendant bank.

^F *Particulars of Special Damages*

(a) Salary from April 1985 to December, 1994 -N195,000.00

(b) Housing allowance from April, 1985 to 31st December - 16,380.00

^G *(c) Transport allowance for same period 7,800.00*
= N219,180.00

(d) Senior Staff Provident Fund (including interest from 1979 to 1994. -N107,102.15
= N326,282.15

^H *2. General Damages -N173,717.85*
= N500,000.00

3. The plaintiff claims interest on the said sum of N219,180.99 at the rate of 21% per annum with effect from the date of the writ until judgment, and thereafter at the rate of 6% per annum until the judg-

ment debt and costs are fully paid."

Both the writ of summons and the statement of claim were filed together. Sequel to the service of the two on the respondent, the latter consequently filed a Notice of Preliminary Objection supported by an affidavit whereby it invited the court below to dismiss the plaintiff's suit on the ground that the cause of action was statute-barred. Of course, the appellant filed a counter-affidavit in opposition to the preliminary objection. After taking arguments on both sides, the court below, in a reserved ruling, sustained the preliminary objection and consequently struck out the suit as being statute barred.

In the concluding part of the ruling the presiding trial Judge of the court below said and I quote:-

"To my mind I do not see why a pending criminal matter should stop an aggrieved man from instituting a civil action. It is trite that the criminal matter is the business of the State, while the civil matter is the business of the aggrieved man. The rule in Smith v. Selwyn (supra) is no longer applicable to our civil procedure in any part of Nigeria, it is safe to describe the rule as antiquated and out of time with what is to be expected in modern times. See Salami v. Odogun (1991) 2 NWLR (Pt.17) 291. The plaintiff has failed to file this action within the time provided by Section 8 of the Limitation Law of Lagos State Cap. 70 of 1973. He is thus left with an empty cause of action which he cannot enforce as the statute of Limitation referred to above removes the right of action and the right to judicial relief. In sum, the preliminary objection succeeds. Suit No. LD/1276/95 is struck out accordingly for being statute barred."

Dissatisfied with the ruling of the court below, the appellant filed a notice of appeal which contains two original grounds of appeal. He in his appeal is inviting this court to set aside the ruling of the court below and a dismissal of the defendant's preliminary objection raised at the court below. In the appellant's brief of argument two issues are formulated for determination and they are:-

1. Whether the trial Judge was right when he struck out this suit on the ground that this action is statute barred since the rule in Smith v. Selwyn (1914) 3 K.B. 98 no longer applies in Nigeria.

2. Whether the trial Judge was right in basing his ruling on a serious point of law without giving either parties the opportunity of addressing him on same.

Similarly, two issues are thrown up for determination in the respondent's brief and they are in the following terms:-

1. Whether the trial Judge was right when he struck out the suit on the ground that the action is statute barred.

2. Whether the trial Judge was correct in his ruling that by virtue of the provisions of Section 5 of the Criminal Code and Section 8 of the Interpretation Act 1964, the Rule in *Smith v. Selwyn* is no longer applicable in Nigeria without giving either party the opportunity of addressing him on same.

On 21st April, 1999 when the appeal came before us for hearing only Chief V. A. Odunaiya, learned counsel for the appellant announced his appearance for the appellant. He referred to and adopted the brief of argument of the appellant filed on 26th September, 1997 and urged that laying emphasis on Section 33(5) of the 1979 Constitution.

The two issues formulated by the appellant on the side of the respondents on the other side are identical in all material respects. Issue 1 in the appellant's brief is materially the same thing as Issue 2 in the respondent's brief. They both dwell on the applicability of the rule in *Smith and Selwyn* in Nigeria. The learned trial Judge of the court below, in concluding his ruling after taking arguments from counsel on both sides said:-

"The learned counsel for the Plaintiff/Respondent submitted that he was awaiting the conclusion of the criminal action before filing this action and in any case the cause of action arose in October of 1993 on the conclusion of the criminal action with the discharge of the plaintiff. He relied on Smith v. Selwyn (supra). The rule in Smith v. Selwyn is that an action for damage based upon an offence the defendant committed against the plaintiff is not maintainable so long as the defendant has not been prosecuted on a reasonable excuse shown for his having not been prosecuted and the proper cause is not the court to stay proceedings in the civil proceeding pending the prosecution of the defendant. This was once the law in Nigeria but by virtue of the provisions of Section 5 of the Criminal Code Act 1958, and Section 8 of the Interpretation Act, 1964 the rule in Smith v. Selwyn is no longer applicable in Nigeria."

Proffering argument in the brief learned counsel for the appellant contended that the rule in *Smith v Selwyn* is still very much

applicable in Nigeria and that the provisions of Section 5 of the Criminal Code and Section 8 of the Interpretation Act do not render the rule inapplicable. He went further to argue that while the provisions of the aforesaid Criminal Code and Interpretation Act favour the availability of both criminal and civil remedies the rule in *Smith v. Selwyn* commands that the two remedies cannot be pursued simultaneously. B The pursuit of Civil remedy in such circumstances should await the criminal prosecution in the interest of public policy and justice, he further maintained; placing reliance on the Supreme Court decision in *Ojikutu v. A.C.B.* (1968) 1 All N.L.R. 40; *Rossek v. A.C.B.* (1991) 8 NWLR (Pt. 112) 182 and *Fulani v. Idi* (1990) 5 NWLR (Pt.150) 311 C in which the court of Appeal followed the decision in the *Ojikutu* case. However, he further argued, the Court of Appeal was wrong when it failed to follow the said decision of the Supreme Court in its (Court of Appeal) judgment in *A.G. Federation v. Dawodu* (1995) 2 D NWLR (Pt.380) 7 12. This according to him is a gross violation of the doctrine of *stare decisis*.

The intendment of the Rule in *Smith v. Selwyn* is primarily to avoid the compounding and the concealment of a felony hence it dictates a hold on further proceedings in an action for damages E founded on a felonious act alleged to have been committed by the defendant against the plaintiff until the defendant has been prosecuted or a reasonable excuse offered for his non-prosecution. The appellant and the respondents are *ad idem* in their respective briefs F that where a criminal act which consequently injures public feeling is also a civil injury to a person, that person shall not be permitted to seek a redress for the civil injury until the injured public feeling is first assuaged. The rule founded on public policy and aptly stated by Swinfen Eady L. J. in his judgment in *Smith & Anor. v. Selwyn* (1914) 1 G K.B. 98 (Court of Appeal, England) was long ago enshrined in the jurisprudence of England until it was abolished thereby the promulgation of Criminal Justice Act, 1967 Section 1 thereof. The application of the rule has since stopped in England. However, the rule has been followed in a number of cases in Nigerian Courts. See (1) *Ojikutu v. A.C.B.* (1968) 1 All NLR 40; (2) *Haco Ltd. v. Udeh* (1959) NMLR 61 and (3) *Fulani v. Idi* (1990) 5 NWLR (Pt.150) 311. H

The appellant in his brief of argument contended that the rule is still in force in Nigeria as no decree or act has been promulgated

repealing it nor has the Supreme Court, the highest court of the land, overruled its earlier decisions where in which it applied the rule.

On the other hand, the respondents, through its brief of argument contended that the rule has constituted a clog in the wheel of proper administration of justice and this is an anachronism. It defeats the end of justice. It further contended that the combined effect of Section 5 of the Criminal Code Act 1958 (now Cap 77 of the Laws of the Federation, 1990) and Section 8 of the Interpretation Act is that a pending criminal matter must never be allowed to stand in the way of an aggrieved person from seeking a redress in the court of law. Section 5 of the Criminal Code provides:-

"When by the code any act is declared to be lawful, no action can be brought in respect thereof. Except as aforesaid, the provisions of this Act shall not affect any right of action which any person would have had against another if this Act had not been passed."

Section 8 of the Interpretation Act 1964 provides:

"An enactment shall not be construed as preventing the recovery of damages in respect of injury attributable to any act by reason only of the fact that the enactment provides forfeiture or punishment in respect of the act."

Let me say straightaway that Nigerian Courts preserve and follow, *stricto sensu*, the common law doctrine of *stare decisis* - which literally translated means that a lower court must for all times hold itself bound by the decisions of a higher court or better put by the decisions of the Highest court of the land until they are seen to have been overruled. The highest court of our land undoubtedly, is the Supreme Court. Such decisions of the Supreme Court can only be annulled by legislation, or a Decree or by rules regulating the practice and procedure as given by the judicial decision of the Supreme Court itself given *intra judicially* when it is satisfied that its previous decision was reached *per incuriam* or that it would perpetuate injustice. See *Bucknor-Maclean v. Inlaks Ltd.* (1980) 8-11 S.C. 1. **It follows that it is only the Supreme Court, sitting as a full court that can depart from its previous decisions.** See *Yonwuren v. Modern Signs (Nig.) Ltd.* (1985) 1 NWLR (Pt.2) 244; (1985) 2 S.C. 86 and *Ojokobo v. Alamu* (1987) 3 NWLR (Pt.61) 377.

I shall now examine the cases in which Nigerian Courts have considered the applicability of the rule in *Smith v. Selwyn*. In *Ojikutu v. A.C.B.* (supra) which touches on banking transaction and the Supreme Court considered the circumstances for the application of the rule in *Smith and Selwyn*. In that case the defendant had averred in his statement of defence paragraph 5 thereof thus:-

"The defendant avers that there is a written agreement for a loan of ₦13,000.00 between the plaintiff and defendant and that the said agreement was altered and forged without the knowledge and consent of the defendant."

Based on this averment the counsel for the defendant had, argued before the Supreme Court that the application was sufficient to bring the rule into force. That argument had been overruled by the trial Judge. The Supreme Court said at page 45:

"Mr. Ojikutu submitted to us that the principle in Smith v. Selwyn...was that the plaintiff must be deprived from benefiting from his felonious act and so could not be permitted to sue if the defendant alleged that he based his claim on a felonious act. We do not see that Smith v. Selwyn decided anything of the sort. It was dealing with exactly the opposite situation where a plaintiff was bringing an action against a defendant for damages based on a felonious act of the defendant...No authority was cited to us to show the converse applied and we consider the learned trial Judge was right to reject the submission that Smith v. Selwyn could be extended in the way that was suggested."

It will be seen from the above quotation that the Supreme Court never held that the rule in *Smith v. Selwyn* was applicable to the case before it. In the recent case of *Okonkwo & Ors. v. Obunseli & Anor.* (1998) 7 NWLR (Pt.558) 502 in which the dispute was as to whether the respondents (plaintiffs in the court below) were right in instituting a civil action against the appellants (defendants in the court below), while the criminal prosecution of the appellants was still going on or pending at the Chief Magistrates Court or they should have waited for the completion of the said prosecution before instituting this action, this court (Enugu Division) per the leading judgment of Akpabio JCA said at page 511:-

"In my respectful view, I think that the emphasis in both the Torts Law and the Law of Actions Law including even the rule in

Smith v. Selwyn (supra) itself was on the commencement of prosecution rather than on its conclusion. This is borne out of the fact that even in Section 5 (1) of the Torts Laws 1987 under the last two subparagraphs (b) and (c) set out above, it is not even necessary that any prosecution should have been commenced. Under sub-para. (b) it is sufficient that a mere report is made to the police who fail to prosecute or sub-para. (c) reasonable excuse is offered for failure to prosecute the felony.”

In the same case Tobi JCA added at page 512 and I quote:-

In the light of the state of the statutory laws at the Federal level which make the English Common Law rule in *Smith v. Selwyn* (1914) 3 K.B. 98 no more applicable in Federal matters it is a matter of some serious concern why Section 9 (1) of the Law of Actions Laws (1981) and Section 5(1) of the Torts Law 1987 of Anambra State should still operate. That apart, the entire policy behind *Smith v. Selwyn* will work injustice particularly in Nigeria where it, at times, takes so much time to apprehend an accused person. And what is more, proof of a criminal matter is quite different from proof of a civil matter and there is really no justifiable reason why the two should be so related in terms of prosecution.

Section 8 of the Interpretation Act 1964 now embodied in the Laws of the Federation 1990 Cap. 192 Section 8(2) thereof which I quoted above is a Federal Legislation: it is unambiguous, the wordings are very clear and straight forward and giving same the ordinary and simple grammatical meaning and connotation which the law enjoins. See *Olanrewaju v. Arewa* (1998) 11 NWLR (Pt.573) 239.

The only conclusion I can reach and which I reach is that the English Common Law Rule in Smith v. Selwyn is no more applicable in Nigeria. To hold otherwise is to deny an aggrieved person the right to seek a redress in the citadel of justice. The Limitation Law with all its excruciating weight will be allowed to descend on him prostrate having been tied down by that rule. Even in England where process of seeking justice is not tardy as here, the rule in Smith v. Selwyn has in their collective wisdom been rendered out of operation. To encourage its application in this country giving the prevailing conditions is to allow for the rolling out of a clog in the wheel of administration of justice.

The result of all I have been discussing is that issue 2 raised by the respondent shall be and is hereby answered in the affirmative. The Judge of the lower court was right when he ruled that the principle in *Smith v. Selwyn* is no longer applicable in Nigeria. I need to add that a cursory look at the record of proceedings leaves me in no doubt that counsel on both sides were accorded ample opportunity to canvass their arguments for and against the preliminary objection raised before it. So the question whether either party was accorded the opportunity of addressing the lower court, as contained in each of issue 2 formulated by the appellant and the respondent in their respective briefs, does not arise. It follows that issue 2 in the brief of argument of the appellant is non sequitur.

Issue 1 in the appellant's brief is identical with issue 1 in the respondent's brief in same material respect. The only addendum to issue (1) formulated by the appellant is the subtle query of the ruling under the thin disguise of the applicability of the rule in *Smith v. Selwyn* in Nigeria. Suffice it to say that issue 1 in the appellant's brief was not elegantly couched. I have already held that the rule is no longer applicable.

My understanding of the two issues is that they are posing the question whether in law the action is statute barred. The law is settled that where a statute prescribes a period for instituting an action, proceedings cannot be instituted after the prescribed period. See Obiefima v. Okoye (1961) 1 All NLR 357. Again, the law is sacrosanct that the period of limitation will begin to run from the date when the cause of action accrued. See Egbe v. Adefarasin (1985) 1 NWLR (Pt.3) 549 and Sanda v. Kukawa Local Government & Anor. (1991) 2 NWLR (Pt.174) 379. It is equally a well stated principle of law that the onus is on the defendant who contends that an action is statute-barred to plead and prove that the right to enforce that cause of action has been lost for the reason of not bringing it within the time stipulated by the law. See Savannah Bank Nigeria Ltd. v. Pan Atlantic Shipping & Transport Agencies Ltd. & Anor, (1987) 1 NWLR (Pt.49) 212, The law also demands that the court must be involved in the exercise of determining whether an action is statute-barred or not. See Aina v. Jinadu (1992) 4 NWLR (Pt.233) 91. However, it is wrong, in law, for a court to compute time from a date pleaded in the

statement of defence not admitted by the plaintiff; as was said in *Omotayo v. Nigerian Railway Corporation* (1992) 7 NWLR (Pt.254) 471, a period of limitation clause in a statute is not read in isolation. In paragraph 9 of the statement of claim the plaintiff/appellant avers:-

B *"While the case was pending and before the plaintiff has had time to prove his innocence the defendant vide its letter Ref. No. MRD/SF/C/204 dated 16th June, 1988 wrongfully and/or maliciously terminated the plaintiff's appointment thereby putting an abrupt end to the service of the plaintiff."*

C In paragraph 3 of the affidavit in support of the defendant/respondent's application before the court below praying for the dismissal of the plaintiff/appellant's suit on the ground that the cause of action was statute-barred the defendant/respondent deposed:

D *"That the cause of action in this matter arose on the 16th June, 1988 and the plaintiff brought the action on 20th March, 1995 more than 7 years after which his appointment with his contract of service."*

E The two sides, from their averment and deposition respectively are ad idem that the cause of action arose on 16th June, 1988. Section 8(1) (a) of the Limitation Law Cap. 70 Laws of the Lagos State of Nigeria 1913 applicable to the instant case dictates that no action shall be brought after the expiration of 6 years from the date in which the cause of action accrued. The writ of summons was taken out on 20th March, 1995 and the statement of claim was filed on the same date. It admits of argument that the writ was taken out after effluxion of time allowed by the law. Since the primary function of a Judge is to sit and determine the issues raised by the parties, find out the truth and do justice according to law, I am of the clear mind that the court below was right in striking out the suit on the ground that it is statute barred. The answer, therefore to issue (1) on the appellant's brief and issue (1) on the respondent's brief is in the affirmative.

H In the final analysis, this appeal which I adjudge to be unmeritorious, fails. It is accordingly dismissed. I award N3,000.00 cost in favour of the respondent.

IGE JCA

I have had a preview of the judgment just delivered by my

learned brother Aderemi, J.C.A. I agree with his reasoning and conclusion which I adopt as mine.

I too dismiss the appeal with N3,000.00 costs to the Respondent.

B

NZEA KO JCA

In my view one other question that also arose in this appeal is whether there were such criminal proceedings which, if *Smith v. Selwyn* was still applicable to Nigeria, would have debarred the Plaintiff-Appellant from bringing this action. C

The criminal proceedings relevant to this matter were those brought by the State against the Plaintiff, they charge him and others of an offence relating to misappropriation of funds from the Respondent Bank in Charge LCD/26/87. I have no doubt that even if the principles in that case still apply, it is not applicable in the circumstance of this case. The principles in *Smith v. Selwyn* is simply this: D

“An action for damages based upon a felonious act on the part of the defendant committed against the plaintiff is not maintainable so long as the defendant has not been prosecuted or a reasonable excuse shown for his not having been prosecuted, and the proper course for the court to adopt in such a case is to stay further proceedings in the action until the defendants has been prosecuted” Per Kennedy L. J. E

Swinfen Eady L. J. further expounded the principles, showing that they apply “where injuries are afflicted on an individual in circumstances constituting a felony, that that felony cannot be made the foundation of a civil action at the suit of the person injured against the person who injured him until the latter has been prosecuted or reasonable excuse proffered for his non-prosecution.” F

Clearly, from the foregoing, the application of the Rule is limited if ever it applies:-

1. Its application is available only to stay further proceedings in the civil matter brought against the person who did the criminal act until the determination of the Criminal case. H

2. The rule applies where the plaintiff is the injured party who in a civil case is claiming against a defendant who caused the injury amounting to felony.

3. The claim must be one based on the act which amounts to a felony.

4. It is not the rule that a plaintiff who is charged with causing injury which is felonious to a defendant, cannot commence a civil claim against the defendant

B In the case in hand, it is to be observed that the claim of the plaintiff does not arise from any felonious act committed by the defendant Bank. The Bank is not being prosecuted or liable to be prosecuted.

C Also the claim of the plaintiff herein does not have its foundation on felony or any crime committed by the defendant/Bank. I have gone to this length to show that even if the principles in *Smith v. Selwyn* apply, that it cannot by any stretch of imagination/apply to the plaintiff-Appellant's case herein. I intensely share the view that
D any rule that clogs the wheels of justice must be jettisoned, so it is with the Rule in *Smith v. Selwyn*.

Smith v. Selwyn reported in (1924) 3 K.B, 98 is, in my view no longer good law in Nigeria, for the reasons so lucidly set out by my learned brother Aderemi, JCA. In my humble view Rhodes-Vivour J.
E was right in dismissing the action of the plaintiff/appellants being statute-barred. On the face of the Writ of summons and the Statement of Claim, the claim is for the wrongful termination of the plaintiffs appointment, which occurred on 16th June, 1988. The cause of action arose on this date. The period of limitation in action is determin-
F able by looking at the writ of summons and statement of claim which allege the wrong and when it occurred. See *The G.O.C. v. Adio* (1995) 2 N.W.L.R. (Pt.379) 570. The cause of action in a claim for breach of contract arises on the date of breach. So it is in this case where the
G Appellant claimed wrongful dismissal on 16/6/88.

The above modest contribution is made for emphasis. Otherwise, I am in agreement with the judgment delivered by my learned brother Aderemi, JCA, and orders herein. Appeal dismissed.

H