

SUPREME COURT OF NIGERIA

FRIDAY 27TH JUNE, 2014. SC. 41/2011

**CORAM:- A. M. MUKHTAR CJN, I. T. MUHAMMAD,
M. S. MUNTAKA-COOMASSIE, N. S. NGWUTA, M. U.
PETER-ODILI, O. ARIWOOLA, C. B. OGUNBIYI, JJSC**

1. A-G OF ADAMAWA STATE
 2. A-G OF BAUCHI STATE
 3. A-G OF BORNO STATE
 4. A-G OF GOMBE STATE
 5. A-G OF JIGAWA STATE
 6. A-G OF KADUNA STATE
 7. A-G OF KANO STATE
 8. A-G OF KATSINA STATE PLAINTIFFS
 9. A-G OF KEBBI STATE
 10. A-G OF KOGI STATE
 11. A-G OF KWARA STATE
 12. A-G OF NIGER STATE
 13. A-G OF SOKOTO STATE
 14. A-G OF TARABA STATE
 15. A-G OF YOBE STATE
 16. A-G OF ZAMFARA STATE
- AND
- A-G OF THE FEDERATION DEFENDANT
-

ACTIONS - Statute barred - Determination - To consider an action caught by statute of limitation - It is vital to determine the cause of action - When the same arose - And when it became statute barred (H1)

ACTIONS - Statute barred - Materials to consider - To determine such action - Court looks at writ of summons and statement of claim - And compares date of cause of action - With date on which writ was filed (H2)

ACTIONS - Cause of action - Definition of - It is the facts which give rise to right of action - Or the factual situation which gives a person - Right to judicial relief (H3)

ACTIONS - Statute barred - Meaning - It connotes that plaintiff who had a cause of action - Loses right to enforce same - As time laid down by limitation law for instituting such action has elapsed (H4)

ACTIONS - Institution of - Limitation - Although where there is right there is a remedy - But there are certain period of limitation for instituting certain actions - For there must be an end to litigation (H5)

ACTIONS - Statute barred - Effect on jurisdiction - As the cause of action in the matter expired after 6 years of its accrual - The action is statute barred - Hence jurisdiction of SC is ousted by Limitation Act s. 7(1)(e) (H6)

FACTS

Before the Supreme Court of Nigeria sitting in its original jurisdiction, plaintiffs - Attorney-General of Adamawa State and 15 others commenced this action against defendant - Attorney-General of the Federation, claiming for the sum of N7,039,773,348.00 being the total outstanding value of the assets of the defunct Northern States Marketing Board taken over by the Federal Government of Nigeria that presently consist of plaintiffs' States.

In its statement of defence as well as notice of preliminary objection, defendant contends in the main that the action as initiated by plaintiffs is frivolous and statute barred by virtue of section 7(1)(e) of the Limitation Act. The reason for the contention is that the cause of action in the matter has long been expired. As such, plaintiffs are left with empty rights and the court is by that very fact without jurisdiction to entertain the matter. Defendant accompanied the preliminary objection with an 8 paragraph affidavit which inter alia averred that plaintiffs' cause of action arose in 1983, but that the action was instituted 28 years thereafter. There was also a written address of learned counsel to defendant in support of the objection.

ISSUE FOR DETERMINATION

Whether the Plaintiffs' claim in this suit is statute barred and liable to be dismissed or struck out by this Honourable Court as being without jurisdiction to entertain same.

HELD (Unanimously striking out the action per **PETER-ODILI JSC**)

ACTIONS - Statute barred - Determination

1. The scenario above makes it necessary to go into the definitions of cause of action, its accrual and what follows when brought within a specified period. In that regard therefore, it is to be said that in the consideration of whether an action is caught by the statute of limitation, what is of paramount consideration is the determination of:

- (a) the cause of action;**
- (b) when the cause of action accrued; and**
- (c) when the action became statute-barred. (p. 2319 A)**

ACTIONS - Statute barred - Materials to consider

2. To determine the conditions above, what the court would look at are the writ of summons and the statement of claim alleging when the wrong which gave the plaintiff a cause of action was committed and by comparing that date with the date on which the writ of summons was filed. (p. 2319 B)

ACTIONS - Cause of action - Definition of

3. The definition that has been followed on cause of action is that cause of action is the fact or facts which establish or give rise to a right of action. It is the factual situation which gives a person a right to judicial relief. (p. 2319 D)

ACTIONS - Statute barred - Meaning

4. Thus, when an action is said to be statute-barred, what it connotes is that the plaintiffs may have an actionable cause of action, but their recourse to judicial remedy is voided. No proceedings could be brought to prosecute the action.

Where an action is statute barred, a Plaintiff who might have had a cause of action loses the right to enforce the cause of action by judicial process because the period of time laid down by the Limitation Law for instituting such an action has elapsed. Thus, an action commenced after the expiration of

the period within which an action must be brought as stipulated in a statute of limitation is not maintainable. Stated differently, when the statute of limitation in question prescribes a period within which an action must be brought, legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period.

Therefore, where an action is statute-barred, a plaintiff who would otherwise have had a cause of action loses the right to enforce the cause of action by judicial process because the time laid down by limitation law for instituting such an action had elapsed.

A statute of limitation removes the right of action, the right of enforcement and the right to judicial relief in a plaintiff and leaves him with a bare and empty cause of action which he cannot enforce if the alleged cause of action is statute-barred, that is, if such a cause of action is instituted outside the statutory period allowed by such law. Another way of stating the above proposition is that any action that is commenced after the period stipulated by the statute is totally barred as the right of the plaintiff or the injured person to commence the action would have been extinguished by such law.

(pp. 2319 E/2320 C/H/2321 B)

ACTIONS - Institution of - Limitation

5. The need to state what the general rule is with respect to the ventilation of grievances in a court of law must not be lost sight of. This is because of the principle that where there is a right, there is a remedy, that is to say, where there is a cause of action, there is a remedy. But the legislature has prescribed certain periods of limitation for instituting certain actions.

This is based on public policy which prescribes that there must be an end to litigation and that stale demands should be suppressed for it would be unfair to a person to allow claims to be made upon him after a long period during which he may have lost the evidence previously available to him with which he would rebut such a claim.

Having put across the general rule as to when there is an injury which needs redress, it has to be brought to light the fact

that such remediation (remedy) is not unlimited. (p.2320 E)

ACTIONS - Statute barred - Effect on jurisdiction

6. In the light of the foregoing, it is to be said without equivocation that the cause of action in this matter arose in 1983 precisely, 27th July, thereof, when the Defendant acknowledged the debt and this action commenced on the 22nd of February 2011, was an action in futility the cause of action having expired after six years of its accrual computed from 27th July 1983. Another way of saying the same thing is that this action as presently constituted and initiated on 22nd February 2011 is statute barred and therefore, the jurisdiction of this court has been effectively ousted by operation of Section 7(1)(e) Limitation Act Cap 522 Laws of the Federation of Nigeria; 1990. The ensuing conclusion is that this suit lacks competence and is hereby struck out. (p. 2323 H)

REPRESENTATION

Aliyu Umaru Esq. with F.R. Onoja Esq. Abila Adamu (Miss), Ajirioghene Aruga (Miss), for the 1st - 4th Plaintiffs & 6th - 16th Plaintiffs

Mr. Y.A. Ruba, A.G. Jigawa with Aliyu Abdullahi, for 5th Plaintiff
A.O. Okeaya-Inneh (SAN) with K. Ibikunle-Awopetu (Mrs.), C.S. Mbah, for the defendant

CASES REFERRED TO

Daudu v. University of Agriculture Makurdi (2002) 17 NWLR (pt. 796) 362

Egbe v. Adefarasin (1987) 1 NWLR (pt. 47) 1

Ibrahim v. J.S.C. Kaduna State (1998) 14 NWLR (pt. 584) 1

Hassan v. Aliyu (2010) 17 NWLR (pt. 1223) 547

F.G.N. v. Zebra Energy (2002) 18 NWLR (pt. 798) 162

Osun State Govt. v. Dalami (Nig.) Ltd. (2007) 9 NWLR (pt. 1038) 606

Muhammad v. MILAD Plateau State (2001) 16 NWLR (pt. 740) 510

British Airways Plc. v. Akinosoye (1995) 1 NWLR (pt. 374) 722

Yusuf v. C.C.B. Ltd (1994) 7 NWLR (pt. 359) 676

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

Fadare v. A.G. Oyo State (1982) 4 SC 1

Abubakar v. Governor of Gombe State (2002) 17 NWLR (pt. 797) 533

P.N. Udoh Trading Co. Ltd. v. Abere (2001) 11 NWLR (pt. 723) 114

Amusan v. Obideyi (2005) 14 NWLR (pt. 945) 322

B Ikine v. Edjerode (2002) FWLR (pt. 92) 1775 SC

STATUTES & RULES REFERRED TO

Limitation Act Cap. 522 LFN 1990, ss. 7(1)(e), 37(1)

C Public Officers' Protection Act, s. 2(a)

Commodity Boards Decree No. 29 of 1977 (now Cap. C17 LFN 2004)

Public Officers' Protection Act, s. 2(a)

Supreme Court Rules (as amended) 1999, O. 3 r. 1

D Federal High Court Rules 2009, O. 29 r. 1

BOOK REFERRED TO

Advanced Law Lexicon Book 1 p. 84 3rd Ed. (reprint 2009)

E **LEAD JUDGMENT BY PETER-ODILI JSC**

The Plaintiffs by a Writ of Summons filed on the 22nd day of February, 2011 initiated this suit and by it activated the original jurisdiction of the Supreme Court, suit being one between the Attorney General of Adamawa State and 15 others against the Attorney General of the Federation.

F

The Claims set out by the plaintiffs are recast hereunder as follows:-

The Plaintiffs' claim against the Defendant is for the sum of
G Seven Billion, Thirty Nine Million, Seven Hundred and Seventy Three Thousand, Three Hundred and Forty Eight Naira (N7,039,773,348.00) being the total outstanding value of the assets of the defunct Northern States Marketing Board taken over by the Federal Government of Nigeria that presently consist of Adamawa,
H Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Niger, Sokoto, Taraba, Yobe, and Zamfara States, which amount is computed in the following manner:-

A. Amount admitted by the Defendant as at 27th July, 1983, which is the sum of N3,091,710 (Three billion, Ninety-one Million,

Seven Hundred and Seventeen thousand, Seven Hundred and Ten Naira) being the current equivalent of the admitted sum of N10,305,725.70 calculated in the following manner:-

i. The aforementioned amount admitted by the Defendant as at the time of takeover of Assets is the sum of N10,305,725.7.

ii. Rate of exchange between the Naira and the American Dollar at the time of takeover of assets was N0.50k to \$1.00. B

iii. American Dollar equivalent of the admitted sum at the time of takeover of assets calculated at the aforementioned governing exchange rate of N0.50k to \$1.00 amounts to \$20,611,451.40. C

iv. Current official exchange rate between the Naira and the American Dollar is N150.00 to \$1.00.

v. The standing total admitted sum calculated at the current aforementioned official exchange rate of N150.00 to \$1.00 (that is \$20,611,451.40 x N150.00), amounts to N3,091,717.710 (Three billion, Ninety-one million, Seven hundred and Seventeen thousand, Seven hundred and Ten Naira), and D

B. Undisputed additional claim of the sum of N3,948,055,638 (Three billion, nine hundred and forty eight million, fifty-five thousand, six hundred and thirty-eight Naira) being the current equivalent of the additional undisputed claim of N13,160,185,46 submitted to the Defendant in August, 1984 calculated in the following manner:- E

i. Total additional undisputed claim for movable properties and cotton store complexes taken over by the Defendant as at the time of taking over of assets is N13,160,185.46. F

ii. Rate of exchange between the Naira and the America Dollar at the time of taking over of assets was calculated N0.50k to \$1.00.

iii. American Dollar equivalent of additional undisputed claim at the time of taking over of assets calculated at the then governing exchange rate of N0.50k to \$1.00 amounts to \$26,320,370.92. G

iv. Current official exchange rate between the Naira and the American Dollar is N150.00 to \$1.00.

vi. Total additional claim calculated at the current official exchange rate between the Naira and the American Dollar of N150.00 to \$1.00 (that is \$26,320,370.92 x N150.00) amount to N3,948,055,638 (Three billion, nine hundred and forty-eight million, fifty-five thousand, six hundred and thirty-eight Naira). H

C. As stated above, the total Plaintiffs, Claim against the Defendant (A+B) is for the sum of Seven Billion, Thirty-Nine Million, Seven Hundred and Seventy-Three Thousand, Three Hundred and Forty-Eight Naira (N7,039,773,348.00).

D. The cost of this action.

B For a fuller understanding would be recaptured paragraphs 1 - 18 of the Statement of Claim which are, viz:-

STATEMENT OF CLAIM:

C 1. The sixteen Plaintiffs are the Attorney Generals (sic) of their respective States; and the sixteen States form part of the thirty-six States of the Federal Republic of Nigeria. The Plaintiffs are suing as representatives of the Governments of their respective States.

2. The Defendant is the Attorney General of the Federation and the representative of the Federal Government of Nigeria.

D 3. The Plaintiffs state that the sixteen States they represent constitute part of the Nineteen Northern States out of the thirty-six states that make up the Federal Republic of Nigeria.

E 4. The Plaintiffs state that in 1954, Northern Nigeria Marketing Board was established under the Northern Nigeria Marketing Board Law of 1954.

F 5. The Plaintiffs state that in 1968, when the Northern Region was split into six States comprising of North-Western, North Eastern, North-Central, Kano, Benue, Plateau and Central-Western States, the Northern Nigerian Marketing Board was renamed Northern States Marketing Board (hereinafter referred to as "*the NSMB*").

6. The Plaintiffs state that in 1972, the then Benue-Plateau State comprising of the presently existing Benue, Plateau and Nasarawa States opted out of the NSMB.

G 7. The Plaintiffs state that in 1977, the Federal Military Government established Commodity Boards under the Commodity Boards Decree No. 29 of 1977 to replace the NSMB and other State Marketing Boards then existing in Nigeria; and provided under Section 23(3)(b) of the said Decree that the assets and liabilities of the H NSMB and other State Marketing Boards that were dissolved with the coming into force of the Decree shall be transferred to the Plaintiffs that owned the NSMB and to the other States that owned the other State Marketing Boards.

8. The plaintiffs state in compliance with the provisions of the

aforementioned Section 23(3)(b) of the Commodity Boards Decree the then reigning Supreme Military Council made it clear that any of the assets of the NSMB and of other dissolved State Marketing Boards taken over by the Commodity Boards shall be paid for by the Federal Military Government.

9. The Plaintiffs state that in compliance with the Federal Military Government directive the NSMB carried out an evaluation of its assets, which amounted to N42,019,229.00 and transmitted same to the Federal Ministry of Cooperatives and Supply in May, 1978.

10. The Plaintiffs state that out of the said N42,019,229.00 only N1,100,000.00 was paid to the NSMB by the Defendant leaving a balance of N40,919,229.72 calculated as follows:-

a) Immovable asset taken over by	N11,106,121.79	
b) Produce taken over	N18,017,729.00	
c) Bags, tarpaulins & twins	N9,741.315.26	D
d) Cotton Stores Complexes (balance)	N2,054,063.67	
Total	N40,919,229.72	

11. The Plaintiffs state that in 1987, the Commodity Boards were dissolved and the Federal Military Government directed that all assets earlier taken over by the Commodity Boards be returned to NSMB.

12. The Plaintiffs state that only immovable properties were returned by the Commodity Boards but they failed to return or pay for the under listed movable properties which are valued as follows:-

a) Produce passed over to the Commodity Boards valued at N18,017,729.00

b) Tarpaulins, bags and twins valued	N9,741,315.25
c) Furniture and Fittings valued at	N—319,994.78
Total	N28,079,994.05

13. The Plaintiffs state that in 1983, the Defendant by its letter No. SCB/MKT/XIII/53 dated 27th of July, 1983 accepted to pay N10,305,725.7 in final settlement of the indebtedness to the NSMB as stated in paragraph 12 of this Statement of Claim.

14. The Plaintiffs state that in 1984, the NSMB submitted additional claim to the Federal Military Government relating to more of its movable assets not returned to it consisting of tarpaulin, bags, twine, furniture, vehicles and fittings valued at N13,160,185.46 (Thirteen million, one hundred and sixty thousand, one hundred and

eighty five thousand Naira and forty six Kobo), which claim was never disputed by the Defendant.

15. The Plaintiffs state that the NSMB, and through its Winding-up Committee, has written several letters to the Federal Government on the subjects relevant to this Suit but without any favourable
B response.

16. The Plaintiffs state that their Solicitors wrote several letters to the Defendant demanding payment for the amounts agreed to be paid by the Defendant and other outstanding amounts due to the Plaintiffs but without any reasonable response from the Defendant.
C

17. The Plaintiffs state that at the time of the takeover of the assets of the NSMB by the then Federal Military Government, the exchange rate between the Naira and the American Dollar was N0.150.00 to \$1.00.

18. The Plaintiffs state that at the hearing of this Suit, they will rely on the following correspondences relevant to the Suit:-
D

a) Letter No. SHQS.35/14 dated 7th of February, 1977 written by Brigadier Shehu Musa Yar'adua, Chief of Staff, Supreme Headquarters to all Military Governors.

b) Letter dated 24th May, 1978 (and documents attached thereto) written to the Permanent Secretary, Federal Ministry of Co-operative and Supply by the Executive Secretary, NSMB Winding Up Committee.
E

c) Letter No. SCB/MKT/I/XII/269 dated 29th April, 1983 written to Sani Aminu & Co. by the Permanent Secretary, Federal Ministry of Agriculture Marked.
F

d) Letter No. SCB/MKT/I/XIII/53 dated 27th July, 1983 written to Sani Aminu & Co. by the Permanent Secretary, Federal Ministry of Agriculture.
G

e) Letter dated 13th August, 1984 written to Permanent Secretary, Federal Ministry of Agriculture by Sani Aminu & Co.

f) Letter dated 12th January, 1991 written to Hon. Minister of Agriculture by Sani Aminu & Co.

g) Letter dated 16th August, 1999 written to Hon. Minister of Agriculture by Sani Aminu & Co.
H

h) Letter NO. CADM/VOL/3/818 dated 28th September, 1999 written to Sani Aminu & Co. by the Northern State Marketing Board (NSMB winding up Committee).

i) Letter dated 7th August, 2007 written to Hon. Minister of Agriculture by Country Chambers.

j) Letter dated 6th August, 2010 written to Hon. Minister of Agriculture by Country Chambers.

k) Letter dated 1st November, 2010 written to Hon. Minister of Agriculture & Rural Development by Country Chambers. B

STATEMENT OF DEFENCE

SAVE AND EXCEPT as hereinafter expressly admitted, the Defendant denies each and every allegation of facts contained in the statement of claim as if each has been set out and traversed seriatim. C

1. The Defendant is the Chief Law Officer of the Federation and a Minister of the Government of the Federation.

2. The Defendant admits paragraphs 1 - 4 of the Statement of Claim.

3. The Plaintiffs' claim of debt was and is barred by Section D 7(1)(e) Limitation Act Cap. 522 Laws of the Federation of Nigeria 1990.

4. The Plaintiffs' cause of action is predicated on correspondences dated 27th July, 1983 and 13th August, 1984 as stated in paragraphs 13 and 14 of the Plaintiffs' Statement of Claim dated E 17th February, 2011.

5. The Plaintiffs' cause of action is based on monies owed to them by the Federal Government of Nigeria. The Plaintiffs' claim is one to recover debts owed to them by the Federal Government of F Nigeria.

6. Notice is hereby given to the Plaintiffs that the defendant will at the hearing of this suit contend that the Plaintiffs' claims is statute barred by virtue of the provisions of Section 7(1)(e) Limitation Act Cap. 522 Laws of the Federation of Nigeria 1990. G

7. The Defendant contends that the Plaintiffs action is frivolous, vexatious and statute barred and should be dismissed.

The Defendant went further to take out a Notice of Preliminary Objection to the Suit, which Objection was filed on 8th day of March, 2012 upon four grounds stated hereunder, viz:- H

1. The claim of the Plaintiffs is statute barred by virtue of Section 7(1)(e) of the Limitation Act.

2. Whereas the law as stated in *Daudu v. University of Agriculture Makurdi & 4 Ors* (2002) 17 NWLR (Pt.796) 362 at 384 - 385 is

that where a party's action is statute barred, the following legal consequences will follow:

- a. the party would lose his right of action;
- b. the party would lose the right of enforcement;
- c. the party would also irretrievably lose the right of judicial relief; and
- d. the party would only have an empty cause of action which no court will assist him to enforce.

3. Whereas the cause of action upon which the Plaintiffs' action is predicated is a letter dated 27th July, 1983 and 13th August, 1984 as stated in paragraphs 13 and 14 of the Plaintiffs' Statement of Claim.

4. Whereas the Plaintiffs/Respondents instituted this action by way of civil summons in consequence thereof, the said action is at variance with Section 7(1)(e) of the Limitation Act.

Accompanying the Notice of Preliminary Objection is an 8 paragraph Affidavit in support deposed to by Kenechukwu M. Nomeh of counsel for the Defendant/Applicant which in the main at paragraphs 5 and 6 averred that the plaintiffs' cause of action arose sometime in 1983 and this action instituted twenty-eight (28) years after that cause of action arose since the action was filed on the 22nd day of February, 2011.

Also filed with the Notice of preliminary Objection is the written Address of the Defendant which learned counsel, O. O. Okeaya-Inneh, SAN, adopted on the 1st day of April, 2014 date of hearing since the Court was of the view that the Preliminary Objection would need be heard and determined before anything if at all would be done within the main suit.

Mr. Aliyu Umaru, learned counsel for the Plaintiffs/Respondents adopted their Reply to the Preliminary Objection which they filed on 26/3/12.

The Defendant raised a single issue for determination stated as follows:-

Whether the Plaintiffs' claim in this suit is statute barred and liable to be dismissed or struck out by this Honourable Court as being without jurisdiction to entertain same.

The Plaintiffs/Respondents on their part distilled two issues for determination, thus:-

1. Whether the Defendant is entitled to the Protection afforded by Section 2(a) of the Public Officers' Protection Act in the circumstances of this case.

2. Whether the action is statute barred by virtue of the provisions of the Limitation Act.

Before proceeding with the arguments for and against the Preliminary Objection, I would want to state some salient portions of the Counter-Affidavit of the Respondents to this Objection deposed to by Friday R. Onoja, legal practitioner of the firm of solicitors for the Respondents. These paragraphs are 3 - 7 of the said Counter-Affidavit:-

3. That I know as a fact that in the pleaded letter dated 7th of August 2007 written to the Hon. Minister of Agriculture of the Federal Republic of Nigeria by the Plaintiffs, Solicitors, the attention of the Defendant was clearly drawn to the fact that as the claims of the plaintiffs are founded on acts of State such claims cannot be statute-barred.

4. That I know as a fact that the Commodity Boards Decree No. 29 of 1977 is now Commodity Boards Act Cap C17 of the Laws of Nigeria 2004, which is still in force and the said Commodity Boards Act does not make any provision for payment of money to the plaintiffs/Respondents.

6. That I know as a fact that the Defendant in this case has no defence to the Plaintiffs' claims in this Suit.

7. That it is in the interest of justice to dismiss the Preliminary Objection and enter judgment for the Plaintiffs in the substantive Suit as the Defendant has no defence to this action.

The issue as identified by the Defendant/Objector seems to me to point out the Kernel of the dispute in this Preliminary Objection and I am comfortable with it in the determination of this Preliminary Objection. The question thereby raised, is if the plaintiffs' claim in this suit is statute barred and liable to be struck out with the lack of jurisdiction of this court as a follow up.

Learned counsel for the Objector, Okeaya-Inneh SAN contended that the claim of the plaintiffs is statute barred by virtue of Section 7(1)(e) of the Limitation Act and that following the law as stated in *Egbe v. Adefarasin* (1987) 1 NWLR (Pt.47) 1 it is said that where a party's action is statute barred, the following legal conse-

quences will ensue:-

- a. the party would lose his right of action;
- b. the party would lose the right of enforcement;
- c. the party would also irretrievably lose the right to judicial

relief; and

- B d. the party would only have an empty cause of action which no court will assist him to enforce.

The learned Senior Counsel stated further that whereas the cause of action upon which the plaintiffs, action is predicated is a letter dated 27th day of July, 1983 and 13th August, 1984 as stated in paragraphs 13 and 14 of the plaintiffs, Statement of Claim, but the Plaintiffs/Respondents instituted this action by way of civil summons on the 22nd February, 2011 and so the action is at variance with Section 7(1)(e) of the Limitation Act.

- D For the Defendant was submitted that Order 3, Rule 1 of the Supreme Court Rules as amended in 1999 has provided for the use of the Rules of the Federal High Court in the absence of a specific rule of practice and procedure in the Supreme Court Rules. That the situation thereby envisaged by the Rules of this court what should
- E apply is Order 29, Rule 1 of the Federal High Court Rules, 2009. He cited *Egbe v Adefarasin* (1987) 1 NWLR (Pt.47) 1 wherein what constitutes cause of action was defined. That to determine when the cause of action in this suit arose, paragraphs 13 and 14 of the State-
- F ment of Claim have addressed that point. Also, that a look at the endorsement on the Civil Summons would reveal that 28 years had elapsed between the presentation of the cause of action and when the action was instituted. This in the clear purview of the fact that Section 7(1)(e) of the Limitation Act had prescribed that the Plaintiffs
- G should have brought the action within 6 years from the time their cause of action crystallized.

- H Going on further, Mr. Okeaya-Inneh, SAN, said when an action has become barred by operation of the Limitation Act or Law, the effect is that the cause of action becomes extinguished by operation of law and no longer maintainable in court. He said in the instant case, the cause of action having arisen in 1983 when the Federal Military Government Acknowledged the debt and the action having been brought in 2011, the plaintiffs' claim had become extinguished by virtue of Section 7(1)(e) of the Limitation Act. That the damage is

not averted by the plaintiffs arguing that the cause of action arose sometime in 1978 when they submitted their evaluation report of their assets taken over by the Federal Government which Federal Government subsequently made part payment of same. This is so since Section 37(1) of the Limitation Act had provided that where a right of action has accrued to recover a debt and the person so liable has acknowledged indebtedness, the right of action is deemed to have accrued on and not before the date of the acknowledgment. He urged the court to dismiss the action on account of the operation of Section 7(1)(e) of the Limitation Act.

Mr. Aliyu Umaru, learned counsel for the Plaintiffs/Respondents conceded that the Defendant is a public officer within the meaning of Section 2(a) of the public Officer's Protection Act but that for the protection to enure to the defendant, performing such public duties and at all times material by acting within the confines of their public authority or outside their statutory or constitutional duty. That, with that principle above stated, in this instance, the plaintiffs contend that the defendant acted outside the scope of their statutory and constitutional duty and so not entitled to the protection offered by Section 2(a) of the Public Officers' Protection Act. He cited Ibrahim v J.S.C. Kaduna State (1998) 14 NWLR (Pt.584) Page 1; Hassan v Aliyu (2010) 17 NWLR (Pt.1223) 547 at 591.

For the Respondents was submitted that both the originating summons and the statement of claim show that the Defendant failed in their legal or statutory duty to pay the compensation mandated by law and therefore cannot find protection from their wrongful neglect to do a public duty under section 2(a) of the Public Officer's Protection Act. Also, that Section 2(a) of the Public Officer's Protection Act does not extend to all classes of action, such as recovery of land, actions founded on simple contracts or for recovery of debt. He referred to N.P.A Construzioni SPA (1974) 1 All NLR (Pt.2) 463; F.G.N. v. Zebra Energy (2002) 18 NWLR (Pt.798) page 162; Osun State Government v. Dalami (Nig.) Ltd. (2007) 9 NWLR (Pt.1038) 606.

Learned counsel for the plaintiffs/respondents submitted further that in the alternative argument that the Limitation Act, 1966 does not apply to disputes between States of the Federation and the Federal Government of Nigeria because of the application of section 4 of the said Limitation Act.

He stated further, that the plaintiffs had through their counsel written demand letters dated 7th August, 2007 and 6th August, 2010 respectively and the applicable legal principle provides that a cause of action for recovery of a debt arises when a demand is made and the completion of the cause of action is when the demand is refused.

B That in the circumstance prevailing in the case at hand, the cause of action accrued on the 7th August 2010 when the final revised claims of the plaintiffs were demanded and the Defendant failed to make the payment within a reasonable time, thereby resulting in the Plaintiffs' action concretizing sometime after 7th August, 2010 and so when C this action was brought in 2011, the Plaintiffs were within time and so the Limitation Act is inapplicable.

In reply on points of law sequel to the Reply on points of law filed by, O. O. Okeaya-Inneh, SAN, on 3/5/12, learned counsel stated D that the plaintiffs anchoring on the doctrine of act of state with regard to the act of the Federal Government in 1977/1978 or even in 1983/1984 in agreeing to pay to the Plaintiffs a certain amount of money as an act of state is misconceived and wrong in law. That the doctrine is one of public international law dealing with sovereignty of State E within its own borders which domestic action cannot be questioned by another nation in a court of law. He referred to Wikipaedia encyclopedia and some other United States cases.

Mr. Okeaya-Inneh, SAN, also submitted that the claim by the F Plaintiffs in response to the Objection are claims founded on the implementation of Public Policy and so cannot be statute barred is a submission that cannot be sustained as it is one outside the ambit of Section 6(b)(c) of the 1999 Constitution which has provided for the Fundamental Objectives and Directive Principles of State Policy.

G The contest before this court which is being played out in the Preliminary Objection raised by the Defendant/Objector and as contended by the Plaintiffs is that the Defence anchors their objection on the Limitation Act Section 7(1)(e) thereof on the ground that the action as initiated by the Plaintiffs is statute barred, same having been H brought 28 years after the cause of action accrued. The stance of the Plaintiffs is that they are well within time since their first demand was made on the 7th of August, 2007 and the revised claim made on the 6th August, 2010 and so the Limitation Act does not apply to the facts and circumstances of this case.

The scenario above makes it necessary to go into the definitions of cause of action, its accrual and what follows when brought within a specified period. In that regard therefore, it is to be said that in the consideration of whether an action is caught by the statute of limitation, what is of paramount consideration is the determination of: B

- (a) the cause of action;***
- (b) when the cause of action accrued; and***
- (c) when the action became statute-barred.***

To determine the conditions above, what the court would look at are the writ of summons and the statement of claim alleging when the wrong which gave the plaintiff a cause of action was committed and by comparing that date with the date on which the writ of summons was filed. Muhammad v. Military Administrator Plateau State (2001) 16 NWLR (pt. 740) 510 at 545 - 546; British Airways Plc v Akinyosoye (1995) 1 NWLR (pt. 374) 722. C D

The definition that has been followed on cause of action is that cause of action is the fact or facts which establish or give rise to a right of action. It is the factual situation which gives a person a right to judicial relief. Thus, when an action is said to be statute-barred, what it connotes is that the plaintiffs may have an actionable cause of action, but their recourse to judicial remedy is voided. No proceedings could be brought to prosecute the action. Muhammad v Military Administration, Plateau State (2001) 16 NWLR (Pt.740) 510 at 544 - 545; Egbe v. Adefarasin (1837) 1 NWLR (Pt.47) 1; Yusuf v. C.C.B. Ltd (1994) 7 NWLR (Pt.359) 676. E F

Going by the definition above and the determination of when the cause of action accrued are to be discerned from the Writ of Summons and the Statement of Claim. For specificity are paragraphs 13 and 14 of the Statement of Claim which claims are thus:- G

"13: The Plaintiffs state that in 1983, the Defendant by its letter NO. SCB/MKT/XIII/53 dated 27th July, 1983 accepted to pay N10,305,725.7 (Ten Million, Three Hundred and Five Thousand, Seven Hundred and Twenty Five Naira, Seven Kobo) in final settlement of the indebtedness to the Northern States Marketing Board (NSMB) as stated in paragraph 12 of this Statement of Claim. H

14. *The plaintiffs state that in 1984, the Northern States Marketing Board (NSMB) submitted additional claim to the Federal Military Government relating to more of its movable assets not returned to it consisting of tarpaulin, bags, twine, furniture, vehicles and fittings valued at N13,160,185.46 (Thirteen Million, One Hundred and Sixty Thousand, One Hundred and Eighty Five Thousand Naira and Forty Six Kobo) which claim was never disputed by the Defendant.*”

In respect of the limitation law and an action being statute barred, I shall refer to the case of United Bank For Africa Limited v. Michael O’ Abimbolu & Co. (1995) 9 NWLR (Pt.419) 371 (CA) Tanko Muhammad, JCA (as he then was) held:-

Where an action is statute barred, a Plaintiff who might have had a cause of action loses the right to enforce the cause of action by judicial process because the period of time laid down by the Limitation Law for instituting such an action has elapsed. Thus, an action commenced after the expiration of the period within which an action must be brought as stipulated in a statute of limitation is not maintainable. Stated differently, when the statute of limitation in question prescribes a period within which an action must be brought, legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period. Eboigbe v. NNPC (1994) 5 NWLR (Pt. 347) 649.

The need to state what the general rule is with respect to the ventilation of grievances in a court of law must not be lost sight of. This is because of the principle that where there is a right, there is a remedy, that is to say, where there is a cause of action, there is a remedy. But the legislature has prescribed certain periods of limitation for instituting certain actions.

This is based on public policy which prescribes that there must be an end to litigation and that stale demands should be suppressed for it would be unfair to a person to allow claims to be made upon him after a long period during which he may have lost the evidence previously available to him with which he would rebut such a claim. Therefore, where an action is statute-barred, a plaintiff who would otherwise have had a cause of action loses the right to enforce the cause of action

by judicial process because the time laid down by limitation law for instituting such an action had elapsed. Muhammad v Military Administrator, Plateau State (2001) 16 NWLR (Pt.740) 510 at 545 per Obadina, JCA; SPDC Ltd v Farah (1995) 3 NWLR (Pt.382) 148.

Having put across the general rule as to when there is an injury which needs redress, it has to be brought to light the fact that such remediation (remedy) is not unlimited.

A statute of limitation removes the right of action, the right of enforcement and the right to judicial relief in a plaintiff and leaves him with a bare and empty cause of action which he cannot enforce if the alleged cause of action is statute-barred, that is, if such a cause of action is instituted outside the statutory period allowed by such law. Another way of stating the above proposition is that any action that is commenced after the period stipulated by the statute is totally barred as the right of the plaintiff or the injured person to commence the action would have been extinguished by such law. See Ibrahim v Judicial Service Committee Kaduna State (1998) 14 NWLR (Pt. 584) 1; Obiefuna v Okoye (1961) 1 All NLR 357; Egbe v Adefarasin (NO.2) (1985) 1 NWLR (Pt.3) 549; Fadare v A.G. Oyo State (1982) 4 SC 1; Abubakar v Governor of Gombe State (2002) 17 NWLR (Pt.797) 533.

While not arguing against the legal principles on the Statute of Limitation, the point being raised and vehemently too by the Plaintiffs is that the protection that would have enured on the Defendant had been lost, the defendant having acted outside the scope of their office in failing to carry out the lawful duty to pay compensation to the plaintiffs.

Learned counsel for the plaintiffs relied on the cases of Ibrahim v J.S.C Kaduna State (1998) 14 NWLR (Pt.584) 1 and the more recent judgment of this Court in Hassan v Aliyu (2010) 17 NWLR (Pt.1223) 547 at 591.

Indeed, the Court per Onnoghen, JSC, had stated in clear H terms in Hassan v Aliyu (supra) 591 thus:-

“It is however correct that where a public officer acts outside the scope of his authority or without a semblance of legal justification, he cannot claim the protection of the provisions of the Public

Officers' Protection Act. "

I shall quote Section 2(a) of Public Officers' Protection Act for clarity and thus:-

B *"2. Where any action, prosecution, or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Act or Law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, Law, duty or authority, the following provisions shall have effect- Limitation of time:*

C *(a) the action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of, or in case of a continuance of damage or injury, within three months next after the ceasing thereof. "*

D The stance of the plaintiffs is two pronged, one that Section 2(a) of the Public Officers protection Act would have applied against the Plaintiffs' claims if the Defendant had acted within the scope of its official duties and so the three months period for such actions would not affect the plaintiffs and on the other leg that their cause of action arose in 2007 when the last demand from the Defendant was made
E and so plaintiffs were within the 6 years Limitation Period in bringing the action on 22nd February 2011. The contention of the Plaintiffs ouster of Section 2(a) Public Officers Protection Act is not substantiated and how that Law comes in focus of what is on ground. The Public Officers Protection Act is not relevant for our purpose here.
F

On the other hand, the Objector/Defendant contends that the cause of action crystallized on 27th July, 1983 when the Federal Military Government or the Defendant acknowledged the debt and so well over the 6 years permissible in initiating the action.

G Taking the two contending positions in view and juxtaposing them with the positions of Section 37(1) of the Limitation Act to see what is in reality the prevailing situation. That section and subsection stipulate as follows:-

H *"(1) Where -
(a) a right of action has accrued to recover a debt: and
(b) the person liable therefore has acknowledged the debt, the right of action shall be deemed to have accrued on and not before the date of the acknowledgment. "*

It is clear from the above stated statutory provision of the Limi-

tation Law that the cause of action had come full blown by the 27th July 1983 when the Defendant acknowledged the indebtedness. Therefore, the subsequent correspondences which climaxed on 6th August, 2010 including that of 7th August, 2007 would not add to or subtract from the event which had already taken place, that is, the crystallization of the cause of action which took place on 27th July 1983, This happening would bring about the attendant fall out which is the operation of Section 7(1)(e) of the Limitation Act. Therefore, what had been restated in *Egbe v Adefarasin* (1987) 1 NWLR (Pt.47) 1 would apply and these are:-

“where a party’s action is statute-barred, the following legal consequences will follow:-

- a. the party would lose his right of action;*
- b. the party would lose the right of enforcement;*
- c. the party would also irretrievably lose the right to judicial relief;*
- d. the party would only have an empty cause of action which no court will assist him to enforce.”*

See also *Daudu v University of Agriculture, Makurdi & 4 Ors* (2002) 17 NWLR (Pt.796) 363 at 384 - 385.

For effect, I shall cite the provisions of the said Section 7 of the Limitation Act and it is as follows:-

“7(1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued

-
(e) actions to recover a sum recoverable by virtue of an enactment other than -

(i) a penalty or forfeiture or sum by way of penalty or forfeiture;

(ii) a sum due to a registered company by a member thereof under its articles of association,

(iii) An amount recoverable against concurrent wrong doers under a civil liability enactment for the time being in force relating to concurrent wrong doer.”

In the light of the foregoing, it is to be said without equivocation that the cause of action in this matter arose in 1983 precisely, 27th July, thereof, when the Defendant acknowledged the debt and this action commenced on the 22nd of

February 2011, was an action in futility the cause of action having expired after six years of its accrual computed from 27th July 1983. Another way of saying the same thing is that this action as presently constituted and initiated on 22nd February 2011 is statute barred and therefore, the jurisdiction of this court has been effectively ousted by operation of Section 7(1)(e) Limitation Act Cap 522 Laws of the Federation of Nigeria; 1990. The ensuing conclusion is that this suit lacks competence and is hereby struck out.

C I make no order as to costs.

MUKHTAR CJN

D I have had the advantage of reading in advance the lead Ruling of Peter-Odili, JSC, and I am in complete agreement with the reasoning and conclusion that the suit has been caught by the limitation Statute. There must be a limit (and indeed there is in this case) to the extent a party can prolong the period within which it can seek redress or remedy in a court of law. See *Fadare v. Attorney-General* E *Oyo State* 1982 4 SC. 1, and *P. N. Udoh Trading Company Ltd v. Sunday Aberé & 1 Or* 2001 11 NWLR part 723 page 114. The present suit is a classic example of foot-dragging by the plaintiffs.

F The limitation Act has adequately provided against the digging up of long standing grievances that have been left to drag for an unnecessary long period without taking action within the reasonable period from when the cause of action accrued, as provided by the law. It is in this vein that I am convinced that the notice of preliminary objection is meritorious and should be upheld. Consequently the suit G filed by the Plaintiffs/Respondents is incompetent and it is accordingly struck out.

MUHAMMAD JSC

H My learned brother, Peter Odili, JSC, made available to me in a draft, a copy of the Ruling just delivered.

The facts giving rise to the suit before this Court have been well stated by Odili, JSC. A challenge as to the competence of the suit was thrown on the hearing date against the plaintiffs by way of a

Preliminary objection that the plaintiffs' suit was statute barred pursuant to the provisions of Sections 7[1][e] and 37[1] of the Limitation Act. My lords, in a claim where a defence of limitation as to the plaintiffs' right of action is made by the defendant, it becomes easier for the Court if it examines the periods within which the cause of action accrued and the date of instituting the suit. A cause of action is, or are the fact or facts which establish or give rise to a right of action. It is the factual situation which gives the plaintiff a right to judicial relief. See: *EGBE VS. ADEFARASIN* [1987] 1 NWLR [Part 47] 1. Thus, a cause of action is said to be statute barred if legal proceedings cannot be commenced in Court because the period laid down by the Limitation Law or Act had elapsed. In the matter on hand, the plaintiffs' statement of claim shows that their cause of action accrued sometime in 1983 when the then Federal Military Government offered to effect payment to the Northern States Marketing Board [NSMB], the sum of N10,305,725.7 [Ten Million, Three Hundred and Five Thousand, Seven Hundred and Twenty Five Naira, Seven Kobo, in final settlement of the defendant's indebtedness to the defunct Northern States Marketing Board. The statement of claim provides more explicitly, as follows:

"13. The Plaintiffs state that in 1983 the Defendant, by its letter No. SCB/MKT/XIII/53 dated 27th of July, 1983 accepted to pay N10,305,725.7 [Ten Million, Three Hundred and Five Thousand, seven Hundred and Twenty Five Naira, Seven Kobo] in final settlement of the indebtedness to the Northern States Marketing Board [NSMB] as stated in paragraph 12 of this statement of claim.

14. The plaintiffs state that in 1984 the Northern States marketing Board [NSMB] submitted additional claim to the Federal Military Government relating to more of its movable assets not returned to it consisting of tarpaulin, bags, twine, furniture, vehicles and fittings valued at N13,160 185.46 [Thirteen Million, One Hundred and Sixty Thousand, One Hundred and Eighty Five Thousand Naira and Forty Six Kobo], which claim was never disputed by the Defendant."

It is the submission of learned counsel for the defendant as objector, that from the endorsement on the Civil Summons, it is clear that the plaintiffs' suit was filed on the 22nd of February, 2011, a period of twenty eight years after their cause of action crystallized. That, going by the provision of Section 7[1][e] of the Limitation Act,

the Plaintiffs' action can only be brought within six years from the time their cause of action arose. In his affidavit evidence, the defendant/objector averred to these facts as follows:

B *"5. That the plaintiffs' cause of action arose sometime in 1983 and this action was instituted twenty eight years after the Cause of action arose.*

6. That the plaintiffs' action was filed on the 22nd of February, 2011."

C The plaintiffs/respondents in their Counter affidavit to the Notice of Preliminary Objection averred as follows:

"3. That I know as a fact that in the pleaded letter dated 7th of August 2007 written to the Hon. Minister of Agriculture of the Federal Republic of Nigeria by the Plaintiffs' Solicitors, the attention of the Defendant was clearly drawn to the fact that as the claims of the Plaintiffs are founded on acts of State such claims cannot be statute-barred.

4. That I know as a fact that the Commodity Boards Decree No. 29 at 1977 is now commodity Boards Acts Cap. C 17 of the Laws of Nigeria 2004, which is still in force and the said Commodity Boards Act does not make any provision for payment of money to the Plaintiffs/Respondents.

5. That it is in the pleaded letter dated 7th February, 1977 written by the then Chief of Staff Supreme Headquarters that the commitment to compensate the Plaintiffs/Respondents was made by the Federal Government of Nigeria.

6. That I know as a fact that the Defendant in this case has no defence to the Plaintiffs' Claims in this suit.

7. That it is in the interest of justice to dismiss this Preliminary Objection and enter judgment for the Plaintiffs in the substantive suit as the defendant has no defence to this action."

H Learned counsel for the plaintiffs/respondents, Aliyu Umaru, submitted that the claims of the plaintiffs are not founded on the provisions of any enactment and as such, the claims are not caught by the provision of Section 7[1][e] of the Limitation Act. The claims are rather, founded on the definite Commitment made by the then Chief of Staff, Supreme Headquarters, Brig. S. M. Yar'adua, in the pleaded letter dated 7th February, 1977, written to all Military Governors. The claims of the plaintiffs, it was argued further, were founded

on the implementation of Public Policy of the Federal Government and cannot, as such, be statute barred. Learned counsel argued further, that compensations to the plaintiffs as such, cannot fall within the definition of “*debt*” envisaged by the provision of Section 37[1] of the Limitation Act and cannot be statute barred.

My lords, the whole connection of “*Limitation*” of action in respect of a given subject matter postulates a statutory period after which a lawsuit or prosecution cannot be brought in Court. It usually comes about by legislation [Statutes] and it can even be made by a written agreement between contracting parties. Thus, a statute of limitation is a law which bars claims after a specified period has elapsed. It establishes a time limit for suing in a civil case based on the date when the claim accrued. The purpose of such a statute of course, is to require diligent prosecution of known claims, thereby providing finality and predictability in legal affairs and ensuring that claims will be resolved in good time while evidence is reasonably available and fresh. The authors of Corpus juris secundam [C.J.S] equate statutes of Limitation to laches. They stated, inter alia:

“Statutes of Limitations, like the equitable doctrine of laches, in their conclusive effects are designed to promote Justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.”

The Statute of Limitation called in aid by the defendant/objector in this matter is the Limitation Act, Section 7 thereof, which provides:

“7[1] The following actions shall not be brought after the expiration of six years from date on which the cause of action accrued - [e] actions to recover a sum recoverable by virtue of an enactment other than -

[i] a penalty or forfeiture or sum by way of penalty or forfeiture.

[ii] a sum due to a registered company by a member thereof under its articles of association,

[iii] an amount recoverable against concurrent wrongdoers under a civil liability by enactment for the time being in force relating to concurrent wrongdoer.”

Now, considering the depositions in paragraphs 13 and 14 of

the Statement of Claim of the plaintiffs, it is clear to me that the cause of action arose in 1983 and by the endorsement on the civil Summons filed, it is clear as well that plaintiffs' suit was filed on the 22nd day of February, 2011. Thus, between the date of accrual of action and the filing of the action was a period of twenty eight years.

B What is the nature of the plaintiffs' claim? By the deposition in paragraph 10 of the Statement of claim, thus

"The plaintiffs state that out of the said N42,019,229.00 only N1,100,000.00 was paid to the NSMB by the Defendant leaving a balance of N40,919,229.72"

C In financial terms, any amount of money which is still owed after some payment has been made is what is called a balance. It remains a debt on the neck of the debtor. Limiting it to financial dealings, "debt" as held in the case of STATE V. DUCEY 25 Ohio at D page 2 60,266, represents a sum of money due by certain and express agreement. It is a specified sum of money owing to one person from another, including not only obligation of debtor to pay but right of creditor to recover and enforce payment. It is lamentable that the plaintiffs did not wake up early from their deep slumber to claim their E forgotten rights.

"Equity", they say helps the vigilant, not the one at slumber. The plaintiffs may have unwittingly allowed their claims against the defendant to be caught up by the cob-web of Limitation Act of 1966 as contained in Limitation Act Cap. 522 Laws of the Federation of F Nigeria 1990. And the Law is that, where an action has been barred by the operation of Limitation Act/Law, as the case may be, the effect is that the cause of action becomes extinguished by operation of law and can no longer be maintained in a Court of law. I entirely agree G with the Court of Appeal in its decision in DAUDU VS. UNIVERSITY OF AGRICULTURE, MAKURDI & 4 ORS [2000] 17 NWLR [Part 796] 326 at page 384 - 385 where it stated, inter alia,

"Where a party's action is statute barred, the following legal consequences will follow:

- H
- a. the party would lose his right of action;*
 - b. the party would lose the right of enforcement;*
 - c. the party would also irretrievably lose the right to judicial relief; and*
 - d. the party would only have an empty cause of action which*

no court will assist him to enforce. "See also: EGBE VS. ADEFARASIN [1987] 1 NWLR [Part 471] 1.

This is the situation in which the plaintiffs found themselves. By the operation of law, this court is unable to extricate the plaintiffs from the cob-web of the Limitation Act as it is too late to do so.

For this and the fuller reasons adumbrated in the leading judgment of Peter-Odili, JSC, this suit lacks competence and it is hereby struck out. I make no order as to costs.

MUNTAKA-COOMASSIE JSC

I was privileged to have a review of the judgment rendered by Peter-Odili, JSC before today. I have read closely the claims of the plaintiffs and the defence of the defendant i.e. the Attorney-General of the Federation.

It was clearly thrashed out that the cause of action arose in 1983 and this action legally commenced in February 2011, six years had elapsed, that means even if there is a cause of action same having expired, the plaintiffs clearly must lose the action. It is in a legal parlance, statute barred. That being the case, the jurisdiction of this court is effectively ousted by the provision of Section 7(1)(e) Limitation Act Cap 522 Laws of the Federation of Nigeria 1990 which says:-

"7.(1) the following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued-

(e) Actions to recover a sum recoverable by virtue of an enactment other than-

(i) a penalty or forfeiture or sum by way of penalty of forfeiture,

(ii) a sum due to a registered company by a member thereof under its articles of association,

(iii) an amount recoverable against concurrent wrong-doers under a civil liability enactment for the time being in force relating to concurrent wrong doers".

This court therefore must decline jurisdiction to entertain this suit. I must, with due respect, therefore completely agree with my learned brother Peter-Odili, JSC. I agree that this particular suit is hereby struck out.

NGWUTA JSC

I have had the privilege of reading in draft the lead judgment prepared and just delivered by my learned brother, Peter-Odili, JSC. I agree with the reasoning leading to the conclusion that the plaintiffs' suit is statute-barred and liable to be struck out.

I desire, however, to add only a few observations. In order to determine whether or not a plaintiff's suit is statute-barred, the Court will have to consider the originating processes such as the Writ of Summon and the Statement of Claim. See *Military Administrator of Ekiti State v. Aladeyelu* (2007) 14 NWLR (Pt.1055) 619 SC; *Amusan v. Obideyi* (2005) 14 NWLR (Pt.945) 322 SC; *Ikin v. Edjerode* (2002) FWLR (Pt. 92) 1775 SC.

The plaintiffs commenced this suit on 23/2/2011, when the Civil Summons was issued and the Statement of Claim filed in the Registry of this Court. I consider paragraphs 13 and 16 of the Statement of Claim very relevant on the question of whether or not the suit is statute-barred as contended by the defendant. The paragraphs are hereunder reproduced for ease of reference:

"13. The plaintiffs state that in 1983 the defendant by its letter No. SCB/MKT/XIII/53 dated 27th of July, 1983 accepted to pay N10,305,725.7 in final settlement of the indebtedness to the NSMB as stated in paragraph 12 of this Statement of Claim.

16. The plaintiffs state that their Solicitors wrote several letters to the defendant demanding payment for the amounts agreed to be paid by the defendant and other outstanding amounts due to the plaintiffs but without any reasonable response from the defendant."

From the paragraphs of the Statement of Claim reproduced supra, the defendant acknowledged indebtedness to the plaintiffs through the letter reference number SCB/MKT/XIII/53 written on 27th day of July 1983. In spite of the letters written by solicitor to the plaintiffs, the defendant remained mute and did not make part payment nor re-acknowledge the debt to the plaintiffs. The defendant said and did nothing about the acknowledged debt to the plaintiffs between 27th day of July when the acknowledgment was made and the 23rd of February, 2011 when the plaintiffs commenced this action.

Now, what is the plaintiffs' cause of action and when did it

accrue. To answer the question above, I will seek guidance in the immortal words of His Lordship of Blessed Memory, Oputa, JSC, in *Egbe v. Adefarasin* (1987) 18 NSCC (Pt.1) SC (1987) 1 NWLR (Pt.47) 1 SC. The renowned Jurist said:

“Legally, expressions like finding of fact, action, cause of action are terms of art to which the law ascribed certain defined and definite meanings.” B

On the cause of action, he said, inter alia:

“It is the factual situation which gives a person a right to judicial relief... In other words, a cause of action is the operative fact or facts (the factual situation) which give rise to a right of action which is itself a remedial right.” See *Savage v. Uwaechia* (1972) All NLR 255 SC. C

In my humble view, based on the dictum reproduced above, the plaintiffs' cause of action, the fact or the factual situation which gave them the right to seek judicial relief or remedy is the letter No. SCB/MKT/XIII/53 which the defendant wrote to them acknowledging indebtedness to the plaintiffs. D

On the question of when the cause of action accrued to the plaintiffs, I am of the opinion that the cause of action accrued on 27th July 1983. On the said date, the three components of the action were in existence: the fact constituting the right to sue, the plaintiffs who could sue and the defendant who could be sued. I say this because after the date of the letter to the plaintiffs, the defendant did not communicate in writing or orally with the plaintiffs on the issue of the debt. E F

The defence set up by the defendant is a plea to time based on Section 7(1) of the Limitation Act by which the right to recover a debt is extinguished at the expiration of six years from the date the cause of action accrued, that is the date on which the plaintiff could sue to recover the debt if he so desired. It follows therefore that at the expiration of six years from 27/2/83 the plaintiffs' right to recover the debt was extinguished, notwithstanding the fact that the debt remained unpaid. G

The act of State doctrine relied on by the plaintiffs is misplaced. H
An act of State is an act done in relation to a foreigner by the Sovereign power of a country or its agents either previously authorized or subsequently ratified. Such an act cannot be questioned or made the subject of legal proceedings in any Court of law. See B.K. Mohapatra

v. State of Orissa AIR 1988 SC 24, 28. The doctrine is inapplicable to an act of the Sovereign power of a country or its agents vis-à-vis its citizens within its territory.

The essence of the doctrine is that one government will not judge the legality of acts of another government committed within the latter's territory. See Advanced Law Lexicon Book 1 page 84, 3rd (Edition Reprint 2009).

With reliance on Section 4 of the Limitation Act 1966, learned Counsel for the plaintiffs contended that the provisions of the Act do not apply to an action in which a State is a party. Section 4 of the Act provides:

*"4. This Act shall not apply to -
(b) an action to which a State authority is a party and for which it that State authority were a private individual, a period of limitation would be fixed by another enactment."*

Learned Counsel, arguing that the Limitation Act does not apply to an action in which a State is a party said:

"There is Statute of Limitation applicable to dispute between States or between States and the Federation."

As if not sure of his position, he speculated *"There should be one."* The Court was not referred to another enactment which would have fixed a period of limitation if the State involved in the litigation were a private individual. The provision of the Act is applicable to this case.

The plaintiffs' learned Counsel argued meretriciously that the defendant's failure to perform a lawful duty to pay compensation to the plaintiffs is an act outside the scope of its statutory and constitutional duty and the defendant is not therefore entitled to the protection of Section 2(a) of the Public Officers Protection Act.

In my humble view, both the performance and default in performance of a lawful duty are the two sides of the same coin. The duty will either be performed or not performed. If the duty is not performed, the breach does not constitute an act outside the scope of that duty. The performance and non-performance of a duty, in my opinion, are acts within the scope of that duty, one is positive the other is negative.

It is for the above and the fuller reasons in the lead judgment that I agree that the plaintiffs' case is statute-barred and liable to be

struck out. I sustain the preliminary objection. It is my order that the suit be, and is hereby, struck out. Parties shall bear their respective costs.

ARIWOOLA JSC

I have had the privilege of reading in draft the lead judgment of my learned brother, Peter-Odili, JSC just delivered and I am in entire agreement with the reasoning therein and the conclusion arrived thereat.

The facts of the case had been given in the lead judgment which came from the claims of the Northern States together against the Federal Government. It was instituted by the sixteen Attorneys-General of the said Northern States against the Chief Law Officer of the Federal Republic of Nigeria - Honourable Attorney-General of the Federation.

The said claim of the plaintiffs was objected to mainly on the ground that it was thought to be statute barred by virtue of Section 7(i)(e) of the Limitation Act.

The plaintiffs had issued a Writ of Summons on the 22nd day of February, 2011 claiming the sum of N7,039,773,348.00 being the total outstanding value of the assets of the defunct Northern States Marketing Board taken over by the Federal Government of Nigeria.

The defendant was said to have admitted indebtedness to the plaintiffs to the tune of N3,091,717,710.00 billion in her letter dated 27th July, 1983.

The defendant had contended that the plaintiffs' claim having been predicated on the correspondences dated 27th July, 1983 and 13th August, 1984 the said claim is statute barred and liable to be dismissed.

When then does a cause of action arise? There is no doubt that a cause of action arises on a date or from the time when a breach of any duty or an act occurs which warrants the person who is injured or the victim who is adversely affected by such breach to take a court action to assert or protect his legal right that has been breached or violated. See Chief Woherem, JP vs. Joel Emereuwa & Ors. (2004) 8 SCM 185; (2004) 35 WRN 23.

However, the duration of a cause of action or right to an ac-

tion which the law confers on an aggrieved or injured party is certainly limited also by law. It does not exist for ever. The time will ordinarily come to an end after the specific date the Limitation Law says that no such legal action or proceedings may lawfully be taken or commenced by an aggrieved party. In effect, it is necessary when
 B an issue has arisen on Limitation Law to determine first the precise time when the cause of action actually arose. The reason being that, time will start to run from the moment the cause of action can be said to have arisen. See; John Eboigbe Vs. Nigeria National Petroleum Corporation (NNPC) (1994) 6 SCNJ 71; (1994) 5 NWLR (Pt 347)
 C 649.

In the computation of the period of limitation, what materials are to be considered? The law is already settled, that the period of limitation is to be determined by looking at the Writ of Summons
 D and the Statement of Claim only, to ascertain the alleged date the wrong in question which has given rise to the plaintiffs' cause of action was committed and by comparing that date with the date on which the action was commenced with the filing of the Writ of Summons. In which case, if the time contained in the Writ of Summons or
 E Statement of Claim as the time the cause of action arose is beyond the period allowed by the Limitation Law, then the action is definitely statute barred. See; Egbe Vs. Adefarasin (1987) 1 NWLR (Pt 47) 1; (1987) 1 SCNJ; (1987) 1 All NLR 1.

In the instant case, the Plaintiffs specifically pleaded that the
 F defendant by its letter no. SCB/MKT/XIII/53 dated 27th July, 1983 accepted to pay the sum of N10,305,725.7 in final settlement of the indebtedness to the plaintiffs. See; paragraph 13 of the Statement of Claim.

G As stated earlier, the plaintiffs' action to claim their indebtedness from the defendant was instituted by the filing of a Writ of Summons on 22nd day of February, 2011.

As clearly shown in the statement of claim of the plaintiffs, their
 H cause of action arose at the acceptance and acknowledgment of indebtedness by the defendant in July, 1983 and time therefore began to run effective from then. The Limitation Law, Section 37(1) provides as follows:

"Where -

(a) A right of action has accrued to recover a debt; and

(b) The person liable therefore has acknowledged the debt, the right of action shall be deemed to have accrued on and not before the date of the acknowledgment."

The plaintiffs had in their paragraph 18 of the statement of claim pleaded a long list of correspondences with the defendant up till 1st November, 2010. B

There was no indication that the defendant ever responded to any of the letters said to have been written by the plaintiffs. In any event, even where there were exchange of correspondences and negotiation was on, the time shall not stop running, from the date the defendant acknowledged the indebtedness in July, 1983. Negotiation by parties does not prevent or stop time from running. See; Gbadamosi Lahan Vs. The Attorney General, Western Nigeria (1961) WNLR 39; (1963) 2 SCNLR 47; Eboigbe Vs. NNPC (supra). C

Section 7(i)(e) of the Limitation Act applicable to this case reads D thus:

"The following action shall not be brought after the expiration of six years from the date on which the cause of action accrued -

(e) actions to recover a sum recoverable by virtue of an enactment other than - E

(i) a penalty or forfeiture or sum by way of penalty or forfeiture;

(ii) a sum due to a registered company by a member thereof under its Articles of Association.

(iii) an amount recoverable against concurrent wrong doers under a civil liability enactment for the time being in force relating to concurrent wrong does." F

There is therefore no doubt that the plaintiffs' cause of action in this matter arose in July, 1983 and they ought to have commenced G an action to recover the acknowledged indebtedness anytime thereabout and before the expiration of the duration fixed to commence such action by the Limitation Law. In the result, when the date the cause of action accrued in July, 1983 is compared with the date of commencement of action by the plaintiffs in February, 2011, it is H clear without doubt that the action has become barred by statute.

"The law is already settled, that where a party's action is caught by statute of Limitation and become statute barred, the following consequences result -

(a) *The party would lose his right of action;*

(b) *The party would lose the right of enforcement;*

(c) *The party would also irretrievably lose the right to judicial relief;*

(d) *The party would only have an empty cause of action which no court will assist him to enforce.*” See Daudu Vs. University of Agriculture, Makurdi & Ors. (2002) 17 NWLR (Pt 796) 363 at 384.

In Egbe Vs. Adefarasin (supra) this court per Aniagolu, JSC, stated, inter-alia, as follows:

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

For the above reason and the fuller and more detailed reasons in the lead judgment, I also say that the plaintiffs’ action in this case is caught by Statute of Limitation rendering the cause of action statute barred. Accordingly, the court cannot further entertain the plaintiffs’ claim, which is liable to striking out, and is hereby struck out by me.

I abide by the order on costs in the lead judgment.

E

OGUNBIYI JSC

The preliminary objection at hand is predicated upon the plaintiffs’ claim initiated by a writ of summons filed on the 22nd day of February, 2011. The 18 paragraphs statement of claim and also the statement of defence have been reproduced in the lead Ruling of my learned brother Mary Ukaego Peter-Odili, JSC.

On the 8th March, 2012 however, the defendant filed a notice of preliminary objection pursuant to order 3 Rule 1 of the Rules of this court as amended in 1999, order 29 Rule 1 of the Federal High Court Rules 2009 and under the inherent jurisdiction of the court contending that the court has no jurisdiction to entertain this suit upon the following grounds, that:-

1. The claim of the plaintiffs is statute barred by virtue of section 7(1)(e) of the Limitation Act.

2. Whereas the law as stated in Daudu V. University of Agriculture Makurdi & 4 Ors. (2002) 17 NWLR (Pt.796) 362 at 384 - 385 that where a party’s action is statute barred, the following legal consequences will follow;

- a. the party would lose his right of action;
- b. the party would lose the right of enforcement;
- c. the party would also irretrievably lose the right to judicial relief, and
- d. the party would only have an empty cause of action which no court will assist him to enforce.

3. Whereas the cause of action upon which the plaintiffs' action is predicated is a letter dated 27th July, 1993 and 13th August, 1984 as stated in paragraphs 13 and 14 of the plaintiffs' statement of claim dated 17th February, 2011.

4. Whereas the Plaintiffs/Respondents instituted this action by way of civil summons on the 22nd February, 2011 in consequence thereof, the said action is at variance with section 7(1)(e) of the Limitation Act.

The defendant at the hearing of the objection sought and relied on the plaintiffs' civil summons and also their statement of claim. For purpose of substantiating the preliminary objection, an affidavit of eight paragraphs is also filed in support as well as a written address.

The plaintiffs/respondents in their counter affidavit against the Notice of preliminary objection averred in summary that the defendant has no defence to the plaintiffs' claims and that the objection should be dismissed in the interest of justice.

The bone of the defendant's submission is that the plaintiffs' cause of action arose sometime in 1983 and hence a period of 28th years with the suit having been instituted only on 22nd February, 2011.

The law is trite and well settled that the two relevant materials for consideration in an objection of this nature are the writ of summons and the statement of claim; that is to say the materials necessary for purpose of ascertaining the date the cause of action arose. Therefore, in the case at hand, paragraphs 13 and 14 of the statement of claim are paramount and the reproduction state as follows:-

"The plaintiffs state that in 1983, the Defendant by its letter No. SCB/MKT/XIII/53 dated 27th of July, 1983 accepted to pay N10,305,725.7 in final settlement of the indebtedness to the NSMB as stated in paragraph 12 of this statement of claim.

14. The plaintiffs state that in 1984, the NSMB submitted additional claim to the Federal Military Government relating to more of

its movable assets not returned to it consisting of tarpaulin, bags, twine, furniture, vehicles and fittings valued at N13,160,185.46k (Thirteen million one hundred and sixty thousand one hundred and eighty five Naira and forty six kobo), which claim was never disputed by the Defendant.”

B The phrase “*cause of action*” was defined by this court “*as facts which when proved will entitle a plaintiff to a remedy against a defendant.*” See Taiye Oshoboja V. Alhaji Surakatu Amuda and Ors. (1992) 6 NWLR (Pt. 250) 690. See also the cases of Bello v. Attorney General, Oyo State (1986) 5 NWLR (Pt.45) 828 at 876; Egbe vs. Adefarasin (1987) 1 NWLR (Pt.47) 1 at 20; Thomas v. Olufosoye (1986) 1 NWLR (Pt. 669 at 682 and Egbue v. Araka (1988) 3 NWLR (Pt.84) 598 at 613.

D With reference made to paragraph 5 of the affidavit supporting the objection, the plaintiffs’ cause of action arose sometimes in 1983 and that the present action was instituted twenty eight years after the cause of action arose. The reason predicating the defendant’s conclusion is not farfetched but is firmly stated in its affidavit in support which seeks leverage on paragraphs 7, 8, 13 and 14 of the plaintiffs’ statement of claim in particular paragraphs 13 and 14, which have been reproduced earlier in the course of this ruling.

E On a communal reading of paragraphs 13 and 14 therefore, the facts reveal that the plaintiffs, cause of action arose sometime in 1983 when the Federal Military Government wrote a letter to the F NSMB offering to pay them the sum of N10,305,725.7 as final payment of the defendant’s indebtedness to the defunct Northern States Marketing Board.

G The only issue for determination poses the question whether the plaintiffs’ claim is statute barred and therefore liable for dismissal or striking out by the court for want of jurisdiction. Where a suit is statute barred, it does not come within the jurisdiction of a court.

H Order 3 Rule 1 of the Supreme Court Rules as amended in 1999 provides for the exercise of original jurisdiction of the court and it states:-

“Where no provision exists in these Rules, the practice and procedure in the court shall be conducted in substantial conformity with the practice and procedure with the time being observed in the Federal High Court.”

Also in conjunction with the foregoing provision is order 29 rule 1 of the Federal High Court Rules 2009 which provides thus:-

“1. Where a defendant wishes to

(a) dispute the court’s jurisdiction to try the claim, or

(b) argue that the court should not exercise its jurisdiction, he may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have, and the court may take such application together with the plaintiffs substantive suit in so far as the substantive suit does not involve the taking of oral evidence.”

The crux of the defendant’s objection is challenging the jurisdiction of the court to entertain the subject matter of the case at hand. It is also elementary to state that this court, has, in the case of *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341, laid down the following principles guiding a court in determining whether or not it has jurisdiction.

“(a) That the subject matter of the case is within its jurisdiction;

(b) That there is no feature in the case which prevents the court from exercising its jurisdiction; and

(c) That the case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.” Referred to in *N.N.P.C. v. Sele* (2013) All FWLR (pt. 7808) 8365 at 846.

For the jurisdiction of the court to be properly activated, the foregoing conditions must therefore be fulfilled. An action which is statute barred cannot confer any jurisdiction on a court. This is obvious because such action has lost its right of initiation as it no longer comes within recognition but is an empty cause of action which cannot confer any right to judicial relief. See the case of *Daudu v. UNAM* (supra), where the consequential effects of statute barred actions are specified.

This court per Oputa, JSC (of blessed memory) has defined succinctly the phrase “*cause of action*” in the case of *Egbe V. Adefarasin* (1987) 18 NSCC (Pt. 1) P.1 at 16 wherein he said:-

“Cause of action can safely be defined as the fact or facts which establish or give rise to a right of action, it is the factual situation which gives a person a right to judicial relief. A cause of action is to be distinguished from right of action. A right of action is the right to

enforce presently a cause of action. In other words a cause of action is the operative fact or facts (the factual situation) which give rise to a right of action which itself is a remedial right. ”

For purpose of determining whether or not the action at hand is statute barred, regard must be had to Section 7 of the Limitation Act and specifically sub paragraph (1) which states thus:-

“7(1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued-

(e) actions to recover a sum recoverable by virtue of an enactment other than -

(i) a penalty or forfeiture or sum by way of penalty or forfeiture.

(ii) a sum due to a registered company by a member thereof under its articles of Association;

(iii) an amount recoverable against concurrent wrongdoers under a civil liability enactment for the time being in force relating to concurrent wrongdoer.”

By interpretation, the foregoing provision will apply to actions seeking to recover sums recoverable by virtue of an enactment and same which must not come within the exceptions which are enumerated under subsections (i), (ii) and (iii) of subsection 7(1)(e) supra. In otherwords any sum within the exceptions will not be subject to the Limitation Act.

The learned counsel, Mr. Aliyu Umaru represented the 1st - 4th and 6th - 16th plaintiffs/respondents. In his written address in reply to the defendant’s preliminary objection however, the counsel contends that the plaintiffs’ claims against the defendant are not founded on the provisions of any enactment and therefore are not caught by the provision of Section 7(1)(e) of the Limitation Act. It is the learned counsel’s further submission that the plaintiffs’ claims are founded on the definite commitment made by the Chief of Staff Supreme Headquarters, Brigadier S. M. Yar’adua in the pleaded letter dated 7th February, 1977, which he wrote to all Nigerian Military Governors; that the claims herein are founded on the implementation of public policy and which, counsel submits, cannot be statute-barred.

Mr. Y. A. Ruba (Hon. Attorney General) Jigawa State, in his

submission on behalf of the 5th plaintiff/respondent associated himself with his learned brother for the other respondents and went further to draw a distinction between public servant and state authority. He also in addition cited the case of Hassan v. Aliyu 2010 All FWLR (Pt.539) P.1007 and urged that the preliminary objection should be discountenanced. B

In the foregoing authority cited on behalf of the respondents, this court at page 1065 - 1066 of the report held and said:-

“for the purpose of the limitation of action, time begins to run from the moment the cause of action arose or accrued.” C

Therefore, in determining whether an action is statute-barred or not, it is pertinent to ask when time begins to run. The law is well settled that time begins to run when there is in existence a person who can be sued and all facts have happened which are material to be proved to entitle the plaintiff to succeed. See *Fadare V. Attorney-General Oyo State* (1982) All NLR 24, (1982) 4 SC 1; *Humbe Attorney-General, Benue State* (2000) 3 NWLR (Pt.649); *Egbe V. Adefarasin* (No. 1) (1985) 1 NWLR (Pt.3) 549. D

Section 37(1) of the Limitation Act also provides that where a debt is acknowledged, the right of action accrues on the date and not before. E

On a communal reading of the view held in the case of *Hassan V. Aliyu* and Section 37(1) of the Act supra, the action taken by the plaintiffs in updating their claims always, would not operate to alter the accrual date as it has been affirmed by Section 37(1) of the Act which clearly relates to an action to recover debt. The authority cited by the counsel for the 5th plaintiff/respondent, is therefore supportive of the defendant's case. F

On the further submission by the counsel for the respondents G on the applicability of the Limitation Act to the state authority, I would seek to draw attention to Sections 1 and 4 of the Act which reproduction state thus:

“1.(1) save as in this Decree otherwise expressly provided and without prejudice to Section 4, this Decree shall apply to proceedings by or against a state authority in like manner as if that state authority were a private individual.” H

“S.4. This Decree shall not apply to -

(a) an action for which a period of Limitation is fixed by any

other enactment, or

(b) an action to which a state authority is a party and for which, if that state authority were a private individual, a period of limitation would be fixed by any other enactment.”

With reference made to Section 1 (supra) the Decree, though applicable to the state authority, it is however subject to Section 4. This is especially when regard is had to the phrase “*any other enactment*.” It is relevant to restate that the use of the words “*state authority*” in Section 1, does not connote the same meaning as it is applied in the latter Section 4, wherein the implication must have regard to the period of limitation “*fixed by any other enactment*.”

Contrary to the submission put forward by the learned counsel for the respondents, the interpretation given to Section 4(b) of the Act cannot sustain. The provision of the Section did not in other words exempt the state authority as envisaged.

With the foregoing few words of mine and more particularly on the comprehensive reasoning and conclusions arrived thereat by my learned brother, Mary Ukaego Peter-Odili, JSC; I also subscribe that the preliminary objection succeeds and this action is statute barred. Same is also therefore struck out for incompetence and I abide by the order made as to costs.

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