

**SUPREME COURT OF NIGERIA**

2ND JULY 2004 SC. 10/2000

**CORAM:- U. MOHAMMED, A. I. IGUH, U. A. KALGO, A. O.  
EJIWUNMI, D. O. EDOZIE, JJSC**

UNION BANK OF NIGERIA PLC ..... APPELLANT  
AND  
ROMANUS C. UMEODUAGU ..... RESPONDENT

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ACTIONS - Cause of action - Definition of - It is a combination of facts - That give rise to right to file a claim in court (H1)

ACTIONS - Cause of action - Determining whether it exists - Is by restricted reference to the statement of claim - And writ of summons (H2)

ACTIONS - Banking - Cause of action - Failure to remit respondent's funds overseas - Gives him right of action (H3)

ACTIONS - Banking - Cause of action - When it arose in this case - Was when respondent discovered where his money - Meant to be remitted abroad - Was wrongfully kept (H4)

ACTIONS - Limitations of - Banking - Recovery of debt - Has 6 years limitation period - So that the present action - Is not statute barred (H5)

**FACTS**

The plaintiff/respondent purchased 7 bills totalling US \$ 121,038 from the defendant/appellant bank in 1982, on the agreement that the appellant should immediately transfer same to his overseas suppliers. Pursuant to appellant's failure, respondent paid his said suppliers in 1983 through another arrangement. He demanded refund of his money from appellant who told him to exercise patience to enable it trace the whereabouts of the money. In 1995, it was discovered that the appellant was keeping the fund in its account with Central Bank of Nigeria. Respondent demanded for the refund

of his money in US Dollars or its equivalent in Naira at that time. The appellant failed to do so and the respondent filed this action on the 19th of June, 1996.

Upon the receipt of the respondent's Statement of Claim, the appellant in its Statement of Defence raised a preliminary objection maintaining that respondent's action having occurred in 1982 is statute barred. The trial court overruled the objection holding that the *actio* is not statute barred. Appellant's appeal to the Court of Appeal was dismissed by a majority decision. Being dissatisfied, appellant has further appealed to the Supreme Court.

**ISSUE FOR DETERMINATION**

1. *“Whether the Court of Appeal was right when it agreed with the trial court that the respondent’s cause of action arose and accrued in 1995 and consequently the action was not statute-barred”.*

**HELD** (Unanimously dismissing the appeal per **KALGO JSC**)

***Cause of action - Definition of***

1. Cause of action has been defined in the Dictionary of English Law, Second Impression page 325 as “*the fact or combination of facts which give rise to a right to sue*”. This definition was closely followed in many decisions of this court particularly in *Egbe v. Adefarasin* (No. 2) (1987) 1 NWLR (Pt. 47) 1. In the recent decision of this court in *P. N. Udoh Trading Company Limited v. Abere* (2001) 5 S.C. (Pt. II) 64; (2001) 11 NWLR (Pt. 723) 114 at 129 it was held that:-

*“Cause of action had been defined by courts to mean a combination of facts and circumstances giving rise to the right to file a claim in court for a remedy. It includes all things which are necessary to give a right of action and every material fact which has to be proved to entitle the plaintiff to succeed”.* (p. 1846 B)

***Cause of action - Determining whether it exists***

2. Having defined the “*cause of action*” the next point is what is to be looked at or examined in order to determine whether there is “*cause of action*” in any particular case.

In the case of 7-Up Bottling Company Ltd. & Ors v. Abiola and Sons Bottling Co. Ltd. (2001) 6 S.C. 73; (2001) 13 NWLR (Pt. 730) 469 at page 495 this court held that:

*“The law is sufficiently settled that in determining whether the plaintiff’s (respondent’s) action discloses any cause of action or the nature thereof, the court will necessarily restrict itself to the plaintiff’s/respondent’s statement of claim without recourse to the defendant’s/appellant’s statement of defence vide Shell B. P. Ltd. & Ors v. Onasanya (1976) NSCC 334 at 336; (1976) 6 SC 89.”*

Also in Labode v. Otubu (2001) 3 S.C. 15; (2001) 7 NWLR (Pt. 712) 256, at page 276, this court held that in determining whether or not pleadings disclose any reasonable cause of action, the trial court will only examine the Writ of Summons and the Statement of Claim. It will not examine the Statement of Defence or any defence by way of affidavit. (p. 1846 F)

#### ***Failure to remit respondent's funds overseas***

3. From these hard facts or averments, there is no doubt in my mind, that the combination of them, clearly revealed that the failure by the appellants to pay back the amount involved to the respondent, after refusal to comply with his original request to remit the amount to his customers overseas, gives him the right to complain culminating in the cause of action. I find accordingly. (p. 1849 E)

#### ***Cause of action - When it arose in this case***

4. This leads me to the next question of when did the cause of action arise in this case. The cause of action normally arises as soon as the combination of facts giving the right to complain accrued or happened. In this case, as soon as the respondent discovered that his money which the appellant agreed to remit overseas to his customers was not remitted as agreed, his cause of action had arisen. In this case, the respondent’s cause of action arose in 1995 when he made the discovery in the Central Bank of Nigeria. I do not agree with the submission of the learned counsel for the appellants in his brief that the cause of action arose in 1983 when the respondent paid his

overseas customers because, as at that time, it was not clear what happened to the money and the appellants could not be blamed for anything at that stage. The appellant might have sent or remitted the amount and then for some reason, the money got stuck or stranded in transit in some other  
B correspondent bank. So there is no ground for complaint then unless it is definite that the amount had not been sent or remitted. This was the result of the discovery in 1995 by the respondent. (p. 1849 F)

**C ACTIONS - Limitations of - Banking**

5. I am therefore of the firm view that the cause of action in this case arose in 1995, and the period of limitation against the respondent started to run as from 1995.

D It is abundantly clear that the respondent took out the writ of summons in this case on the 19th of June, 1996. Therefore taking the whole of 1995 and up till June 1996 when the action was filed, there was a period of only one and a half years. According to Section 20 of the Action Law, (Cap.3) Laws of Anambra State 1986, the right of action in this type of case  
E shall cease to exist 6 years after the cause of action arose. Therefore, by filing this case just within one and a half years after the cause of action arose, the respondent was within time and his action is not statute-barred. I am in complete agreement with the trial court and the Court of Appeal that  
F on the state of the respondent's Statement of Claim, he has a cause of action and his action is not statute-barred. (p. 1850 B)

**CASES REFERRED TO**

- G Igbe v. Adefarasin (No. 8) (1987) 1 NWLR (Pt. 47) 1  
Savannah Bank of Nigeria Limited v. Pan Atlantic Shipping & Transport Agencies Limited (1987) 1 NWLR (Pt. 49) 21 2  
National Bank of Nigeria v. Mafa (1972) 1 S.C. 105  
Patkun Industries Limited v. Niger Shoes Limited (1988) 12 S.C. (Pt II) 1;  
H (1988) 5 NWLR (Pt. 93) 138  
P. N. Udoh Trading Company Limited v. Abere (2001) 5 S.C. (Pt.II) 64;  
(2001) 11 NWLR (Pt. 723) 114 at 129  
7-Up Bottling Company Ltd. & Ors v. Abiola and Sons Bottling Co. Ltd.

(2001) 6 S.C. 73; (2001) 13 NWLR (Pt. 730) 469 pg 495

Shell B. P. Ltd. v. Onasanya (1976) NSCC 334 at 336; (1976) 6 SC 89

Aladegbemi v. Fasanmade (1988) 3 NWLR (Pt. 81) 129

Labode v. Otubu (2001) 3 S.C. 15; (2001) 7 NWLR (Pt. 712) 256 pg 276

B

**STATUTE REFERRED TO**

Actions Law (Cap. 3) Laws of Anambra State 1986 s. 20

**LEAD JUDGMENT BY KALGO JSC**

The dispute in this appeal is on a very narrow compass. It is simply for the determination of when the cause of action has arisen in the case having regard to the circumstances. The case did not go to trial and no evidence was called at all. Everything was based on the pleadings of the parties.

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D

According to paragraph 13 of the Statement of Claim, the plaintiff now respondent, claimed against the appellant for:-

*“(a) Payment to the plaintiff of the said sum of \$121,038 (One Hundred and Twenty-one Thousand and Thirty-eight Dollars) which the plaintiff purchased from the defendant but which the defendant failed and/or neglected to remit to the plaintiff’s overseas customers, or its naira equivalent at the official parallel market rate of N82.50 (Eighty -two Naira Fifty Kobo) per Dollar amounting to N9,985,635 (Nine Million, Nine Hundred and Eighty-five Thousand Six Hundred and Thirty-five Naira).*

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*(b) Interest on the said sum claimed at 21% per annum from 1995 till payment of the sum claimed or date of judgment in this suit, whichever is earlier”.*

In the Amended Statement of Defence filed by the appellant, paragraph 16 reads:-

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*“Defendant will contend the following preliminary points: -*

*(a) The plaintiff statement of claim discloses ..... no cause of action against the defendant;*

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*(b) That the plaintiff’s cause of action having accrued in 1982, is statute barred;*

*(c) That the plaintiff lacks competence to institute the action for*

*recovery of the deposits”.*

By this averment, the appellant has raised a preliminary objection that no cause of action is disclosed in the statement of claim and that the action of the respondent is statute-barred. The learned trial Judge, quite properly in  
B my view, decided to hear the parties on the preliminary objection before proceeding to trial. I say this is proper in the circumstances because if he decides to sustain the preliminary objection, that is the end of the matter as far as he is concerned. The learned trial Judge, Amaizu, J., (as he then was),  
C after hearing the parties on the objection overruled it and ruled that the plaintiff respondent had a cause of action and that “*in the state of the plaintiff’s pleading the action is not statute-barred*”.

D Dissatisfied with the ruling, the appellant appealed to the Court of Appeal which by a majority decision dismissed the appeal. He now appealed here.

The facts of this case as gleaned from the pleadings, as no evidence was called, is that the respondent purchased seven bills totalling US \$121,038 from the appellant bank in 1982 on the agreement that the appellant should  
E immediately transfer the said sum to the respondent’s suppliers overseas being payment for goods purchased from them by the respondent. The appellant failed or neglected to remit or transfer the sum as agreed. As a result, the respondent had to arrange to pay the said sum to the overseas  
F suppliers in 1983 when they came to Nigeria and demanded the payment from him. The respondent then demanded from the appellant to know the whereabouts or what happened to the bills he purchased from them in 1982, but was only requested to exercise patience. He waited patiently until 1995  
G when his patience was exhausted and he joined in the appellants in the search for the said sum. In the course of his investigations, he discovered that the appellants were keeping the sum in their account in the Central Bank of Nigeria. As a result, the respondent demanded from the appellants the refund of his money in US dollars or its equivalent in Naira at that time. The  
H appellants failed to do so and the respondent filed this action on the 19th of June 1996.

In the briefs of argument filed by the parties and exchanged between them, in this appeal, issues for the determination of this court were formu-

lated. The 3 (three) issues raised by the appellants read:-

*“(1) Whether having regard to respondent’s pleadings, the majority of the Justices of the court below were right to uphold the opinion of the learned trial Judge that respondent’s cause of action did not arise in 1982 or 1983 or latest 1987, but rather in 1995 following his demand for refund of the sum after his alleged “discovery”.*

*(2) Whether the court below was right to’ confirm the trial court’s decision that appellant’s failure to perform its part of contract immediately in 1982, or respondent’s payment to his suppliers in 1983 or the event in 1987 does not vest him with right of action for recovery the sum until the event of 1995.*

*(3) Whether the appellant was not prejudiced by failure of the court below to consider all its case, particularly that discovery of the fact per se is not justiciable and therefore could not be basis for respondent’s action and that demand for the sum was not an ingredient of the contract.”*

The respondent raised only one issue thus:-

*“Whether the Court of Appeal was right when it agreed with the trial court that the respondent’s cause of action arose and accrued in 1995 and consequently the action was not statute-barred”.*

I have carefully looked at the parties’ issues raised in this appeal, and it appears to me that they are all pointing or leading to the same thing, and although the appellant’s issues are germane to the grounds of appeal, their issue 1 which is identical with the respondent’s sole issue, summed it up altogether. Therefore in my consideration of this appeal, I shall take the appellant’s issues together.

At the hearing of this appeal in this court, neither the appellants’ nor the respondent’s counsel was in court, but as both of them have filed their respective briefs, those briefs were deemed to be argued in this case by virtue of the provisions of Order 6, Rule 8 (6) of the Supreme Court Rules 1985 as amended.

I have already indicated that I shall consider the appellants’ 3 issues together I now do. Issue 1 appears to me to be the most important in the determination of this appeal and that issues 2, and 3 can conveniently be

argued in it. Issue 1 asked the question whether the majority decision of the Court of Appeal was right to uphold the opinion of the learned trial Judge that the respondent's cause of action in this case arose in 1995 and that the action was not statute-barred. The two points which arise for decision in this issue are (a) what in any particular case is the cause of action and (b) when does it arise or terminate.

**Cause of action** has been defined in the Dictionary of English Law, Second Impression page 325 as "*the fact or combination of facts which give rise to a right to sue*". This definition was closely followed in many decisions of this court particularly in *Egbe v. Adefarasin (No. 2) (1987) 1 NWLR (Pt. 47) 1* Savannah Bank of Nigeria Limited v. Pan Atlantic Shipping & Transport Agencies Limited (1987) 1 NWLR (Pt. 49) 21 2 National Bank of Nigeria v. Maja (1972) 1 S.C. 105. *Patkun Industries Limited v. Niger Shoes Limited (1988) 12 S.C. (Pt II) 1; (1988) 5 NWLR (Pt. 93) 138*. In the recent decision of this court in *P. N. Udoh Trading Company Limited v. Abere (2001) 5 S.C. (Pt.II) 64; (2001) 11 NWLR (Pt. 723) 114 at 129* it was held that:-

"Cause of action had been defined by courts to mean a combination of facts and circumstances giving rise to the right to file a claim in court for a remedy. It includes all things which are necessary to give a right of action and every material fact which has to be proved to entitle the plaintiff to succeed"

See also *Bello v. A. G. Oyo State (1986) 5 NWLR (Pt. 45) 828*.

**Having defined the "cause of action"** the next point is what is to be looked at or examined in order to determine whether there is "cause of action" in any particular case.

In the case of *7-Up Bottling Company Ltd. & Ors v. Abiola and Sons Bottling Co. Ltd. (2001) 6 S.C. 73; (2001) 13 NWLR (Pt. 730) 469* at page 495 this court held that:

"The law is sufficiently settled that in determining whether the plaintiff's (respondent's) action discloses any cause of action or the nature thereof, the court will necessarily restrict itself to the plaintiff's/respondent's statement of claim without recourse to the defendant's/appellant's statement of defence vide *Shell B. P. Ltd. & Ors v. Onasanya*



(1976) NSCC 334 at 336; (1976) 6 SC 89. See also *Aladegbemi v. Fasanmade* (1988) 3 NWLR (Pt. 81) 129".

(Underlining mine)

Also in *Labode v. Otubu* (2001) 3 S.C. 15; (2001) 7 NWLR (Pt. 712) 256, at page 276, this court held that in determining whether or not pleadings disclose any reasonable cause of action, the trial court will only examine the Writ of Summons and the Statement of Claim. It will not examine the Statement of Defence or any defence by way of affidavit. See also *Fumudoh v. Aboro* (1991) 9 NWLR (Pt. 214) 210; *Civil Service Technical Workers Union v. Agricultural and Allied Workers Union of Nigeria* (1993) 2 NWLR (Pt. 273) 63.’

Having stated the relevant law on the matter, I now wish to examine the material available before the trial court in determining whether the respondent had any cause of action in this case. The relevant material here is the Statement of Claim of the respondent which in paragraphs 3 - 6, 8, 9, 10, 11, and 12 read as follows:-

“3. In 1982, the plaintiff purchased from the defendant at its Onitsha New Market Road Branch a total sum of \$121, 038 (One Hundred and Twenty-one Thousand and Thirty-eight United States of America Dollars) covering seven bills for transfer to a correspondent bank for payment to the plaintiff’s customers overseas for goods purchased by the plaintiff. The particulars of the bills purchased by the plaintiff and their respective values in dollars are as follows:-

- (a) IBC 82/2433 for USD 17,291.00
- (b) IBC 82/2434 for USD 17,299.00
- (c) IBC 82/2431 for USD 17,286.00
- (d) IBC 82/2432 for USD 17,286.00
- (e) IBC 82/2439 for USD 17,299.00
- (f) IBC 82/2436 for USD 17,286.00
- (g) IBC 82/2438 for USD 17,291.00

4. After payment of diverse charges, the defendant contracted and agreed to remit the sum so purchased to the plaintiff’s customers whose particulars were known to the defendant through the correspondent bank, the particulars of which were also known to the defendant.

(5) *For reasons not known to the plaintiff, the defendant failed and/or neglected to remit the sum so purchased, and did not inform the plaintiff of the whereabouts of the United States Dollars so purchased by the plaintiff. Whenever the plaintiff made inquiries, the plaintiff was advised to exercise patience and that attempts were on course to locate the whereabouts of the dollars purchased by him.*

6. *Exasperated by the long waiting and without knowing precisely when to be paid for goods supplied and cleared by the plaintiff, the plaintiff's overseas customers flew into Nigeria in 1983 to demand payment by the plaintiff to enable them finance the business of their relation in Nigeria.*

8. *In order to maintain good and smooth business relationship with his overseas customers, the plaintiff quickly settled his account with his customers by paying for full value of the goods supplied to him by his said customers.*

9. *In 1995, the plaintiff became convinced that the defendant was not serious in its alleged efforts to trace the whereabouts of the sum of USD121,038 purchased by the plaintiff from the defendant to be remitted by the defendant to the plaintiff's overseas customers.*

10. *When in 1995 the plaintiff intensified his investigations of the whereabouts of the sum purchased which investigation took him to the Central Bank of Nigeria, the plaintiff discovered to his dismay that the defendant is indeed having and keeping the plaintiff's money and making use of the same in the course of its business, a fact which the defendant concealed from the plaintiff.*

11. *Consequently upon this discovery, the plaintiff has made repeated and several demands on the defendant to pay to him the sum so purchased, or credit his account with the naira equivalent at the prevailing parallel market exchange rate of N82.50 per dollar.*

12. *Instead of honouring the plaintiff's demand, the defendant resorted to imposing conditions before releasing the money to the plaintiff."*

From the above paragraphs the following facts are revealed:-

1. The respondent purchased from the appellant in 1982 a total of 7 bills to the tune of 121,038 U.S Dollars for remittance to his customers

overseas.

2. The appellant contracted and agreed to remit the said amount immediately to the respondent's customers whose particulars were known to the appellant.

3. The appellant failed or neglected to remit the said sum and refused to inform the respondent of what happened to the money. B

4. The respondent's customers overseas having waited for some-time without receiving the money, flew to Nigeria in 1983, to collect the same, and the respondent had to quickly pay them the amount to maintain his good relationship with them. C

5. The respondent continued to make enquiries from the appellant about the money but was each time told to be patient.

6. In 1995, the respondent in course of his investigation about the money, discovered that the money was kept by the appellant in an account in the Central Bank of Nigeria and was making use of same in course of their business. D

7. The respondent demanded from the appellant the payment to him of the said money but the appellants refused or neglected to do so. E

**From these hard facts or averments, there is no doubt in my mind, that the combination of them, clearly revealed that the failure by the appellants to pay back the amount involved to the respondent, after refusal to comply with his original request to remit the amount to his customers overseas, gives him the right to complain culminating in the cause of action. I find accordingly. This leads me to the next question of when did the cause of action arise in this case. The cause of action normally arises as soon as the combination of facts giving the right to complain accrued or happened. In this case, as soon as the respondent discovered that his money which the appellant agreed to remit overseas to his customers was not remitted as agreed his cause of action had arisen. In this case, the respondent's cause of action arose in 1995 when he made the discovery in the Central Bank of Nigeria. I do not agree with the submission of the learned counsel for the appellants in his brief that the cause of action arose in** F  
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1983 when the respondent paid his overseas customers because, as at that time, it was not clear what happened to the money and the appellants could not be blamed for anything at that stage. The appellant might have sent or remitted the amount and then for some reason, the money got stuck or stranded in transit in some other correspondent bank. So there is no ground for complaint then unless it is definite that the amount had not been sent or remitted. This was the result of the discovery in 1995 by the respondent. I am therefore of the firm view that the cause of action in this case arose in 1995, and the period of limitation against the respondent started to run as from 1995.

It is abundantly clear that the respondent took out the writ of summons in this case on the 19th of June, 1996. Therefore taking the whole of 1995 and up till June 1996 when the action was filed, there was a period of only one and a half years. According to Section 20 of the Action Law, (Cap.3) Laws of Anambra State 1986, the right of action in this type of case shall cease to exist 6 years after the cause of action arose. Therefore, by filing this case just within one and a half years after the cause of action arose, the respondent was within time and his action is not statute-barred. I am in complete agreement with the trial court and the Court of Appeal that on the state of the respondent's Statement of Claim, he has a cause of action and his action is not statute-barred.

From all what I said above, I find that there is no merit in this appeal and no special reasons to justify any interference with the concurrent findings of the lower courts. I accordingly dismiss this appeal and affirm the decision of the Court of Appeal. I award N10,000.00 costs to the respondent against the appellants.

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H **MOHAMMED JSC**

I entirely agree with the judgment just delivered by my learned brother, Kalgo, JSC., that this appeal has failed. In a case like this one, where the defence of limitation of action has been put up, the duty of the court is to

look into the facts of the case as given in both the writ and the Statement of Claim in order to ascertain when, from the state of facts, the party's right to seek a judicial remedy has arisen.

From the combination of facts given by the respondent it is abundantly clear that he came to know about the whereabouts of the missing money when he conducted a search which took him to the Central Bank. It was then that he discovered that the money had been kept in the Central Bank in the appellant's name. The discovery has established a prima facie default by the appellant. It was only then that the cause of action has arisen and the respondent could institute a claim for the recovery of the amount.

For the more detailed reasons given in the lead judgment, I too dismiss this appeal and affirm the majority decision of the Court of Appeal. I abide by the consequential order made by my learned brother in the lead judgment.

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#### IGUHJSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Kalgo, JSC., and I entirely agree that this appeal is without merit and should be dismissed.

What calls for determination in this appeal is whether the court below was right when it agreed with the trial court that the respondent's cause of action accrued in 1995 and that consequently the suit was not statute-barred.

It is now well settled that in considering whether an action to enforce a legal right is statute-barred, the court should confine itself to the averments in the Writ of Summons and the Statement of Claim which allege the factual situations that gives rise to the cause of action. See *Egbe v. Adefarasin* (1987) 1 N.S.C.C. (Vol. 18) 1 at 16 or (1987) 1 NWLR (Pt. 47) 1 and *Omotayo v. Nigerian Railway Corporation* (1992) 7 NWLR (Pt. 254) 471. A recourse to the averments in the Statement of Defence in this exercise does not arise.

Now, paragraphs 9,10,11,12 and 13 of the respondent's Statement of Claim aver as follows –

9. *"In 1995, the plaintiff became convinced that the defendant was not serious in its alleged efforts to trace, the whereabouts of the sum of USD121,038 purchased by the plaintiff from the defendant to be remitted by the defendant to the plaintiff's overseas customers.*

B 10. *When in 1995 the plaintiff intensified his investigations of the whereabouts of the sum purchased which investigations took him to the Central Bank of Nigeria, the plaintiff discovered to his dismay that the defendant is indeed having and keeping the plaintiff's money and making use of the same in the course of its business, a fact which the defendant*  
C *concealed from the plaintiff.*

11. *Consequent upon this discovery, the plaintiff has made repeated and several demands on the defendant to pay to him the sum so purchased, or credit his account with the Naira equivalent at the prevailing parallel*  
D *market exchange rate of N82.50 per Dollar.*

12. *Instead of honouring the plaintiff's demand, the defendant resorted to imposing conditions before releasing the money to the plaintiff.*

13. *WHEREOF the plaintiff claims from the defendant as follows:-*

E (a) *Payment to the plaintiff of the said sum of \$121,038 (One Hundred and Twenty-one Thousand and Thirty-eight Dollars) which the plaintiff purchased from the defendant but which the defendant failed and/or neglected to remit to the plaintiff's overseas customers, or its Naira equivalent at the official parallel market rate of N82.50 (Eighty-two Naira Fifty*  
F *Kobo) per Dollar amounting to N9,985,635 (Nine Million, Nine Hundred and Eighty-five Thousand, Six Hundred and Thirty-five Naira).*

(b) *Interest on the said sum claimed at 21% per annum from 1995 till payment of the sum claimed or date of judgment in this suit, whichever*  
G *is earlier".*

The Court of Appeal in resolving whether the respondent's action is statute-barred commented thus -

H *"In Anambra State where this cause of action arose and where the action was commenced the period of limitation as prescribed by Section 20(1) (a) of the Actions Law of Anambra State 1981 as contained in the Laws of Anambra State of Nigeria 1986 is six years. This point would seem to be accepted by both sides to the contest."*

It went on-

*“In paragraphs 9 and 10 of the Statement of Claim the respondent pleaded that in 1995, following his investigation of the whereabouts of the money purchased by him, he discovered in the Central Bank, to his chagrin, that the appellant was in fact keeping and making use of his money in the course of its business. This fact was concealed by the appellant to the respondent. In paragraphs 11 and 12 of the Statement of Claim the respondent pleaded that consequent upon this discovery, the respondent demanded the refund of his money or to credit his account with the said money. This demand, the appellant failed to meet, but rather imposed certain conditions before it could release his money to him. The respondent sued in June 1996.”*

The court then opined -

*“I have had a good look at the Statement of Claim. I shall reserve my comments on certain aspects of it as I do not intend to prejudice the trial. We are only at the preliminary stage as to whether the respondent can maintain the action having regard to the limitation of action under the Actions Law of Anambra State 1986. My view is that he can.”*

The facts of this case as pleaded in the Statement of Claim may be summarized as follows-

1. The respondent purchased from the appellant in 1982 a total, of 121,038 United States Dollars for remittance to his customers overseas.

2. The respondent made endless enquiries about the remittance but was consistently advised to exercise patience and that attempts were on course to locate where the money was.

3. In 1995, the respondent appeared satisfied that the appellant was hiding something from him.

4. In the same 1995, the respondent went to the Central Bank of Nigeria and discovered from his investigations and to his dismay that the appellant was keeping his money and making use of the same in the course of its business. This fact the appellant concealed from the respondent.

5. Consequent upon this discovery, the respondent make repeated demands on the appellant for payment to him of the sum so purchased, which demands the appellant failed to comply with.

6. In 1996, the respondent was obliged to file his action against the

appellant.

A cause of action, without doubt, is the fact or facts which establish or give rise to a right of action. It is the factual situation which gives a person the right to judicial relief. See if Egbe v. Adefarasin (supra) and  
 B Savage v. Uwechie (1972) 3 S.C. 213. A close study of the facts of this case as above set out clearly discloses that the cause of action arose from the discovery in 1995 by the respondent that his money which the appellant claimed it had been tracing for several months without success was in the  
 C possession of the said appellant; and despite repeated demands, the said appellant refused and/or neglected to pay the same over to the said respondent. In other words, the respondent was obliged to file his action against the appellant in 1996 on discovery in 1995 that his money was with the  
 D appellant and after he had duly made demands on the appellant for its payment to him without success.

The court below dealt exhaustively with this issue of when the respondent's cause of action arose when per Ubaezonu, JCA., it stated -

*"In paragraph 5, the respondent pleaded that the appellant did not  
 E remit the money and did not inform the respondent of the whereabouts of the money so purchased. Whenever the respondent made enquiries he was advised by the appellant to exercise patience as attempts were being made to locate the whereabouts of the money. In paragraphs 6 and 8, the respondent  
 F pleaded that exasperated by the long waiting, he had to pay his overseas customers in 1983 in order, apparently, to save his business reputation. Meanwhile, the search for the whereabouts of the money purchased by the respondent continued. One may ask -why did the respondent not sue the  
 G appellant at this stage? I would ask - sue for what? At that stage it was not clear to the respondent what had happened to the money. The respondent was searching or investigating the whereabouts of the money. The appellant, apparently, was also engaged in the investigation while asking the respondent to exercise patience. There was not a breach of any contract at that  
 H stage as the money might have been remitted to a foreign bank, and something happened in transit."*

I entirely agree with the above observation of the Court of Appeal and fully endorse the same. It is clear to me that up till 1995 when the



respondent was persistently asked to exercise patience by the appellant and that all attempts were being made to locate his money, there was no legal basis for the respondent to proceed against the appellant by way of a court action. There was, however, cause for the respondent to go to court after 1995 when he discovered that the appellant was wrongfully keeping his money and doing business with it and that the said appellant refused to pay it over to the said respondent. The period of limitation as prescribed by Section 20(1) (a) of the Actions Law of Anambra State, 1986 is six years and the respondent's action against the appellant was filed in 1996. It is clear to me that the Court of Appeal was perfectly right when it held that the respondent's action was not statute-barred.

It is for the above and the more detailed reasons contained in the leading judgment of the learned brother, Kalgo, JSC., that I, too, find no substance in this appeal which I hereby dismiss with costs to the respondent against the appellant which I assess and fix at N10,000.00.

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**EJIWUNMI JSC**

As I have had the opportunity of reading before now the judgment just delivered by my learned brother, Kalgo JSC., dismissing this appeal, the appeal is also dismissed by me for the reasons given in the said judgment.

The events that led to this appeal began in 1983 when the respondent deposited his money, a total sum of N9,985,635 for the purchase of \$121,038 (One Hundred and Twenty-one Thousand and Thirty-eight Dollars) and for the onward transmission of the said foreign currency to the customers of the respondent through an overseas bank. It turned, out that the appellant failed and or neglected to transmit the said sum as agreed. The matter remained that way until the respondent on his own found out in 1995 that the money had been down with the Central Bank of Nigeria where the appellant had placed it to effect, its transmission in dollars to the customers of the appellant.

There can be no doubt that the cause of action arose when though the appellant had failed to transmit the money as agreed between it and the

respondent as scheduled, then went on to fail to do anything to ameliorate the position by taking immediate steps to deal with the matter after the respondent had managed to discover his money by taking urgent and immediate steps to effect the transfer, even at its own cost. That the respondent's cause of action arose at that point in 1995 is settled law. See  
B *Egbe v. Adefarasin (No.2) (1987) 1 NWLR (Pt 47) 1*; *Savannah Bank of Nigeria Ltd. v. Pan Atlantic Shipping & Transport Agencies Ltd. (1987) 1 NWLR (Pt. 49) 212*; *P. N. Udoh Trading Company Ltd. v. Abere (2001) 5 S.C. (Pt.II) 64*; *(2001) 11 NWLR (Pt. 723) 114 at 129*.

C This appeal for all the reasons given above and the fuller reasons in the lead judgment of Kalgo, JSC., lacks merit. It is therefore dismissed by me and I award costs in the sum of N10,000.00 only.

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### **EDOZIE JSC**

I had the privilege of reading in advance the draft of the leading judgment just read by my learned brother, Kalgo, JSC., and I am in agree-  
E ment with his reasoning and conclusion in dismissing the appeal. It is a matter for regret that a reputable bank such as the appellant bank should in the circumstances of this case seek to take refuge under the limitation law. In my view, once it became clear that the appellant bank had defaulted in remitting its customer's money to the latter's overseas partners as agreed,  
F the appellant bank was obliged, as a matter of course, to refund the money to its customer the respondent. Had the appellant been properly advised, the protracted litigation culminating in this appeal would have been averted.

For the reasons lucidly set out in the leading judgment, I also dismiss  
G the appeal with N10,000.00 costs to the respondent.

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