

SUPREME COURT OF NIGERIA
15TH DECEMBER, 2006. SC. 247/2003
CORAM:- S. M. A. BELGORE CJN, S. U. ONU,
A. I. KATSINA-ALU, D. MUSDAPHER, G. A. OGUNTADE,
A. M. MUKHTAR, W. S. N. ONNOGHEN, JJSC

ATTORNEY-GENERAL, BAYELSA STATE PLAINTIFF
AND
ATTORNEY-GENERAL, RIVERS STATE DEFENDANT

ACTIONS - Competence - Statute bar - Cause of action - Is the factual situation - Giving a person right to judicial relief - So it can only accrue in contract - Upon breach by defendant (H1)

ACTIONS - Claim - Basis of - It is evident - On the pleadings - That this action is not based on contract - But on the legal effects - Of creation of states (H2)

STATUTES - Interpretation - Words used in a statute - That are clear and unambiguous - Should be given their ordinary plain meaning (H3)

STATUTES - Interpretation - States Creation Act 1996 s.7(1) - Vests specific assets - On newly created states - But does not vest assets - On States out of which they are created (H4)

CONSTITUTIONAL LAW - Creation of states - Out of existing states - Legal effect - Is that such existing state - Ceases to exist - As a judicial entity (H5)

CREATION OF STATES - Assets & liabilities - Joint ownership of - Is not prohibited by s. 7(1) of the State Creation Act 1996 - So that defendant's counterclaim - To sole ownership of landed property located outside the old Rivers State - Has no foundation (H6)

ACTIONS - Claim - Creation of States - Committees - Liability of defendant - Determination - Without direct challenge of Afolayan reports - They displace Salihu recommendations - As basis of defendant's liability herein (H7)

EVIDENCE - Proof - Parties - Burden of proof - Incidence of - Burden of proving particular facts - Falls on the party asserting those facts (H8)

DOCUMENTS - Agreements - Binding effect of - Having agreed to joint valuation - Of newly discovered assets - Unilateral valuation is invalid - As parties are bound by their agreement (H9)

FACTS

The plaintiff sued the defendant before the Supreme Court pursuant to the court's original jurisdiction. Plaintiff's claim was for sundry reliefs, ranging from declarations to orders, the purpose of which was to compel the defendant to share some assets of the old Rivers State in the ratio of 51% for the plaintiff and 49% for the defendant. It is pertinent to note that both parties used to form part and parcel of the old Rivers State which was created in 1967 from the former Eastern Region of Nigeria. They remained so until 1996 when the said Rivers State was split into Rivers State and Bayelsa State by virtue of the provisions of Decree No.36 of 1996 known as States Creation and Transitional provisions Decree. Following the splitting of the old Rivers as above, several committees were set up at one time or the other to facilitate the equitable sharing of assets between the two emergent states.

The activities of the committees culminated in several reports and recommendations on the basis of which the then Military Administrators of the two states entered into and signed agreements on behalf of their states as it concerns the sharing of the said assets. Their reports, recommendations and agreements are the basis on which the plaintiff is making its claim. The Defendant on its part argues that the plaintiff's

action is statute barred in so far as it is based on the agreements by the Military Administrators, i.e contracts. It further argues that plaintiff is not entitled to further shares in the assets of the old Rivers state except as is given to it by S.7(1) of the States (Creation and Transitions) Decree. It was found from the evidence before the court that the assets have de facto been virtually shared in accordance with the recommendations of the committees and the agreements by the Administrators.

ISSUES FOR DETERMINATION

“(i) Subject to S.7(I) thereof, did the States (Creation and Transitions) Act NO. 36 of 1996, vests in the Defendant Rivers State, the assets and liabilities of the old Rivers State to the exclusion of Bayelsa State?”

“(ii) Other than the assets vested in Bayelsa under S.7(I) of the States (Creation and Transitional Provisions) Act NO. 36 of 1996, is Bayelsa State entitled to share with the new Rivers State represented by the Defendant, all the other assets and liability held, owned and controlled by the old Rivers State as at 30th September, 1996?”

“(iii) Is Bayelsa State entitled to all or any of the reliefs claimed in this suit?”

“(a) Whether the Plaintiff’s action based on the agreement dated 14th January, 1997 and 14th October, 1997 is statute barred by virtue of the applicable statute of limitation being S. 36 of the Rivers State Limitation Edict NO. 7 of 1988 or alternatively the 1623 Statute of Limitation in force in England on January 1, 1900 by virtue of S. 15 of the High Court Law of Eastern Nigeria Cap 61.

HELD (Unanimously dismissing the action per **ONNOGHEN JSC**)

ACTIONS - Competence - Statute bar

1. The action of the plaintiff as constituted is not statute barred and therefore competent. In the case of *Egbe vs Adefarasin* supra relied upon by both counsel, cause of action is defined by OPUTA, JSC thus:-

It can be defined as the fact or facts which established or give rise to right of action. It is the factual situation which gives a person right to judicial relief. A cause of action is the right to enforce presently a cause

of action. In other words, a cause of action is the operative fact or facts the factual situation which give rise to a right of action which itself is a remedial right.” Emphasis supplied by me.

From the above definition, it is very clear that for a cause of
B action to be said to have accrued in an action founded in breach of contract as contended by learned counsel for the defendant, there must be breach by the party in default thereby kick starting the cause of action. It is never the law that a cause of action in contract accrues upon the
C signing of a contract or agreement by the parties thereto particularly as the discharge of the contractual obligations under the contract will not result in accrual of any cause of action. The cause of action must be present at the institution of the action. That being the case it is very obvious that the premises of the submission of learned counsel for the
D defence - namely that the cause of action accrued on 14th October, 1997 when the contract was signed, is based on fallacy and therefore untenable - granted that the action is based on breach of contract as contended by counsel for the defendant, which is however not hereby conceded.
E (p. 3489 A)

Claim - Basis of

2. I hold the view that upon looking at this action as evidenced in the
F pleadings particularly the Amended Statement of Claim, it is very clear that the action is not based on breach of contract but founded on the legal interpretation of the States (Creation and Transitional Provisions) Act 1996 and the constitutional and legal implications of the creation of Bayelsa State out of the old Rivers State. The claims which had earlier been fully
G reproduced in this judgment are not based on contract at all. In conclusion, I cannot help but hold the considered view that defendant's issue No. 1 has no merit at all and is consequently resolved against the defendant. I find and hold that the action as presently constituted is not statute
H barred, and therefore competent. (p. 3489 G)

Words used in a statute - That are clear

3. Issue No. 1 of the plaintiff clearly calls for interpretation of the provi-

sions of section 7(1) of Act 36 of 1996. It is settled principles of interpretation of statute that where words used in statute are clear and unambiguous, they are to be given their ordinary plain meaning and that it is not necessary to put a gloss on or read into it, meaning which render them artificial.

I hold the considered view that the provisions of section 7(1) of Act 36 of 1996 are very clear and unambiguous and therefore ought to be given their ordinary plain meaning and nothing more. (p. 3492 E)

STATUTES - Interpretation - States Creation Act 1996 s.7(1)

4. Plaintiff's issues 1 and 2 have been determined by this court in the case of A-G Ondo State vs A-G Ekiti State Supra whose facts are very similar to those of the instant case particularly as the provisions of section 7(1) of Act 36 of 1996 call for interpretation.

In the earlier case, this court held that the transfers in the case are to the new state of Ekiti only and that there is clearly no transfer of any property to Ondo State under the subsection. Applying the ratio to the facts of this case particularly as it relates to plaintiffs issue NO. 1, I hold the firm view that section 7(1) of Act 36; of 1996 vests specific assets in the newly created Bayelsa State and did not vest any asset of the old Rivers State on the new and remaining old Rivers State after the creation of Bayelsa State therefrom. (pp. 3492 G/ 3493 C)

Creation of states - Out of existing states - Legal effect

5. I go further to hold that having gone through the whole Act 36 of 1996 I find no provision therein vesting any assets in the new Rivers State. This is so because with the creation of Bayelsa State from Rivers State, the old Rivers State ceased to exist as a juridical entity with its original assets and liabilities intact contrary to the contention of learned counsel for the defendant. What in effect emerges from the exercise of creating Bayelsa State is-the emergence 'of two new states out of the old Rivers State and it is of no moment that one of the two states thereby created retained the name of the old state. It could have been given a different name so the fact that it retained the name of the old Rivers State does

not, with respect make it the same legal person with rights to the assets and liabilities of the former or old Rivers State intact and to the exclusion of Bayelsa State, its twin sister. (p. 3493 E)

B *CREATION OF STATES - Assets & liabilities - Joint ownership of*

6. Having found and held as above, it becomes very clear that both the newly created Bayelsa State and Rivers State are joint owners of the assets and liabilities of the old Rivers State except those vested in Bayelsa State by the provisions of section 7(1) of Act 36 of 1996. There is no suggestion in the words of section 7(1) to the effect that the plaintiff is excluded from or not entitled to any other immovable property or chattel else where except those provided in the said section 7(1) of Act 36 of 1996 and since there is no such prohibition of joint ownership, the law says that it be allowed. It is in recognition of these facts that the Federal Government set up the Assets Sharing Committee for the two states in respect of the assets and liabilities of the old Rivers State which produced the reports earlier referred to in this judgment. There is evidence on record from both parties to the effect that the landed property of the old Rivers State outside the old Rivers State had been shared between the parties as well as other assets. This clearly negatives the claim of the defendant to exclusive ownership of the assets of the old Rivers State situate outside the newly created Bayelsa State. In the circumstance I find merit in plaintiffs issues 1 and 2 and resolve same in favour of the plaintiff while I find no merit in defendants issue NO. 2 which is hereby resolved against the defendant. The defendant's issue 2 having been resolved against it, it follows that the Counter Claim of the defendant has no foundation to sustain it and is consequently without merit whatsoever. (p. 3494 A)

Creation of States - Committees - Liability of defendant

H 7. The plaintiff wants this court to take into consideration the report of the Salihu Committee as contained in exhibit N along side the three volumes report of the Afolayan Committee a.k.a exhibits CB1, CB2 and CB3 without coming out to state that the said exhibits CB1, CB2 and CB3 did

not reflect the true state of affairs as regards the implementation of the recommendations of the Salihu Committee.

I hold the view that in order to determine whether the plaintiff has established its right to the reliefs claimed in this action, one has to take a look at the implementation report as relevant to the various heads B of claim and the agreement reached by the Military Administrators of the two states thereon. To begin with I hold that the agreements signed by the Military Administrators of the two states following the implementation of the recommendations is binding on both parties to this action and therefore enforceable. I also hold the considered view that the Afolayan's C report on implementation of the Salihu's Committee's recommendations and the agreements signed by the Military Administrators of the two states are the relevant documentary evidence in determining the liability or otherwise of the defendant in this action excluding the Salihu's Committee D recommendations. (pp. 3498 E/ 3499 D)

Burden of proof - Incidence of

8. By the provisions of section 135 of the Evidence Act, Whoever desires E any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, has the burden of proving that those facts exist. In the instant case the plaintiff asserted that he is entitled to the reliefs claimed by virtue of the provisions of Act 36 of 1996, F the reports of the Assets Sharing and Assets Implementation Committees as well as the agreements entered into by the parties to the action. That being the case, it is settled law that the plaintiff has the burden of proof of the assertion. (p. 3498 G)

G

Agreements - Binding effect of

9. On relief 14 clause 6.3 of the Agreement between the parties entered into on 14th October, 1997 provides as follows:-

“6.3 It is further agreed between the two States that should any H assets or liabilities come to light, the sources particularly as relates to Liabilities shall be investigated by a joint team of both states in accordance with the agreed formula.”

The above clearly shows that any investigation or valuation of subsequently discovered assets is the joint responsibility of the two states, not a unilateral exercise by one of the two states. The exercise is by agreement of both parties to be carried out by consent not by order of court. I hold the view that both parties are bound by the terms and conditions contained in the agreement of 14th October 1997 and cannot operate outside same.

In conclusion apart from the two properties at NO. 5 & 9 Akusa Street, old GRA, Port Harcourt which if not yet handed over to the plaintiff is hereby ordered to be so handed over by the defendant within 21 (twenty one) days of this order, I find no merit whatsoever in the action instituted by the plaintiff and I hold that the plaintiff has woefully failed to prove his entitlement to the reliefs claimed. (p. 3502 H)

REPRESENTATION

T. J. O. OKPOKO Esq., SAN, for the Plaintiff with him are T. E. UWHUETNE Esq., C. A. AJUYAH Esq., and A. ATIJEGBE.

H. O. AJUMOGOBIA Esq. A-G RIVERS, SAN for the defendant with him are Messrs I. R. MINAKIRI DCR Rivers State; E. N. MADUME, DDCL; F. R. GEORGE, CHIEF STATE COUNSEL, J. O. NWANKWO P.S.C.

CASES REFERRED TO

A-G of Ondo State v. A-G of Ekiti State (2001) 17 NWLR (Pt.743) 608
Olowofoyeku vs A-G Oyo State (1996) 10 NWLR (pt. 477) 190

Perkun Industries Ltd. V. Niger Shoes Ltd. (1988) 5 NWLR (pt. 93) 138

A-G Anambra State vs Onuselogu (1987) 4 NWLR (pt. 66) 547

Odukwe vs Ogunbiyi (1998) 8 NWLR (pt. 561) 339)

Osawaru vs Ezeiruka (1978) 6-7 S.C 135

Toriola vs Williams (1982) 7 SC. 27

Elias vs Disu (1962) 1 SCNLR 361

Abiodun vs Adehin (1962) 2 SCNLR 305

Agu vs Nndi (2002) 12 NWLR (pt. 798) 103

Fashanu vs Adekoya (1974) 6 SC. 83

Archibong vs Ita (2004) 2 NWLR (pt. 858) 590

Ibrahim v. Osim (1987) 4 NWLR (pt.67) 965

Bello v. A-G Oyo State (1986) 5 NWLR (pt.45) 828

Egbe vs Adefarasin (1987) 1 NNCR (pt. 47) at 20

Eboigbe vs NNPC (1994) 5 NWLR (pt. 347) 649

B

Odubelu vs Fowler (1993) 7 NWLR (pt. 308) 637

Bronix Motors vs Wema Bank (1983) 1 SCN LR 296

University Press Ltd. vs I.K. Martins (Nig) Ltd. (2000) 4 NWLR (pt. 654) 584

C

STATUTES REFERRED TO

Evidence Act, L.F.N, 1990 s. 135

High Court Laws of Eastern Nigeria, s.15

Limitation Law of Rivers State, 1988

D

States (Creation and Transitional Provision) Decree No 36, 1996, s. 7

Statute of Limitation Act, 1623

BOOKS REFERRED TO

E

Blacks Law Dictionary

Sources of Nigeria Law, A. E. W. Park, Sweet and Maxwell (1963 Ed)
pp 24-35

F

LEAD JUDGMENT BY ONNOGHEN JSC

By an Amended Statement of Claim deemed filed and served on the 9th day of February, 2006 the Plaintiff claimed against the Defendant, the following reliefs:

(1) A declaration that Bayelsa State is entitled to at least 45%
in the shares and profits of all joint venture investments of the old Rivers State, the particulars of which are set out in paragraph 15(i) - (ii) of the Statement of Claim.

(2) An order enjoining Rivers State to join in the transfer to Plaintiff H of the shares to which it shall be adjudged entitled under relief 1.

(3) An order enjoining Defendant to transfer and deliver to the Plaintiff with vacant possession, the buildings and premises known as

NOS. 5 and 9 Akassa Street, Old GRA Port Harcourt as they were on 1/10/96 in pursuance of the agreement between the parties as approved by the Federal Military Government.

B (4) An order that the Defendant transfer to the Plaintiff 51% of the buildings and houses in Rivers State and not located in Lagos State or exempted by Decree No. 36 from sharing and not already shared by the parties in accordance with the agreed and approved sharing formula. In the ALTERNATIVE, an order that Defendant do pay to Bayelsa State 51% of the value of such property as pleaded in paragraph 5(2) (ii) of the C Statement of Claim - that is to say, property vested in the old Rivers State as at 30/9/96.

D (5) An order that the sharing of the property in Lagos State be adjusted in such a manner that Plaintiff will have 51% of the property or 51% of the value of the property shared in Lagos with consequential order that the loss of Plaintiff in respect of the current share be met by payment of such sum as will bring Bayelsa State's share of the property in Lagos to 51% or reduce Rivers share in Lagos to 49% of the agreed E value as pleaded in paragraph 152 (iii) (sic) of the Statement of Claim.

F (6) An order that the joint surveyors or new surveyors appointed by each side be commissioned to carry out joint valuation and produce a joint valuation report of the value of the tertiary institutions and media houses as pleaded in paragraph 15(3) of the Statement of Claim and the Plaintiffs share thereof in accordance with the agreed sharing formula be paid to Bayelsa State Government by the Defendant.

G (7) An order that the one dredger and one boat referred to in paragraph 15(4) (i) of the Statement of Claim be released to the Bayelsa State Government by the Defendant OR in the alternative, to pay to the Bayelsa State Government the value thereof.

H (8) An order that the 119 vehicles referred to in paragraph 15(4) (ii) of the Statement of Claim be shared in accordance with the agreed sharing formula OR in the alternative, Defendant do pay to the plaintiff 51% of the agreed value of the said vehicles.

(9) An order that the Plants and Machinery clearly identified and valued in the joint valuation exercise carried out by both states as pleaded

in paragraph 15(5)(i) of the Statement of Claim be shared in accordance with the agreed sharing formula. In the ALTERNATIVE, Defendant be ordered to pay to the Plaintiff 51% of the agreed value of the said Plants and Machinery, Furniture and other Equipment.

(10) An order that the Plaintiff (sic) and Machinery for Yenagoa and Sagbama Industrial Estates now kept in the Government Warehouse in Port Harcourt as pleaded in paragraph 15(5) (ii) be released to Bayelsa State. B

(11) An order that the cash Balances as at 1st October, 1996 as pleaded in paragraph 15.6 of the Statement of Claim be shared in accordance with the agreed sharing formula. C

(12) An order that the sums of money due and available in bodies pleaded in paragraph 15(7) of the Statement of Claim be shared and Plaintiff's share of 51% be released to it by the Defendant. D

(13) An order that the value of the exempted items under Decree NO. 36 of 1996 erroneously included and excluded from the Plaintiff's supposed share or in the alternative that Defendant refunds and pays to Plaintiff sum credited to it thus making up for the error. E

(14) An order that the assets, funds or property of the old Rivers State which have not hitherto been valued be duly valued and same be shared in accordance with the sharing formula either in kind or in their values worth and F

(15) Any other relief to give full and final effect to the Asset Sharing Exercise." F

By way of counter claim, the Defendant claimed the following reliefs:- .

"(i) A DECLARATION that by the State (Creation and Transitional Provisions) Act NO. 36 of 1996 (hereinafter described as the Act) the Rivers State created out of the former Eastern Region by the states (creation and Transitional Provisions Act 1967) though territorially diminished in size continued to exist as a judicial entity. G H

(ii) A DECLARATION that the Act did not divest Rivers State of any immovable or movable property situate within the geographical area comprising Rivers State after the commencement of the Act.

(iii) A *DECLARATION* that the Plaintiff is by virtue of the Act only legally entitled to such immovable property situate in the area comprising Bayelsa State and any chattel which was held by a body corporate situate in the said area upon the creation of Bayelsa State with effect
B from October 1st, 1996 by the Act, and such other property as may have been legally and validly, transferred to Bayelsa State by Rivers, State since October 1st 1996.

(iv) A *DECLARATION* that the understanding, agreements or
C arrangements or comprises (sic) entered into between the persons purporting to act on behalf of the Plaintiff and Defendant as contained in agreements dated 14th January, 1997 and 14th October, 1997 have no legal validity whatsoever for the purpose of divesting Rivers State of any movable or immovable assets that were vested in Rivers State prior to
D October 1st, 1996.”

The undisputed facts of the case are as follows:

The parties to this action used to form part and parcel of Rivers State which was created in 1967 from the former Eastern Region of
E Nigeria by virtue of the provisions of the States (Creation and Transitional Provisions Act 1967) and remained so until 1996 when the said Rivers State was split into Rivers State and Bayelsa State by virtue of the provisions of Decree NO. 36 (now Act) of 1996 known as States Cre-
F ation and Transitional Provisions Decree NO. 36 of 1996. Following the creation of the two states an Asset sharing Committee was set up by the Federal Government of Nigeria to take inventory of all properties including buildings and equipment of the old Rivers State, articulate acceptable
G formula for the sharing of all assets and liabilities between, the affected states, effect smooth re-deployment of all public servants or staff to their states of origin, recommend joint undertakings where need be between the said states, make recommendations for shouldering responsibility for pensions and gratuities for employees and retirees of the states, ensure
H that all projects and their liabilities are taken over by the Government of the states where the projects are sited and make recommendations on any other matters in the spirit of equitable sharing of the assets and liabilities of the states. The committee became known as the Salihu Committee

which produced a report, exhibit BSDN or CB 1 in which it approved the sharing formula of 51% and 49% in favour of Bayelsa and the new Rivers States respectively for the assets and liabilities of the old Rivers State.

On 5th August, 1997 an Implementation Committee of the findings of the said Salihu Committee was inaugurated by the Federal Government of Nigeria saddled with the responsibility of sharing and implementing the approved recommendation of the said Salihu Committee in favour of new Rivers State and Bayelsa State. The new Committee was headed by Navy Commander Afolayan. It studied the report of the Salihu Committee and the approved recommendations and other relevant materials and eventually rendered a report on the Asset and Liability Sharing Implementation Committee in three volumes made up as follows:-

(i) Volume I - the main report

(ii) Volume II - containing appendixes on the actual implementation of assets and liabilities between the parties to this action and reports of its sub-committees; and

(iii) Volume III - which contains, the Agreement signed by the Military Administrators of Rivers and Bayelsa States.

Learned Senior Counsel for the Plaintiff T. J. OKPOKO Esq, SAN in the Plaintiffs Amended Brief of Argument filed on 13/3/06 and adopted in argument of the case on 28/9/06 identified the following issues as calling for determination of the suit, to wit:-

“(i) Subject to S.7(I) thereof, did the States (Creation and Transitions) Act NO. 36 of 1996, vests in the Defendant Rivers State, the assets and liabilities of the old Rivers State to the exclusion of Bayelsa State?”

“(ii) Other than the assets vested in Bayelsa under S.7(I) of the States (Creation and Transitional Provisions) Act NO. 36 of 1996, is Bayelsa State entitled to share with the new Rivers State represented by the Defendant, all the other assets and liability held, owned and controlled by the old Rivers State as at 30th September, 1996?”

“(iii) Is Bayelsa State entitled to all or any of the reliefs claimed in this suit?”

It should be noted at this stage that the defendant in paragraphs 26

and 27 of the Statement of Defence and counter claim filed on 19/1/04 pleaded as follows:-

B “26. The Defendant will farther contend at the hearing that having regard to the Plaintiffs cause of action based on a purported agreements signed in Port Harcourt, Rivers State, on January 14th, 1997, and agreement October 14th, 1997, respectively the plaintiffs suit having, been filed on October 14th, 2003 more than 6 years after the plain-
C tiffs (sic) cause of action accrued not later than October 14th, 1997 is statute barred by virtue of the applicable statute of limitation, being S. 16 of the Rivers State Limitation Edict, NO. 7 of 1988 or alternatively the 1623 Statute of Limitation in force in England on January 1, 1900, by virtue of S. 13(1) of the High Court Law of Rivers State or S.15 of the High Court Law of Eastern Nigeria, Cap. 61.

D 27. The Defendant will prior to or at the hearing of the suit consequently seek the dismissal of the Plaintiff suit in limine on the ground that the action is statute barred.”

The above preliminary point was taken into consideration by
E Learned Senior Counsel for the Defendant and Honourable Attorney-General of Rivers State, H. O. AJUMOGOBIA Esq, SAN in the Defendant’s Brief of Argument filed on 5/10/05 in formulating the three issues for determination as follows:-

F “(a) Whether the Plaintiff’s action based on the agreement dated 14th January, 1997 and 14th October, 1997 is statute barred by virtue of the applicable statute of limitation being S. 36 of the Rivers State Limitation Edict NO. 7 of 1988 or alternatively the 1623 Statute of Limitation in force in England on January 1, 1900 by virtue of S. 15 of the
G High Court Law of Eastern Nigeria Cap 61.

(b) Whether by virtue of the State (Creation and Transitional Provisions) Act NO. 36 of 1996 Rivers State created out of the former Eastern Region by the States (Creation and Transitional Provisions) Act
H 1967 ceased to exist as a judicial entity and was consequently divested of all its immovable and movable property situate within its revised geographical boundary after October 1, 1996.

(c) Whether the Plaintiff is entitled to the reliefs (sic) claimed in

paragraph 17 of the Plaintiff Statement of Claim dated 13th October, 2003 and filed on 14/10/03 and paragraph 5.0 - 7.0 of the Plaintiff's Brief of Argument as contained in pages 21-31 of the said brief."

Since the competence of the action has been challenged by the defendant, it becomes necessary to determine, that issue before any other, B if need be, depending on the outcome of the resolution of that issue.

In arguing the issue as to whether the action is statute barred, learned counsel for the defendant referred to pages 24 - 35 of A.E.W. Park. "The Sources of Nigeria Law, London Sweet and Maxwell 1963 C ed." and stated that the English Statute of Limitation Act 1623 being a Statute of General application in force in England on January 1, 1900 is by operation, of law applicable to Rivers and Bayelsa States by virtue of section 15 of the High Court Law of Eastern Nigeria as applicable to the aforesaid states. Learned counsel further submitted that since limitation D of action is within the exclusive legislative competence of state house of Assembly, the Rivers State House of Assembly duly enacted the Limitation Edict 1988 which enactment, he submits, applies to both Rivers and Bayelsa States citing and relying on Nigerian Law of Limitation of Ac- E tions by ELAIGUN E. APEH Esq 2001 ed. at page 15 thereof; that section 16 of the Law of 1988 provides that "no action founded on contract, or arty other action not specifically provided for in parts I and II of the Law shall be brought after the expiration of five (5) years from the date F on which the cause of action accrued" and proceeded to give a definition of action and cause of action and to state when a cause of action is said to have accrued relying on Blacks Law Dictionary 6th Ed. at page 28; the Limitation Law of Rivers State 1988; page 221 of Blacks Law Dictionary 6th ed; Egbe vs Adefarasin (1987) 1 NNCR (pt. 47) at 20 per OPUTA, G JSC and Eboigbe vs NNPC (1994) 5 NWLR (pt. 347) 649.

Learned counsel further submitted that the cause of action in this case accrued on the 14th day of October, 1997 when the two states entered into the agreement setting the sharing formula at 51% for Bayelsa H State and 49% for Rivers State of the assets and liabilities of old Rivers State and that since the action was not filed until 14th October, 2003 which is about 6 years after the said contract or agreement between the

parties it is caught by section 16 of Rivers State Limitation Edict NO. 7 of 1988 and therefore statute barred and not maintainable, relying on Odubelu vs Fowler (1993) 7 NWLR (pt. 308) 637; Egbe vs Adefarasin (1987) 1 NWLR (pt. 47) at 21 and urged the court to resolve the issue in
 B favour of the defendant particularly as any period spent on negotiation for settlement is not taken into account in computing the period of limitation of action as decided in Eboigbe vs NNPC supra at 64.

On his part, learned counsel for the Plaintiff in the Plaintiffs
 C Response to Defendant's brief filed on 6/6/06 submitted that the defence based on limitation of action as raised by the defendant is unavailable to the defendant particularly as the Statute of Limitation of England 1623 relied upon is an imperial Act which by the provisions of section
 D 2(4) of the Applicable Laws (Miscellaneous) Laws Cap 11 Laws of Rivers State no longer has effect in Rivers State and can therefore not be invoked in this case; that the issue for determination in this case is not based on contract as canvassed by learned counsel for the defendant but on the legal effect of the States Creation and Transitional Provisions
 E Decree NO. 36 of 1996 in respect of assets and liabilities of the old Rivers State from which Bayelsa State was created and therefore based on legal interpretation of the Act as it affects the assets and liabilities of the old Rivers State, referring to relief NO. 1 in paragraph 17(1) of the
 F Amended Statement of Claim. Learned Counsel further submitted in the alternative, that section 16 of the Limitation Law does not apply because it is not correct that the cause of action accrued on 14th October, 1997 as contended by learned counsel for the defendant, the correct position
 G being that the 14th October, 1997 being the date the agreement or contract was entered into does not constitute the date of breach of contract which by law confers a right of action on the party thereby adversely affected and that the case of Egbe vs Adefarasin supra does not decide that a cause of action accrues on the day the contract is signed or made;
 H that the relevant period in determining the accrual of the cause of action in an action for breach of contract is from the date or period or time when the plaintiff alleged that the defendant has breached the contract which in the instant case is the period from the return to Civilian Rule in

Nigeria on 29th May, 1999 and that between then and 14th October, 2003 when the action was filed in this court was less than five years and therefore the action is competent, learned counsel finally concluded.

I have no hesitation in agreeing with the submissions of learned senior counsel for the plaintiff that **the action of the plaintiff as constituted is not statute barred and therefore competent. In the case of Egbe vs Adefarasin supra relied upon by both counsel, cause of action is defined by OPUTA, JSC thus:-**

It can be defined as the fact or facts which established or give rise to right of action. It is the factual situation which gives a person right to judicial relief. A cause of action is the right to enforce presently a cause of action. In other words, a cause of action is the operative fact or facts the factual situation which give rise to a right of action which itself is a remedial right.” Emphasis supplied by me.

From the above definition, it is very clear that for a cause of action to be said to have accrued in an action founded in breach of contract as contended by learned counsel for the defendant, there must be breach by the party in default thereby kick starting the cause of action. It is never the law that a cause of action in contract accrues upon the signing of a contract or agreement by the parties thereto particularly as the discharge of the contractual obligations under the contract will not result in accrual of any cause of action. The cause of action must be present at the institution of the action. That being the case it is very obvious that the premises of the submission of learned counsel for the defence - namely that the cause of action accrued on 14th October, 1997 when the contract was signed, is based on fallacy and therefore untenable - granted that the action is based on breach of contract as contended by counsel for the defendant, which is however not hereby conceded.

I hold the view that upon looking at this action as evidenced in the pleadings particularly the Amended Statement of Claim, it is very clear that the action is not based on breach of contract but founded on the legal interpretation of the States (Creation and Transitional Provisions) Act 1996 and the constitutional and legal impli-

cations of the creation of Bayelsa State out of the old Rivers State. The claims which had earlier been fully reproduced in this judgment are not based on contract at all. In conclusion, I cannot help but hold the considered view that defendant's issue No. 1 has no merit at all and is consequently resolved against the defendant. I find and hold that the action as presently constituted is not statute barred, and therefore competent.

In considering the action on the merit, it is better and more convenient to consider plaintiff's issues 1 and 2 together with defendant's issue No. 2, which though slightly different is substantially similar in content with plaintiff's issues 1 and 2.

On issues 1 and 2 learned counsel for the plaintiff submitted that it is wrong for the defendant to contend in paragraphs 4 and 5 of the Statement of Defence and Counter Claim that a State from which a new State is created survives intact the creation of the new state as originally created and inherits to the exclusion of the newly created state, all the assets and liabilities of the original or old state; that it is always the case that the newly created State shares in what is left of the original State; the assets and liabilities thereof; referring to the case of *Olowofoyeku vs A-G Oyo State* (1996) 10 NWLR (pt. 477) 190; that the effect of the creation of the new State is that the old State ceases to exist in fact and in law as both states emerge from the exercise as new states; that the issue is basically whether by Act 36 of 1996, the assets and liabilities of the old Rivers State passed to the Defendant to the exclusion of the plaintiff as contended by the defendant or to both the plaintiff and defendant as contended by the plaintiff. Learned counsel further submitted that in interpreting the provisions of Act 36 of 1996 the principle to be applied is that where the words of a statute are clear and unambiguous, they are to be given their ordinary plain meaning relying on *Toriola vs Williams* (1982) 7 SC. 27; *Bronix Motors vs Wema Bank* (1983) 1 SCN LR 296; *A-G Ondo State vs A-G Ekiti State* (2001) 17 NWLR (pt. 743) 608 at 756; that section 7(1) of Act 36 of 1996 be given their ordinary meaning without recourse to any aid, internal or external, and that with that interpretation it becomes clear that the transfers in section 7(1) of Act 36 of 1996

is to the new state of Bayelsa only and that no transfer of property was therein made to the defendant Rivers State and urged the court to resolve the first issue in favour of the plaintiff.

On issue 2, learned counsel for the plaintiff submitted that other than the assets vested in the plaintiff under section 7(1) of Act NO. 36 of 1996, the plaintiff is in addition, entitled to share with the defendant, the new Rivers State, all the other assets held, owned and controlled by the old Rivers State as at 30th September, 1996, relying on the decision of this court in A-G Ondo State vs A-G Ekiti State supra; that the Counter Claim of the defendant in the present action is similar to the case put forward by the plaintiff in the A-G Ondo State vs A-G Ekiti State supra which was rejected by this court; he urged the court not to depart from that decision in determining this, case particularly as the same Act created Ekiti out of Ondo State and Bayelsa out of Rivers State. Learned Counsel then urged the court to resolve the issue in favour of the plaintiff and dismiss the Counter Claim in its entirety.

On his part, learned counsel for the defendant submitted that by virtue of the provisions of the State (Creation and Transitional Provisions) Act NO. 36 of 1996, Rivers State created out of the former Eastern Region by the States (Creation and Transitional Provisions) Act 1967 did not cease to exist as a judicial entity and was consequently not divested of all its immovable and movable property situate within its revised geographical boundary after October 1st, 1996 and referred to and relied on the judgment of this court in A-G Ondo State vs A-G Ekiti State supra; that it is legally untenable and preposterous to argue that Rivers State ceased to exist upon the creation of Bayelsa State out of it as governmental transactions continued to be carried out in Rivers State despite the creation of Bayelsa State which would not have been the case if Rivers State really ceased to exist as contended; that only the Regions from which states were created in the 1967 state creation exercise can be said to have ceased to exist following the exercise not a state like Rivers State where only six Local Government Councils were carved out to create Bayelsa State; that the decision of this court in Olowofoyeku vs A-G Oyo State supra is on the effects of the creation of states out of the

former Western Region on that Region and the newly created states with regard to ownership of the assets and liabilities of the old Western Region; that in that situation the old Western Region clearly ceased to exist with its assets and liabilities jointly owned by the newly created states.

B Learned counsel then urged the court to resolve the issue in favour of the defendant counter claimant and grant the reliefs in the Counter Claim.

Section 7(1) of Act 36 of 1996 provides as follows:-

“ Subject to subsection (2) of this section, any immovable property and any chattel which immediately before the commencement of this Decree, was situate in the area comprised in a new state created by this Decree and was held by a body corporate directly established by an Edict of the Military Administrator of the state out of which the new state is created or an instrument having effect as such Edict shall by virtue of this section and without further assurance than this section vest in the Military Administrator of the new state concerned and be held by him for purpose of the Government of that state and no compensation shall be payable in respect of any transfer effected by this section.”

E Issue No. 1 of the plaintiff clearly calls for interpretation of the provisions of section 7(1) of Act 36 of 1996. It is settled principles of interpretation of statute that where words used in statute are clear and unambiguous, they are to be given their ordinary plain meaning and that it is not necessary to put a gloss on or read into it, meaning which render them artificial, see *Toriola vs Williams* (1982) 7 S.C 27; *Bronix Motors vs Wema Bank* (1983) 1 SCNLR 296; *A-G Ondo State vs A-G Ekiti State* (2001) 17 NWLR (pt. 743) 608 at 756.

G I hold the considered view that the provisions of section 7(1) of Act 36 of 1996 are very clear and unambiguous and therefore ought to be given their ordinary plain meaning and nothing more.

H Fortunately plaintiff's issues 1 and 2 have been determined by this court in the case of *A-G Ondo State vs A-G Ekiti State Supra* whose facts are very similar to those of the instant case particularly as the provisions of section 7(1) of Act 36 of 1996 call for interpretation. In a position similar to that of the present defendant/

counter claimant, Ondo State claimed inter alia as follows:-

“(1) A DECLARATION that by virtue of Section 7(1) of the States (Creation and Transitional Provisions) Act 1996 (hereinafter referred to as the Act) ALL immovable properties and chattels owned by the plaintiff as at 30th September 1996 remain vested in and owned by the plaintiff after that date to the exclusion of the defendant with the ONLY exception of those immovable properties and chattels that as at the said 30th September, 1996 were held by a body corporate directly established by a legislation of Ondo State and were situate in the geographical area of Ekiti State.

The above claim is similar to the four claims of the defendant in this case in its counter claim earlier reproduced in this judgment. **In the earlier case, this court held that the transfers in the case are to the new state of Ekiti only and that there is clearly no transfer of any property to Ondo State under the subsection. Applying the ratio to the facts of this case particularly as it relates to plaintiffs issue NO. 1, I hold the firm view that section 7(1) of Act 36; of 1996 vests specific assets in the newly created Bayelsa State and did not vest any asset of the old Rivers State on the new and remaining old Rivers State after the creation of Bayelsa State therefrom. I go further to hold that having gone through the whole Act 36 of 1996 I find no provision therein vesting any assets in the new Rivers State. This is so because with the creation of Bayelsa State from Rivers State, the old Rivers State ceased to exist as a juridical entity with its original assets and liabilities intact contrary to the contention of learned counsel for the defendant. What in effect emerges from the exercise of creating Bayelsa State is-the emergence ‘of two new states out of the old Rivers State and it is of no moment that one of the two states thereby created retained the name of the old state. It could have been given a different name so the fact that it retained the name of the old Rivers State does not, with respect make it the same legal person with rights to the assets and liabilities of the former or old Rivers State intact and to the exclusion of Bayelsa State, its twin sister.**

Having found and held as above, it becomes very clear that both the newly created Bayelsa State and Rivers State are joint owners of the assets and liabilities of the old Rivers State except those vested in Bayelsa State by the provisions of section 7(1) of Act 36 of 1996. There is no suggestion in the words of section 7(1) to the effect that the plaintiff is excluded from or not entitled to any other immovable property or chattel else where except those provided in the said section 7(1) of Act 36 of 1996 and since there is no such prohibition of joint ownership, the law says that it be allowed. It is in recognition of these facts that the Federal Government set up the Assets Sharing Committee for the two states in respect of the assets and liabilities of the old Rivers State which produced the reports earlier referred to in this judgment. There is evidence on record from both parties to the effect that the landed property of the old Rivers State outside the old Rivers State had been shared between the parties as well as other assets. This clearly negatives the claim of the defendant to exclusive ownership of the assets of the old Rivers State situate outside the newly created Bayelsa State. In the circumstance I find merit in plaintiffs issues 1 and 2 and resolve same in favour of the plaintiff while I find no merit in defendants issue NO. 2 which is hereby resolved against the defendant. The defendant's issue 2 having been resolved against it, it follows that the Counter Claim of the defendant has no foundation to sustain it and is consequently without merit whatsoever.

This brings me to a consideration of issue NO. 3 which is the same for both parties. It asks the question whether Bayelsa State is entitled to all or any of the reliefs claimed in the action. Learned counsel for the plaintiff has submitted that by law and available evidence, the plaintiff has proved its case against the defendant and is therefore entitled to judgment for the reliefs claimed. Learned counsel stated that the Federal Government set up two different committees in relation to the assets and liabilities of Rivers State at different stages, the first being the Assets and Liabilities Sharing Committee between the plaintiff and the defendant which was headed by Air Commodor Salihu and the other, the Implementation

Committee headed by Cdr. Afolayan both of which produced reports. Learned counsel submitted that the mandate of the Afolayan Committee was to implement the recommendations of the Salihu Committee as contained in exhibit N. and in accordance with the terms of reference contained in exhibit J; that the agreed sharing formula of the assets and liabilities of the old Rivers State was 51% for Bayelsa State and 49% for Rivers 'State per exhibit E; 45% Bayelsa and 55% Rivers for sharing joint venture assets - exhibit H and 50/50 in respect of tertiary institutions and common services as per exhibit N.

Turning to the reliefs specifically, learned counsel referred to exhibit N page 72 on the plaintiffs stand on Hotels and Guest Houses owned by old Rivers State and the stand of the defendant thereon before the Salihu Committee and the recommendation of that Committee at pages 74 - 74 thereof to the effect, inter alia, that the Hotels were to be jointly owned, revitalized where applicable and leased to reputable organizations with the proceeds to be shared between the states on agreed formula, etc but that the said assets have not been shared neither are the hotels and guest houses in joint venture or unlimited liability company; that the plaintiff is entitled to 45% of assets of the five joint venture companies and 51% wholly owned companies as pleaded in paragraphs 15.1 (2) (a) and 17(1) of the Statement of Claim; that the plaintiff is entitled to Specific Performance in relation to properties at NOS. 5 & 9 Akasa Street, old GRA Port Harcourt as agreed by the parties and as evidenced in the agreement between the parties - exhibit C2. Referring to page 92 of exhibit N, learned counsel for the plaintiff submitted that the plaintiff is entitled to share in the value of all residential offices and commercial buildings in the old Rivers State in accordance with the agreed sharing formula.

On relief 4 counsel submitted that the plaintiff is entitled to N4,240,088,259.00 being 51% of the net value of buildings in Rivers State of N8,427,725,476.00.

On relief NO. 5, landed property in Lagos State, the plaintiff claims N28,799,668.00 while 50/50 of the value of tertiary institutions is claimed in relief NO. 6 as recommended in exhibit N, or

N6,313,055,084.50 being 50% of the value as assessed by a valuer appointed by the plaintiff in a report, exhibit J. On media houses plaintiff claims N1,126,382,773.00 as per exhibit J while N50,000,000.00 is claimed as value of one dredger not released to the plaintiff. In respect of
B vehicles in Government House the plaintiff claims N27,778,575.00 while N2,557,832,250.00 is claimed for plants and machinery and cash balances etc, etc.

On his part, learned counsel for the defendant submitted that by
C the summary of execution of Government White Paper on Assets and Liabilities contained in volume III of the report, each state was to take over in its entirety all Government buildings, offices and staff quarters located within its own territory and that the plaintiff has been consistently collecting 45% of its approved ratio of all joint venture projects
D between the parties; that there is no evidence that it was agreed that other buildings and houses located within Rivers State should be valued and the value shared according to the sharing formula rather section 10 page 23 clause (p) of volume III of the report provides that each state is
E to take over in its entirety all Government buildings, offices and staff quarters located within its own territory. On the landed property in Lagos State learned counsel for the defendant referred to page 4 of volume 1 (main report) on the sharing of property in Lagos and Abuja and stated
F that the said exercise had been long concluded.

On tertiary institutions learned counsel referred to clause 3.3 at page 4 to clauses 3.5-3.8 at page 5 of volume III of the report and paragraph 19 at page 9 of volume III which states that the four tertiary institutions should be run jointly for a maximum period of five (5) years
G within which Bayelsa State should establish its own. Thereafter, these institutions should be inherited by state of location. As regards motor vehicles, barges, boats and dredgers learned counsel referred to clause 6.1 - 6.3 at page 6 of volume III and urged the court to dismiss the claim;
H that shares in Government owned companies and dividends were shared as well as bank balances and external account balances were shared as evidenced in the report; that no asset belonging to the plaintiff was ever shared during the exercise; that since clause 6.3 at page 6 of volume III

of the report states that should any assets and liabilities come to light, the sources shall be investigated by a joint team of both states and if approved, shared between the states in accordance with the agreed formula, it was wrong for the plaintiff to unilaterally appoint a valuer to assess some perceived assets of the defendant allegedly discovered by the plaintiff and urge the court to dismiss the claim of the plaintiff in that the same has not been proved. B

Having gone through the facts of the case as revealed in the evidence produced before this court, I make the following findings of fact:- C

1. that following the creation of Bayelsa State from the old Rivers State the Federal Government of Nigeria set up the Assets and Liabilities Sharing Committee to share the assets and liabilities of the old Rivers State between the two new states. The Committee was headed by Air D Commodore A. Salihu.

2. the Committee produced a report at the conclusion of its assignment which is exhibit N.

3. that the Federal Government of Nigeria accepted the report E and produced a White Paper thereon.

4. On 5th August, 1997, the then Chief of Staff and Vice Chairman of the Provisional Ruling Council, Lt. General Oladipo Diya, FSS, MSS inaugurated the Assets and Liabilities Sharing Implementation Committee headed by Commodore S. O. AFOLAYAN of the Nigerian Navy F with terms of reference as contained in exhibit J. namely:

“(a) Share the assets and liabilities between the affected states in accordance with the approved formulae.

(b) Effect the smooth re-deployment of all public servants or staff to their states of origin in accordance with the approved recommendations. G

(c) Indicate which tertiary, health and other related institutions will be jointly owned for a period of 3 years as approved. H

(d) Establish structures for joint undertakings in the states where such joint ownership has been accepted and recommended.

(e) Ensure that all projects including their assets and liabilities are

taken over by the states where such projects are located.

(f) Ensure that the state pensioners are paid by their state's of origin while non-indigenes are allowed to indicate their states of preference."

B 5. that the Afolayan Committee completed its assignment and produced a report in three volumes as follows:-

(a) Volume I - main report

(b) Volume II - Appendices on the actual implementation of assets and liabilities between the two states and reports of the sub-committee etc.

(c) Volume III - containing the agreement signed by the Military Administrators of Rivers and Bayelsa States.

D 6. that the report of the Afolayan Committee and the agreement signed by the Military Administrators of the two states concerned and constitute the final documents on the implementation of the report of the Salihu Committee, on Assets and Liabilities Sharing between Rivers and Bayelsa States.

E 7. that the plaintiff in this action has not challenged the report of the implementation of the assets and liabilities committee a.k.a the Afolayan Committee report.

8. that the plaintiff wants this court to take into consideration the report of the Salihu Committee as contained in exhibit N along side the three volumes report of the Afolayan Committee a.k.a exhibits CB1, CB2 and CB3 without coming out to state that the said exhibits CB1, CB2 and CB3 did not reflect the true state of affairs as regards the implementation of the recommendations of the Salihu Committee.

By the provisions of section 135 of the Evidence Act, Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, has H the burden of proving that those facts exist. In the instant case the plaintiff asserted that he is entitled to the reliefs claimed by virtue of the provisions of Act 36 of 1996, the reports of the Assets Sharing and Assets Implementation Committees as well as the agree-

ments entered into by the parties to the action. That being the case, it is settled law that the plaintiff has the burden of proof of the assertion - see *Elias vs Disu* (1962) 1 SCNLR 361; *Abiodun vs Adehin* (1962) 2 SCNLR 305; *University Press Ltd. vs I.K. Martins (Nig) Ltd.* (2000) 4 NWLR (pt. 654) 584; *Odukwe vs Ogunbiyi* (1998) 8 NWLR (pt. 561) 339). B

The reason why the burden of proof in a civil case is with the plaintiff is that he is the person who is making the claim and where he fails to discharge the burden he must fail in his claim - see *Osawaru vs Ezeiruka* (1978) 6-7 S.C 135; *A-G Anambra State vs Onuselogu* (1987) 4 NWLR (pt. 66) 547; *Agu vs Nndi* (2002) 12 NWLR (pt. 798) 103; *Fashanu vs Adekoya* (1974) 6 SC. 83; *Archibong vs Ita* (2004) 2 NWLR (pt. 858) 590. C

The question that calls for answer is whether the plaintiff has proved the case against the defendant so as to be entitled to the reliefs as claimed. D

I hold the view that in order to determine whether the plaintiff has established its right to the reliefs claimed in this action, one has to take a look at the implementation report as relevant to the various heads of claim and the agreement reached by the Military Administrators of the two states thereon. To begin with I hold that the agreements signed by the Military Administrators of the two states following the implementation of the recommendations is binding on both parties to this action and therefore enforceable. I also hold the considered view that the Afolayan's report on implementation of the Salihu's Committee's recommendations and the agreements signed by the Military Administrators of the two states are the relevant documentary evidence in determining the liability or otherwise of the defendant in this action excluding the Salihu's Committee recommendations. E F G

As regards relief 17(1) of the Statement of Claim, paragraph (p) H of the summary of execution of Government White Paper on Assets and Liabilities Sharing between Rivers and Bayelsa States clearly states that "Each state should take over in its entirety, all Government buildings,

offices and staff quarters located within its own territory.” This is confirmed by clause 4 of the Agreement between the Military Administrators of Rivers and Bayelsa States entered into on 14th October 1997, exhibit BSDC1 which provides “*All Government owned projects including their attached assets and liabilities are to be taken by the Government of the state in which they are located.*”

I have carefully gone through the documentary exhibits in the case and have seen the list of investment assets jointly owned by Rivers and Bayelsa States as at 1st October, 1996 at pages 396 to 397 of exhibit CB1 while page 398 contains evidence of quoted investments already shared by the joint stock brokers nominated by both states as at 28th October, 1999. There is also evidence at pages 400 to 402 of exhibit CB1 of transfer of quoted and unquoted shares jointly owned by the two states to the plaintiff at ratio of 45% for plaintiff and 55% for the defendant.

Page 405 of exhibit CB1 contains evidence of sharing of dividend revenue between Rivers and Bayelsa States between 1st August, 1997 to 15th June, 1998 showing that out of a total of N28,018,675.92 Bayelsa State got N12,608,404.17 being 45% thereof while page 406 contains a photocopy of a Central Bank of Nigeria cheque dated 25th June, 1998 in favour of Bayelsa State for the said sum of N12,608,404.17. At page 407 of exhibit CB1 there is evidence that between 16th June, 1998 and 31st January, 2000 the sum of N18,802,521.31 was received by the Ministry of Finance, Incorporated Rivers State on behalf of the two states, out of which the plaintiff was entitled to N8,461,134.60 being 45% of the sum which money was paid to the plaintiff vide Zenith International Bank Ltd. cheque dated 06-09-2000 as evidenced in a photocopy at page 409 of exhibit CB1. Finally clause 5.1 at page 5 of volume III of the report, exhibit CB1 being the agreement between the parties clearly states that shares in Government owned companies and dividends from shares from October 1996 to July, 1997 were shared in accordance with the agreed sharing formula between the parties.

As regards relief NO. 3 learned counsel for the defendant, during the hearing of the case on 28/9/06, conceded that though instructions to

transfer the property at NOS 5 & 9 Akasa Street, old GRA Port Harcourt was given by the defendant, there is no evidence that it was duly carried out and undertook to ensure that it is done.

On relief NO. 4 I find as a fact that section Ten at page 23 clause (p) of volume III of the report, exhibit CB1, which had earlier been re-produced in this judgment it is stated clearly that “Each state should take over in its entirety, all Government buildings, offices and staff quarters within its own territory” and that the Agreement entered into by both parties on 14th October, 1997 contains no clause on the sharing of other buildings and houses located within Rivers State and not included in the immovable property and chattels pursuant to section 7(1) of Act 36 of 1996. The claim is obviously without foundation and I so find and hold.

On relief NO. 5 I refer to page 10 of volume I (main report) on the sharing of property in Lagos and Abuja which had been concluded in accordance with the agreed sharing formula of 51% to Bayelsa State and 49% for Rivers. It states as follows:-

“PROPERTIES IN LAGOS AND ABUJA.

The committee realized that the liason Offices in both Abuja and Lagos had been shared. By the two states in accordance with the consensus Reached; while all other properties in Lagos comprising Residential buildings, offices and warehouses valued At N345,438,000.00 are shared between the two States. Details are at Annex. D.”

From the above evidence I hold the view that the plaintiffs claim in relief 5 is very speculative.

As regard relief 6 on tertiary Institutions in which the plaintiff claims 50% share of the assessed and certified value of the four tertiary institutions of Rivers State University of Science and Technology, Nkpulu, Port Harcourt; Rivers State Polytechnic, Bori; Rivers State College of Arts and Science, Port Harcourt, and Rivers State College of Education there is evidence that the Implementation Committee decided that the “four tertiary institutions should be run jointly for a maximum period of five (5) years within which Bayelsa State should establish its own. Thereafter, these institutions should be inherited by state of location. However the management and funding of the above institutions should be on eq-

uity of 50:50 as desired by the two states” There is therefore no basis for the plaintiffs claim in relief 6.

On claims 7 and 8 I refer to clauses 6.1 and 6.2 of the Agreement of 14th October 1997 which expressly provide as follows:-

B “6.1 With the exception of motor vehicles and river crafts in zonal offices, health and health related institutions, special or specialized projects the judiciary, press, radio and television services, other motor vehicles, barges, boats, and dredges were shared according to the agreed formula.

C 6.2. The details of the motor vehicles, barges, boats and dredges shared are more particularly, described in scheduled 4 and its appendixes and form an intergral part of this Agreement and is to be read as one with it.”

D On the claims for plants and machinery, clause 1.1 of the Agreement between the parties entered into on 14th October 1997 stated unambiguously as follows:-

E “1.1 All plants, machinery, stores and stocks, office furniture and equipment with the exception of those items exempted in the Federal Government White Paper were shared between the two states in accordance with the agreed formula ratio of 49:51 in favour of Rivers State and Bayelsa State respectively.”

F As regards the claim for bank balances and cash balances it was agreed by both parties in clauses 5.2 and 5.3 of volume III as follows :

“5.2 Banks balances and External Account balances were also shared using the agreed formula.

G 5.3 Cash balances in Ministries, Departments, Agencies, Parastatals and sub treasuries were also shared according to the agreed formula.”

H As regards the claim in relief 13 I find nowhere in volume III particularly pages 22 - 26 thereof and the agreement between the parties where there was any sharing of assets that belong to the plaintiff under section 7(1) of Act 36 of 1996.

On relief 14 clause 6.3 of the Agreement between the parties entered into on 14th October, 1997 provides as follows:-

“6.3 It is further agreed between the two States that should any assets or liabilities come to light, the sources particularly as relates to Liabilities shall be investigated by a joint team of both states in accordance with the agreed formula.”

The above clearly shows that any investigation or valuation of subsequently discovered assets is the joint responsibility of the two states, not a unilateral exercise by one of the two states. The exercise is by agreement of both parties to be carried out by consent not by order of court. I hold the view that both parties are bound by the terms and conditions contained in the agreement of 14th October 1997 and cannot operate outside same.

In conclusion apart from the two properties at NO. 5 & 9 Akusa Street, old GRA, Port Harcourt which if not yet handed over to the plaintiff is hereby ordered to be so handed over by the defendant within 21 (twenty one) days of this order, I find no merit whatsoever in the action instituted by the plaintiff and I hold that the plaintiff has woefully failed to prove his entitlement to the reliefs claimed. I therefore have no option than to dismiss the action but with no order as to costs.

Plaintiff’s case dismissed.

BELGORE CJN

The States (Creation and Transitional Provisions) Act 1996 must not be construed as creating only one State from old Rivers State. The same Act could have named the present Rivers State differently whereby we would have had both Bayelsa and perhaps a State named differently from Rivers State, say “Elele State”. Certainly the present Rivers State is not the same as the previous one. [See *Olowofoyeku vs Attorney-General of Oyo State* (1996) 10 NWLR (Pt. 477) 190]. The old Rivers State ceased to exist once it was carved into two States by the 1996 Act (supra).

On the assets of the old Rivers States, the principle of sharing is mainly based on geographical location of the assets. Government House

buildings in Port Harcourt which are permanent structures are certainly to be in new Rivers State. Other assets like institution - University, College of Technology etc. - are governed by parties' agreement either for interim management or permanent arrangement of sharing the facilities.

B The practice between the new states has always been to extend facilities to the State that will start afresh to have breathing space up to when it can provide for itself.

C The other assets are those for which loans (both foreign and internal) are borrowed to create. Examples of these are dams, institutions and other facilities which will be governed by where they are located. Now, it cannot be said that a road constructed and is entirely within Bayelsa State with a foreign loan will be joint responsibility of Rivers and Bayelsa States to liquidate the loan. The geographical location of the project D dictates which state is responsible.

I have looked through this action by Bayelsa State and I cannot find any merit in it. The judgment of my learned brother, Onnoghen J.S.C. has set out clearly all the facts of this case and I agree with him entirely E that the action must fail. I therefore agree with his conclusion in dismissing this action.

ONU JSC

F Having been privileged to read before now the judgment of my learned brother, Onnoghen JSC just delivered, I am in entire agreement with him that the case lacks merit and it must perforce fail.

G The Plaintiff, claimed against the Defendant, the following reliefs: -

H *“(1) A declaration that Bayelsa State is entitled to at least 45% in the share and profits of all joint venture investments of the old Rivers State, the particulars of which are set out in paragraph 15(i)-(ii) of the Statement of Claim.*

(2) An order enjoining Rivers State to join in the transfer to Plaintiff of the share to which it shall be adjudged entitled under relief 1.

(3) An order enjoining Defendant to transfer and deliver to the

Plaintiff with vacant possession, the buildings and premises known as Nos.5 and 9 Akassa Street, Old GRA, Port Harcourt as they were on 1/10/96 in pursuance of the agreement between the parties as approved by the Federal Military Government.

(4) *An order that the Defendant transfer to the Plaintiff 51% of the buildings and houses in Rivers State and not located in Lagos State or exempted by Decree No.36 from sharing and not already shared by the parties in accordance with agreed and approved sharing formula. In the ALTERNATIVE, an order that defendant do pay to Bayelsa State 51% of the value of such property as pleaded in paragraph 5(2)(ii) of the Statement of Claim - that is to say, property vested in the old Rivers State as at 30/9/96.*

(5) *An order that the sharing of the property in Lagos State be adjusted in such a manner that Plaintiff will have 51% of the property or 51% of the value of the property shared in Lagos with consequential order that the loss of Plaintiff in respect of the current share met by payment of such sum as will bring Bayelsa State's share of the property in Lagos to 51% or reduce Rivers share in Lagos to 49% of the agreed value as pleaded in paragraph 152(iii)(sic) of the Statement of Claim.*

(6) *An order that these joint surveyors or new surveyors appointed by each side be commissioned to carry out joint valuation report of the value of the tertiary institutions and media houses as pleaded in paragraph 15(3) of the Statement of Claim and the Plaintiffs share thereof in accordance with the agreed sharing formula be paid to Bayelsa State Government by the Defendant.*

(7) *An order that the one dredger and one boat referred to in paragraph 15(4)(i) of the Statement of Claim be released to the Bayelsa State Government by the Defendant OR in the alternative, to pay to the Bayelsa State Government the value thereof.*

(8) *An order that the 119 vehicles referred in paragraph 15(4)(ii) of the Statement of Claim be shared in accordance with the agreed sharing formula OR in the alternative, defendant do pay to the Plaintiff 51% of the agreed value of the said vehicles.*

(9) *An order that the plants & machinery clearly identified and*

valued in the joint valuation exercise carried out by both states as pleaded in paragraph 15(5)(i) of the Statement of Claim be shared in accordance with the agreed sharing formula. In the ALTERNATIVE Defendant be ordered to pay to the Plaintiff 51% of the agreed value of the said Plants & Machinery, Furniture and other Equipment.

(10) An order that the Plaintiff (sic) and Machinery for Yenogoa and Sagbama Industrial estates now kept in Government warehouse in Port Harcourt as pleaded in paragraph 15(5)(ii) be released to Bayelsa State.

(11) An order that the cash Balances as at 1st October, 1996 as pleaded in paragraph 15.6 of the Statement of claim be shared in accordance with the agreed sharing formula.

(12) An order that the sums of money due and available in bodies pleaded in paragraph 15(7) of the Statement of Claim be shared and Plaintiffs share of 51% be released to it by the Defendant.

(13) An order that the value of the exempted items under Decree No.36 of 1996 erroneously included and excluded from the Plaintiffs supposed share or in the alternative that the Defendant refunds and pays to Plaintiff sums credited to it thus making up for the error.

(14) An order that the assets funds or property of the old Rivers State which have hitherto been valued be duly valued and same be shared in accordance with the sharing formula either in kind or in their values worth and

(15) Any other relief to give full and final effect to the Asset Sharing Exercise.”

The Defendant for its part, filed its Statement of Defence followed by a Counterclaim, to wit:

“(i) A DECLARATION that by the States (Creation and Transitional Provisions) Act No.36 of 1999 thereafter described as the Act) the Rivers State created out of the former Eastern Region by the States (Creation and Transitional Provisions Act 1967 though territorially diminished in size continued to exist as a judicial entity.

(ii) A DECLARATION that the Act did not divest Rivers State of any immovable or movable property situate within the geographical

area comprising Rivers State after the commencement of the Act.

(iii) A DECLARATION that the Plaintiff is by virtue of the Act only legally entitled to such immovable property situate in the area comprising Bayelsa and any chattel which was held by a body corporate situate in the said area upon the creation of Bayelsa State with effect from October, 1st, 1996 by the Act, and such other property as may have been legally and validly transferred to Bayelsa State by Rivers State since October 1st, 1996.”

(iv) A DECLARATION that the understanding, agreements or arrangements or comprises (sic) entered into between the persons purporting to act on behalf of the Plaintiff and Defendant as contained in agreements dated 14th January, 1997 and 14th October, 1997 have no legal validity whatsoever for the purpose of divesting Rivers State of any movable or immovable assets that were vested in Rivers State prior to October, 1st, 1996.”

As transpired, the contention by the Defendant took the preliminary issue that Plaintiffs action was statute barred as Issue No. 1 was raised in the Defendant’s brief of argument. Since the Plaintiffs cause of action was not based on contracts but rather on Act No.36 of 1996, the outcome of the recommendations of the Salihu Committee, the final report of the Commander Afolayan’s Committee as well as the directives of the Head of State, the Plaintiffs action is not statute barred.

That even if it was based on contracts, the agreements between the parties forming part of the implementation of the sharing of the assets and liabilities had been signed on 27/10/1997.

Plaintiff’s action is not based on breach of any contract but founded on the interpretation of Act No.36 of 1996 as well as the constitutional and legal implications of the creation of Bayelsa State out of the old Rivers State. I accordingly reject the preliminary objection raised by the Defendant and resolve Defendant’s Issue No.1 against it and in favour of the Plaintiff.

In respect of the two reliefs in issues (i) & (ii) made out in the Plaintiffs case, I am of the view that of the two properties, Nos.5 and 9 Akassa Street Old G.R.A Port Harcourt, which if not handed over to the

Plaintiff, already, should be so handed over to it forthwith.

Issues (i) and (ii) having been judicially determined in the case of A-G of Ondo State v. A-G of Ekiti State (2001) 17 NWLR (Pt.743) 608, the two entities - Rivers and Bayelsa States, with one retaining the name of the former State both became the joint owners of the assets and liabilities of the old Rivers State. Thus, the issues are resolved in favour of the Plaintiff. In that wise, Issue 3 being not made out, cannot be sustained and it fails.

For reasons given in the leading judgment of my learned brother Onnoghen, JSC with which I entirely agree, I too dismiss this case and make no order as to costs.

D KATSINA-ALU JSC

I have had the privilege of reading in draft the judgment of my learned brother Onnoghen JSC. I entirely agree with it. The plaintiffs action is clearly without merit.

The plaintiff, by an amended Statement of Claim, claimed against the defendant the following reliefs:

(1) A declaration that Bayelsa State is entitled to at least 45% in the shares and profits of all joint venture investments of the old Rivers State, the particulars of which are set out in paragraph 15(i)-(ii) of the Statement of Claim.

(2) An order enjoining Rivers State to join in the transfer to Plaintiff of the shares to which it shall be adjudged entitled under relief 1.

(3) An order enjoining Defendant to transfer and deliver to the Plaintiff with vacant possession, the buildings and premises known as Nos. 5 and 9 Akassa Street, Old GRA, Port-Harcourt as they were on 1/10/96 in pursuance of the agreement between the parties as approved by the Federal Military Government.

(4) An order that the Defendant transfer to the Plaintiff 51% of the buildings and houses in Rivers State and not located in Lagos State or exempted by Decree No. 36 from sharing and not already shared by the parties in accordance with the agreed and approved sharing formula. In

the ALTERNATIVE, an order that Defendant do pay to Bayelsa state 51 & of the value of such property as pleaded in paragraph 5(2)(ii) of the Statement of Claim-that is to say, properly vested in the old Rivers State as at 30/9/96.

(5) An order that the sharing of the property in Lagos State be B adjusted in such a manner that Plaintiff will have 51& of the properly or 51& of the value of the property shared in Lagos with consequential order that the loss of Plaintiff in respect of the current, share be met by payment of such sum as will bring Bayelsa State's share of the property C in Lagos to 51% or reduce Rivers share in Lagos to 49% of the agreed value as pleaded in paragraph 152(iii) (sic) of the Statement of Claim.

(6) An order that thee joint surveyors or new surveyors appointed by each side be commissioned to carry out joint valuation and produce a D joint valuation report of the value of the tertiary institutions and media houses as pleaded in paragraph 15(3) of the Statement of Claim and the Plaintiffs share there of in accordance with the agreed sharing formula be paid to Bayelsa State Government by the Defendant.

(7) An order that the one dredger and one boat referred to in E paragraph 15(4)(i) of the Statement of Claim be released to the Bayelsa State Government by the Defendant OR in the alternative, to pay to the Bayelsa State Government the value thereof.

(8) An order that the 119 vehicles referred to in paragraph 15(4)(ii) F of the Statement of Claim be shared in accordance with the agreed sharing formula OR in the alternative, Defendant do pay to the plaintiff 51% of the agreed value of the said vehicles.

(9) An order that the Plants and Machinery clearly identified and G valued in the joint valuation exercise carried out by both states as pleaded in paragraph 15(5)(i) of the Statement of Claim be shared in accordance with the agreed sharing formula. In the ALTERNATIVE, Defendant be ordered to pay to the Plaintiff 51% of the agreed value of the said Plants and Machinery, Furniture and other Equipment. H

(10) An order that the Plaintiff (sic) and Machinery for Yenogoa and Sagbama Industrial Estates now kept in the Government Warehouse in Port-Harcourt as pleaded in paragraph 15(5)(ii) be released to Bayelsa

State.

(11) An order that the cash Balances as at 1st October, 1996 as pleaded in paragraph 15.6 of the Statement of Claim be shared in accordance with the agreed sharing formula.

B (12) An order that the sums of money due and available in bodies pleaded in paragraph 15(7) of the Statement of Claim be shared and Plaintiff's share of 51% be released to it by the Defendant.

C (13) An order that the value of the exempted items under Decree No. 36 of 1996 erroneously included and excluded from the Plaintiff's supposed share or in the alternative that Defendant refunds and pays to Plaintiff sum credited to it thus making up for the error.

D (14) An order that the assets, funds or property of the old Rivers State which have not hitherto been valued be duly valued and same be shared in accordance with the sharing formula either in kind or in their values worth and

(15) Any other relief to give full and final effect to the Asset Sharing Exercise."

E For its part, the defendant filed its Statement of Defence and counter-claim. In its counter-claim the defendant sought the following reliefs:

F "(i) A DECLARATION that by the state (Creation and Transitional Provisions) Act No. 36 of 1996 (hereinafter described as the Act) the Rivers State created out of the former Eastern Region by the states (creation and Transitional Provisions Act 1967) though territorially diminished in size continued to exist as a judicial entity.

G (ii) A DECLARATION that the Act did not divest Rivers State of any immovable or movable property situate within the geographical area comprising Rivers State after the commencement of the Act.

H (iii) A DECLARATION that the Plaintiff is by virtue of the Act only legally entitled to such immovable property situate in the area comprising Bayelsa State and any chattel which was held by a body corporate situate in the said area upon the creation of Bayelsa State with effect from October 1st 1996 by the Act, and such other property as may have been legally and validly, transferred to Bayelsa State by Rivers State

since October 1st, 1996.”

(iv) A DECLARATION that the understanding, agreements or arrangements or comprises (sic) entered into between the persons purporting to act on behalf of the Plaintiff and Defendant as contained in agreements dated 14th January, 1997 and 14th October, 1997 have no legal validity whatsoever for the purpose of divesting Rivers State of any movable or immovable assets that were vested in Rivers State prior to October 1st, 1996.”

My learned brother Onnoghen JSC. has dealt very exhaustively with the issues raised by both parties.

With regard to the contention that the plaintiffs action was statute barred, the defendant’s submission was to the effect that the cause of action arose from the date the agreements between the parties were signed i.e. 14th October, 1997. The simple answer is that a cause of action is said to have accrued from the date of a breach of agreement by the party in default. Therefore the action of the plaintiff as constituted is not statute barred.

Now to the main reliefs sought by the plaintiff. From the facts of this action, it should have been obvious to the plaintiff that its action was bound to fail. This is because the documentary exhibits in the case have shown that the agreement between the plaintiff and the defendant was fully complied with. This has been particularized by my learned brother in the leading judgment and I do not deem it necessary to also set it out here. The plaintiff’s action in my judgment was no more than a short in the dark.

In the circumstances this action is without merit and must be dismissed.

Accordingly I also dismiss it. I make no order as to costs.

MUSDAPHER JSC

Pursuant to the provisions of Section 232(1) of the 1999 Constitution of the Federal Republic of Nigeria, the plaintiff herein, the Attorney-General of Bayelsa State of Nigeria representing the Bayelsa State

invoked the original jurisdiction of the Supreme Court in a dispute over the sharing of assets between the plaintiff and the defendant, the Attorney-General of Rivers State of Nigeria representing the Rivers State of Nigeria. The defendant also filed a Counter-claim.

B It is common ground that the two states parties to these proceedings, were part of the old Rivers State created in 1967 and carved out of the former Eastern Region of Nigeria in accordance with the provisions of STATES [CREATION AND TRANSITIONAL PROVISIONS] DECREE, 1967. The created Rivers State remained one entity from 1967
C until 1st October 1996 when by virtue of the provisions of Decree No. 36 of 1996 now Act No. 36 of 1996, that is STATES [CREATION AND TRANSITIONAL PROVISIONS] Act, the state was split into two new states namely Bayelsa and Rivers States, the parties to this action. By
D virtue of the provisions of the aforesaid Act, the two states became the joint successors of all the assets and liabilities of the former Rivers State aforesaid. The dispute giving rise to these proceedings is on the sharing of the assets and liabilities stated aforesaid.

E Following the creation of the two states on the 1/10/1996, the Federal Military Government set up Assets/Liabilities sharing committee. The terms of reference of the committee included among other items the following:-

F “(a) Take inventory of all properties including buildings, materials and equipments.

(b) Articulate acceptable formula for the sharing of all assets and liabilities.

G (c) Effect smooth redeployment of all public servants or staff to their states of origin.

(d) Recommend joint undertakings where necessary etc. The Committee set up was under the chairmanship of Air Commodore A. Salihu and is known as Air Commodore Salihu’s Committee. On completion of
H their assignment, the Federal Military Government set up an implementation committee to implement the various recommendations of the Air Commodore Salihu committee. This latter committee was under Navy Commander Afolayan and became known as the Afolayan committee.

The terms of reference of the implementation committee include:-

“(a) Share the assets and liabilities in accordance with the approved formula.

(c) Indicate which tertiary, health and other related institutions will be jointly owned for a period of 3 years as approved.

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(d) Establish structures for joint undertakings, when such joint ownership have been accepted and recommended.”

The commander Afolayan committee, set up sub-committees consisting of the nominees of the parties herein, studied the report of the Salihu committee and the approved recommendations and other relevant materials and finally came with a report on the assets and liabilities sharing implementation. The report is in three volumes:-

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[1] Volume 1 - Main Report.

[2] Appendixes on the actual sharing of the assets and liabilities and reports of the sub-committees. Volume II.

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[3] Various agreements signed by the parties on the sharing of the assets and liabilities. Volume III

By its Amended Statement of claim filed on the 7/2/2006. The plaintiff alleges that the recommendation of the Salihu's Assets and Liabilities sharing committee, the agreement dated 14/10/1997 and the Directive of the Head of State, the assets sharing exercise has not been fully carried out as the defendant has put a stop to the implementation and failed and neglected to carry out, the said recommendations, agreements and directives. In paragraph 15 of the aforesaid Amended Statement of Claim the plaintiff made certain specific claims i.e, wholly owned and partly owned companies, buildings residential and commercial, cash balances, undeclared funds and other assets the plaintiff is excluded from sharing. The plaintiff therefore claims under paragraph 17 of the Amended Statement of Claim 15 reliefs.

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As mentioned above, the defendant resisted the claims of the plaintiff by filing a statement of Defence wherein he made some counter-claims. After the pleadings, the parties filed Affidavit evidence in proof of their claims, they also filed briefs of arguments. In his Statement of Defence, defendant pleaded as a special defence to the action, the provi-

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sions of Section 16 of the Rivers State Limitation Law No. 7 of 1988 or alternatively the English Statute of general application, the 1623 English imperial statute of limitation. The defendant thus contended that the action of the plaintiff was statute barred. The learned counsel for the defendant took this preliminary point as his issue No 1 in the defendant's brief of argument. Without much ado, I resolve this issue in favour of the plaintiff, the cause of action of the plaintiff was not based on contract, the action was clearly based on the aforesaid Act No. 36 of 1996, the recommendations of the Salihu Committee, the final report of the implementation committee of Commander Afolayan and the directives of the Head of State. The action of the plaintiff is not statute barred even if it was based on contract, the agreements between the parties forming part of the implementation of the sharing of the assets and liability were signed on the 27/10/1997. Be that as it may, in my view the action of the plaintiff is not based on breach of any contract but founded on the interpretation of the Ac; No. 36 of 1996 and the constitutional and legal implications of the creation of Bayelsa State out of the old Rivers State.

The plaintiff's action is also based on the recommendations of the Salihu Committee the final report of the Afolayan implementation Committee including the agreements of both parties reached in the implementation exercise and the directives of the Federal Military Government. It is accordingly not correct to state that the basis of the plaintiffs claims were based on breach of contract and that by virtue of the limitation statutes, the action became statute barred. I accordingly reject the preliminary objection raised by the defendant and I resolve the defendant's issue No. 1 against the defendant in favour of the plaintiff.

Now in his brief for the plaintiff, the learned Senior counsel has identified and formulated three issues for the determination of the matter before this court. The issues are:-

“(i) Subject to Section 7(i) thereof; did the States [Creation And Transitional] Provisions Act, No. 36 of 1996, vests in the defendant Rivers State, the assets and liabilities of the old Rivers State to the exclusion of the Bayelsa State?

(ii) Other than the assets vested in Bayelsa under Section 7(i) of

the States [Creation And Transitional Provisions] Act No. 36 of 1996, is Bayelsa State entitled to share with the new Rivers State represented by the defendant, all the other assets and liabilities held, owned and controlled by the old Rivers State as at 30th September, 1996?

(iii) *Is Bayelsa State entitled to all or any of the reliefs claimed in this suit.*”

I have alluded to the issue No. 1 formulated by the defendant in which he relied as a preliminary point of law that since the action of the plaintiff was based on a breach of contract, the limitation statutes referred to apply to bar the action of the plaintiff. I have dealt with that point. The two other issues are similar to the issues raised by the plaintiff reproduced above, I do not deem it necessary to reproduce the defendant’s issues.

In my view, Issue (i) and (ii) raised by the plaintiff are not necessary for the determination of issue No. (iii) which is clearly the fundamental and the crucial point of the litigation. Under issue (iii) question is whether the plaintiff is entitled to the specific claims and reliefs he sought in the action. In any event the plaintiffs issues (i) and (ii) have been judicially determined by this court. See the case of A-G of ONDO STATE VS. A-G OF EKITI STATE [2001] 17 NWLR (Pt 743) 608. The creation of Bayelsa State resulted in the emergence of two new states and this is notwithstanding the fact that one of them retained the old name. The new states created in this case Bayelsa and Rivers State became the joint owners of the assets and liabilities of the old Rivers State subject to the provisions of Act No. 36 of 1996, creating the states. See for example section 7(i) thereof. This means that issues (i) and (ii) for whatever reasons are resolved in favour of the plaintiff and the counter-claim of the defendant has no leg to stand on. The counterclaim cannot therefore be sustained, it is dismissed by me. This is clearly in view of the earlier decision of this court referred to above.

This brings me to the plaintiffs issue No. 3, the question here is whether the plaintiff has proved its claims to entitle it to the reliefs sought. I have carefully read before now, the judgment of my Lord Onnoghen JSC and with the greatest respect adopt his seasonings as mine and I

reach the inevitable conclusion that apart from the two properties at No. 5 and 9 AKASSA STREET, OLD GRA, PORT HARCOURT which if not handed over to the plaintiff should be handed over forthwith, I find that the other claims and reliefs of the plaintiff have no merit whatsoever. I also hold that the plaintiff has woefully failed to establish his claims by credible evidence to entitle it to the reliefs claimed. Subject to above, I dismiss the claims of the plaintiff. The counter-claim of the defendant is also dismissed. I make no order as to costs.

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OGUNTADE JSC

The plaintiff issued its writ of summons in this Court claiming multiple reliefs. The defendant in reaction raised a counter-claim. The claim of the plaintiff and the counter-claim which it elicited have been set out fully in the lead judgment by my learned brother Onnoghen JSC. I do not need to set them out in this judgment.

The relevant background to the dispute may be briefly told. The defendant State, Rivers was created out of the former Eastern Nigeria in 1967. At its creation, the State included the land area now known as Bayelsa State. Bayelsa was constituted a separate State of its own in 1996 vide Decree No. 36 of 1996. Except for the old Mid-West Region, States in Nigeria post-independence were created only by the Military Administration. Often, the devolution of assets and liabilities between the old States and the new ones created out of them was a matter of administrative arrangements after the new States had been created.

With respect to the parties in this suit, the starting point for the devolution of their assets and liabilities was section 7 of Decree No. 36 of 1996 which provides:

“7.-(1) Subject to subsection (2) of this section, any immovable property and any chattel which, immediately before the commencement of this Decree, was situate in the area comprised in a new State created by this Decree and was held by a body corporate directly established by an Edict of the Military Administrator of the State out of which the new State is created or an instrument having effect as such Edict shall, by

virtue of this section and without further assurance than this section, vest in the Military Administrator of the new State concerned and be held by him for the purpose of the Government of that State and no compensation shall be payable in respect of any transfer effected by this section. (2) Nothing in his section shall apply to any such property held on behalf B of the Federation for the purposes of the government of the Federation or to immovable property and chattels in the ownership of statutory corporations or, as the case may be, of companies, owned or controlled by the Government of the Federation.”

Following the creation of Bayelsa State out of Rivers State in 1996, an Asset sharing Committee was set up. It later became known as the Salihu Committee. It was to ascertain the assets available and make recommendations for sharing such assets between the two States. The Committee recommended the sharing formula as 51% for Bayelsa State D and 49% for Rivers State.

This was followed on 5-8-97 with the setting up of the Implementation Committee, otherwise called the Afolayan Committee. As its name conveys, it would appear that the Implementation Committee was set up to put into effect the recommendations of the Salihu Committee. E

I have stated the brief historical background in order to show that the dispute in this case is not about an ascertainment of the Constitutional or other legal rights as such of the parties vis-a-vis their existence F as States. Rather, the dispute from its nature, is only an invitation to ascertain whether or not the Plaintiff had been short-changed as a result of the non-delivery to it of what the two committees earlier mentioned decided should be given to it. This imposes on this Court the duty to find G out what the Afolayan Committee decided and see if Rivers State or the defendant has in any respect failed to live up to what it was enjoined to do under the report of the Committee.

I have had the advantage of reading in draft a copy of the lead H judgment by my learned brother Onnoghen JSC. He has exhaustively examined the relevant matters to the dispute. I adopt his reasoning and conclusion as mine as I could not possibly improve on them. The claims of the plaintiff when viewed against the available evidence which con-

sists of the reports of the two committees earlier mentioned would appear to be a mirage or mere fishing expedition. I say this because the plaintiff never satisfactorily showed in what respect the defendant had failed to comply with the agreement reached by parties as to the sharing
B of their joint assets and liabilities. The claims were generalized and no attempt was made to show specifically in what aspects the defendant breached the agreement on sharing.

I am in agreement with the views expressed in the lead judgment
C that this suit has no merit. I would also dismiss it.

MUKHTAR JSC

I have had a preview of the lead judgment delivered by my learned
D brother Onnoghen, JSC. I wish to add by way of emphasis that the suit instituted in this court is not statute barred, as the cause of action that gave rise to this action did not accrue from 1997 when the agreement came into being. Cause of action was defined by this court, in the case of
E P.W. Udoh Trading Co. Ltd. V. Abere 2001 11 NWLR part 723 page 114 at 129 which dealt with the point of when the cause of action arises. Kalgo JSC in the case summarized the position thus:-

*“When then is the cause of action and when does it arise. Cause
F of action has been defined by courts to mean a combination of facts and circumstances giving rise to the right to file a claim in court for remedy. It includes all those things which are necessary to give a right of action and every material fact which is material to be proved to entitle the plaintiff to succeed. It includes all those things which are necessary to
G give a right of action and every material fact which is material to be proved to entitle the plaintiff to succeed. See Perkun Industries Ltd. V. Niger Shoes Ltd. (1988) 5 NWLR (pt. 93) 138, Ibrahim v. Osim (1987) 4 NWLR (pt.67) 965; Bello v. A-G Oyo State (1986) 5 NWLR (pt.45) 828.
H The cause of action arises as soon as the combination of the circumstances mentioned above accrued or happened, and it is the act on the part of the defendant which gives the plaintiff the cause of complaint.”*

Applying the above principles the cause of action in the instant

case arose when there was a perceived breach. In this respect I hold that action is not statute barred, and in the circumstances I overrule the objection raised by the learned counsel for the defendant. The issues raised in the briefs of argument have been thoroughly dealt with in the lead judgment, and I am in agreement with the reasoning and conclusion reached B therein.

The law is settled that in civil cases, it is incumbent on a party who is claiming a relief against his opponent to prove what he asserts, for unless he provides good and credible evidence to discharge the burden of proof placed on him by the law, his case is bound to fail. He who asserts must prove: See Section 135 of the Evidence Act Cap. 112 laws of the Federation of Nigeria. See also *Osawaru v. Ezeiruka* 1978 6-7 SC. 135 and *Imana v. Robinson* 1979 34 SC 1. C

The plaintiff in this case has failed to discharge the burden of D proof. In this wise I also dismiss the plaintiff action as was done in the lead judgment, and with no order as to costs.

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