

**SUPREME COURT OF NIGERIA**

3RD JUNE, 2005 SC. 194/2000

**CORAM:- S. M. A. BELGORE, S. U. ONU, U. A. KALGO,  
A. O. EJIWUNMI, D. O. EDOZIE, JJSC**

1. FRANCIS OKAFOR
  2. SAMUEL IFEDIORA
  3. PATRICK OKEKE
  4. GODIOJUKWU
  5. VICTOR NWANYA ..... APPELLANTS
  6. CHARLES OSURUGBE
  7. EMMANUEL OKONKWO
  8. NATHANIEL AGBANUSI
  9. CHIEF KENETH OKONKWO
  10. CHIEF H. A. ANADU
  11. OBUCHUKWU OJUKWU
- AND
1. ATTORNEY-GENERAL OF ANAMBRA STATE
  2. DIRECTOR-GENERAL, BUREAU OF LANDS, SURVEY AND TOWN PLANNING OFFICE OF THE MILITARY ADMINISTRATOR, AWKA ..... RESPONDENTS

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PRACTICE & PROCEDURE - Demurrer - Quick dispensation of matters  
- Can be better achieved after issues are joined - Without following archaic demurer procedure (H1)

ACTIONS - Limitation - Land Law - Acquisition by State Government -  
Time began to run - When Government violated terms of the acquisition  
- So that this action is not statute barred (H2)

**FACTS**

Before the High Court of Anambra State sitting at Nnewi, the

plaintiffs/appellants sued the defendant/respondent for the land in dispute which they claimed was acquired by their ancestors 450 years ago. By a publication in 1979, the Anambra State Government published a notice whereby it expressed its intention to acquire the disputed land for overriding public interest. The plaintiffs' communities protested and had a series of meetings with the Anambra State Government.

In 1989, the new Anambra State Government repealed the previous notice of acquisition and published a new one. The notice was not served on the plaintiffs. A panel was set up by the new Government to look into Government Land allocation and policies and make recommendations, and the land in dispute is included. Government accepted all the recommendations by their white paper but the plaintiffs were not paid their compensation. The plaintiffs therefore made several claims against the defendants. But the defendants filed separate motions and prayed the court to strike out the action on the ground that it was statute barred. The trial court held that the plaintiffs' action was statute barred as it was not brought within a period of 6 years. The plaintiffs' appeal to the Court of Appeal was dismissed. They have further appealed to the Supreme Court.

**HELD** (Unanimously allowing the appeal per **BELGORE JSC**)

***Demurrer - Quick dispensation of matters***

1. The procedure by way of demurrer is not only archaic and time wasting, it is a product of English rules of eighteenth century whereby formulary system reigned. The English have done away with it but it appears some parts of this country still adhere to it. The Uniform High Court Rules and recent High Court Rules of Lagos State wisely did away with demurrer. It is in the interest of efficient and timeous dispensation of matters in court to allow parties to join issues and the defendant, without directly pleading law but facts can raise issues that will dispose of the matter without hearing evidence on matters like limitation of action, immorality, public policy, laches etc., in the Statement of Defence.

What is strange in this case is that the Government of Anambra State and the defendants/respondents not only filed a demurrer but attempted to raise some defences. It has not vitiated the demurrer which

was here based clearly on Limitation Law of Anambra State. The so-called defences attached to the demurrer are inconsequential as to demolish its purpose. (p.1802E)

### ***ACTIONS - Limitation - Land Law***

2. The question is: Was the action statute-barred by virtue of Limitation Law? The plaintiffs all along, believing on White Paper on Iloegbune Report, believed Government would abide by its words and honour as a government. By giving a portion of the contentious land to Ibeto Industries Limited, the plaintiffs' rights got vitiated in their view and they went to court. The time started running for purpose of Limitation Law of Anambra State when the land whose acquisition Government itself in its White Paper admitted was yet to be perfected, was given to a third party by way of right of occupancy. *Nemo dat quod non habet*, the plaintiffs seem to contend. But I do not intend to go further than this in this appeal, suffice however to say that time to sue had not elapsed as found by trial court and erroneously upheld by Court of Appeal. Limitation period has not set in.

For the foregoing reasons, I allow this appeal and hold that the action of the plaintiffs subsists. I order that the suit be remitted to High Court, Nnewi Judicial Division, before another judge other than the one that heard it before. (p. 1803A)

### **NOTABLE POINTS OF INTEREST**

#### **BELGORE JSC**

##### ***1. Demurrer - Its implication in law***

The respondents never filed Statement of Defence but only came by way of demurrer. The Statement of Claim remains untraversed once a demurrer is filed. The demurrer, an archaic procedure though still extant in our practice in some parts of the country, is the nature of saying that even if all in the Statement of Claim as averred are true the action cannot be sustained either due to illegality (e.g. sharing of assets criminally acquired) or public policy (e.g. gaming and lottery banned in some States and frowned upon in others) or by failing to give Notice of Intention to sue (when such notice is statutorily required) or when the right to sue had

lapsed due to effluxion of time e.g. Limitation Act or Law. There are other instances where demurrer can be filed against Statement of Claim. By its nature, demurrer if successful can lead to the action being stopped in its tracks whatever the merits of claim. It is what I will call “peremptory B defence” to save the defendant the trouble of filing a Statement of Defence. But it is not in all cases successful demurrer is a complete guillotine to the action. If the demurrer fails the defendant can still come to defend the action by filing Statement of Defence or praying for extension of time to C do so if the time has passed. In some cases, where the claim is clear and certain and the defendant has no defence, the dismissal of demurrer is virtual end of the suit. (p. 1801E)

2. *No place for demurrer where parties have joined issues*  
D By its nature, demurrer is only filed against Statement of Claim and admits no filing of Statement of Defence, otherwise the demurrer proceedings will be rendered meaningless. In essence, the motion on demurrer should be brought before issue was joined on matters alleged in the Statement of E Claim. However, if the parties have joined issues, and pleadings have been exchanged by parties there is no more place for demurrer and the case must proceed to trial. (p. 1802A)

F **EDOZIEJSC**

3. *Statute bar finding - Is based on misapprehension of cause of action*  
It is evident from the ruling of the learned trial Judge based on the submissions of the defendants’ counsel, that the learned trial Judge took the view that the plaintiffs’ cause of action accrued on 7th September, G 1989, and reckoning from that date to 28/4/97 when their suit was filed was a period of about 8 years outside the period limited by law for bringing the action.

H It seems to me that both the defendants and the learned trial Judge appeared to have misapprehended the plaintiffs’ cause of action. The plaintiffs’ grouse was that their land was acquired ostensibly for a public purpose but in actual fact the defendants were using it for a private purpose by allocating parcels thereof to individuals. It is, therefore, the defendants’

continued user of the land other than for public purpose that grounds the plaintiffs' cause of action. I, therefore, hold the view that the plaintiffs' cause of action was not barred as erroneously held by the two lower courts. (p. 1805E)

B

**REPRESENTATION**

Chief A. O. Mogboh, SAN., (with him, C. H. C. Nwanya Esq.), for the Appellants.

N. J. Obika Esq. (Mrs.), Solicitor-General, Anambra State, for the 1st and 2nd Respondents. C

C. O. Anah Esq., (with him, B. S. Nwankwo Esq.), for the 3rd Respondent.

**CASES REFERRED TO**

D

Williams v. Williams (1995) 2 SCNJ 22

Federal Capital Development Authority v. Naibi (1990) 2 NWLR 270, 281

Ege Shipping v. Tigris International (1999) 12 SCNJ, 14

Gold Coast and Ashanti Electrical Power Development Corporation v. Attorney-General (1937) 3 WACA 215

(Glover & Anor. v. Officer Administering Government of Nigeria & Ors. (1949) 19 NLR 45)

Enwezor v. Onyelekwe (1964) 1 All NLR 14.

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Odivo v. Obor & Anor. (1974) 2 S.C. (Reprint) 18; (1974) 1 All NLR (Pt.1) 436

Aina v. The Trustees of NRC Pensions Fund (1970) 1 All NLR 281).

**LEAD JUDGMENT BY BELGORE JSC**

G

The appellants were plaintiffs in the High Court of Anambra State sitting at Nnewi Judicial Division. The land in dispute called by plaintiffs as Okpukpite was acquired by their ancestors by conquest about four hundred and fifty years ago. The eleven plaintiffs represent various descendants of the original conqueror and divided or apportioned the land among themselves. They had been in possession all the time burying their dead there, farming there and having various homesteads there undis-

turbed all these centuries. Individual members of each family had portions allocated to them and they have developed most of them and are still developing them; it is a continuing process as the families grow larger. These families' rights had been exercised unhindered up to promulgation

B of Land Use Decree (now Act) of 1978.

By a publication around 1979, the then Anambra State Government published a Notice whereby it expressed its intention to acquire the disputed land for "overriding public interest" and in particular, for fibre processing. The plaintiffs' communities protested and had a series of meetings with the former Anambra Government at Enugu. Nothing again was heard about this matter not until 1989 when the new Anambra Government on 2nd day of December, 1989, repealed the previous Notice of Acquisition published a new one for an unspecified public interest. This Notice was not served on any of the plaintiffs. The communities as represented by the eleven plaintiffs continued their protests by physical presence at Awka, the seat of 1st defendant government and by petitions. The government of former Anambra State at Enugu promised to look into their protests and would make all efforts to accommodate their protest insofar as farms and homesteads and several developments had taken place and were ongoing on the fast track of land.

To find a solution, the new Anambra State Government set up a Panel of Inquiry under Professor Iloegbune to look into Government land allocations and policies and make recommendations. The land in dispute formed part of that inquiry. The panel made far-reaching recommendations and findings. The Government accepted the recommendations. The most significant findings and recommendations are:

G 1. That the acquisition of the plaintiffs land in dispute had not been legally perfected by the Government insofar as compensations had not been paid to anyone where land was being expropriated.

H 2. That the Government should review the layout plan accommodate all existing development as earlier promised the communities.

3. That the Government should require all owners of the existing developments to regularize their titles by applying for formal allocation and grant of Certificate of Occupancy.

4. That the Government should allocate 20% of the plots from the redesigned layout to original land owners (plaintiffs) in accordance with the new policy of Anambra State Government on expropriated lands.

All these the Government accepted by their White Paper. The plaintiffs were not paid their compensation and the defects in the acquisition leading to their “*not perfecting the acquisition*” as the White Paper seems to have accepted in Iloegbune Report had not been looked into much less perfected. To the plaintiffs, therefore, the Government had not fulfilled its obligations under the White Paper and had not fully acquired their land. This is a situation still to be denied by the Government.

All the foregoing were facts clearly in the Statement of Claim. Also undenied is that fact that a complete stranger to the land Ibeto Industries Limited applied to the Government for a Right of Occupancy and was immediately granted one evidenced by a Certificate of Occupancy registered at Land Registry, Awka to build a gas processing plant. Whereas in reaction to the White Paper, several of the plaintiffs applied for the same right of occupancy but had no response much less being granted.

The respondents never filed Statement of Defence but only came by way of demurrer. The Statement of Claim remains untraversed once a demurrer is filed. The demurrer, an archaic procedure though still extant in our practice in some parts of the country, is the nature of saying that even if all in the Statement of Claim as averred are true the action cannot be sustained either due to illegality (e.g. sharing of assets criminally acquired) or public policy (e.g. gaming and lottery banned in some States and frowned upon in others) or by failing to give Notice of Intention to sue (when such notice is statutorily required) or when the right to sue had lapsed due to effluxion of time e.g. Limitation Act or Law. There are other instances where demurrer can be filed against Statement of Claim. By its nature, demurrer if successful can lead to the action being stopped in its tracks whatever the merits of claim. It is what I will call “peremptory defence” to save the defendant the trouble of filing a Statement of Defence. But it is not in all cases successful demurrer is a complete guillotine to the action. If the demurrer fails the defendant can still come to defend the action by filing Statement of Defence or praying for extension of time to

do so if the time has passed. In some cases, where the claim is clear and certain and the defendant has no defence, the dismissal of demurrer is virtual end of the suit.

**By its nature**, demurrer is only filed against Statement of Claim and admits no filing of Statement of Defence, otherwise the demurrer proceedings will be rendered meaningless Williams v. Williams (1995) 2 SCNJ 22; Federal Capital Development Authority v. Naibi (1990) 2 NWLR 270, 281; Ege Shipping v. Tigris International (1999) 12 SCNJ, 14). In essence, the motion on demurrer should be brought before issue was joined on matters alleged in the Statement of Claim (Glover & Anor. v. Officer Administering Government of Nigeria & Ors. (1949) 19 NLR 45); Enwezor v. Onyelekwé (1964) 1 All NLR 14. However, if the parties have joined issues, and pleadings have been exchanged by parties there is no more place for demurrer (Gold Coast and Ashanti Electrical Power Development Corporation v. Attorney-General (1937) 3 WACA 215.) and the case must proceed to trial (Odivé v. Obor & Anor. (1974) 2 S.C. (Reprint) 18; (1974) 1 All NLR (Pt.1) 436 and Aina v. The Trustees of E NRC Pensions Fund (1970) 1 All NLR 281).

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For the foregoing reasons, I allow this appeal and hold that the action of the plaintiffs subsists. I order that the suit be remitted to High Court, Nnewi Judicial Division, before another judge other than the one that heard it before. The defendants are at liberty to apply for extension of time to file their Statement of Defence if trial court in its discretion would find it expedient to grant application to do so out of time.

I award N5000.00 as costs in the trial court against 1st and 3rd respondents, N5000.00 as costs against 1st and 3rd respondents in the Court of Appeal and N10,000.00 as costs against 1st and 3rd respondents in this court all in favour of the appellants.

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### ONUJSC

Having had the privilege of reading before now in draft the judgment of my learned brother, Belgore, JSC., just delivered, I am in entire agreement with his reasoning and conclusions that this appeal is meritorious and it therefore succeeds. I adopt the same as mine and have nothing further to add thereto.

### KALGO JSC

I have had the privilege of reading in advance the judgment just delivered by my learned brother, Belgore, JSC., in this appeal. I entirely agree with the reasoning and conclusions reached in the said judgment and find merit in the appeal. I accordingly and for the reasons given in the leading judgment which I adopt as mine, allow the appeal and abide by all the consequential orders made therein including the order as to costs.

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### EJIWUNMI JSC

I had the advantage of reading before now the judgment just delivered by my learned brother, Belgore, JSC. In the said judgment, the question raised in the appeal as to whether the plaintiffs' action was not statute barred was properly resolved in favour of the plaintiffs. I therefore adopt the said judgment as my own and also allow the appeal. I abide also with the consequential orders made in the leading judgment.

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### EDOZIE JSC

The appellants and respondents were respectively plaintiffs and defendants before the Nnewi High Court in Suit No. HN/61/17. As radical owners of the land in dispute, the reliefs sought by the plaintiffs jointly and severally against the defendants as adumbrated in their Statement of Claim may be paraphrased thus:-

"(a) Declaration of statutory right of occupancy to the land in dispute called Okpukpuite land which was compulsorily acquired by the Anambra State " Government for a well defined public purpose but which purpose has been abandoned by the allocation of parcels of the land in dispute to private entrepreneurs.

(b) An order setting aside the Anambra State Government revocation of plaintiffs' right of occupancy over the land in dispute.

(c) An order setting aside certificates of occupancy granted to the 3rd defendant and other private commercial interests.

*(d) Perpetual injunction restraining the defendants, their servants, agents from disturbing the plaintiffs' peaceful and quiet enjoyment over the land in dispute."*

In reaction to the plaintiffs' claims, the 1st and 2nd defendants on one hand and the 3rd defendant on the other, by their respective counsel, filed separate motions praying the court to strike out the plaintiffs' suit on the ground that it is statute barred in that right over the land was revoked by the Anambra State Government on the 7th of September, 1989, whilst the plaintiffs' suit was filed on 28/4/97, a period of more than 8 years after the land was acquired.

After the parties had addressed the court on the motions, the learned trial Judge delivered a reserved ruling in which he held that the plaintiffs' action which was founded on contract or tort was statute barred as it was not brought within a period of 6 years as provided by Section 20(1)(a) and (d) of the Actions Law, Cap. 3, Laws of Anambra State, 1986. He further held that in respect to the 1st and 2nd respondents who are public officers, that the action was not maintainable against them unless it is commenced before the expiration of one year from the date on which the cause of action accrued, pursuant to Section 37(1) of the Actions Law *supra*. Consequently, the trial court dismissed the plaintiffs' suit. Their appeal to the Court of Appeal was equally dismissed, hence, the present appeal.

It is evident from the ruling of the learned trial Judge based on the submissions of the defendants' counsel, that the learned trial Judge took the view that the plaintiffs' cause of action accrued on 7th September, 1989, and reckoning from that date to 28/4/97 when their suit was filed was a period of about 8 years outside the period limited by law for bringing the action.

It seems to me that both the defendants and the learned trial Judge appeared to have misapprehended the plaintiffs' cause of action. The plaintiffs' grouse was that their land was acquired ostensibly for a public purpose but in actual fact the defendants were using it for a private purpose by allocating parcels thereof to individuals. It is, therefore, the defendants' continued user of the land other than for public purpose that grounds the plaintiffs' cause of action. I, therefore, hold the view that the plaintiffs'

cause of action was not barred as erroneously held by the two lower courts.

In agreement with the leading judgment of my learned brother, Belgore, JSC., I also allow the appeal and abide by the consequential orders  
B contained in the leading judgment. .

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