

**SUPREME COURT OF NIGERIA**  
28TH APRIL, 2006. SC. 129/2002  
**CORAM:- S. M. A. BELGORE, U. A. KALGO, N. TOBI**  
**G. A. OGUNTADE, M. MOHAMMED, JJSC**

NZE BERNARD CHIGBU ..... PLAINTIFF/APPELLANT  
AND  
1. TONIMAS NIGERIA LIMITED ..... DEFENDANTS/  
2. CHIEF ANTHONY ENUKEME ..... RESPONDENTS

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STATUTES - Interpretation - Limitation law - Retrospective construction of statutes - Presumption against - Does not affect laws on practice and procedure of the courts (H1)

ACTIONS - Limitation law - Nature of - Right of lien can be exercised where an action is limited - Statutes of limitation are procedural - And can be retrospective (H2)

ACTIONS - Limitation of - Statutes - Retrospective provisions of - Apply in this case to bar some of the claims - As rightly held by the lower court (H3)

ACTIONS - Limitation of - Detinue claim - In respect of property being wrongfully detained - May not be deemed limited - Until Statement of Claim is filed (H4)

**FACTS**

Before the Mbano/Etiti High Court of Imo State the plaintiff/appellant filed an action against the defendants/respondents. Appellant claimed inter alia, that his purported dismissal as a dealer on the respondents' products is unlawful, N20 million damages for the wrongful dismissal and an order for the return of appellant's property wrongfully detained by the respondents. The respondents filed an application praying that the appellant's suit be dismissed or struck out on the ground that

it was statute barred. It was contended that the trial court had no jurisdiction to entertain the suit.

The trial court after hearing arguments on the application held that it had jurisdiction to hear the matter. Respondents' appeal to the Court of Appeal was upheld. Being dissatisfied, appellant has now appealed to the Supreme Court.

**ISSUE FOR DETERMINATION**

1. Whether the Imo State Limitation Edict of 1994 or the English Limitation Act of 1623 applied to the suit.

**HELD** (Unanimously allowing the appeal in part per **OGUNTADE JSC**)  
***Retrospective construction of statutes***

1. In the consideration of the one issue for determination in this appeal, I bear in mind that I am dealing with the interpretation of the provisions of a Law. In the interpretation of a statute the court must construe its provisions literally and the words used given their ordinary meaning. See *Onashile v. Idowu* [1961] All N.L.R. 313 at 316; *Adejumo v. Governor* [1972] 3 S.C. 45 at 54.

Now section 18 of the Imo State Limitation Edict, 1944 provides:

*“No action founded on contract, tort or any other action not specifically provided for in parts (ii) and (iii) of this Edict shall be brought after the expiration of five years from the date on which the cause of action accrued.”*

I observed earlier that it was undisputed that the cause of action accrued on 17-7-91 and that plaintiffs suit was brought on 23/12/96. In *Ojokolobo v. Alamu* [1987] 3 NWLR (Pt.61) 377 at 394, this Court per *Nnamani JSC.* observed:

*“It is settled law that the presumption against retrospective construction has no application to enactments which only affect procedure and practice of the courts. As Mellish J. said in Republic of Costa Rica v. Ertanger [1974] 3 Ch. D 62, no person has a vested right in any course of procedure.”* (p. 1434 E)

***Right of lien can be exercised where an action is limited***

2. Plaintiffs counsel has however argued that a Limitation Law is not to be treated as a part of procedural law but rather as one of substantive law. On this submission he relied on *Raleigh Industries Ltd. V. Nwaiwu* [1994] 9 NWLR (Pt.341) 760 at 771 and *Atolagbe v. Awuni* [1997] 9 NWLR (Pt.522) 66. Defendants' counsel for his part relied on *THE YDUN* (1899) P.236 for his submission that a statute dealing with Limitation of actions is an act dealing with procedure only and applies retrospectively.

The cases which plaintiffs counsel relied upon for his submission that statutes of Limitation are a part of substantive Law do not unequivocally support that proposition. In *Atolagbe v. Awuni* (supra), *Ogundare JSC* in his dissenting judgment discussed limitation laws with a view to show that such laws are necessary in that it enables litigations to be brought to an end.

And in *Raleigh Industries Ltd. V. Nwaiwu* (supra) , a decision of the Court of Appeal, Kaduna Division, *Opene JCA* said at page 771,

*“No doubt Mr. Daudu has put a very powerful and forceful argument but I must say that I entirely disagree with him that the question of limitations of actions is a matter of law as contained in relevant statutes.”*

A short statement as the above is certainly inconclusive to support the proposition that statutes of limitation are aspects of the substantive law.

It seems to me that, such statutes only take away the right of action from a party without destroying that right since it can be enforced in other ways, for example by exercise of a right of lien. In *Ojokolobo v. Alamu* (supra), this Court would appear to have accepted that limitation laws are matters of practice and procedure only by quoting with approval the observation of *Vaughan Williams L.J* in *THE YDUN* [1899] P.236 where dealing with a Statute of Limitation, he observed.

*“I also agree that the Act is retrospective, for though, no doubt, the general rule of construction is that 'nova constitutio futuris formam imponere debet non praeteritis,' it is pointed out in Moon v. Durden*

(1884)2 x EX 22 at 43) that rule of construction yields to a sufficiently expressed intention of the legislature that the enactment shall have a retrospective operation, and there is abundant authority that the presumption against a retrospective construction has no application to enactment B which affect only procedure and practice of the Court.” (p. 1435 D)

**Statutes - Retrospective provisions of**

3. It is apparent that the court below correctly decided that the Limitation C Edict 1994 of Imo State is a procedural law. Being such a procedural law, it operates retrospectively. More than that however, it seems to me that even if the conclusion of the court below was that the Edict was a substantive Law which did not operate retrospectively, a close perusal of sections 44 and 45 of the Edict yields no conclusion other than that the D intention of the law-maker was to make the Edict operate retrospectively. The concurring opinion of Ikongbeh JCA at pages 83-84 of the record captures succinctly the combined implication of sections 18, 44 and 45 of the Edict thus:

E “It is pertinent at this juncture to have a look at the relevant terms of the edict. The relevant sections are 18, 44 and 45. They provide:

’18. No action founded on contract, tort or any other action not specifically provided for in Parts II and III of this Edict shall be brought F after the expiration of five years from the date on which the cause of action accrued.

44. Any enactment relating to limitation of action which were in force in the State immediately before the commencement of this Edict shall cease to apply.

G 45. Nothing in this Edict shall affect any action commenced before the commencement of this Edict.’

As can be seen, section 44 clearly and effectively repeals all previous legislation, including, of course, the English Limitation Act, that regulated limitation of actions. Then section 45 expressly excepts from the H operation of the provisions of the Edict actions commenced before the commencement of the Edict. That means, in my view, that none of its provisions, including, of course, section 18, is intended to apply to ac-

tions commenced before the date on which the Edict took effect. A necessary corollary from this state of affairs, in my view, is that any action not commenced before the commencement of the Edict is caught by its provisions. That means that all such actions, including, the plaintiffs/respondent's, have to be brought within five years from the accrual of the cause of action. I am satisfied that the Edict contains enough clear provisions roping in the plaintiffs/respondent's action into its operation. That being the case, I do not see that it lies within our power to dance around the issue. It is not for us to consider whether or not the plaintiff/respondent has been fairly treated. Our duty is to ascertain the intention of the law-maker from the words he has used. Once we have done that we are in duty bound to give effect to it regardless of the consequences."

I think that the court below was right in its conclusion as to plaintiffs claims (a), (b) and (e). (p. 1438 C)

#### ***ACTIONS - Limitation of - Detinue claim***

4. The court below however failed to see that claims (c) and (d) were reliefs founded in the tort of detinue. For as long as a person detains the chattels of another against the will of the owner, an action in detinue will lie against the person wrongfully detaining the chattels. It is an essential pre-requisite that there be a demand by the owner followed by a refusal from the person detaining the chattel to constitute an action in detinue. At the time the defendants brought their application to dismiss or strike out plaintiffs suit, a statement of claim had not been filed by the plaintiff. It was not therefore shown when a demand followed by a refusal was made. It is possible these were done within the 5 years limit allowed under the Limitation Edict of 1994. The result is that the defendants' objections in respect of claims (c) and (d) were premature.

In the final conclusion this appeal partially succeeds. Plaintiffs claims (a), (b) and (e), which are statute barred are struck out. There will be liberty to the plaintiff to file his statement of claim in respect of H claims (c) and (d) and the case further pursued on those claims. (p. 1439 E)

## NOTABLE POINTS OF INTEREST

### BELGORE JSC

#### *1. Purpose of limitation of action laws*

The Limitation Law is certainly procedural, setting out clearly time frame within which an action must be brought. Unlike substantive law, it is retroactive in nature and such statutes on this all-important subject must be read as a whole. As such whether specifically stated or not in such a statute, it must be read retroactively. A person should not sleep on his rights. The purport of laws on limitation of actions is to obviate the inconvenience and embarrassment to defendants whose witnesses, be they members of staff or people having dealings with them may no longer be available; and documents for defence must have been out of circulation, in some cases already destroyed and cannot be found in archives or will otherwise take inordinate length of time to locate. (p. 1440 C)

### TOBI JSC

#### *2. Where local statute is applicable English law will not apply*

Where a local statute is available and applies to a particular local situation, courts of law have no jurisdiction to go all the way to England to search for an English statute. This is because by the local statute, the law makers intend it to apply in the locality and not any English statute which is foreign and inapplicable.

Much as I appreciate the colonial tie between England and Nigeria, it will seriously hamper and compromise our sovereignty if we continue to go on a borrowing 'spree', if I may so unguardedly call it, to England for the laws of that country without any justifiable reason. Nigeria is Nigeria and England is England. Statutes of England cannot apply to Nigeria as a matter of course, even the so-called statutes of general application.

From the trend of the case law, it cannot be said that any English statute which was enacted before 1st January 1900 is automatically applicable in Nigeria. No. Nigerian legislation is a potent and formidable source of Nigerian law. It forms the most substantial and definite part of the corpus juris of Nigeria and the Judges are involved daily in the inter-

pretation of the statutes. As the statutes are the most precise and exact source of Nigeria law, the courts are bound to apply them in the cases that come before them. They will have nothing to do with English statute, unless it is applicable in the circumstance as a statute of general application. (pp. 1442 G / 1443 E)

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### *3. Limitation of Actions - When time begins to run in detinue*

I agree with the submission of learned counsel for the appellant that in detinue, time begins to run from the time of the demand and a definite refusal. In *Julius Berger Nigeria Plc v. Onogui* (2001) 15 NWLR (Pt. 736) 401, this court held that in an action for detinue as in other actions of tort, limitation period 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 demand by the owner from the person in possession of the chattel and a refusal on the part of the latter to giving it up, then in 6 years the remedy of the owner is barred. The time begins to run from the time of the demand and or definite refusal. See also *Egbe v. Adefarasin* (No.2) (1987) 1 NWLR (Pt. 47) 1

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Before an action on detinue can be filed, two acts must be present; one from the plaintiff and the other from the defendant. The plaintiff must make a formal demand for the return of the goods or chattel. The defendant must refuse to return the goods or chattel. And so an action in detinue cannot be founded only on the demand by the plaintiff without a corresponding refusal. (p. 1444 C)

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### **REPRESENTATION**

K. C. O. Njemanze Esq. (A. B. Asogu with him) for the appellant.  
N. U. Uzoma Esq. for the respondents.

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### **CASES REFERRED TO**

*Julius Berger Nigeria Plc v. Onogui* (2001) 15 NWLR (Pt. 736) 401  
*Egbe v. Adefarasin* (No.2) (1987) 1 NWLR (Pt. 47) 1  
*Moon v. Durden* (1884) 2 x EX 22 at 43)

**1430 Chigbu v. Tonimas Ltd (2006) 4 KLR Oguntade JSC**

Raleigh Industries Ltd. V. Nwaiwu [1994] 9 NWLR (Pt.341) 760 at 771

Atolagbe v. Awuni [1997] 9 NWLR (Pt.522) 66

Republic of Costa Rica v. Ertanger [1974] 3 Ch. D 62

Ojokolobo v. Alamu [1987] 3 NWLR (Pt.61) 377 at 394

B Onashile v. Idowu [1961] All N.L.R. 313 at 316

Adejumo v. Governor [1972] 3 S.C. 45 at 54.

West v. Gwynne [1911] 2 ch D.1

Rossek v. A.C.B. Ltd. [1993] 8 NWLR (Pt.312) 382

Alase v. Aladetuyi ,[1995] 6 NWLR (Pt.403) 527

C Ojokolobo v. Alamu [1987] 3 NWLR (Pt.61) 377

Imo State and Mustapha v. Governor of Lagos State [1987] 2 NWLR (Pt.58) 539

Egbe v. Adefarasin [1987] I N.W.L.R. (Pt. 47) 1 at 20

D

**STATUTES REFERRED TO**

The Limitation Act of 1623

Imo State Limitation Edict, 1994 ss. 18, 44 and 45

E Interpretation Law Cap. 66 Laws of Eastern Nigeria s. 13

High Court Law Cap. 61 Laws of Eastern Nigeria s. 15

Interpretation Act Cap. 89 Laws of the Federation and Lagos 1950 s. 45

**LEAD BY JUDGMENT BY OGUNTADE JSC**

F

At the Mbano/Etiti High Court of Imo State, the appellant as the plaintiff claimed against the respondents [as the defendants] the-following reliefs:

*“(a) Declaration that the purported dismissal of the plaintiff by the defendants, as contained in a letter dated 17th July, 1991, as a dealer of the defendants products is unlawful and wrongful.*

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*(b) N20,000,000.00 (Twenty Million Naira) damages for the said unlawful and wrongful dismissal.*

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*(c) An order for the return of the plaintiffs air conditioner, deep freezer, surface tank, drums, furniture, spare computer, rotary pump, drum hangers, wash-hand basin which the defendants have wrongfully detained at Ehime Mbano. The defendants have in spite of plaintiff s repeated demands refused to return the said things and have wrongfully detained*



*and still detains same or in default pay the sum of ^589,750.00 (five hundred and eighty nine thousand seven hundred and fifty Naira) being the value of the said things.*

*(d) N1,000.00 (One thousand Naira) per day for loss of use as a result of the wrongful detention of the said things from July 1991 until the said things are returned to the plaintiff or their value paid.*

*(e) An account of the commission due to the plaintiff in respect of the said dealership under an agreement dated the 28th day of July 1986 (and subsequent amendments thereto) made between the first defendant and the plaintiff and an order for payment for by the first defendant to the plaintiff of any sum found due from the first defendant to the plaintiff upon taking such account."*

The plaintiff later brought a follow-up application pursuant to Order 18 of the Imo State High Court (Civil Procedure) Rules, 1988 praying:

*"that an account may be taken of moneys and or commission due or belonging to the plaintiff from the defendants or received by any other person on behalf or account of the defendants in respect of and under dealership agreement dated the 28th day of July, 1986 (and subsequent variations thereto) made between the plaintiff and first defendant (and in particular the period 1990-1991) and that all necessary inquiries and directions to be taken and made and that provisions be made for the costs of this application."*

An affidavit was filed in support of the application. The plaintiff in paragraphs 10 - 12 of the affidavit deposed thus:

*"10. That the defendants have not paid or accounted to me for all the commission due to me in respect of the sales made particularly between 1990 and 1991.*

*11. That by a letter dated 17/7/91 from the defendants' Solicitor to me the defendants purportedly dismissed me as the 1st defendant's dealer without final account. Copy of the said letter is annexed herewith and marked EXHIBIT 'B'*

*12. That I have repeatedly requested the defendants to render account in respect of the matters mentioned above but the defendants con-*

*sistently refused to neglected (sic) to do so.”*

The defendants, through an employee of the 1st defendant filed a counter-affidavit. Paragraphs 6 and 7 of the counter affidavit read thus:

B “6. That the cause of action endorsed on the said undated Writ of Summons is said to have arisen on the 17th day of July, 1991, and the Writ of Summons was filed in this Court on the 23rd day of December, 1996, a period of 5 years and 6 months after the cause of action had accrued.

C 7. That the plaintiffs action is clearly statute-barred-debts, and the reliefs endorsed on the suit are all extinguished by statute namely The Limitation Edict of 1994 of Imo State.”

The defendants later brought an application praying that the plaintiffs suit be dismissed or struck out on the ground that the suit was D statute barred. It was contended that the trial court had no jurisdiction to entertain the suit. The trial judge (Coram, Opara J) heard arguments on the application and in his ruling on 4-2-98 held that he had jurisdiction to hear the matter. The defendants’ objection was accordingly dismissed. E Dissatisfied, the defendants brought an appeal before the Court of Appeal, Port-Harcourt Division (hereinafter referred to as ‘the court below’). The court below on 29-2-98, in a unanimous judgment allowed the appeal. It held that the plaintiff’s suit was statute barred. The suit was accordingly struck out. The plaintiff has come on a final appeal before F this Court. The appeal raises one solitary issue, which is whether the Imo State Limitation Edict of 1994 or the English Limitation Act of 1623 applied to the suit.

G It was common ground that the plaintiffs cause of action accrued on 17-7-91 and that the Plaintiffs suit was brought on 23/12/96. Under the Limitation Act of 1623, the plaintiff had 6 years within which to bring his suit whereas under the Imo State Limitation Edict of 1994, he had 5 years. The 1994 Edict came into force on 30-12-94. The Edict repealed H the 1623 Act.

In the appellant’s brief, counsel opened his argument by defining the meaning of a cause of action. He relied on *Egbe v. Adefarasin* [1987] I N.W.L.R. (Pt. 47) 1 at 20. It was argued that plaintiffs reliefs (c) and

(d) was in the tort of detainee and that as an action in detainee would not be complete until there have been a demand and refusal, the cause of action would only accrue from the date the defendants refused to return the goods. Counsel relied on *Julius Berger (Nig.) Plc. V. Omogui* [2001] 15 N.W.L.R. (Pt. 736) 461. It was argued that since pleadings had not been filed at the time defendants brought their application to dismiss or strike out plaintiffs suit, the court below acted prematurely in striking out plaintiffs claims (c ) and (d). It was further argued with respect to plaintiffs claim a, b and e, that the law applicable to plaintiffs claims was the Limitation Act, 1623, it being a statute of general application by virtue of section 15 of the High Court Law Cap. 61, Laws of Eastern Nigeria applicable in Imo State. B  
C

Plaintiffs counsel argued that the substantive Law existing at the time a cause of action accrued would govern the determination of an action and the rights and obligations of the parties were determinable only by reference to such substantive law. It was submitted that a change of law after the cause of action accrued would not affect the accrued rights and obligations of parties unless the change was made retrospective - *Rossek v. A.C.B. Ltd.* [1993] 8 NWLR (Pt.312) 382, *Alase v. Aladetuyi* ,[1995] 6 NWLR (Pt.403) 527 and *Ojokolobo v. Alamu* [1987] 3 NWLR (Pt.61) 377. It was, counsel argued, immaterial that the law had been repealed - *Governor of Oyo State v. Folayan* (1995) 8 NWLR (Pt.413) 292; Section 13 of the Interpretation Law Cap. 66 Laws of Eastern Nigeria applicable in Imo State and *Mustapha v. Governor of Lagos State* [1987] 2 NWLR (Pt.58) 539. D  
E  
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The respondents' counsel opened his argument by making three propositions of law, namely: G

*“(a) The Imo State Edict of 1994 is not a retrospective enactment.*

*(b) The presumption against retrospectivity is not inflexible and may be displaced by very clear words used in an enactment; and*

*(c ) An enactment such as a statute of limitation which affect H  
procedure and practice of the courts apply retrospectively and therefore  
the presumption against retrospectivity does not apply to such a procedural enactment.”*

Counsel referred to the observations of Nnaemeka-Agu JSC in Adamu v. The State [1991] 4 NWLR (Pt. 187) 530 at 541 as stating the correct principle of law. The observations read:

B *“apart from purely procedural matters, provisions of a statute cannot be taken as applying retrospectively but prospectively, except by very, clear words.”*

C Counsel argued that none of the provisions of the Imo State Limitation Act offended against the Rule relating to retrospectivity. It was submitted that it was clear from the language of the enactment that the legislature intended that

*“(a) any other enactment relating to limitation of action which had previously applied in Imo State before 30th December, 1994 (and this must include all statutes of England) shall cease to apply after 30th December, 1994; and*

*(b) The only actions, which shall not be affected by the provisions of the Edict are those actions commenced before 30th December, 1994.”*

E Counsel relied for the above on West v. Gwynne [1911] 2 ch D.1 as discussed in Ojokolobo v. Alamu (supra). Counsel urged, the court to give the words used in sections 44 and 45 of the Imo State Limitation Edict their plain and ordinary meaning.

F **In the consideration of the one issue for determination in this appeal, I bear in mind that I am dealing with the interpretation of the provisions of a Law. In the interpretation of a statute the court must construe its provisions literally and the words used given their ordinary meaning. See Onashile v. Idowu [1961] All N.L.R. 313 at 316; Adejumo v. Governor [1972] 3 S.C. 45 at 54.**

G Now section 18 of the Imo State Limitation Edict, 1944 provides:

H *“No action founded on contract, tort or any other action not specifically provided for in parts (ii) and (iii) of this Edict shall be brought after the expiration of five years from the date on which the cause of action accrued.”*

I observed earlier that it was undisputed that the cause of

action accrued on 17-7-91 and that plaintiffs suit was brought on 23/12/96. In *Ojokolobo v. Alamu* [1987] 3 NWLR (Pt.61) 377 at 394, this Court per Nnamani JSC. observed:

*“It is settled law that the presumption against retrospective construction has no application to enactments which only affect procedure and practice of the courts. As Mellish J. said in Republic of Costa Rica v. Ertanger [1974] 3 Ch. D 62, no person has a vested right in any course of procedure.”*

Wright J. in *In Re: Athlumney* (1898) 2 Q.B. 551 at 552 on the same point similarly observed:

*“Perhaps no rule of construction is more firmly established than this - that a retrospective operation is not to be given to a statute so as to impair existing right or obligation, otherwise than as regards procedure.”*

Plaintiffs counsel has however argued that a Limitation Law is not to be treated as a part of procedural law but rather as one of substantive law. On this submission he relied on *Raleigh Industries Ltd. V. Nwaiwu* [1994] 9 NWLR (Pt.341) 760 at 771 and *Atolagbe v. Awuni* [1997] 9 NWLR (Pt.522) 66. Defendants’ counsel for his part relied on *THE YDUN* (1899) P.236 for his submission that a statute dealing with Limitation of actions is an act dealing with procedure only and applies retrospectively.

The cases which plaintiffs counsel relied upon for his submission that statutes of Limitation are a part of substantive Law do not unequivocally support that proposition. In *Atolagbe v. Awuni* (supra), Ogundare JSC in his dissenting judgment discussed limitation laws with a view to show that such laws are necessary in that it enables litigations to be brought to an end. At pages 590-591 of the report, His Lordship observed:

“Another argument that has been proffered is that limitation laws are examples of conditions precedent which the courts have always upheld. With profound respect, I think this argument is without any merit. To describe limitation provisions as conditions precedent shows lack of knowledge of the nature of such provisions. Limitation statutes are laws that fix certain periods within which actions must be brought or pro-

ceedings taken. These laws are based on the principle interest republicae ut sit finis litium, that is to say, it is in the public interest that there is an end to litigation.

Such laws are of two kinds. There are those, such as the Limita-  
 B tion Law of Lagos State Cap. 118, Laws of Lagos State 1994, where on  
 the expiration of the time the remedy is barred, but not the right. For  
 example, in the case of a simple contract debt which has remained un-  
 paid and unacknowledged for six years, the creditor's right to bring an  
 C action to recover it is gone (S.8(l) of the Limitation Law of Lagos State)  
 but the debt exists for other purposes. The creditor can exercise a right  
 of lien to recover it, but cannot set-off or counterclaim, because this is in  
 the nature of a cross-action (section 3). It is in this category that section  
 1 of the Ondo State Approval of Appointment of an Oba and Presentation  
 D of Instrument of Appointment and Staff of Office Edict, 1991 which  
 provides:

*'Any person who is aggrieved by the appointment of another per-  
 son as an Oba shall within seven days of the date of such appointment  
 E institute action in the High Court challenging the appointment.'*  
 Falls - see Akinnuoye v. Military Administrator of Ondo State & Ors.  
 (1997) 1 NWLR (Pt.483) page 564.

The second category consists of laws, which, on the expiration of  
 F the time prescribed the right itself is barred. Examples of this are sections  
 15 and 22 of the Limitation law of Lagos State which extinguish the title  
 of the person who has been out of possession of chattel or land for the  
 period of limitation prescribed in the Law. It is immaterial that he may be  
 ignorant that another is in possession - see Rains v. Buxton (1880) 14 Ch.  
 G D537."

**And in Raleigh Industries Ltd. V. Nwaiwu (supra) , a decision  
 of the Court of Appeal, Kaduna Division, Opene JCA said at page  
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A short statement as the above is certainly inconclusive to support the proposition that statutes of limitation are aspects of the substantive law.

It seems to me that, such statutes only take away the right of action from a party without destroying that right since it can be enforced in other ways, for example by exercise of a right of lien. In *Ojokolobo v. Alamu* (supra), this Court would appear to have accepted that limitation laws are matters of practice and procedure only by quoting with approval the observation of Vaughan Williams L.J in *THE YDUN* [1899] P.236 where dealing with a Statute of Limitation, he observed.

*“I also agree that the Act is retrospective, for though, no doubt, the general rule of construction is that 'nova constitutio futuris formam imponere debet non praeteritis,' it is pointed out in Moon v. Durden (1884)2 x EX 22 at 43) that rule of construction yields to a sufficiently expressed intention of the legislature that the enactment shall have a retrospective operation, and there is abundant authority that the presumption against a retrospective construction has no application to enactment which affect only procedure and practice of the Court.”*

The court below, in the lead judgment per Ogebe JCA observed at page 80 of the record thus:

“The trial judge failed to determine whether or not the Limitation Edict of 1994 is a substantive or procedural law. In the case of *Ifezue v. Mbadugha* [1984] 5SC. 79 at p.82 Obaseki JSC. tried to define procedural law in the following words:

*‘In the procedural law or adjectival law including rules of court, the law or rule normally fixed time for doing of an act or the taking of a step in the proceedings.’*

I HAVE NO HESITATION IN HOLDING THAT THE limitation Edict of 1994 of Imo State is a procedural law as defined above. It does not give any rights or obligations to the parties. It only limits the right of action by a party and that is purely procedural.”

In *Atolagbe v. Awuni* (supra) this Court per Onu JSC at page 575

emphasized the distinction between substantive law and procedural or adjectival law thus:

“It is pertinent at this juncture to point out that the distinction between substantive law and procedure can be quite difficult at times. Broadly speaking, however, procedural or adjectival law relates to practice and procedure, that is, rules according to which substantive law is administered. It prescribes the method for enforcement of rights as well as the enforcement of obligations or duties. On the other hand, substantive law is concerned with the creation, definition, limitation of obligation. See *Garari v. Johnson* [1986] 5 NWLR (Pt.39) 66 at 71.”

**It is apparent that the court below correctly decided that the Limitation Edict 1994 of Imo State is a procedural law. Being such a procedural law, it operates retrospectively. More than that however, it seems to me that even if the conclusion of the court below was that the Edict was a substantive Law which did not operate retrospectively, a close perusal of sections 44 and 45 of the Edict yields no conclusion other than that the intention of the law-maker was to make the Edict operate retrospectively. The concurring opinion of Ikongbeh JCA at pages 83-84 of the record captures succinctly the combined implication of sections 18, 44 and 45 of the Edict thus:**

“It is pertinent at this juncture to have a look at the relevant terms of the edict. The relevant sections are 18, 44 and 45. They provide:

*’18. No action founded on contract, tort or any other action not specifically provided for in Parts II and III of this Edict shall be brought after the expiration of five years from the date on which the cause of action accrued.*

*44. Any enactment relating to limitation of action which were in force in the State immediately before the commencement of this Edict shall cease to apply.*

*45. Nothing in this Edict shall affect any action commenced before the commencement of this Edict.’*

As can be seen, section 44 clearly and effectively repeals all



pervious legislation, including, of course, the English Limitation Act, that regulated limitation of actions. Then section 45 expressly excepts from the operation of the provisions of the Edict actions commenced before the commencement of the Edict. That means, in my view, that none of its provisions, including, of course, section B 18, is intended to apply to actions commenced before the date on which the Edict took effect. A necessary corollary from this state of affairs, in my view, is that any action not commenced before the commencement of the Edict is caught by its provisions. That means C that all such actions, including, the plaintiffs/respondent's, have to be brought within five years from the accrual of the cause of action.

I am satisfied that the Edict contains enough clear provisions roping in the plaintiffs/respondent's action into its operation. That D being the case, I do not see that it lies within our power to dance around the issue. It is not for us to consider whether or not the plaintiff/respondent has been fairly treated. Our duty is to ascertain the intention of the law-maker from the words he has used. E Once we have done that we are in duty bound to give effect to it regardless of the consequences."

I think that the court below was right in its conclusion as to plaintiffs claims (a), (b) and (e). The court below however failed to F see that claims (c) and (d) were reliefs founded in the tort of detinue. For as long as a person detains the chattels of another against the will of the owner, an action in detinue will lie against the person wrongfully detaining the chattels. It is an essential pre-requisite G that there be a demand by the owner followed by a refusal from the person detaining the chattel to constitute an action in detinue. At the time the defendants brought their application to dismiss or strike out plaintiffs suit, a statement of claim had not been filed by the H plaintiff. It was not therefore shown when a demand followed by a refusal was made. It is possible these were done within the 5 years limit allowed under the Limitation Edict of 1994. The result is that the defendants' objections in respect of claims (c) and (d) were pre-

mature.

In the final conclusion this appeal partially succeeds. Plaintiffs claims (a), (b) and (e), which are statute barred are struck out. There will be liberty to the plaintiff to file his statement of claim in respect of claims (c ) and (d) and the case further pursued on those claims. I make no order as to costs.

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### BELGORE JSC

C The Limitation Law is certainly procedural, setting out clearly time frame within which an action must be brought. Unlike substantive law, it is retroactive in nature and such statutes on this all-important subject must be read as a whole. As such whether specifically stated or not in D such a statute, it must be read retroactively. A person should not sleep on his rights. The purport of laws on limitation of actions is to obviate the inconvenience and embarrassment to defendants whose witnesses, be they members of staff or people having dealings with them may no longer E be available; and documents for defence must have been out of circulation, in some cases already destroyed and cannot be found in archives or will otherwise take inordinate length of time to locate.

I therefore agree with the conclusions of my learned brother, F Oguntade JSC in allowing this appeal in part. Plaintiffs claims in (a), (b), and (e) are statute barred. It is up to plaintiff should he so wish, to continue on claims (c) and (d) to take necessary steps. I also make no order as to costs.

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### KALGO JSC

I have read in advance the judgment just delivered by my learned brother Oguntade JSC in this appeal. I entirely agree with his findings H and conclusions reached therein. I therefore partially allow the appeal and abide by the consequential order made in the said judgment including the order to costs.

### TOBI JSC

The issue involved in this appeal is whether the Limitation Act of 1623 of England or the Limitation Edict of 1994 of Imo State is applicable in the suit involving the dismissal of the plaintiff/appellant by the defendant/respondents and all that.

On 23rd of December, 1996, the appellant as plaintiff filed an action at the High Court seeking for five reliefs. The respondents as defendants entered an unconditional appearance. On 21st April, 1997, the appellant filed a motion under Order 18 of the High Court (Civil Procedure) Rules 1988 of Imo State, for “an account to be taken of all monies and commissions due or belong to the plaintiff from the defendant.”

On 20th May, 1997, the respondents filed a motion challenging the jurisdiction of the court to entertain the suit on the ground that the suit was statute barred. The respondents specifically relied on sections 18, 44 and 45 of the Limitation Edict, 1994 of Imo State.

After hearing argument from counsel, the learned trial Judge, in his ruling of 4th February, 1998 held that the action was not statute barred because the applicable statute was the Limitation Act of 1623 of England, a statute of general application. The Court of Appeal set aside the ruling of the learned trial Judge. The court held that the Limitation Edict of 1994 applied and that the action was statute barred.

Dissatisfied with the decision, the appellant has come to the Supreme Court. The appellant formulated the following issue for determination:

*“Whether the Imo State Limitation Edict of 1994, is applicable to the Appellant’s Suit filed on 23/12/96”*

The respondents, in their brief, agree with the above issue.

Learned counsel for the appellant argued that when the cause of action in respect of reliefs a, b, and c arose, the applicable limitation law in Imo State was the Limitation Act of 1623, a statute of general application by virtue of section 15 of the High Court Law, Cap.61, Laws of Eastern Nigeria applicable in Imo State. He cited Egbe v. Adefarasin (1987)

1 NWLR (Pt. 47) 1; Julius Berger (Nig) Plc, v. Onogui (2001) 15 NWLR (Pt.736) 401. Rossek v. A. C. B. Ltd (1993) 8 NWLR (Pt. 312) Alese v. Aladetunji (1995) 6 NWLR (Pt. 403) 527; Ojokolobo v. Alamu (1987) 3 NWLR (Pt. 61) 377; Governor of Oyo State v. Folayan (1995) 8 NWLR (Pt.413) 292; Mustapha v. Governor of Lagos State (1987) 2 NWLR (Pt. 58) 539; Adamu v. The State (1991) 4 NWLR (Pt. 187) 530; Ralaph Industries (Nig) Ltd v. Nwaiwu (1994) 9 NWLR (Pt. 341) 760; Atologba v. Awuni (1997) 9 NWLR (Pt. 522) 536 and submitted that reliefs (c) and (d), being torts of detinue do not accrue until there has been a demand for the return of the goods in question and a definite refusal to deliver them up. Counsel also disagreed with the Court of Appeal that the Limitation Edict of 1994 is a procedural law which does not give any right or obligation to the parties; rather it only limits the right of action by a party. He urged the court to allow the appeal.

Learned counsel for the respondents relying on sections 18, 44 and 45 of the Limitation Edict of 1994 submitted that the applicable limitation statute is the 1994 Edict. He submitted that sections 44 and 45 clearly show that the Legislature intended the Edict to apply to all actions commenced before 30th December, 1994. He cited West, v. Gwynne (1911) 2 Ch. D. I.; Ojokolobo v. Alamu (1987) 3 NWLR (Pt. 61) 393; Adamu v. The State (1991) 4 NWLR (Pt. 187) 530 and 541; Ifezue v. Mbadugha (1984) 5 SC.79; Rossek v. ACB Ltd (1993) 8 NWLR (Pt. 312) 382; In RE Atlolumney (1898) 2 GB.551 at 552. In THE YDUN (1899) P.236; The King v. Dharme (1905) 2KCB 335. He submitted that a statute of limitation is a procedural law. He urged the court to dismiss the appeal.

Where a local statute is available and applies to a particular local situation, courts of law have no jurisdiction to go all the way to England to search for an English statute. This is because by the local statute, the law makers intend it to apply in the locality and not any English statute which is foreign and inapplicable.

Much as I appreciate the colonial tie between England and Nigeria, it will seriously hamper and compromise our sovereignty if we continue to go on a borrowing ‘spree’, if I may so unguardedly call it, to England

for the laws of that country without any justifiable reason. Nigeria is Nigeria and England is England. Statutes of England cannot apply to Nigeria as a matter of course, even the so-called statutes of general application.

Section 45 of the Interpretation Act, Cap.89, Law of the Federation and Lagos, 1950 provided that the statutes of general application that were in force in England on the 1st day of January, 1900 shall be in force in the Federation. By this nebulous provision, a number of English statutes were held to be applicable in Nigeria as statutes of general application by the courts. From the state of the case law, the approach of the courts has not been consistent. The courts have not found it quite easy to determine what is a statute of general application and what is not. And so, what amounts to a statute of general application is still a vexed juridical problem in our jurisprudence, as the courts do not successfully apply a single criterion or sets of criteria across the board. The issue is, therefore, largely taken on the particular merits of the case before the court. See generally Attorney-General v. John Holt and Co. (1910) 2 NLR 1; Re Public Lands Ordinance, Lawal Bola, Claimant - Ex Parte Joseph Unreported, delivered on 26th January, 1910; Inspector General of Police v. Karama (1934) 2 WACA 185; Ribeiro v. Chahin (1954) 14 WACA 476. From the trend of the case law, it cannot be said that any English statute which was enacted before 1st January 1900 is automatically applicable in Nigeria. No. Nigerian legislation is a potent and formidable source of Nigerian law. It forms the most substantial and definite part of the corpus juris of Nigeria and the Judges are involved daily in the interpretation of the statutes. As the statutes are the most precise and exact source of Nigeria law, the courts are bound to apply them in the cases that come before them. They will have nothing to do with English statute, unless it is applicable in the circumstance as a statute of general application.

In 1991 when the cause of action accrued, the applicable law would appear to be Limitation Act of 1623 of England. This is because that English Act was the enabling law at the time the cause of action accrued. In that singular circumstance, the Limitation Decree of 1994 was not applicable. Taking the issue in the light of the Limitation Edict of

1994, the Court of Appeal said at page 18 of the Record:

“When the action was commenced on the 23rd day of December 1996 for a cause of action which arose on the 17th day of July 1991 and 28th day of July 1986, five years had elapsed with the result that the  
B action had become statute barred.”

With respect, the above statement is partially correct. It is correct only in respect of some of the reliefs. It is not correct in respect of others.

As indicated earlier, the plaintiff/appellant sought for five reliefs.  
C Of the five reliefs, reliefs (c) and (d) are founded on detinue. I agree with the submission of learned counsel for the appellant that in detinue, time begins to run from the time of the demand and a definite refusal. In *Julius Berger Nigeria Plc v. Onogui* (2001) 15 NWLR (Pt. 736) 401, this court  
D held that in an action for detinue as in other actions of tort, limitation period 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.  
E If there is demand by the owner from the person in possession of the chattel and a refusal on the part of the latter to giving it up, then in 6 years the remedy of the owner is barred. The time begins to run from the time of the demand and or definite refusal. See also *Egbe v. Adefarasin* (No.2) (1987) 1 NWLR (Pt. 47) 1  
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Before an action on detinue can be filed, two acts must be present; one from the plaintiff and the other from the defendant. The plaintiff must make a formal demand for the return of the goods or chattel. The defendant must refuse to return the goods or chattel. And so an action in  
G detinue cannot be founded only on the demand by the plaintiff without a corresponding refusal.

In sum, I agree with my learned brother, Oguntade, JSC that reliefs (a), (b) and (e) are statute barred in virtue of the Limitation Edict,  
H 1994 of Imo State. Reliefs (c) and (d) founded on the tort of detinue are not statute barred. I therefore order that pleadings be filed on the two reliefs and the case should be heard.

I make no order as to cost as in the judgment of my learned brother,

Oguntade, JSC

### MOHAMMED JSC

I have been privileged before today to have the opportunity of reading in draft the judgment of my learned brother Oguntade, JSC just delivered in this appeal. I agree that on the whole this appeal should succeed in part.

The appellant in this appeal was the plaintiff at the High Court of Justice of Imo State sitting at Etiti in the Mbano/Etiti Judicial Division where he commenced this action against the respondents as defendants claiming -

*“(a) Declaration that the purported dismissal of the plaintiff by the Defendants, as contained in a letter dated 17th July, 1991 as a dealer of the Defendants’ products is unlawful and wrongful.*

*(b) N20,000,000.00 (Twenty Million Naira) damages for the said unlawful and wrongful dismissal.*

*(c) An order for the return of the plaintiffs air conditioner, deep freezer, surface tank, drums, furnitures, spear computer, rotary pump, drum hangers, wash hand basin which the Defendants have wrongfully detained at Ehime Mbano. The Defendants have in spite of plaintiffs repeated demands refused to return the said things and have wrongful (sic) detained and still detains same or in default pay the sum of N589,750.00 (Five Hundred and Eighty Nine Thousand, Seven Hundred and Fifty Naira) being the value of the said things.*

*(d) N1,000.00 (One Thousand Naira) per day for loss of use as a result of the wrongful detention of the said things from July 1991 until the said things are returned to the plaintiff or their value paid.*

*(e) An account of the commission due to the plaintiff in respect of the said dealership under an agreement dated the 28th day of July 1986 (and subsequent amendments thereto) made between the 1st Defendant and the Plaintiff and an order for payment by the first Defendant to the Plaintiff of any sum found due from the first Defendant to the Plaintiff upon taking such account”.*

The only issue arising for determination in the appeal is whether

the above reliefs claimed by the appellant in his action against the respondents were statute barred by virtue of the provisions of the Imo State Limitation Edict of 1994 which came into force on 30th December, 1994 while the appellant's action was not commenced until 23rd day of December, 1996.

I entirely agree with the reasoning and the conclusion reached in resolving this single issue by my learned brother, Oguntade, JSC in partly allowing the appeal in the leading judgment which I adopt as mine.

Accordingly the appeal is allowed by me in part. The appeal against the dismissal of the appellants claims in reliefs (a) (b) and (e) based on the contract between the parties which are clearly statute barred, is hereby dismissed. However, the appeal in respect of relief s (c) and (d) claimed by the appellant being in detinue, is here by allowed. These reliefs are returned / to the trial High Court for hearing on pleadings. Parties to bear their costs.

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