

SUPREME COURT OF NIGERIA
18TH APRIL, 2008 SC. 342/2002
CORAM:- N. TOBI, S. A. AKINTAN, F. F. TABAI, I. T.
MUHAMMAD, JJSC

MRS. O. ADEKOYA	APPELLANT
AND		
FEDERAL HOUSING		
AUTHORITY	RESPONDENT

ACTIONS - Cause of action - Definition - A cause of action - Is the emergence of a factual situation - Which gives rise to a right of action in court (H1)

ACTIONS - Limitation - Period of - How determined - Is by ascertaining - From the writ of summons and statement of claim - Alleged date of wrong committed - And comparing that with date action was filed (H2)

JUDGMENTS - Technicality - Trial court's judgment given on technical grounds - Where upturned on appeal - Proper order to make - Is not an order granting reliefs claimed - But an order for hearing on the merits of the case (H3)

FACTS

The plaintiff/appellant had sued the defendant/respondent at the Ikeja Judicial Division of the High Court of Lagos State. Appellant's claim was for an order of specific performance of an agreement dated 25th July, 1977, made between her and the respondent by which the respondent, as lessor, had leased to the appellant Flat No. 11, Blocks 3, 4th Avenue, 402 Road, C close, Community 1 A Festac Town; or in the alternative, an award of N10, 000. 00 against the respondent as general and special damages for breach of contract. It is the appellant's story that following the execution of the said agreement by the parties, she had waited for five years for the respondent to put her in possession of the demised property to no avail. So in 1982, by a letter dated 20th July, she had complained bitterly to the respondent

about the state of affairs. It was in response to the said letter that respondent wrote the appellant, stating for the first time that the appellant's allocation was a unit of flat in Amuwo-Odofin and not Festac town. In May 1984, two years after the respondent's letter, Appellant instituted this suit.

After hearing, the learned trial judge dismissed the suit on the ground that it was statute barred under section 8 (1)(a) of Limitation Law of Lagos State, not having been brought within six years of the accrual of the cause of action. The court had found as a fact that the cause of action arose on the 25th July, 1977, the date on which the lease agreement was made. Appellant's appeal to the Court of Appeal was dismissed. She has brought the instant appeal against the Judgment of the Court of Appeal affirming the judgment of the trial court.

ISSUE FOR DETERMINATION

Whether the action was defeated by reason of the provisions of Section 8(1)(a) of the Limitation Law of Lagos State.

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

Cause of action - Definition

1. In Fred Egbe v. Hon. Justice LA. Adefarasin (1987) 1 NWLR (Pt. 47) 1 at 20, this court per Oputa, JSC., explained “*cause of action*” as follows:-

“Now let us look at the meaning of cause of action. It is admittedly an expression that defies precise definition. But it can safely be defined as the fact or facts which establish or give rise to a right of action it is the factual situation which gives a person a right to judicial relief.

A cause of action is to be distinguished from a right of action. A right of action is the right to enforce presently a cause of action. In order 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.....”

In my view, a cause of action is the emergence of a factual situation which enables a party to an action in court. (p. 1432 A)

ACTIONS - Period of limitation - How determined

2. On the question of how to determine the period of limitation,

Oputa at the same page 20, said:-

“How does one determine the period of limitation? The answer is simple by looking at the Writ of Summons and the Statement of Claim alleging when the wrong was committed which gave the plaintiff a cause of action and by comparing that date with the date on which the Writ of Summons are filed. This can be done without taking oral evidence from witnesses”

The above statement represents the correct legal principle. A plea by a defendant in any given case that the action is statute barred is a plea which raises the issue of jurisdiction and which determinant is the Writ of Summons and the Statement of Claim. (p. 1432 D)

Trial court's judgment given on technical grounds

3. In contending that the appeal be allowed the appellant claimed that she is entitled to all the reliefs claimed and urged this court to grant the reliefs as claimed. Although some references were made to some of the exhibits in the judgment, the dismissal of the claim was predicated whole and entire on the applicability of the statute of limitation. There is nothing indicating that the claim was determined on its merits. I do not think that in these circumstances this court is in a position to reach a dispassionate decision on the merits of the case. This is particularly so in view of the fact that there was, in addition to the documentary evidence, some oral testimony. It is also to be noted that the exhibits in this case are not available and not all the documents referred to in the pleadings are copied in the record of appeal.

In conclusion, I hold that the decision of the courts below that the action was statute barred by reason of the provisions of Section 8(1)(a) of the Limitation Law of Lagos State is wrong and same is set aside. For the reasons which I have stated above. I hold that the action was not caught by the Limitation Law. And since the concurrent judgment of the two courts below was based wholly on the applicability of the Limitation Law, this appeal succeeds and is accordingly allowed. The case be and is hereby remitted back to the High Court of Lagos State for hearing and determination on the merits. (p. 1434 H)

NOTABLE POINTS OF INTEREST

TOBI JSC

1. A reply brief should address points of law not of facts

B Counsel for the appellant in his Reply Brief made submission on points of fact, which is procedurally wrong. He is expected by our adjectival law to submit only on points of law in his Reply Brief. The facts of the case are constant and they are available in the record for the court to apply the law. After all they are the fountain head of the law which the court applies in arriving at a decision. What the court needs is
C assistance from counsel on the law and not the facts. And so in a Reply Brief counsel is expected to Reply on the points of law raised by the respondent in his Brief. (p. 1437 E)

2. A court has no discretion in the calculation of limitation period

D In order to determine whether an action is statute barred or not, the court must be involved in the exercise of calculation of years, months and days to the minutest detail. It is really an arithmetic exercise which needs a most accurate answer. Using the limitation period in the enabling statute (in this case, Section 8 of the Limitation mathematical
E precision and exactness. That is not a regular phenomenon but it is not impossible. In such a situation, a court of law is entitled to hold that the action is still competent. It is a matter of calculation of raw figures in the determination of whether an action is statute barred or
F not. A court of law has no discretion in the matter. It is as stringent as that. (p. 1438 B)

3. Cause of action arises when an agreement is breached, not when made

G How and why? How does a cause of action arise from the date the parties enter into an agreement? Why should a cause of action arise from the date the parties enter into an agreement? It is my view that a cause of action arises when there is a breach of the agreement, and the date cannot be the date the agreement was entered into by the
H parties. (p. 1439 A)

REPRESENTATION

Chief Bisi Adegunle, for the Appellant.

L. A, Emelieze, for the Respondent.

CASES REFERRED TO

- Domingo Paul v. Mrs. F. A. George (1959) 4 FSC 198 at 201
Famuyiwa v. Folawiyo & Anor. (1972) 5 S.C. (Reprint) 74: (1972) 1
All NLR (Pt. 2) 11 at 22-23 B
N.I.P.C. Ltd. & Anor. v. Bank of West Africa (1962) 1 All NLR 556
Ochonma v. Unosi (1965) NMLR 321
Savannah Bank v. Pan Atlantic (1987) 1 NWLR (Pt. 49) 212 at 215
Ehimare & Ors. v. Emhonyon (1985) 1 NWLR (Pt. 2) 177 C
Overseas Construction v. Creek Enterprises Ltd. (1985) NWLR (Pt.
13) 407
Adimora v. Ajufo (1988) 3 NWLR (Pt. 80) 1 at 15
Oredoyin v. Arowolo (1989) 7 S.C. (Pt. II) 1; (1989) 4 NWLR (Pt.
114) 172 D
Obiefuna v. Okoye (1961) All NLR 357
Madukolu v. Nkemdilim (1969) 9 SCNLR 341
Nwadiaro v. Shell Development Company Limited (1990) 5 NWLR
(Pt. 150) 322
Awachie v. Chime (1990) 5 NWLR (Pt. 150) 302 E
Ojah v. Ogboni (1976) 4 S.C. 69; (1976) 4 S.C

STATUTES & RULES REFERRED TO

- Limitation Law, Cap. 70, Laws of Lagos State, 1973, s. 8 (1) (a) F
High Court (Civil Procedure) Rules of Lagos State, O. 16 r. 11

LEAD JUDGMENT BY TABAI JSC

This suit was begun at the Ikeja Judicial Division of the High Court of Lagos State on the 12th October, 1984. The plaintiff is the appellant, while the defendant is the respondent. I shall in this judgment simply refer to them as the appellant and respondent respectively. The claim was for :-

1. An order for specific performance of an agreement dated 25th July, 1977, made between the plaintiff as lessee of the 1st part and the defendant as lessor of the second part whereby the plaintiff was allocated Flat No. 11, Block 3, 4th Avenue, 402 Road, C Close, Community 1A Festac Town. H

2. An order for payment of the total sum of N3,608 representing rents payable by the plaintiff to the defendant from August, 1974, up to and including May, 1984, at N44.00 monthly.

Alternatively, the total sum of N 10,000.00 against the defendant as general and special damages for breach of contract.

B Pleadings were filed and exchanged. And the matter went on trial with quite a number of exhibits tendered in evidence. In its judgment on the 17/7/84, the trial court per Onalaja, J., (as he then was) dismissed the suit on the ground that it was statute barred, same not
C having been brought within six years of the accrual of the cause of action under Section 8(1)(a) of the Limitation Law of Lagos State.

Aggrieved by the said judgment, the appellant went on appeal to the court below. In its judgment on the 11/1/2000, the appeal was dismissed. The court also affirmed that the suit was brought after six
D years from the date the cause of action arose.

Still not satisfied the appellant has come on further appeal to this court. The Notice of Appeal dated 17/2/2000, contained two grounds of appeal. Before this court the parties have through their counsel filed and exchanged their Briefs of Arguments. The appellant's Brief prepared by Chief Bisi Adegunle was dated and filed on the 23rd of May, 2003. He also prepared the appellant's Reply Brief. The respondent's Brief was prepared by L.A. Emelieze (Mrs) and same was filed on the 12/8/2003. Although the respondent formulated two issues for determination in this appeal, it is my view that
E there is only one issue for determination and it is *whether the action was defeated by reason of the provisions of Section 8(1)(a) of the Limitation Law of Lagos State*.
F

On behalf of the appellant, Chief Bisi Adegunle argued as follows. It was his submission that the defence founded on the Statute of Limitation being a special defence ought to be properly raise in the pleadings by reference to the precise date on which the cause of action arose and that the failure so to do defeats the operation of the Limitation Laws of Lagos State. Reliance was placed on N. N. S. L. v. Emenike (1987) 4 NWLR (Pt. 63 77). Domingo Paul v. Mrs. F. A. George (1959) 4 FSC 198 at 201, Famuyiwa v. Folawiyo & Anor. (1972) 5 S.C. (Reprint) 74: (1972) 1 All NLR (Pt. 2) 11 at 22-23, N.I.P.C. Ltd. & Anor. v. Bank of West Africa (1962) 1 All NLR 556,
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Ochonma v. Unosi (1965) NMLR 321 and Savannah Bank v. Pan Atlantic (1987) 1 NWLR (Pt. 49) 212 at 215. He relied also on Order 16 Rule 11 High Court of Lagos Civil Procedure Rules.

It was further submitted that since the claim is in respect of Flat 11 Block 3, 4th Avenue, 402 Road, C Close, Community 1A Festac Town, the respondent's plea of limitation in respect of the Flat at 25/26 Amuwo Odofin cannot be used to defeat the claim. In support of this submission counsel cited Ehimare & Ors. v. Emhonyon (1985) 1 NWLR (Pt. 2) 177, Metal Impex & Ors. v. Alli Balogun & Ors. (1975) 1 All NLR 30 at 40, Total (Nig.) Ltd. v. Wilfred Nwanko & Anor. (1978) 5 S.C. 1 at 16-18; (1978) 5 S.C. (Reprint) 1, Overseas Construction v. Creek Enterprises Ltd. (1985) NWLR (Pt. 13) 407, Adimora v. Ajufo (1988) 3 NWLR (Pt. 80) 1 at 15, Oredoyin v. Arowolo (1989) 7 S.C. (Pt. II) 1; (1989) 4 NWLR (Pt. 114) 172.

Chief Adegunle further submitted that the cause of action did not arise until November, 1983, when the respondent finally refused to let her into possession. He relied on Lion of Africa Insurance Co. Ltd. v. S. A. Fisayo (1986) 4 NWLR (Pt. 37) 674. The arguments in the appellant's Reply Brief is a repetition of the points already argued.

For the respondent, L. A. Emelieze (Mrs) made the following submissions. She referred to the respondent's letter of offer dated 18th July, 1977, for the use and occupation of flat complete No. 25 and 26 Badagry Crescent, Block 45, Amuwo Odofin Lagos State and the appellant's letter of acceptance dated 25th July, 1977 and the payment of N116.60 in respect thereof and argued that the writ was taken out 7 years and 3 months after the cause of action arose and therefore statute barred. For the meaning of cause of action counsel relied on Fred Egbe v. Hon. Justice J.A. Adefarasin (1987) 1 NWLR (Pt. 47). Learned counsel submitted that the respondent's letter dated 18th July, 1977, did not give rise to any contract and that it was, at best, an invitation to treat. It was counsel's further submission that negotiations between the parties did not stop the time from running. For this submission, she relied on Nwadiaro v. Shell Dev. Co. Ltd. (1990) 5 NWLR (Pt. 150) 322 at 338-339. With respect to the respondent's second issue, learned counsel argued that the amendment though sought and granted after the appellant had

closed her case, no injustice was occasioned by it. Counsel urged finally that the appeal be dismissed.

In Fred Egbe v. Hon. Justice LA. Adefarasin (1987) 1 NWLR (Pt. 47) 1 at 20, this court per Oputa, JSC., explained “cause of action” as follows:-

B *“Now let us look at the meaning of cause of action. It is admittedly an expression that defies precise definition. But it can safely be defined as the fact or facts which establish or give rise to a right of action it is the factual situation which*
C *gives a person a right to judicial relief.*

A cause of action is to be distinguished from a right of action. A right of action is the right to enforce presently a cause of action. In order words, a cause of action is the operative fact or facts (the factual situation) which give rise to a
D *right of action which itself is a remedial right.....”*

In my view, a cause of action is the emergence of a factual situation which enables a party to an action in court. On the question of how to determine the period of limitation, Oputa at the same page 20, said:-

E *“How does one determine the period of limitation? The answer is simple by looking at the Writ of Summons and the Statement of Claim alleging when the wrong was committed which gave the plaintiff a cause of action and by comparing*
F *that date with the date on which the Writ of Summons are filed. This can be done without taking oral evidence from witnesses*
.....”

The above statement represents the correct legal principle. A plea by a defendant in any given case that the action
G *is statute barred is a plea which raises the issue of jurisdiction and which determinant is the Writ of Summons and the Statement of Claim. On this principle see also* Alhaji Umaru Abba
Tukur v. Govt. of Gongola State (1989) 9 S.C. 1; (1989) 4 NWLR (Pt. 117) 517 at 549, Nimpa v. Pyendang (1994) 7 NWLR (Pt. 356)
H 346 at 353, Anibi v. Shotimehin (1993) 3 NWLR (Pt. 282) 461 at 747, Izenkwe v. Nnadozie 14 WACA 361 at 363, Adeyemi v. Opeyori (1976) 9-10 S.C 31 at 51; (1976) 9-10 S.C (Reprint) 18, Western Steel Works v. Iron and Steel Workers (1987) NWLR (Pt. 49) 284.

The claim as endorsed in the Writ of Summons relates specifically to Flat No. 11 Block 3, 4th Avenue, 402 Road, C Close, Community 1A Festac Town. And in paragraphs 16 and 17 of the Statement of Claim the appellant pleaded:-

"16. By letter dated 20th July, 1982, signed by the plaintiff, addressed and delivered to the defendant the plaintiff complained bitterly that she had not up till that date been allocated the subject matter of this action.

17. By letter reference No. FHA/EST/1/5/TB.317, dated 6/9/82, the defendant acknowledged the plaintiff's letter of 20/7/82, but for the first time stated that the plaintiff's allocation was a unit of flat in Amuwo-Odofin and not Festival Town."

In coming to the conclusion as to the date the cause of action accrued to the appellant, the learned trial Judge, at page 93 of the record found:-

"On the face of the writ and the pleadings the cause of action arose on 25th July, 1977, be it in respect of the Festival Town Flat or the Amuwo-Odofin Flat."

The lower court endorsed this finding of the learned trial Judge when at page 199 of the record it held:-

"Thus, applying the definitions given above it can be safely concluded that there has been created a cause of action from the contract between the parties as rightly founded by the learned trial Judge with the plaintiff/appellant as lessee and defendant/respondent as lessor. This cause of action created from the contractual agreement accrued from the date of the said agreement which was 25th July, 1977."

It is clear from the concurrent finding of the two courts below that the date of the contract for the lease 25/7/77, is the date the cause of action accrued to the appellant. With respect, I do not think that finding has any legal basis. Even it is conceded that a valid contract for a lease was entered into on the 25th July, 1977, a cause of action cannot be said to accrue to the appellant unless and until there emerges a factual situation which gives her a right of action. In invoking the statute of limitation to defeat the action, the two courts below made no reference to the specific claim in respect of the property at the Festival Town and completely ignored the assertion in para-

graph 17 of the Statement of Claim that it was by its letter of the 6th September, 1982, that the respondent stated for the first time that the allocation was in respect of a flat in Amuwo-Odofin and not Festival Town. It is clear that the decision about the action being statute barred was founded on the defence without any reference to the case of the appellant as stated in paragraph 17 of the Statement of Claim.

On this issue it is also important to refer to the manner in which the respondent raised the issue of the action being statute barred and on which the courts below relied for their decision. The plaintiff's Statement of Claim was filed on the 7th of March, 1985. The respondent filed its Statement of Defence on or about the 23rd April, 1985. The plea of Statute of Limitation was not raised. To this Amended Statement of Defence, the appellant filed a Reply on the 23rd October, 1985. Thereafter, the respondent filed an Amended Statement of Defence on the 23rd January, 1986, and yet another on the 26th February, 1986. In none of these was the issue of Statute of Limitation raised.

The appellant started her testimony on the 26th June, 1986, and concluded her case on the 4th November, 1986. In other words, until the appellant concluded her case, this vexed issue of the action being statute barred was not raised.

On the 2nd December, 1986, the motion to further amend the Statement of Defence was filed. The issue of the action being statute barred was raised for the first time in paragraph 14(1) of the Amended Statement of Defence. The appellant who had already filed a Reply to the Statement of Defence had no opportunity either to plead in Reply or to adduce evidence in response thereto. Yet it is the very issue on which the courts below relied for their decisions.

On this issue of when the cause of action arose, therefore, I am persuaded by the argument of learned counsel for the appellant that the cause of action only accrued to the appellant when the letter of the 6th September, 1982, Exhibit 5 was conveyed to her. I hold therefore that the action was not caught by the provisions of the Limitation Law of Lagos State.

In contending that the appeal be allowed the appellant claimed that she is entitled to all the reliefs claimed and urged

this court to grant the reliefs as claimed. Although some references were made to some of the exhibits in the judgment, the dismissal of the claim was predicated whole and entire on the applicability of the statute of limitation. There is nothing indicating that the claim was determined on its merits. I do not think that in these circumstances this court is in a position to reach a dispassionate decision on the merits of the case. This is particularly so in view of the fact that there was, in addition to the documentary evidence, some oral testimony. It is also to be noted that the exhibits in this case are not available and not all the documents referred to in the pleadings are copied in the record of appeal.

In conclusion, I hold that the decision of the courts below that the action was statute barred by reason of the provisions of Section 8(1)(a) of the Limitation Law of Lagos State is wrong and same is set aside. For the reasons which I have stated above. I hold that the action was not caught by the Limitation Law. And since the concurrent judgment of the two courts below was based wholly on the applicability of the Limitation Law, this appeal succeeds and is accordingly allowed. The case be and is hereby remitted back to the High Court of Lagos State for hearing and determination on the merits. Costs are assessed at N50,000 in favour of the appellant.

TOBI JSC

This appeal has to do with the Limitation Law of Lagos State. The appellant as plaintiff in the High Court claimed specific performance of an agreement made between the respondent and herself. The agreement was dated 25th July, 1977. Appellant also claimed the refund of rents and in the alternative, damages for breach of contract.

The learned trial Judge dismissed the action on the ground that it was statute barred. An appeal to the Court of Appeal was also dismissed. Dissatisfied, the appellant has come to this court. Briefs were filed and exchanged. Appellant formulated the following issue for determination.

“Whether the appellate court was right in upholding that the action is defeated by reason of the provision of Section 8(1) of the Limitation Laws of Lagos State.”

Respondent formulated a similar issue as follows:

“Whether the appellate court was right to have upheld the judgment, that the action is caught by Section 8(1)(a) of the Limitation Law of Lagos State of Nigeria, 1973, Cap. 70, because the right of action accrued on 25th July, 1977.”

Learned counsel for the appellant, Chief Bisi Adegunle, contended that before a party can successfully rely on the provision of the Limitation Law to defeat an action that will otherwise succeed, the party must have properly pleaded the statute with all necessary particulars as the defence is in the nature of a special defence which must be properly raised. He cited N.N.S.L. v. Emenike (1987) 4 NWLR (Pt. 63) 77, Paul v. George (1958) 4 FSC 198. Famuyiwa v. Folawiyo (1972) 5 S.C. (Reprint) 74; (1972) 1 All NLR (Pt. 2) 11, N.I.P.C. v. Bank of West Africa (1962) 1 All NLR 556, Ochonma v. Unosi (1965) NMLR 321, Savannah Bank v. Pan Atlantic (1987) 1 NWLR (Pt. 49) 212 and Order 16 Rule II of the High Court (Civil Procedure) Rules of Lagos State.

Learned counsel argued that as the claim before the court is for specific performance of an agreement for a lease of the property at Flat No. 11, Block 3, 4th Avenue, 402 Road, C Close, Community 1A Festac Town and the defence pleaded under the Limitation Law is in respect of a contract for use and occupation of Flat 25/26, Badagry Crescent, Amuwo Odofin, the defence under the Limitation Law does not relate to the claim before the court. In the circumstances, the defence in respect of another property cannot and should not have been used to defeat the claim of the appellant, counsel further argued. He cited Adimora v. Ajufo (1988) 3 NWLR (Pt. 80) 1, Oredoyin v. Arowolo (1989) 7 S.C. (Pt. II) 1; (1989) 4 NWLR (Pt. 114) 172, Ehimare v. Emhonjon (1985) 1 NWLR (Pt. 2) 177 and Lion of African Insurance Company Limited v. Fisayo (1986) 4 NWLR (Pt. 37) 674. He urged the court to allow the appeal.

Learned counsel for the respondent, Mrs. L. A. Emelieze, submitted that the Court of Appeal was right to uphold the decision of the trial Judge that the action is statute barred having regard to Sec-

tion 8(1)(a) of the Limitation Laws, Cap. 70, Laws of Lagos State 1973. A cause of action is said to be statute barred if in respect of it proceedings cannot be brought because the period laid down by the Limitation Law had elapsed, counsel submitted. He cited Egbe v. Adefarasin (1987) 1 NWLR (Pt. 47) 1 and Dosumo v. Nigeria Railway Corporation which counsel cited wrongly as (1942) 9 NMLR B 81.

Learned counsel submitted that the claim of the appellant that the defence of limitation of law is not available to the respondent cannot be sustained because the Court of Appeal upheld the findings of the trial court that the cause of action arose on the 25th July, 1977. To learned counsel, the letter dated 17th March, 1977, did not give rise to any contract, as it is in all respect an invitation to treat. Citing Nwadiaro v. Shell Development Company Limited (1990) 5 NWLR (Pt. 150) 322, Awachie v. Chime (1990) 5 NWLR (Pt. 150) D 302 and Ojah v. Ogboni (1976) 4 S.C. 69; (1976) 4 S.C. (Reprint) 87, learned counsel submitted that time began to run from 25th July, 1977, when the flat was accepted by the appellant. He urged the court to dismiss the appeal.

Counsel for the appellant in his Reply Brief made submission E on points of fact, which is procedurally wrong. He is expected by our adjectival law to submit only on points of law in his Reply Brief. The facts of the case are constant and they are available in the record for the court to apply the law. After all they are the fountain head of the law which the court applies in arriving at a decision. What the court F needs is assistance from counsel on the law and not the facts. And so in a Reply Brief counsel is expected to Reply on the points of law raised by the respondent in his Brief.

The issue before us is simple and straightforward. It is whether G the action is statute barred or not. Let me read quickly Section 8(1) of the Limitation Law of Lagos State:

"The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued; (a) actions founded on simple contract, (b) Actions founded on quasi - H contract"

As it is, the subsection deals with limitation of action involving contracts, which is what this appeal is about.

A cause of action is said to be statute barred if in respect of it proceedings cannot be brought because the period laid down by the Limitation Act or Law has elapsed. Limitation of action is determined by looking at the Writ of Summons or the Statement of Claim alleging when the wrong was committed which gave the plaintiff the cause of action and by comparing that date on which the Writ of Summons was filed. See *Egbe v. The Hon. Justice Adefarasin* (supra).

In order to determine whether an action is statute barred or not, the court must be involved in the exercise of calculation of years, months and days to the minutest detail. It is really an arithmetic exercise which needs a most accurate answer. Using the limitation period in the enabling statute (in this case, Section 8 of the Limitation mathematical precision and exactness. That is not a regular phenomenon but it is not impossible. In such a situation, a court of law is entitled to hold that the action is still competent. It is a matter of calculation of raw figures in the determination of whether an action is statute barred or not. A court of law has no discretion in the matter. It is as stringent as that.

In determining whether an action is statute barred or not, the most crucial consideration is when the cause of action arose. A cause of action arises the moment a wrong is done to the plaintiff by the defendant. And the wrong which is the basis of a dispute represents a factual situation which entitles the plaintiff to seek a remedy in a court of law by way of enforcement.

It is the case of the respondent that the cause of action arose on 25th July, 1977, the date the agreement between the parties was made. That is the decision of the High Court and affirmed by the Court of Appeal. Affirming the decision of the High Court, the Court of Appeal said at pages 199 and 800 of the Record:

“Thus, applying definition given above it can be safely concluded that there has been created a cause of action from the contract between the parties as rightly founded by the learned trial Judge with plaintiff/appellant as lessee and defendant/respondent as lessor. This cause of action created from the contractual agreement accrued from the date of the said agreement which was 25th july, 1977. It is trite that it is always necessary when dealing with a Limitation of Statute to ascertain the exact date in which the cause of action arose. This

is because time will start running right from the date the cause of action arose. By this finding of fact by the trial court which this court has no reason to disturb, it has been established that the cause of action began to run as from 25th July, 1977."

How and why? How does a cause of action arise from the date the parties enter into an agreement? Why should a cause of action arise from the date the parties enter into an agreement? It is my view that a cause of action arises when there is a breach of the agreement, and the date cannot be the date the agreement was entered into by the parties.

I agree with counsel for the appellant that the dispute arose on or about November, 1983, when the respondent made its intention clear to the appellant that it was not prepared to let the appellant into possession of the property. As the cause of action arose on or about November, 1983, and the action was filed in October, 1984, the action is not statute barred.

It is in the light of the above and the fuller reasons given by my learned brother, Tabai, JSC., that I too allow the appeal. I abide by his order as to cost.

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AKINTAN JSC

The appellant was the plaintiff in this case instituted at Lagos High Court against the respondent as defendant. The plaintiff's claim against the defendant was, *inter alia*, for (1) an order for specific performance of an agreement dated 25th July, 1977, made between the plaintiff as lessee and the defendant, as lessor whereby the plaintiff was allocated a flat at Festac Town; and (2) an order for payment of N3,608 representing rents payable by the plaintiff to the defendant from August, 1974, up to and including May, 1984, at N44 monthly.

The brief facts of the case are that, the appellant in respond to an advertisement placed by the respondent by which it called on interested members of the public to apply for allocation of houses in its housing estate at Festac Town, Lagos, applied and paid the required application fee. A balloting was held and the appellant was successful. She was allocated a flat and the respondent communi-

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cated that to her. But the dispute arose when the respondent failed to deliver the flat allocated to her despite repeated demands. The appellant then instituted the present action on 12th October, 1984. The respondent reacted by raising an objection to the competency of the action on the ground that it was statute barred by virtue of Section 8(1) of the Limitation of Law of Lagos State. The subsection provides as follows:

“The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued; (a) actions founded on simple contract, (b) actions founded on quasi-contract.”

The learned trial Judge upheld the objection and dismissed the action on the ground that the action was statute barred. An appeal to the court below was dismissed. The present appeal is from the judgment of the court below.

The requirement of section 8(1) of the Limitation of Law is that, an action founded on contract or quasi-contract must be commenced before the expiration of six years from the date on which the cause of action accrued or arose. Once the action is not commenced within the specified period when the cause of action accrued then the action becomes incompetent. See Egbe v. Adefarasin (1987) 1 NWLR (Pt. 47) 13, Adigun v. Ayinde (1993) 8 NWLR (Pt. 313) 516, Obiefuna v. Okoye (1961) All NLR 357 and Madukolu v. Nkemdilim (1969) 9 SCNLR 341. It is necessary therefore to state that the cause of action of a plaintiff is the factual situation or a combination of facts or acts relied upon by him as entitling him to a remedy against the defendant. See Adigun v. Ayinde. *supra*, 516 at 528, Egbe v. Adefarasin *supra*, Ransome-Kuti v. Attorney-General of Federation (1985) 2 NWLR (Pt. 6) 211 and Savage v. Uwechie (1972) 3 S.C. 71; (1972) 3 S.C. (Reprint) 206.

In the instant appeal, both the trial court and the court below erroneously took the date when the allocation of the flat was given to the appellant as the date when her cause of action accrued. That should not be the position. The correct position is when the respondent finally refused or failed to give her possession of the flat. If the limitation period had been computed from that date, the two lower courts would have found that the plaintiff's action was commenced

within the six year period prescribed by the said Limitation of Law.

In conclusion and for the reasons given above and the fuller reasons given in the leading judgment written by my learned brother, Tabai, JSC., I allow the appeal with costs as assessed in the leading judgment.

B

MUHAMMAD JSC

I have the privilege of reading before now the judgment of my learned brother, Tabai, JSC. I agree with his reasoning and conclusions. The appeal has merit and ought to be allowed. I allow the appeal. I abide by all orders made in the leading judgment.

D

CHUKWUMA-ENEH JSC

The facts and the issues for determination in this case have been set out in the leading judgment of my learned brother, Tabai, JSC. After the exchange of pleadings by the instant parties, the only crucial issue that has emerged to be resolved is, whether the instant cause of action is statute-barred as per Section 8(1)(a) of the Limitation Law, Cap. 70, Laws of Lagos State. The provisions of the said section make it clear that an action founded upon a simple contract cannot be brought after the expiration of six years from the date of accrual of cause of action. In other words, it has raised the pertinent question on the facts of this case whether or not the instant action has been brought within six years of its accrual.

In the context that a cause of action is a combination of facts constituting a wrongful act by the defendant which has occasioned to the plaintiff consequential damage; in particular as per the instant case the plaintiff's claim inter alia is for specific performance of an agreement of 25/7/77, in regard to a Flat No. 11 Block 3, 4th Avenue, 402 Road, "C" Close, Community 1A, Festac Town, Badagry Road, Lagos. The contention is that the transaction as per the agreement is caught by the said Limitation Law and has become statute-barred.

To determine whether it is statute-barred, regard has to be had to the averments in paragraphs 12, 16 and 17 of the Statement

of Claim as against paragraph 17 of the Statement of Defence.

However, paragraph 12 as admitted by paragraph 7 of the Statement of Defence reads:-

“12. By a lease dated 25/7/77, made between the plaintiff as lessee of the first part and the defendant as lessor of the other part, the plaintiff was allocated flat No. 11, Block 3, 4th Avenue, 402 Road, “C” Close, Community 1A Festac Town, Badagry Road, Lagos, referred to herein as the subject matter of this action.”

The upshot is that the instant cause of action could not have arisen until the wrongful act by the defendant as per the letter of 6/9/82, which has occasioned consequential damage to the plaintiff by the refusal by the defendant to put her into possession of the said flat. This is the straw that broke the camel’s back. That letter is the last act in a combination of facts to vest the plaintiff with a cause of action. If therefore, agree with the appellant that the cause of action accrued on 6/9/82 and not 25/7/77. And it is the date for determining whether this case has become stale and unenforceable by pursuant to Section 8(1) (a) (supra).

The case of Egbe v. Adefarasin (1987) 1 NSCC (Vol. 18) 1, is the leading authority on how to calculate the period of limitation in cases of this nature per Oputa, JSC., he stated thus:-

“How does one determine the period of limitation? The answer is simple - by looking at the Writ of Summons and the Statement of Claim alleging when the wrong was committed which gave the plaintiff a cause of action and by comparing that date with the date on which the Writ of Summons are filed. This can be done without taking oral evidence from witnesses.....”

And so this action is not statute-barred.

For all the foregoing, I am in complete agreement with my learned brother, Tabai, JSC., that there is merit in this appeal. I would allow it and I allow it. I abide by the orders in the leading judgment.

H