

SUPREME COURT OF NIGERIA

22ND MAY 2009 SC. 153/2002

**CORAM:- D. MUSDAPHER, I. F. OGBUAGU, F. F. TABAI,
I. T. MUHAMMAD, M. S. MUNTAKA-COOMASSIE, JJSC**

HENRY STEPHENS ENGINEERING LTD. APPELLANT
AND

S. A. YAKUBU (NIG.) LTD. RESPONDENT

EVIDENCE - Affidavits - Admissions - Applicability - Failure to swear to further-affidavit where there is unchallenged counter-affidavit - Amounts to admission of the counter-affidavit (H1)

ACTIONS - Limitation period - Computation of time - Starting point - In view the letters by appellant and the promise of respondent - To return the items in due course - It cannot be said that time began to run from 1984 (H2)

ACTIONS - Validity - Statute of Limitation - Plaintiff had until October 1992 to validly bring its suit - As the law provides for 6 Years from date of cause of action - Instant suit is therefore not statute barred (H3)

FACTS

The plaintiff/respondent sued the defendant/appellant claiming the sum of N750,000.00 (seven hundred and fifty thousand naira) being money due and payable to the respondent for the wrongful conversion of its concrete mixer and for damages suffered by the respondent for the loss of its use. On being served with the writ of summons and statement of claim, appellant without filing a statement of Defence, filed a motion praying for an order dismissing the suit as statute barred.

It was the contention of the appellant that the cause of action arose in 1984 when respondent first made oral request from appellant for return of the mixer. In response to appellant's motion, respondent filed a counter-affidavit showing that up till 21/10/86, respondent was still paying the agreed deposit, the receipt of which was a pre-condition for appellant's repair of the mixer. The counter-affidavit was unchallenged. Moreover, in reaction to a letter from respondent, appellant had written him on 29/10/86 undertaking to return the

items of machinery in due course. The trial court dismissed appellant's application. Aggrieved, appellant appealed to the court of Appeal which dismissed the appeal. This is a further appeal to the Supreme Court.

ISSUE FOR DETERMINATION

Whether the said action of the Respondent, was/is statute-barred as claimed by the Appellant.

HELD (Unanimously dismissing the appeal per **OGBUAGU JSC**)
EVIDENCE - Affidavits - Admissions - Applicability

1. I will therefore, pause here to state that it is now settled that failure to swear to further-affidavit where there is a counter-affidavit which is unchallenged, it is deemed that the counter-affidavit, is admitted as being correct. In other words, where there is unchallenged counter-affidavit evidence, the court is at liberty, to accept it as true and correct. (p. 1272 B)

Limitation period - Computation of time - Starting point

2. An oral demand by the Respondent, was made to the Appellant for return of the item or equipment, during the period of May, 1984. But in paragraph 11 thereof, the Solicitors of the Respondent, wrote two letters - one dated 28th April, 1986 followed by another letter dated 20th October, 1987. In paragraph 12, the Appellant, re-acted to the said demand by their two letters dated 16th October, 1986 and 29th October, 1986, respectively, undertaking to return the said items of machinery and equipment of the Respondent, in due course. At the time the Respondent sued in September, 1992, the Appellant, had not, made good of their said undertaking. In view of these clear and unambiguous averments in the said Statement of Claim, could it be honestly said or stated that the cause of action began to run from 1984 as has been done by the Appellant in this case up to this Court? I think not. (p. 1274 F)

ACTIONS - Validity - Statute of limitation

3. The court below, - per Oguntade, JCA (as he then was), was very clear when it correctly or rightly in my respectful view, held at page 45 of the Records *inter alia*, as follows:

“..... *A period of six years under the Limitation Law when*

computed from 21/10/86 would enable the plaintiff to have validly brought its suit sometime in October, 1992 at the earliest. Viewed from that angle, plaintiff's Suit which was filed on 8/9/92 could not have been statute-barred. (p. 1275 A)

NOTABLE POINTS OF INTEREST

OGBUAGU JSC

It remains an issue whether the action is in conversion

1. In view of the averment in paragraph 13 of the Statement of claim, I will refrain from commenting on or dealing with it. This is because, if I do so, I may or will be pre-empting the decision of any trial court that will eventually try the suit. Whether the action is in conversion or detinue, it remains a live issue, more so or since the Appellant, up till now, is still in custody of the said equipment and machinery of the Respondent which it long undertook to return to the Respondent, but has still not done so. (p. 1277 B)

TABAI JSC

When detention of chattel will become adverse

2. In my view the present action is one of conversion by detention, the Defendant/Appellant having taken possession of the chattels for repairs under an agreement. The Defendant/Appellant's detention of the chattels becomes conversion only if it is adverse to or inconsistent with the rights of the owner/Respondent or other person entitled to their possession. To be liable of conversion therefore the Appellant must be shown to have demonstrated an intention to detain or withhold the equipment in defiance of the Plaintiff/Respondent. (p. 1279 E)

Demand and refusal are essential ingredients of conversion

3. The usual mode of establishing that a detention of chattels by a Defendant is adverse to the rights of the owner or other person entitled to their possession and therefore constitutes the tort of conversion is to prove that the Plaintiff demanded the delivery of the chattels and that the Defendant refused or neglected to comply with the demand. Thus demand by the Plaintiff and refusal by the Defendant are the essential ingredients of conversion. (p.1279 H)

REPRESENTATION

Titilola Akinlawon (Mrs.), for the Appellant, with him/her Sogi Toki, Esqr.

O. A. Akerele,. Esqr., for the Respondent.

B

CASES REFERRED TO

Jumbo Nwangansa &, 5 ors. v. Military Governor of Imo State & 2 ors. (1987) 3 NWLR (Pt.59) 182 @ 193 C.A.

C Attorney-General of Plateau State v. Attorney-General of Nassarawa State (2005) 4 SCNJ. 120 @ 175 (2005) 4 S.C. 55

Chief S. A. Dada & 3 ors. v. Otunba Adeniran Ogunsanya & anor. (1992) 3 NWLR (Pt.232) 754; (1992) 4 SCNJ. 162

Irene Thomas v. Dr. Olofosoje (1986) 1 NWLR (Pt.18)

D Adimora v. Ajufo & ors. (1988) NSCC Vol.19 (Pt.I) 1005; (1988) 3 NWLR (Pt.80) 1; (1988) 6 SCNJ. 18

Alhaji Ibrahim v. Mr. Oshin (1988) NSCC Vol. 19 (pt 1) 1184; (1988) 3 NWLR (pt. 82) 257; (1988) 6 SCNJ. 203

E Ajomale v. Yaduat & anor. (No.2) (1991) 5 NWLR (Pt.191) 226 @ 282-283; (1991) 5 SCNJ. 178

Magnusson v. Koikoi (1993) 12 SCNJ. 114

Irogbu v. Ugbo (1970-71) 1 ECSLR 162

Nzekwu v. Nzekwu & 2 ors. (1977) 1 ANLR 224 @ 226

F

STATUTE & RULES REFERRED TO

Limitation Law of Lagos State, s.8(4) & (14)

High Court of Lagos State (Civil procedure) Rules,1972, 0.22 r. 4

G

LEAD JUDGMENT BY OGBUAGU JSC

This is another Interlocutory appeal against the Judgment of the Court of Appeal, Lagos Division (hereinafter called “*the court below*”) delivered on 29th April, 2002, dismissing the appeal to it by the Appellant. Dissatisfied with the said Judgment, the Appellant, has H further appealed to this Court on three Grounds of Appeal. Without their particulars, they read as follows:

(1) The learned Justices of the Court of Appeal erred in law when they held as follows:

“..... In paragraph 9 of the Statement of Claim, it was pleaded

that the deposit paid to the defendant was made in three installments the last of which was made on 21/10/86. It is manifest therefore that by the contract of the parties themselves, the obligation of the defendant to commence repair work and to return the equipment to the plaintiff would only mature subsequent to 21/10/86 when the last installment of the deposit was made. The conversion, if any, of plaintiff's equipment could not therefore have arisen earlier than 21/10/86.

(2) The learned Justices of the Court of Appeal erred in law when they affirmed the decision of the trial Court and held that the action of the plaintiff was not statute barred and that it disclosed a reasonable cause of action.

(3) The averment in paragraph 10 of the Statement of Claim that the Plaintiff made a demand for the return of the equipment from May 1984 must be read subject to the averments in paragraphs 5 and 9 of the Statement of Claim”.

The facts of this case, are simple. The Respondent as Plaintiff in Suit No, LD/277/92 in the High Court of Lagos, sitting in Lagos, claimed from the Appellant, the sum of N750,000.00 being money due and payable to the Respondent, for the wrongful conversion of its concrete mixer and for damages suffered by the Respondent for the loss of use of the said mixer. After the service of both the Writ of Summons and the Statement of Claim on the Appellant, who did not file a Statement of Defence, but instead, filed a motion pursuant to Order 22 Rule 4 of the High Court of Lagos State (Civil Procedure) Rules, 1972 (hereinafter called “the Rules”) praying for an order dismissing the said suit.

The grounds for the application, are:

“1. That the facts and matters relied on in support of this action occurred more than six (6) years before the issue of the writ in this case and the claim (if any, which is denied) is barred by Limitation Law Cap, 70 Laws of Lagos State 1973.

2. That the action is vexatious and constitutes an abuse of the process of the court”.

I note that the Respondent, filed a counter-affidavit in which paragraphs 3 and 4, read as follows:

“3. That Plaintiff made a payment of N2,000.00 to the defendant on 21/10/86 which the Defendant accepted and issued a re-

ceipt thereon.

4. *Although the concrete mixer and compressor were delivered to the Defendant in 1984, the Defendant on 29/10/86 in reply to a letter from the Plaintiff wrote and undertook to return the said items of machinery in due course”.*

B (the underlining mine)

I will therefore, pause here to state that it is now settled that failure to swear to a further - affidavit where there is a counter - affidavit which is unchallenged, it is deemed that the counter-affidavit, is admitted as being correct. In other words, where there is unchallenged counter-affidavit evidence, the court is at liberty, to accept it as true and correct. See the cases of Jumbo Nwangansa &, 5 ors. v. Military Governor of Imo State & 2 ors. (1987) 3 NWLR (Pt.59) 182 @ 193 C.A. and Attorney-General of Plateau State v. Attorney-General of Nassarawa State (2005) 4 SCNJ. 120 @ 175; (2005) 4 S.C. 55.

Obadina, J. (as he then was), heard the application and dismissed it on the ground that it was premature. On appeal to the court below, that court, also dismissed the appeal on the ground that the trial court, correctly found that the Respondent’s Statement of Claim, disclosed a reasonable cause of action. It is against this decision, that the instant further appeal, has been brought.

The Appellant, has formulated only one issue for determination namely,

F “*Were the learned Justices of the Court of Appeal right in all the circumstances in holding that the Respondent’s claim for conversion was not statute barred?”.*

The above issue, has been adopted by the Respondent in its Brief.

When this appeal came up for hearing on 24th February, 2009, the leading learned counsel for the Appellant - Akinlawon (Mrs.), adopted their Brief. He/she told the Court that there is only one issue for interpretation as regards Sections 8(4) and (14) of the Limitation Law of Lagos State and whether the court below, was right in holding that the action, was not statute-barred. He/she referred to page 4 paragraph 10 of the Statement of Claim and submitted that it is a case of conversion and not on contract. That that is, the cause of action. That the Respondent, are bound by their pleading. Learned

counsel referred to paragraph 11 of the said claim which she stated refers to a contract. He/she urged the Court, to allow the appeal.

Akerele, Esqr, - learned counsel for the Respondent, also adopted their Brief. He told the Court that they used the word conversion in their claim. That they did not claim on the basis of contract. He referred to the meaning of conversion and stated that this was/is not applicable in this case. He also referred to paragraph 12 of the Statement of Claim at page 5 of the Records and stated that in 1986, the Appellant took their money and still kept their goods. He urged the court, to dismiss the appeal. Thereafter, the Court was minded to give on the Bench Judgment, but because of the fuss or forceful reference by Mrs. Akinlawon as to the import of Section 14 of the said Law, Judgment was reserved till to-day.

The real or crucial issue to be determined in my respectful view, is, whether the said action of the Respondent, was/is statute-barred as claimed by the Appellant. In order to determine the said issue, it will be necessary for me, to reproduce some of the relevant or material averments in the Statement of Claim. I shall reproduce paragraphs 9, 10, 11, 12 and 13 thereof. They read as follows:

"9. Immediately upon, and from time to time after the said delivery of the said items of plant and equipment to them, the Defendant demanded performance by the Plaintiff of the condition-precedent or material pre-condition mentioned in paragraph 6(1) above, (namely, the payment of a deposit), and in compliance with this demand, the Plaintiff avers that they did pay the Defendant the specific sums and on the specific dates shown in the table below and the Defendant took possession of the Plaintiff's items of plant and equipment accordingly.

		<u>Particulars</u>	G
<u>Date</u>		<u>Amount of Deposit</u>	
		<u>Paid to 1st Defendant</u>	
(i) 11.4.84	N3,000.00	(vide defendant's Receipt No, 4651 of 11.4.84).	
(ii) 10,10.86	N2,400.00	(vide Defendant's receipt No. 8855 of 10.10.86)	H
(iii) 21.10.86	N2000.00	(vide defendant's receipt No. of 21.10.86)	

10. The Plaintiff states that during the period of May 1984 to

date, he has orally demanded the return of his (sic) Concrete Mixer, and Compressor on numerous occasions, but states that the Defendant has failed to return them to him.

11. By their letters dated the 28th of April 1986 and the 22nd of October 1986 respectively, and by their Solicitor's letter dated the 20th of October, 1987 (all written to the Defendant), the Plaintiff demanded from the Defendant the return of their items of machinery and equipment referred to in paragraph 4(i) and (ii) above.

12. By the defendant's letters dated the 16th of October, 1986 and the 29th of October, 1986 and delivered to the Plaintiff, the defendant undertook to return the said items of machinery and equipment the property of the Plaintiff to their rightful owner in due course.

13. The Plaintiff however avers that from the diverse dates referred to in paragraphs 10-12 hereof up until the time of the commencement of these proceedings, the Defendant has refused to return the same and has wrongfully detained and/or still detains the same, whereby the Plaintiff has suffered loss and damage.

Particulars of Damages

E	N300,000.00	-	value of Winget Concrete Mixer
	N200,000.00	-	value of Compressor
	250,000.00	-	for loss of use of the equipment
	Total N750,000.00		

WHEREUPON the Plaintiff claims the sum of N750,000.00 from the defendant being money due and payable to the Plaintiff for the wrongful conversion of its Concrete Mixer S/No. 309/10B 5781 and for damage suffered by the Plaintiff for loss of use of same".

As can be seen from the above in paragraph 10 of the Claim, **an oral demand by the Respondent, was made to the Appellant for return of the item or equipment, during the period of May, 1984. But in paragraph 11 thereof, the Solicitors of the Respondent, wrote two letters - one dated 28th April, 1986 followed by another letter dated 20th October, 1987. In paragraph 12, the Appellant, re-acted to the said demand by their two letters dated 16th October, 1986 and 29th October, 1986, respectively, undertaking to return the said items of machinery and equipment of the Respondent, in due course. At the time the Respondent sued in September, 1992, the Appellant, had not, made good of their said undertaking. In view of these**

clear and unambiguous averments in the said Statement of Claim, could it be honestly said or stated that the cause of action began to run from 1984 as has been done by the Appellant in this case up to this Court? I think not.

The court below, - per Oguntade, JCA (as he then was), was very clear when it correctly or rightly in my respectful view, held at page 45 of the Records inter alia, as follows:

“..... A period of six years under the Limitation Law when computed from 21/10/86 would enable the plaintiff to have validly brought its suit sometime in October, 1992 at the earliest. Viewed from that angle, plaintiff’s Suit which was filed on 8/9/92 could not have been statute-barred. It would be unfair to tie the plaintiff only to May, 1984 without the benefit of evidence at the trial.....,”

(the underlining mine)

See also the finding of fact and holding of the court below, reproduced in ground 1 of the Appellant’s Notice of Appeal earlier reproduced by me in the beginning of this Judgment. I note that it was in the circumstances of the issues before it, that His Lordship, had to state at the same page 45 of the Records as follows:

“..... It is therefore my view that the lower court was right to have concluded that the plaintiff’s Statement of Claim disclosed a cause of action” .

In the case of Chief S. A. Dada & 3 ors. v. Otunba Adeniran Ogunsanya & anor. (1992) 3 NWLR (Pt.232) 754; (1992) 4 SCNJ. 162 this Court - per Kawu, JSC. @ 765, held inter alia, as follows:

“Determining reasonable cause of action in so doing, it is irrelevant to consider the weakness of the plaintiffs claim. What is important is to examine the averments in the pleadings and see if they disclose some cause of action or raise some questions fit to be decided by a Judge - See the case of Irene Thomas v. Dr. Olofosoye (1986) 1 NWLR (Pt.18) 669”

On the duty on a party seeking to strike out pleadings for failure to disclose a cause of action, - Olatawura, JSC - @ 767 - 768, of the above case, held, inter alia, as follows:

“When pleadings have been filed, a party resorting to Order 22 of the High Court of Lagos State (Civil Procedure) Rules, (as was/is the case in the instant case leading to this appeal), must ensure

1276 Henery Engr. v. Yakubu Ltd (2009) 5 KLR Ogbuagu JSC
that the pleadings disclose no reasonable cause of action”.

(the underlining mine)

As to when the court is obliged to strike out a Statement of Claim which discloses no cause of action, see the cases of Adimora v. Ajufo & ors. (1988) NSCC Vol.19 (Pt.1) 1005; (1988) 3 NWLR (Pt.80) B 1; (1988) 6 SCNJ. 18 and Alhaji Ibrahim v. Mr. Oshin (1988) NSCC Vol. 19 (pt 1) 1184; (1988) 3 NWLR (pt. 82) 257; (1988) 6 SCNJ. 203, just to mention but few.

In the said suit leading to the instant appeal , there is the said counter- affidavit evidence, constitutes evidence and deposition therein not challenged, is deemed admitted. See the cases of Ajomale v. Yaduat & anor. (No.2) (1991) 5 NWLR (Pt.191) 226 @ 282-283; (1991) 5 SCNJ. 178 and Magnusson v. Koikoi (1993) 12 SCNJ. 114.

Frankly speaking, this is a most worthless appeal. The hearing D of the suit which was instituted since September, 1992, is yet to commence. The Appellant, it is obvious to me, is using this frivolous application, to have the suit dismissed on the porous and laughable ground that it is statute- barred and as a ploy to frustrate the hearing of the case on the undefended List. I say this because, up till now, the E Appellant, is yet to return to the Respondent, its equipment and machinery. It is now about seventeen (17) years, since the suit was initiated.

I have a feeling that this appeal may have been brought, because of the dismissal of the Appellant's said motion by the trial court. F But I agree with the court below when it stated at page 48 of the Records that,

"The order dismissing the defendant's case was only 'final' to the extent to which it barred the defendant from bringing the same application at that stage of the proceedings. It could not be regarded as final for all purpose." G

As to the effect or consequences of either a striking out or a dismissal of a motion, perhaps, See the cases of Irogbu v. Ugbo (1970-71) 1 ECSLR 162- per Aniagolu, J. (as he then was) Nzekwu v.Nzekwu H & 2 ors. (1977) 1 ANLR 224 @ 226-citing the case of Bozson v.Altrineham Urban Council (1903) 1K.B. 547 @ 548 - per Lord Alverstone, C. J.; Alhaji Mohammed & ors. v. Olawunmi & 11 ors. (No.3) (1993) 5 SCNJ. 126 @ 135 and The Vestry of paddington (1880) 5 Q. B. D. 368.

Since the trial court as affirmed by the court below, held that the Respondents Statement of claim, disclosed a cause of action, the hearing of the suit, can now proceed unimpeded. This appeal I believe, has strengthened my desire or insistence that interlocutory applications, should end at the Court of Appeal in order to save parties, the agonies or stress of putting on hold by the adversary or opponent, of a clear, or simple and legitimate or relief sought by a plaintiff. B

However, in view of the averment in paragraph 13 of the Statement of claim, I will refrain from commenting on or dealing with it. This is because, if I do so, I may or will be pre-empting the decision of any trial court that will eventually try the suit. Whether the action is in conversion or detinue, it remains a live issue, more so or since the Appellant, up till now, is still in custody of the said equipment and machinery of the Respondent which it long undertook to return to the Respondent, but has still not done so. C D

In conclusion, this appeal lacks substance and merit. It hopelessly, with respect, fails and it is accordingly dismissed with N50.000.00 (fifty thousand naira) costs in favour of the Respondent payable to it by the Appellant. I hereby and accordingly, affirm the decision of the court below dismissing the said Appellant's motion/ application E

MUSDAPHER JSC

I have read before now the judgment of my Lord, Hon. Justice Ikechi Francis Ogbuagu, JSC just delivered with which I entirely agree. In the aforesaid judgment his Lordship has dealt with all the relevant issues submitted for determination of the appeal. I respectfully adopt the reasoning's canvassed as mine and accordingly find this appeal as lacking in merit. I dismiss it and I abide by the order for costs contained in the aforesaid judgment. F G

TABAI JSC

This action was initiated at the Lagos Judicial Division of the High Court of Lagos State on or about the 8th September 1992, In paragraph 13 of the Statement of Claim filed same date, the Plaintiff Company which is the Respondent herein claimed against the Defendant Company which is the Appellant herein in the following terms: H

"The Plaintiff however avers that from the diverse dates re-

ferred to in paragraphs 10-12 hereof up until the time of the commencement of these proceedings, the Defendant has refused to return the same and has wrongfully detained and/or still detains same whereby the Plaintiff has suffered loss and damage."

Particulars of Damages

B	N300,000.00	Value of Winget Concrete Mixer
	N200,000.00	Value of Compressor
	<u>N250,000.00</u>	For loss of use of the equipment
Total	<u>N750,000.00</u>	

C *"WHEREUPON the Plaintiff claims the sum of N750,000.00 from the Defendant being money due and payable to the Plaintiff for the wrongful conversion of its Concrete Mixer S/N0.309/10B 5781 and for damages suffered by the Plaintiff for loss of use of same."*

D By a motion dated the 6th of October 1993 the Defendant/Appellant prayed for an order dismissing the action. The grounds for the application were stated to be:-

(1) *That the facts and matters relied on in support of this action occurred more than six (6) years before the issue of the writ in this case and the claim (if any, which is denied) is barred by Limitation Law Cap. 70 Laws of Lagos State 1973.*

(2) *That the action is vexatious and constitutes an abuse of the process of the court.*

F Arguments for and against the application were taken. By his ruling on the 11th of March 1994 the learned trial Judge O.O. Obadina J (as he then was) dismissed the application. He reasoned that the action disclosed a reasonable cause of action and that the Defendant/Appellant ought to have filed and raised the issue of the action having been barred by reason of the Statute of Limitation in the State-
G ment of Defence and that the application was, for that reason, premature.

The Defendant/Appellant was not satisfied with the ruling and proceeded on appeal to the Court below. The appeal was dismissed.
H Still not satisfied the Appellant is before this Court. The parties submitted only one issue for determination and it is:

"Whether the learned Justices of the Court of Appeal were right in all the circumstances of the case in holding that the Respondent's claim for conversion was not statute barred?"

The Appellant referred to the ingredients of conversion as contained in its definition in CLARK and LINDSELL ON TORTS 5th Edition and paragraphs 8, 10, 11 and 13 of the Statement of Claim and submitted that the demand for return of the properties was refused right from May 1984 and therefore that the cause of action arose in May 1984. It was the Appellant's further contention that since the action was filed in September 1992, the action was, by reason of the provisions of Section 8(4) of the Limitation Law Cap. 70 Laws of Lagos State 1973, Statute barred.

The Respondent on the other hand submitted that the mere failure of the Appellant to deliver the properties to the Respondent on demand does not make it conversion, contending that as at 1984 there had been no unqualified and unjustifiable refusal to deliver. The Respondent further pointed out that by the letters dated 16th and 29th October, 1986 the Appellant had even undertaken to return the goods in due course, and that the cause of action could not therefore have arisen earlier than October 1986.

I have considered the relevant averments of the Statement of Claim and the address of counsel in their respective brief of argument. In my view the present action is one of conversion by detention, the Defendant/Appellant having taken possession of the chattels for repairs under an agreement. The Defendant/Appellant's detention of the chattels becomes conversion only if it is adverse to or inconsistent with the rights of the owner/Respondent or other person entitled to their possession. To be liable of conversion therefore the Appellant must be shown to have demonstrated an intention to detain or withhold the equipment in defiance of the Plaintiff/Respondent. This view is consistent with the majority opinion in the English case of CLAYTON v LE ROY (1911) 2 K.B. 1031 at 1052. See also ABUBAKAR YUSUF v ALHAJI B.A. MOBOLAJI (1999) 12 NWLR (Part 631) 374 at 387; DR. OLATUNBOSUN ODEJIDE v MADAM OLAIDE FAGBO (2004) 8 N.W.L.R., 1 at 25; J. DUROJAIYE ADETURO & ORS v OGO OLUWA KITAN TRADING CO. LTD. (2002) 9 N.W.L.R. (Part 771) 157 at 201.

The usual mode of establishing that a detention of chattels by a Defendant is adverse to the rights of the owner or other person entitled to their possession and therefore constitutes the tort of conversion is to prove that the Plaintiff demanded the delivery of the

chattels and that the Defendant refused or neglected to comply with the demand. Thus demand by the Plaintiff and refusal by the Defendant are the essential ingredients of conversion. See CAPITAL FINANCE CO. LTD. v BRAY (1964)1 W.L.R. 323 at 329.

For the purpose of resolving the only issue in this appeal the crucial question is when did the course of action accrue to the Plaintiff/Respondent?, The Appellant’s plea in the application that the action is caught by the Statute of Limitation and therefore Statute barred is premised on paragraph 10 of the Statement of Claim. It reads:

“10. The Plaintiff States that during the period of May 1984 to date, he has orally demanded the return of this concrete mixer and compressor on numerous occasions but states that the defendant has failed to return same to him.”

There is no doubt that paragraph 10 of the Statement of Claim, read in isolation, gives the impression that the Respondent’s demand for the return of the equipments and the Appellant’s refusal or defiance of the demand was in May 1984. However, a community reading of the Statement of Claim does not portray that to be the case of the Respondent. In paragraph 9 of the Statement of Claim the Respondent averred:

“9. Immediately upon, and from-time to time after the said delivery of the said items of plant and equipment to them, the 1st Defendant demanded performance by the Plaintiff of the condition-precedent or material pre-condition mentioned in paragraph 6(i) above (namely, the payment of a deposit, and in compliance with this demand, the plaintiff avers that they did pay the defendant the specific sums and on the specific dates shown in the “ table below, and the Defendant took possession of the plaintiffs items of plant and equipment accordingly.”

Particulars

Date	Amount of Deposit Paid to 1 Defendant
(i) 11/4/84	N3,000.00 (Vide Defendant’s receipt No. 46-51 of 11/4/84)
(ii) 10/10/86	N2,400.00 (Vide Defendant’s receipt No. 8855 of 10/10/86)
(iii) 21/10/86	N2,000.00 (Vide Defendant’s receipt No..... of 21/10/86)

Further in paragraph 11 of the Statement of Claim the Re-

spondent pleaded:

“11. By their letters dated the 28th of April 1986 and the 22nd of October 1986 respectively, and by their solicitor’s letter dated the 20th of October 1987 (all written to the Defendant) the Plaintiff demanded from the Defendant the return of their items of machinery and equipment referred to in paragraph 4(i) and (ii) above.” B

It is clear from the above paragraphs 9 and 11 of the Statement of Claim that the letter of 28th of April 1986 pleaded in paragraph 11 thereof notwithstanding, the Plaintiff/Respondent was, up till and including the 21st of October 1986, still making payments of deposits to meet its obligation under the pre-condition in their contract. In such circumstances, Respondent could not therefore have made any legitimate demand for the return of the equipments before it discharged its obligation of paying some deposits to the Appellant. The logical conclusion therefore is that it is only by the letters D dated the 22nd of October 1986 and 29th of October 1987 that the Respondent demanded from the Appellant the return of the items of plant and equipment. C

And finally the question of when the cause of action accrued to the Respondent is settled beyond any dispute in paragraph 12 of the Statement of Claim, The said paragraph avers: E

“12. By the Defendant’s letters dated the 16th of October 1986 and the 20th of October 1986 and delivered to the Plaintiff the Defendant undertook to return the said items of machinery and equipment the property of the Plaintiff to their rightful owner in due course.” F

It is settled principle of law that when a Defendant files an application (such as the one that has given rise to this appeal) to strike out or dismiss an action on the ground that it discloses no reasonable cause of action, he is, for the purpose of the application, taken to have admitted the facts alleged in the Statement of Claim. And in the determination of the application, the Court is bound to restrict itself to the Statement of Claim and to proceed on the assumption that the facts therein have been admitted. The implication of such an application for a Defendant is that although the facts in the Statement of Claim are admitted, the Plaintiff has not, on the face of such facts, made out a case to warrant a trial or that he has, in law, a complete answer to the Plaintiffs case. See F.C.D.A. v NAIBI (1990) 3 N.W.L.R. (Part 138) 270 at 281; IMANA v ROBINSON (1979) 3-4 SC 1 at 9- G H

10; U.D.C. v LADIPO (1971) 1 ALL N.L.R. 102; FADARE v A.G. OYO STATE (1982) 4 SC 1; TANDON v CFAO of ACCRA 10 WACA 186; AKANBI v ALAO (1989) 3 N.W.L.R. (Part 108) 118 at 140 and 153; EGBE v ADEFARASIN (1985) 1 NWLR (Part 3) 549 at 556.

The consequence is that the Defendant/Applicant/Appellant is
B deemed to have admitted the facts of its two letters of 16th October
and 29th October 1986 in paragraph 12 of the Statement of Claim.
And having regard to its unequivocal undertaking in the two letters
to return the equipments to the Plaintiff/Respondent in due course
C he cannot, in any conceivable sense, be taken to have manifested an
intention to detain or withhold them in defiance of Plaintiff/Respon-
dent. It is my firm view therefore that it is only when the detention or
withholding of the equipments continued for a reasonable time after
October 1986 that a cause of action accrued to the Respondent.

D In conclusion I hold that this action having been filed on or
about the 8th of September 1992 is within the limitation period of six
years. I entirely agree with the view of the court below that the action
is not statute barred.

E For the foregoing reasons and the fuller reasons contained in
the lead judgment of my learned brother Ogbuagu JSC I also dismiss
the appeal for lack of substance. I also award N50,000.00 costs against
the Appellant in favour of the Respondent.

MUHAMMAD JSC

F I have read before now, the judgment of my learned brother,
Ogbuagu, JSC, just delivered. I agree with him in his reasoning and
conclusion. I abide by all consequential orders made therein includ-
ing order as to costs.

G

MUNTAKA-COOMASSIE JSC

I have had the privilege of reading in draft the lead judgment
of my learned brother Ogbuagu JSC just delivered and I agree with
him that this appeal should be dismissed.

H The appeal is barren and empty and should not have been
worthy of consideration in the Supreme Court. I agree with my Lord
Ogbuagu JSC when he opined, in the lead judgment, that inter-
locutory applications for the reasons he adumbrated should end at
the Court of Appeal, I endorse the order as to costs.