

**SUPREME COURT OF NIGERIA**

16TH MAY, 2008 SC. 304/2002

**CORAM:- S. U. ONU, D. MUSDAPHER, A. M.  
MUKHTAR, M. MOHAMMED, I. F. OGBUAGU, JJSC**

CHARLES OLADEINDE WILLIAMS ..... APPELLANT  
AND  
MADAM OLAITAN WILLIAMS ..... RESPONDENT

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ACTIONS - Limitation - Purport and effect of - Where the law provides for bringing of an action - Within a prescribed period - In respect of a cause of action - Proceedings cannot be brought after the prescribed period - As rightly held by the Court of Appeal (H1)

ACTIONS - Limitation period - How determined - Period of limitation is calculated - By comparing the date the cause of action accrued - As ascertained from the statement of claim - With the date on which writ of summons was filed (H2)

ACTIONS - Statute bar - Onus of proof - Party who raises preliminary objection - Should ordinarily prove that action is statute barred - But where this fact is evident - On the face of the writ of summons - There is no need - To adduce further evidence in proof (H3)

**FACTS**

The Plaintiff/Appellant has taken a lease of the property situate at No. 37, Little Road, Yaba, Lagos from one Alexander Odu Williams (now deceased), the father of the Defendant/Respondent. The deed of lease was dated 5th July, 1976 and the lease which was to commence on that date, was for a term of 50 years. By clause 11 thereof, the deed recognized that there were existing tenants on the demised property but gave to the Appellant the responsibility of ejecting those tenants. The Respondent was one of the existing tenants. It was also a term of the lease that the Appellant should erect a building on the demised property, which building was to be completed within 2 years from the commencement date of the lease. Appellant did not erect the said building. Indeed, it was not until 1985 before Ap-

pellant commenced an action for possession against the Respondent – 9 years after the commencement of the lease. In the course of the proceedings for possession, Respondent argued, inter alia, that Appellant had forfeited the lease or that the lease never existed. The case of the Appellant was dismissed by the magistrate. The Appellant indicated an intention to appeal against the decision of the magistrate, he never did.

Yet 7 years after the said decision, in 1992, he applied by originating summons before the High Court of Lagos State, praying, inter alia, for declarations that he has not forfeited his rights under the deed of lease and that the lease was still valid and subsisting. Upon service of the originating summons on her, the Respondent filed a preliminary objection under Order 22 Rules 3 and 4 of the High Court of Lagos State (Civil Procedure) Rules 1972 contending inter alia, that the action was statute barred by virtue of Sections 16(2) (a) and 21 of the Limitation Law, Cap 70, Laws of Lagos State. After hearing, the learned trial judge dismissed the objection. The Respondent filed a Notice of Appeal against the ruling. Meanwhile argument was heard by the judge on the main claim at the end of which he also granted to the Appellant the reliefs sought. The Respondent also filed a Notice of Appeal against the judgment. The two appeals were later consolidated by the order of the Court of Appeal. After hearing, the Court of Appeal held that the action was indeed statute barred as contended by the Respondent. Appellant has brought this appeal against the judgment of the Court of Appeal.

### **ISSUE FOR DETERMINATION**

*"Whether the Originating Summons before the trial Judge was statute barred or whether the appellant's cause of action arose from the 5th July, 1978?"*

**HELD** (Unanimously allowing the appeal per **MUSDAPHER JSC**)  
***ACTIONS - Limitation - Purport and effect of***

1. Now, the general principle of law is that where the law provides for the bringing of an action within a prescribed period in respect of a cause of action, accruing to the plaintiff, proceedings shall not be brought after the period prescribed by law.

Where an action is statute barred, a plaintiff who might other-

wise have had a cause of action loses the right to enforce it by judicial process because the period of time laid down has elapsed.

Now, the appellant by his Originating Summons was seized of the demised land by the terms of the lease on 5/7/1976. He had the responsibility of ejecting the tenants therein. He was also bound by the terms of the lease to erect a building within 2 years of the commencement of the lease. He did not do anything. He allowed the respondent to remain on the property from 1976, without any valid complaint until 1996, when he took this action. By the provisions of the Limitation Law, such an action cannot be brought after the expiration of 12 years from the date the right of action accrued. In my view, the Court of Appeal was right in determining that the claim of the appellant was caught by the provisions of the Limitation Law of Lagos State. I accordingly resolve issue No.2 against the appellant. (pp. 2169 D/2171 E)

### ***ACTIONS - Limitation period - How determined***

2. How does one determine the period of limitation in a particular case? In *Egbe v. Adefarasin* (supra). Oputa, JSC., stated:-

*“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 was filed. This can be done without taking oral evidence. If the time on the writ is beyond the period allowed by the Limitation Law then the action is statute barred.”*

See also *Texaco Panama Incorp v. Shell* (2002) 2 S.C. (Pt. 11) 1 at 25, *Fadare v. Attorney-General Of Oyo State* (supra), *Board Of Trade v. Cayner, Iryine & Co. Ltd.* (1927) AC 610, where it was held:-

*“Time, therefore begins to run when there is in existence a person who can sue and another who can be sued, and all facts have happened which are material to be proved to entitle the plaintiff to succeed.”* (p. 2169 F)

### ***Statute bar - Onus of proof***

3. There is no doubt that it is ordinarily the defendant who raises the Preliminary Objection who should establish that the action is statute

barred. See *Savannah Bank of Nigeria Ltd, v. Pan Atlantic Shipping And Transport Agencies Ltd*, (supra), but where on the face of the Writ of Summons the date of the wrong committed is clear, a comparison can be made with that date and the date when the cause of action was taken to court.

B Another point that ought to be borne in mind is that the application of the respondent as defendant, before the trial court was by way of Preliminary Objection for the dismissal of the appellant's suit in limine on the ground of Limitation Law of Lagos State. The principle of law is well established that an application by way of Preliminary Objection for the dismissal of a suit in limine may be on points of law and when there are no facts in dispute for the purposes of determining such objection. See *Foko v. Foko* (1968) NMLR 441. The respondent in the instant case relied only on the fact stated by D the appellant in the Originating Summons. The respondent needed not file any affidavit nor prove the date of the accrual of the cause of action nor the date when the writ or the claim was issued. The court can look at the documents filed by the appellant and compute the period of limitation. (p. 2170 D/2171 B)

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### **REPRESENTATION**

Chief Akinbiyi O. T., (with him; O.H. Oyajinmi and A.E. Audu), for the Appellant.

F Respondent absent, duly served.

### **CASES REFERRED TO**

*Lasisi Fadare & Ors. v. Attorney-General of Oyo State* (1982) 4 S.C U.B.A. Plc. v. BTL Ind. Ltd. (2006) 12 S.C. 63 at 76

G *Udeze & Ors. v. Chidebe & Ors.* (1990) 1 S.C. 148; (1990) 1 NSCC 123

*Uwawah & Ors. v. Boyo & Ors.* (1971) NMLR 233

*Stroud v. Stroud* (1963) 3 All ER 539

*Thomas v. Olufosoye* (1986) 1 NWLR (Pt.18) 689

H *Okechukwu Adimora v. Nanyelugo Ajufo & Ors.* (1988) 3 NWLR (Pt.80) 1 at 17

*Egbe v. Adefarasin* (1985) 1 NWLR (Pt.3) 549

*Akibu v. Azeez* (2003) 1 S.C. (Pt.II) 71; (2003) 5 NWLR (Pt.814)

643 at 669

Oduke v. Fowler & Anor. (1993) 7 NWLR (Pt.308) 637 at 659

Oba Aremo II v. Adekanye & 2 Ors. (2004) 7 S.C. (Pt.II) 28 at 40-42

Owie v. Ighiwi (2005) 1 S.C. (Pt.II) 16; (2005) 1 SCNJ 181 at 199

Alhaja Ajibona v. Alhaji Kolawole (1996) NWLR (Pt.476) 28 at 35-36 B

Chief Wolerem J.P. v. Emeruwa & (2004) 6-7 S.C 161; (2004) 13 NWLR (Pt.890) 398

Sanda v. Kukawa Local Government & Anor. (1991) 2 NWLR (Pt.174) 379 at 381 C

### **STATUTES & RULES REFERRED TO**

Lagos State Limitation Law, Cap. 70, Laws of Lagos State, 1973, now Cap. 118, Laws of Lagos State, 1994, ss. 6(2), 16(2)(a), 21 Lands Registration Law, s. 62 D

High Court of Lagos State (Civil Procedure) Rules, 1972, O. 22 rr. 3, 4

### **LEAD JUDGMENT BY MUSDAPHER**

The appellant herein and one Alexander Odu Williams (now deceased) were parties to a lease. The appellant took the lease of the property situated at No. 37, Little Road, Yaba, Lagos for 50 years. . The lease was dated and was to commence from the 5th day of July, 1976. By Clause 11 of the lease it was recognized that there were tenants on the demised property but the responsibility of ejecting the tenants was placed on the appellant. In Suit No. 86/85, before the Magistrate Court of Lagos State, the appellant instituted a recovery of premises action against the respondent the only occupant remaining on the premises. The action was dismissed on the 29/8/1991, on the grounds of jurisdiction. On the 1st of June, 1992, the, appellant herein filed an Originating Summons before the High Court of Lagos State claiming against the respondent herein the following reliefs:- F G H

*“1. A declaration that the applicant as against the respondent for herself and as heir of one late Odu Williams, is the person entitled to the possession of the property situate at and known as No. 37,*

*Little Road, Yaba, Lagos under the lease-registered as Title No. 11879.*

2. *A declaration that the applicant has not forfeited his rights and any entitlement whatsoever under the lease registered as Title No. 11879.*

3. *An Order construing the lease and declaring that the lease registered as Title No. 11879 in the Lands Registry in the office at Alausa, Ikeja is still valid and subsisting.”*

The Originating Summons was supported by an affidavit attached to which were certified true copies of the lease agreement dated the 5/7/1976 and the judgment of the Chief Magistrate Court in Suit 86/85. There was also a further affidavit in support of the Originating Summons filed on the 9/10/1992.

Upon the service of the Originating Summons on the respondent, she filed a Notice of Preliminary Objection under Order 22 Rules 3 and 4 of the High Court of Lagos State (Civil Procedure) Rules, 1972 and asked the court for the following orders:-

“1. *That the case of the applicant/respondent be dismissed as Lagos State High Court has no jurisdiction, by virtue of Sections 16 (2) (a) and 21 of the Limitation Law, Cap 70, Laws of Lagos State.*

2. *That the action be dismissed as it is vexatious, oppressive and abuse of the process of the court.*

3. *That the judgment of the Chief Magistrate Court, Yaba in Suit No. 86/85 constitute a res judicata.”*

The grounds upon which the respondent relied for the Preliminary Objection were:-

i. *Respondent/applicant as per Exhibit “WILLY B” attached to the application of the applicant/respondent had been in possession since 1970, assuming her possession became adverse in 1976 (which is not conceded) (sic) by 1992, she had been in continuous adverse possession for 16 years, therefore this Honourable Court lacks jurisdiction as the action is statute barred.*

ii. *Claim for possession was refused at the Chief Magistrate Court Yaba on 29/8/1991 almost a year ago, no appeal court has set it aside, it constitute (sic) a res judicata; expressing an intention to appeal is an abuse of the process of the court.*

iii. *That the applicant has not come to this Honourable Court with clean hands, and he who comes to equity must come with clean*

hands.

*iv. That deponent does not have the authority of the applicant to swear to the affidavit. ”*

After hearing the learned counsel of the parties, the learned trial Judge in his ruling delivered on the 17/3/1994, dismissed the objection. The respondent felt aggrieved with the dismissal of the Preliminary Objection and filed a Notice of Appeal. B

In the meanwhile argument was heard by the learned trial Judge on the main claim of the Originating Summons and in a judgment delivered on the 21/5/1995, the trial Judge found merit in the summons and accordingly granted the reliefs sought by the applicant, the appellant herein. The respondent felt unhappy also with the decision and has filed a second Notice of Appeal. The two appeals were later consolidated by an order of the Court of Appeal. After its consideration of the issues submitted in the two appeals, the Court of Appeal per Aderemi, JCA., (as he then was), who read the leading judgment which was concurred by Oguntade, JCA., and Chukwuma-Eneh, JCA. (both as they were then), concluded thus:- C

*“xxxxxxx having regard to all I have been saying, the two appeals that have been consolidated by order of this court, are substantially meritorious having regard to my treatment of the provision of the Statute of Limitation. They are therefore allowed. The ruling of the court below delivered on the 17/3/1994, whereby the trial Judge held that it has jurisdiction to entertain the suit and consequently dismissed the Preliminary Objection is hereby set aside. In its place, I make an order upholding the Preliminary Objection and consequently, dismissing the action in toto. Similarly, the judgment of the court below delivered on 21st March, 1995, granting the three reliefs claimed by the applicant/respondent per the Originating Summons is hereby set aside. In its place, is an order dismissing the suit in toto. xxxx. ”* D

Now, the appellant felt unhappy with the two decisions and has now appealed to this court. The Notice of Appeal contains five grounds of appeal. In his Brief of Argument for the appellant, the learned counsel for the appellant has identified and formulated issues arising for the determination of the appeal. The issues read:- E

*“(i) Whether the 1st appeal before the Court of Appeal (i.e. appeal on the ruling of the trial Judge delivered on the 17th day of* F

*March, 1994) was valid?*

*(ii) Whether the Originating Summons before the trial Judge was statute barred or whether the appellant's cause of action arose from the 5th July, 1978?*

*(iii) Whether the trial Judge went into serious error by granting possession of the property in dispute to the appellant upon the Originating Summons?*

*(iv) Whether the lease of the appellant is still subsisting or not?"*

At the hearing of the appeal, the learned counsel for the appellant withdrew issue No. 1 and consequently issue No 1 and all the arguments from the beginning of paragraph 3 at page 3 to page 4 were struck out and discountenanced by me. Before I discuss the remaining three issues, I think it is convenient at this stage to briefly state the facts. The appellant claimed to have obtained a 50 year renewable lease from the late father of the respondent in respect of the property known as and situate at No. 37, Little Road, Yaba. The lease commenced from the 5th of July, 1976. It is claimed that the respondent and one of her sisters were living on the property at the commencement of the lease and that the appellant allowed them to live on the property with the understanding that they would vacate whenever the appellant wanted. When he asked the respondent to vacate the premises she refused and he had to take an action for the possession of the property at the Magistrate Court Yaba - that is the aforesaid Suit No. 86/85. In the course of the proceedings before the Magistrate Court in 1985, the respondent herein as the defendant claimed that the appellant has forfeited the lease or that the lease never existed. The respondent further claimed that the property was given to her by her late father and that she was never aware of the lease the appellant was claiming. The case of the appellant was dismissed by the Magistrate on the grounds of lack of jurisdiction. The appellant indicated his intention to appeal against the decision but he never did. It was about 7 years later on the 1/6/1992, that the appellant applied by Originating Summons before the High Court for the reliefs recited above. The respondent on the 24/6/1992, filed the Notice of Preliminary Objection the terms of which were also recited above in this judgment. The main complaint of the respondent was that the action of the appellant as per the Originating Summons was



statute barred and that the lease the applicant was claiming was no longer in existence. As mentioned above, the learned trial Judge rejected the Preliminary Objection in a ruling delivered on the 17/3/1994. The respondent filed a Notice of Appeal against the said ruling, that is, the first appeal. Later, the learned trial Judge heard argument of counsel on the claims on Originating Summons and in his judgments delivered on 21/5/1995, found for the appellant. The respondent filed the 2nd appeal in the Court of Appeal. The Court of Appeal as mentioned above, upheld the Preliminary Objection and allowed the 1st appeal. It also allowed the 2nd appeal in consequence of allowing the 1st appeal. I shall now discuss the remaining three issues:-

### Issue No. 2

This arose from the decision of Court of Appeal when it held that the suit filed by the appellant before the trial court on the 2/6/1994, was statute barred. The court per Aderemi, JCA., (as he then was), held:-

*“xxxxxxx It is now a well established principle of law that the period of limitation for any claim begins to run when the cause of action accrues. If the person to whom the right inures fails to seek a redress by filing an action within the period prescribed by law, his claim is then said to be statute barred.”*

The learned Justice reproduced Clauses 10 and 11 of the lease in which the appellant was to build a structure on the land within two years from the 5/7/1976 and also to be solely responsible for ejecting any tenants on the land. The learned Justice continued to say that the appellant on his own free will, has allowed the adverse possession of the respondent to remain unmolested in the property for a period spanning over twelve years without complaining or resisting her adverse possession. By Sections 6(2) and 21 of the Limitation Law of Lagos State, the claim became statute barred.

It is argued for the appellant that there was no evidence to suggest that the appellant's cause of action arose on the 5/7/1976. It is submitted that the respondent did not establish the evidence that the cause of action arose in 1976. There was no evidence of any complaint against the appellant for not erecting the buildings as required by the lease. The appellant argued that, he allowed the re-

spondent to remain on the premises for a time and later when she refused to vacate the land he went to the Magistrate Court to recover possession. It is argued that the cause of action only arose in 1991, when the appellant went to court. Learned counsel relied on the cases of *Lasisi Fadare & Ors. v. Attorney-General of Oyo State* (1982) 4 S.C. (Reprint) 1; (1982) All NLR 26 at 37, *U.B.A. Plc. v. BTL Ind. Ltd.* (2006) 12 S.C. 63 at 76. The court should have looked at the date of the suit in court and compare it with the date of the alleged wrong doing. See *Fred Egbe v. Adefarasin* (1987) 1 NSCC 1. It is further argued that by Section 134(1) of the Evidence Act, the burden of establishing when the time began to run is always on the person relying on the legal defence of laches. See *Savannah Bank of Nigeria Ltd. v. Pan Atlantic Shipping And Transport Agencies Ltd. & Anor.* (1987) 1 NSCC 67 at 80, in the instant case the respondent did not establish this. It is again argued that the fact of the action in Suit No. 86/85, is deemed in law to be an act of possession on the part of the appellant vide *Ababio II v. Priest in charge Catholic Mission* (1935) 2 WACA 381, *Udeze & Ors. v. Chidebe & Ors.* (1990) 1 S.C. 148; (1990) 1 NSCC 123. It cannot be said that respondent remained in exclusive possession without any interference. There must be evidence to show that the title registered has been extinguished by the Limitation Law. See Section 62 of the Lands Registration Law.

The learned counsel for the respondent on the other hand argued that the lower court was right to have upheld the Preliminary Objection that the claims of the appellant in the Originating Summons before the trial court were statute barred. The appellant waited from 5/7/1976 until 1/6/1992, when he went to the right court to seek redress. Learned counsel refers to Sections 16(2) and 21 of Limitation Law of Lagos State and submitted that the rights of the appellant became extinguished by operation of law. It is submitted that the appellant himself provided the evidence of the date of accrual of the cause of action by attaching the lease to the Originating Summons. The lease commenced from 5/7/1976 and that the appellant was to eject the tenants and erect structures on the land within two years. The content of the lease and the affidavit in support of the Originating Summons supplied all the evidence needed. See *Uwawah & Ors. v. Boyo & Ors.* (1971) NMLR 233, *Stroud v. Stroud* (1963) 3

All ER 539, Fred Egbe v. Adefarasin (supra). It is submitted that the appellant since the signing of the lease knew that there were tenants on the land and that he was to build a structure on the land and did not do the right thing to claim possession until 1992. After a period of 16 years when the cause of action accrued. Learned counsel referred to the case of Koney v. UTC Ltd. 2 WACA 188. It is submitted that the appellant having supplied the evidence of the date of the accrual of the cause of action and the time when he took the proper action for possession, the respondent need not give any evidence on that score. Learned counsel referred to Uwawah v. Boyo (supra); Stroud v. Stroud (supra); Archibong v. Ita (1954) 14 WACA 520. The respondent has the right to rely on the documents filed by the appellant to establish her objection to the Originating Summons. See In ReHinchlife (1895) 1 Ch. 117. B

***Now, the general principle of law is that where the law provides for the bringing of an action within a prescribed period in respect of a cause of action, accruing to the plaintiff, proceedings shall not be brought after the period prescribed by law.*** See Obiefuna v. Okoye (1961) All NLR 357. An action brought outside the prescribed period offends the section of the law and does not give any cause of action. Now Section 16(2) of the Lagos State Limitation Law provides:- C

*“The following provisions shall apply to an action by a person to recover land -*

*(a) subject to paragraph (b) of this subsection, no such action shall be brought after the expiration of twelve years from the date on which the right of action accrued to the person bringing it, xxxxxxxx,”* D

Now, ***how does one determine the period of limitation in a particular case? In Egbe v. Adefarasin (supra). Oputa, JSC.,*** E  
***stated:-***

***“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 was filed. This can be done without taking oral evidence. If the time on the writ is beyond the period allowed by the Limitation Law then the action is statute barred.”*** F

**See also Texaco Panama Incorp v. Shell (2002) 2 S.C. (Pt. 11) 1 at 25, Fadare v. Attorney-General Of Oyo State (supra), Board Of Trade v. Cayner, Iryine & Co. Ltd. (1927) AC 610, where it was held:-**

***“Time, therefore begins to run when there is in existence a person who can sue and another who can be sued, and all facts have happened which are material to be proved to entitle the plaintiff to succeed.”***

**C** See Jallco Ltd. v. Owoniboy Technical Serv. Ltd. (1995) 4 NWLR (Pt.391) 534 at 547. It is also the law, that ignorance of the statutory limitation provision by the plaintiff is of no moment.

**D** See Cartledge v. E. Jopling and Sons Ltd. (1963) AC 758, Sanda v. Kukawa Local Government (1991) 3 S.C. 45; (1991) 2 NWLR (Pt.174) 379 at 389, Bakare v. Coker (1935) 12 NLR 31, Green v. Owo (1936) 13 NLR 43.

***There is no doubt that it is ordinarily the defendant who raises the Preliminary Objection who should establish that the action is statute barred. See Savannah Bank of Nigeria Ltd, v. Pan Atlantic Shipping And Transport Agencies Ltd, (supra), but where on the face of the Writ of Summons the date of the wrong committed is clear, a comparison can be made with that date and the date when the cause of action was taken to court.***

**F** In the present case, the appellant took the lease on the 5/7/1976, when the property was demised to him and by a clause on the lease, he was responsible for ejecting all the persons on the land, and the lease commenced immediately i.e. the appellant was to have immediate possession. The appellant was not only to eject the tenants but also to erect a structure within two years on the land.

**G** In my view, the lower court was right when it held that the statute of limitation applied on the evidence supplied by the appellant himself and as Oputa, JSC., said in the Egbe v. Adefarasin (supra), *“that there is no need for oral evidence.”* It has been decided that the period of limitation is only determinate by looking at the Writ of Summons and Statement of Claim alone to ascertain the alleged date of the wrong in question which gave rise to the plaintiff’s cause of action and by comparing that date with the date on which the writ was filed. If the

**H**

time pleaded in the Writ of Summons or the Statement of Claim is beyond the period allowed by the Limitation Law, the action is statute barred. See *Woherem v. Emereuwa* (2004) 6-7 S.C. 161; (2004) 13 NWLR (Pt. 890) 398, *Solomon v. African Steamship Co.* (1979) 9 NLR 99, *Koney v. UTC* (supra).'

**Another point that ought to be borne in mind is that the application of the respondent as defendant, before the trial court was by way of Preliminary Objection for the dismissal of the appellant's suit in limine on the ground of Limitation Law of Lagos State. The principle of law is well established that an application by way of Preliminary Objection for the dismissal of a suit in limine may be on points** of law and when there are no facts in dispute for the purposes of determining such objection. See *Foko v. Foko* (1968) NMLR 441. The respondent in the instant case relied only on the fact stated by the appellant in the Originating Summons. The respondent needed not file any affidavit nor prove the date of the accrual of the cause of action nor the date when the writ or the claim was issued. The court can look at the documents filed by the appellant and compute the period of limitation. See *Woherem* case (supra). See also *Aremo II v. Adekanye* (2004) 7 S.C. (Pt. II) 28; (2004) 13 NWLR (Pt. 891) 572.

**Where an action is statute barred, a plaintiff who might otherwise have had a cause of action loses the right to enforce it by judicial process because the period of time laid down has elapsed.** See *Eboigbe v. NNPC* (1994) 5 NWLR (Pt. 347) 649, *Odubeko v. Fowler* (supra), *Sanda v. Kukawa Local Government*, (supra), *Ekeogu v. Aliri* (1991) 3 S.C. 58; (1991) 3 NWLR (Pt. 179) 258.

**Now, the appellant by his Originating Summons was seized of the demised land by the terms of the lease on 5/7/1976. He had the responsibility of ejecting the tenants therein. He was also bound by the terms of the lease to erect a building within 2 years of the commencement of the lease. He did not do anything. He allowed the respondent to remain on the property from 1976, without any valid complaint until 1996, when he took this action. By the provisions of the Limitation Law, such an action cannot be brought after the expiration of**

**12 years from the date the right of action accrued. In my view, the Court of Appeal was right in determining that the claim of the appellant was caught by the provisions of the Limitation Law of Lagos State. I accordingly resolve issue No.2 against the appellant.**

B Issues 3 and 4

After the determination of the 1st appeal on the question of whether the appellant's suit was statute barred or not and while considering the 2nd appeal dealing with the issue of whether the appellant was entitled to the reliefs sought in Originating Summons or not, the Court of Appeal per Aderemi, JCA., (as he then was) stated at page 234 of the printed record thus:-

C *"Having regard to what I have been saying about the first appeal No. CA/L/80/95, the second appeal No. CA/L/309/96, with which it has been consolidated may appear to be academic."*

D It was having regard to the decision of the court on the applicability of the Statute of Limitation that the appellant's arguments in issues Nos. 3 and 4 are non sequitur.

E The determination of such issues one way or the other will serve no purpose, since it is adjudged that the claims of the appellant are statute barred and unenforceable. In the language of the Limitation Law "*no such action shall be brought xxxxxxx*" accordingly the issue of how such an action was treated and the result arrived at does not of necessity arise. I accordingly do not deem it necessary or worthwhile to discuss issues 3 and 4. Suffice it for me to dismiss the appeal and affirm the decision of the Court of Appeal. The respondent is entitled to costs assessed at N50,000.00.

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### ONU JSC

The appellant as plaintiff (by no means a relation of the defendant) commenced by way of Originating Summons against the defendant/respondent the following reliefs: -

H *"1. A declaration that the applicant as against the respondent for herself and as heir of the late Odu Williams, is the person entitled to the possession of the property situate at and known as No. 37, Little Road, Yaba, Lagos under the lease registered (sic) as Title No:*

11879.

2. *A declaration that the applicant has not forfeited his rights and any entitlement (sic) whatsoever under the lease registered as Title No: 11879.*

3. *An order construing the lease and declaration that the lease registered as Title No: 11879 in Lands Registry in the office at Alausa, Ikeja is still valid and subsisting.*" B

The affidavit in support of the Originating Summons containing several material depositions inter alia was filed in support thereof.

The respondent claimed in the course of the case that she is entitled to the property as her father had given it to her and that she was never aware of the lease. C

A Notice of Preliminary Objection raised by the respondent pursuant thereto was dismissed for lacking in merit; consequently the Originating Summons was heard with the learned trial Judge granting the reliefs sought therein. D

Consequent upon the ruling and the judgment appeals that were later consolidated were filed at the Court of Appeal, which upheld the Notice of Preliminary Objection, and set aside the judgment on the Originating Summons. The appeal herein is against the aforementioned decisions. In an Amended Brief of Argument, the appellant formulated the following issues for determination: - E

"(i) *Whether the 1st appeal before the Court of Appeal (i.e. the appeal from the Ruling of the trial Judge delivered on the 17th of March, 1994) was valid?*" F

(ii) *Whether the Originating Summons before the trial Judge was statute barred or whether the appellant's cause of action arose from 5th July, 1978?*

(iii) *Whether the trial Judge went into serious error by granting possession of the property in dispute to the appellant upon the Originating Summons?* G

(iv) *Whether the lease of the appellant is subsisting or not?"*

The appellant as transpired, abandoned issue (i) and as issue (ii) dominates the remaining two issues, namely, issues (iii) and (iv) in both scope and content, my consideration of it herein, I think, will suffice to provide answers thereto. H

The argument proffered by the learned counsel for the appel-

lant that there was no available evidence before the lower courts to suggest that the appellant's cause of action arose on 5/7/78, is of no purport. This is because before the trial court, was the lease signed by the appellant and the deceased lessor, Leopold Alexander Odu Williams, exhibited as Exhibit "A" to the affidavit in support of the Originating Summons. The lease dated 5/7/78, was as to completion date, but this was not to be since the building was not erected. This obligation not having been fulfilled by the appellant who was the lessee, resulted in a breach of the agreement at that stage and the cause of action arose at that date of 5/7/78, inspite of the refusal of the respondent to vacate the premises, which the appellant alleged necessitated the breach. This reason notwithstanding, the appellant should have taken appropriate action to facilitate the ejection of the respondent from the property immediately after signing the lease of agreement, for he would be the looser if she continued to be on the premises. The appellant was definitely not diligent in ensuring to keep his own side of the agreement. As a matter of fact the lessee could have instituted an action against the appellant if he happened to be still alive.

The term, "*cause of action*" was judicially defined by the Supreme Court, applying *Read v. Brown* (1289) 122 QBD 128 at 131, per Lord Esher, MR., and in *Lasisi Fadare & Ors. v. Attorney-General of Oyo State* (1982) 4 S. C. 1 at pg. 7; (1982) 4 S.C. (Reprint) 1, per Aniagolu, JSC., as:-

*"denoting every fact (though not every piece of evidence) which it would be necessary for the plaintiff to prove, if traversed, to support his right to the judgment of the court."*

See also *Egbe v. Adefarasin* (1985) 1 NWLR (Pt.3) 549 and *Thomas v. Olufosoye* (1986) 1 NWLR (Pt.18) 689, *Okechukwu Adimora v. Nanyelugo Ajufo & Ors.* (1988) 3 NWLR (Pt.80) 1 at 17 and *U.B.A. Plc. v. B.T.L. Industries Ltd.* (2006) 12 S.C. 63.

In the instant case, since the cause of action arose in 1978, and this case was not commenced until in 1992, then it was caught by the Limitation Law of Lagos State which stipulates the following: -

*"16(2) The following provisions shall apply to an action by person to recover land -*

*(a) subject to paragraph (b) of this subsection, no such action*



*shall be brought after the expiration of twelve years from the date on which the right of action accrued to the person . bringing it or, if it first accrued to some person through whom he claims, to that person. ”*

The intervening period when carefully computed leaves one with 14 years before the action was instituted, hence it had expired. Thus, going back to the learned counsel for the appellant’s contention that there was no evidence upon which the lower court based its finding that the action was statute barred, I decline to subscribe to the argument most especially as there was definitely evidence to support it, both in the supporting affidavit and the lease agreement exhibited and marked Exhibit ‘A’.

It is for these reasons and more profound ones contained in the leading judgment of my learned brother, Musdapher, JSC., that I too unhesitatingly dismiss this appeal as lacking in merit and no iota of substance.

### **MUKHTAR JSC**

By way of Originating Summons, the appellant sought the following reliefs:-

*“1. A declaration that the applicant as against the respondent for herself and as heir of the late Odu Williams, is the person entitled to the possession of the property situate at and known as No. 37, Little Road, Yaba, Lagos under the lease registered (sic) as Title No: 11879.*

*2. A declaration that the applicant has not forfeited his rights and any entitlement (sic) whatsoever under the lease registered as Title No: 11879.*

*3. An Order construing the lease and declaration that the lease registered as title No: 11879 in Lands Registry in the office at Alausa, Ikeja is still valid and subsisting.”*

The affidavit in support of the Originating Summons contains inter alia the following material depositions:-

*“(a) That sometime in 1976, he entered into 50 year - lease (with a renewal option) with one Leopold Alexander Odu Williams over the property known as and situate at No. 37, Little Road, Yaba, (herein - after simply referred to as “the property”).*

(b) That a courtified (sic) true copy of the lease (sic) in annexed hereto or filed herewith and it is herein after referred to as “Exhibit Willy A”.

(c) That the said Leopold Alexander Odu Williams (the lease) (sic) in (sic) the father of the respondent.

B (d) That Leopold Alexander Odu Williams died a few years ago and no executors or administrators (sic) of this estate have been named to the applicant’s knowledge.

C (e) That the respondent together with some of her sisters were living in the property then (sic) the lease commenced and he allowed them (sic) to continue to live therein with the understanding that they would vacate the same whenever he wanted to use it.

D (f) That when he eventually wanted to use the property he gave the respondent and her sister the appropriate notices, but while the sister vacated the property the respondent has since refused to give up possession thereof.

(g) That he took out a case (sic) against the respondent for the possession of the property at the Registrar’s Court of Lagos State (holden at Yaba) sometime in 1985, in Suit No. 86/85.

E (h) That the respondent claimed in the course of the case that he (i.e. the applicant) has forscited (sic) the lease if any enlisted at all.

F (i) That the respondent claimed in the course of the case that she is entitled to the property as her father had given case (sic) to her, and that she was never aware of the lease.”

A Notice of Preliminary Objection was raised by the respondent as follows:—

G “(1) That the case of the applicant/respondent be dismissed as Lagos State High Court has no jurisdiction, by virtue of Sections 16(2)(a) and not 21 of Limitation Law, Cap. 70, Laws of Lagos State.

(2) That the action be dismissed as it is vexatious, oppressive and an abuse of the process of court.

(3) That the judgment of the Chief Magistrate Court, Yaba in Suit No. 86/85, constitute a res judicata.”

H The Preliminary Objection was dismissed for lacking in merit, consequently the Originating Summons was heard and the learned trial Judge granted the reliefs sought therein. Consequent upon the ruling and the judgment appeals that were later consolidated were

filed at the Court of Appeal, which upheld the Notice of Preliminary Objection, and set aside the judgment on the Originating Summons.

The appeal before this court is against the aforementioned decisions. In his Amended Brief of Argument, the appellant raised the following issues for determination:-

*“(i) Whether the 1st appeal before the Court of Appeal (i.e. the appeal from the ruling of the trial Judge delivered on the 17th of March, 1994) was valid?”* B

*“(ii) Whether the Originating Summons before the trial Judge was statute barred, or whether the appellant’s cause of action arose from 5th July, 1978?”* C

*“(iii) Whether the trial Judge went into serious error by granting possession of the property in dispute to the appellant upon the Originating Summons?”*

*“(iv) Whether the lease of the appellant is subsisting or not?”* D

Issue (1) supra, was abandoned by the learned counsel for the appellant at the hearing of the appeal. The salient and succinct issue for the determination of this appeal, is to my mind issue (ii) supra, and I will highlight it in this judgment. The argument proffered by learned counsel for the appellant that there was no available evidence before the lower courts to suggest that the appellant’s cause of action arose on 5/7/78, does not hold any water. Before the trial court was the lease signed by the appellant and the deceased lessor, Leopold Alexander Odu Williams, exhibited as Exhibit “A” to the affidavit in support of the Originating Summons. The lease dated 5/7/76, in Clause (10) of the Agreement, Exhibit ‘A’ specifically provides that the building should be completed within 2 years from 5/7/76, which translates to 5/7/78 as completion date, but this was not to be so the building was not erected. This obligation not having been fulfilled by the appellant who was the leasee, resulted in a breach of the agreement, at that stage and the cause of action arose at that date of 5/7/78, inspite of the refusal of the respondent to vacate the premises which the appellant alleged necessitated the breach. This reason notwithstanding, the appellant should have taken appropriate action to facilitate the ejection of the respondent from the property immediately after signing the lease agreement, for he would be the looser if she continued to be on the premises. The appellant was

definitely not diligent in ensuring that he kept to his own side of the agreement, and as the equitable maxim goes ‘equity aids the vigilant and not the indolent’. As a matter of fact the leasee, could have instituted an action against the appellant if he was alive.

B A cause of action is in general defined as facts or situations arising from those facts from which there may emanate a right of action for which a remedy may be sought. See *Lasisi Fadare & Ors. v. Attorney General of Oyo State* (1982) 4 S.C. (Reprint) 1; (1982) FWLR 26, *Fred Egbe v. Adefarasin* (1987) 1 NSCC 1 and *U.B.A. Plc. v. B.T.L Industries Ltd.* (2006) 12 S.C. 63. “Since the cause of action C arose in 1978, and the present action was not commenced until in 1992, then it was caught by the Limitation Law of Lagos State which stipulates the following:-

D *“16(2) The following provisions shall apply to an action by a person to recover land-*

*(a) subject to paragraph (b) of the subsection, no such action shall be brought after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if the first accrued to some person through whom he claims, to that person.”*

F A careful calculation of the intervening period reveals that a period of 14 years had elapsed before the action was instituted hence it had expired. Going back to the contention of learned counsel for the appellant that there was no evidence upon which the lower court based its finding that the action was statute haired, I refuse to subscribe to that argument, for there was definitely evidence to support it, both in the supporting affidavit, and the lease agreement exhibited and marked Exhibit ‘A’. This issue is therefore bound to be resolved G in favour of the respondent, and in my view that about covers the whole appeal, as once the action was statute barred whatever comes under it has no leg to stand on.

H I have read in advance the leading judgment delivered by my learned brother, Musdapher, JSC. I am in full agreement with him that the appeal lacks merit and substance, and deserves to be dismissed. I also dismiss the appeal and affirm the judgment of the lower court. I abide by the orders made in the leading judgment.

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**MOHAMMED JSC**

This appeal is against the decision of the Court of Appeal, Lagos Division given on 20th May, 2002, in consolidated appeals from the interlocutory ruling and final judgment of the High Court of Justice of Lagos State. In that judgment, the Court of Appeal allowed the two appeals, set aside the ruling of the trial court of 17th March, 1994, overruling a Preliminary Objection on the competence of the action, set aside the final judgment of the trial court granting all the reliefs sought in the action on 21st March, 1995, and substituting there for with a judgment dismissing the plaintiff's/respondent's action for being statute barred.

In this appeal, although the name 'Williams' is a common factor in the names of the parties, the parties are not members of the same family. The circumstances surrounding the facts that gave rise to the dispute between the parties, right from 5th July, 1976, the date the lease relied upon by the appellant was executed, to the date of the judgment of the court below dismissing the claims of the appellant as being statute barred on 20th May, 2002, are quite straight on the record. It is in this respect that I am of the view that the main issue for determination in the appeal, is whether or not the suit of the appellant in a land dispute, founded on a lease executed since 5th July, 1976, was statute barred. From the affidavit in support of the appellant's claims in the Originating Summons filed by him at the trial court, the date the cause of action arose was quite clear and the date the claim was filed at the trial court was also plainly stated on the Originating Summons.

The relevant statute relied upon by the court below in its judgment now on appeal is the Lagos State Limitation Law, Cap. 70, Laws of Lagos State, 1973, now Cap. 118, Laws of Lagos State, 1994, which provides in Sections 16(2)(a) and 21 thus:-

*"16(2) The following provisions shall apply to an action by a person to recover land -*

*(a) subject to paragraph (b) of this subsection, no such action shall be brought after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if it first accrued to some person through whom he claims to that person;*

XXXXXXXXXXXXXXXXXXXX

21. *On the expiration of the period fixed by this law for any person to bring an action to recover land, the title of that person to the land shall be extinguished.*”

B These provisions of the Lagos State Limitation Law upon which the judgment of the court below was based, also came up for consideration and interpretation by this court in the case of Ajibona v. Kolawole (1996) 10 NWLR (Pt.476) 22 at 35-36, where Ogwuegbu, JSC., said:-

C “*On the reading of the provisions of the Limitation Law of Lagos State as a whole, they do not merely deny the right of action, they completely extinguish an existing right at the expiration of twelve years from the accrual of the right of action.*”

D This interpretation was later applied in the case of Akibu v. Azeez (2003) 1 S.C. (Pt.II) 71; (2003) 5 NWLR (Pt.814) 643 at 669. From the undisputed facts in the present case, taking into consideration that the right of the appellant under the lease executed on 5th July, 1976, under which the appellant was expected to take up possession of the property after the completion of the building within  
E two years, was not exercised within the period of limitation of twelve years prescribed by the Lagos State Limitation Law, the appellant's conduct or inaction not only denied the appellant's right of action but also completely extinguished his existing right under the lease.  
F The court below was therefore right in its judgment against the appellant. It is for the foregoing reasons and fuller reasons contained in the leading judgment of my learned brother, Musdapher, JSC., which I have had the privilege of reading in advance and with which I completely agree, that I also see no merit in this appeal. Accordingly, the  
G appeal is hereby dismissed with N50,000.00 costs in favour of the respondent.

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### OGBUAGU JSC

H This is an appeal against the decision of the Court of Appeal, Lagos Division (hereinafter called “*the court below*”) delivered on 20th May, 2002, allowing the two appeals of the parties that were consolidated by the order of that court and dismissing and setting

aside, the respective decisions of the trial court given on 17th March, 1994.

Dissatisfied with the decision given against the appellant, the appellant, has appealed to this court on five (5) grounds of appeal. When the appeal came up for hearing on 18th February, 2008, the learned counsel for the appellant - Chief Akinbiyi appearing with two other learned counsel, applied to withdraw issue 1 and all the arguments thereon from pages 3 and 4, of their Amended appellant's Brief and he urged the court, to strike them out. The application was granted and the said issue 1 with all the arguments thereon, were accordingly struck out. He urged the court to allow the appeal, set aside the judgment of the court below and re-instate that of the trial court. The respondent was absent and as there was no appearance for her although there is evidence of the service of the hearing notice on them/counsel, the appeal, was deemed argued pursuant to Order 6 Rule 6 of the Rules of this court. Judgment was thereafter, reserved till to-day.

The appellant's remaining issues, read as follows:-

*"(ii) Whether the Originating Summons before the trial Judge was statute-barred, or whether appellant's cause of action arose from 5th July, 1978?"*

*(iii) Whether the trial Judge went into serious error by granting possession of the property in dispute to the appellant upon the Originating Summons?"*

*(iv) Whether the lease of the appellant is subsisting or not?"*

On its part, the respondent, formulated three issues for determination, namely:-

*"3.01 Whether the 1st appeal before the Honourable Court of Appeal based on the ground that the Honourable High Court lacked the competence to hear the case, as the jurisdiction of the High Court had been ousted by the Statute of Limitation, was an Interlocutory or final decision?"*

*3.02 Whether the Honourable Court of Appeal was right in holding; (sic) that Statute of Limitation was applicable to a person who had a lease agreement dated 5/7/76 but was not put into possession and by the lease agreement was required to complete the building within 2 years by 5/7/78 on the land, and who despite sev-*

*eral obstacles placed in his way in taking possession of the property from 5/7/76, by a person (the respondent in this appeal) waited till 1/6/92, to go to the right court to seek declaration when he had only 12 years to seek redress?*

3.03 *Whether having resolved the issue of Statute of Limitation in favour of the respondent. The (sic) appellant had any other relief to be considered: example (i) granting of possession, and (ii) whether the lease agreement was subsisting?"*

I had the advantage of reading before now, the judgment of my learned brother, Musdapher, JSC., just delivered. I agree with his reasoning and conclusion and I respectfully, adopt the same as mine. However, for purposes of emphasis, I will make my own contribution particularly, as regards the issue of the action of the appellant, being statute-barred. The parties agree that although they bear the same surname, they are not related in any way at all. The surnames, are a matter of coincidence.

Now, (i) the Certified True Copy of the Lease Agreement, was attached by the appellant to his affidavit in support of the Originating Summons he initiated or caused to be initiated as 'Exhibit Willy A'. The date thereon, is 5th July, 1976, - (see paragraph 26 thereof).

(ii) Clause 11 of the lease, provides for the building by the appellant within two (2) years from 5th July, 1976, "*building or buildings in all respects, fit for immediate occupation and use and to expend thereon a sum of not less than N100,000 (One Hundred Thousand Naira)*". The word "*shall*" is used in this regard therein.

(ii) Clause 12 makes the ejection of the tenants, the sole responsibility of the appellant. The word "*shall*" is also used in this respect.

(iv) In paragraph 2(e) of the said affidavit, it is admitted by the appellant, that the lease commenced on that 5th July, 1976, and that the respondent with one of her sisters, were living in the property and he allowed them to continue to live therein "with the understanding that they would vacate whenever he the appellant wanted to use the property. In paragraph 2(f) it is stated on oath that when he wanted to use the property (date not averred or stated), while the respondent sister vacated, that the respondent, "*has since refused to give up possession thereof.*"



(v) There is the admission that he the appellant went to the Magistrate's Court, Yaba and sued for the recovery of possession, but the suit, was dismissed on the ground of lack of jurisdiction. In other words, that he went to the wrong court. In paragraph 2(c) it is averred that he intended to appeal against the said decision. There is no evidence that he ever did. He therefore, later sued in the trial court by an Originating Summons which is dated 20th May, 1992 but was filed on 17th July, 1996. There is the evidence, that the respondent, challenged the competence of the suit and the jurisdiction of the trial court to entertain the same on the ground that the suit is/was statute-barred.

What emerges from the foregoing, is that the appellant never complied with the mandatory provisions of the lease. He never built any building on the property within the two (2) year period or at all. He never succeeded in ejecting the respondent. There is no evidence that he expended any money in respect of the property even when he eventually sued in 1996 - a period of twenty (20) years. Even up to 1992 - a period of sixteen (16) years, he did not recover possession from the respondent.

Now, Section 16(2) of the Lagos State Limitation Law. Cap. 70, Law of Lagos State, (now Cap. 118), Law of Lagos State. 1994, provides as follows:-

*"The following provisions shall apply to an action by a person to recover land -*

*(a) subject to paragraph (b) of this subsection no such action shall be brought after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if it first accrued to some person through whom he claims to that person....."*

(the underlining mine)

Section 21 of the same law, provides as follows:-

*"On the expiration of the period fixed by this law 25 for any person to bring an action to recover land, the title of that person to the land shall be extinguished."*

(the underlining mine)

The above mandatory provisions, were also reproduced at page 227 of the records by the court below. They are clear and unambiguous. In the case of Egbe v. The Hon. Justice Adefarasin (1987) 1

NWLR (Pt.47) 13; (1987) 1 SCNJ 1; (1987) 1 All NLR 1 at 21; (1987) 1 NSCC 1, Aniagolu, JSC., stated inter alia, as follows:-

*“..... if the action was barred by statute no amount of resort to the merit of appellant’s “contention, will serve to keep the action in being.”*

B In the case of Sanda v. Kukawa Local Government & Anor. (1991) 2 NWLR (Pt.174) 379 at 381, 389; (1991) 3 SCNJ 35. it was held that it is settled that where the law prescribes a period for instituting an action, proceeding cannot be instituted after the prescribed period . The case of Obiefuna v. Okoye (1961) 1 ANLR 357 at 388, C 389, was referred to. That the period of limitation will begin to run from the date when the cause of action accrues . The case of Egbe v. Adefarasin (1985) 1 NWLR (Pt.3) 549, was referred to. That ignorance of a statutory limitation provision by a party and/or his counsel, is no defence.

D In the case of Lasisi Fadare & Ors. v. Attorney-General of Oyo State (1982) 4 S.C. 1 at 24, 25; (1982) 4 S.C. (Reprint) 1; (1982) NSCC 52 at 60; (1982) All NLR 26 at 37, it was held that time begins to run, when the cause of action arises. The cases of Solomon v. E African Steamship Co. Ltd. 9 NLR 99 and Board Trade v. Cayner. Irvine & Co. Ltd. (1927) AC 610, were referred to. That time therefore, begins to run, when there is in existence, a person who can sue and another, who can be sued and when all the facts, have happened which are material to be proved to entitle the plaintiff, to succeed. The cases of Cooke v. Gill (1873) LR 1 QB 222, 242, were also F referred to. See also the case of Chief Wolerem J.P. v. Emeruwa & 4 Ors. (2004) 6-7 S.C 161; (2004) 13 NWLR (Pt.890) 398; (2004) 7 SCNJ 119 at 130, 132.

G Thus, and this also settled, a plaintiff may have a cause of action, but loses the right to enforce that cause of action by judicial process because, the period of time laid down by the Limitation Law for bringing such action, elapsed. See the case of Odubeke v. Fowler & Anor. (1993) 7 NWLR (Pt.308) 637 at 659; (1993) 9 SCNJ (Pt.II) H 185 at 201, citing the case of Savannah Bank of Nig. Ltd. v. Pan Atlantic Shipping & Transport Agencies Ltd. & Anor. (1987) 1 S.C. 198; (1987) 1 NWLR (Pt.49) 212; (1987) 1 SCNJ 88; (1989) 1 NSCC 67 at 80. See also recently, the cases of Oba Aremo II v.

Adekanye & 2 Ors. (2004) 7 S.C. (Pt.II) 28 at 40-42; (2004) 13 NWLR (Pt.891) 572; (2004) 7 SCNJ 218 at 233 and Owie v. Ighiwi (2005) 1 S.C. (Pt.II) 16; (2005) 1 SCNJ 181 at 199, citing some other cases therein.

Indeed, dealing with the Limitation Law of Lagos State (supra), Ayoola, JSC, in the case of *Alhaja Ajibona v. Alhaji Kolawole* (1996) NWLR (Pt.476) 28 at 35-36; (1996) 12 SCNJ 270 at 283 (also referred to by me in my concurring judgment in the case of *Elabanjo & Anor. v. Chief (Mrs.) Dawodu* (2006) 6-7 S.C. 24; (2006) 6 SCNJ 204 at 244, stated inter alia, that on the reading of the provisions of the said Law as a whole, “*they do not merely deny the right of action. They completely extinguish an existing right at the expiration of twelve years from the accrual of the right of action*”.

In the instant case leading to this appeal, the appellant’s learned counsel, in the face of the overwhelming facts/evidence (including documentary evidence), admitted by the appellant in his said affidavit referred to by me earlier in this judgment, with respect, cannot be heard to argue or submit that “*there was no evidence to suggest that the appellant’s cause of action, arose on 5th July, 1976*”. This cannot and will not be, with respect, right and honest. The appellant himself, provided the documentary evidence of the date of accrual of the cause of action by exhibiting the certified true copy of the Lease Agreement. He was to eject the tenants including the respondent, but he did not and could not. He never erected any building on the land within two (2) years from the date of the Lease, nor did he expend any sum of money whatsoever on the property as contained or stipulated in the Lease.

As a matter of fact, he was in total and complete breach of the mandatory clauses/provisions contained in the Lease. The Originating Summons filed by him, shows that it was filed in 1996. Even at the time he sued the respondent at the Magistrate’s Court, Yaba, he was already caught by the said Limitation Law having sued after sixteen (16) years when also, the cause of action accrued. But what was/is worse, is that, he went and filed this said action, in a court that lacked jurisdiction to entertain and determine the action i.e. his said suit, was incompetent and being incompetent, the cause of action, never existed. When he eventually came to the trial court, twenty

(20) years, had elapsed from the date his cause of action accrued.

It is from the foregoing, the decided authorities and the more detailed judgment of my learned brother, Musdapher, JSC., that I too, hold that this appeal, is most unmeritorious and it fails. I too, dismiss it and I accordingly, affirm the said decision of the court below. I abide by the consequential order in respect of costs as costs follow the event.

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