IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 12 BWARI, ABUJA.
BEFORE HIS LORDSHIP: **HON. JUSTICE O. A. MUSA.**

JUDICIARY HIGH COURT OF THE FEDERAL CAPITAL TERRITORY No. B1090936

SUIT NO. FCT/HC/BW/CV/2817/2019

BETWEEN:

MRS. BUKOLA DAKOLO ..... CLAIMANT

AND

REV. BIODUN FATOYINBO ..... DEFENDANT

RULING

DELIVERED ON 14TH NOVEMBER, 2019

By a Writ of summons dated the 6th day of September, 2019 and filed on the same day, the Claimant commenced this suit. Sequel to the consummation of the service of the originating processes on the Defendant, the defendant confronted the Claimant's Writ with a Notice of Preliminary Objection dated and filed on the 20th day of September, 2019 to which the Claimant reached with a Counter –affidavit of 20 paragraphs and a written address in support both of which were filed on the 27th September, 2019. In reply, the Defendant filed a further – affidavit of 18 paragraphs and a written address both of which were filed on the 7th day of October, 2019.

I have carefully studied the entirety of the processes filed in this matter by both the party in pursuit and the party in defence. I will first of all proceed with the resolution of the defendant's of preliminary objection dated and filed on the 20th day of September, 2019 which is Motion No. M/8938/19. It is the correct and long-settled view of the law that whenever a preliminary objection is raised against the hearing of an application or on the competence of the application itself, ***Okoi v. Ibiag*** (2002) 10 NWLR (pt. 776) page 445 at 468, the preliminary objection should be considered, **Osun State Government V. Olawi (Nig.) Ltd** (2003) 7 NWLR (pt. 816) page 72 and resolved or determined first by the court, **Jaiye v. Abioye** (2003) 4 NWLR (pt. 810) page 397 at 414 before going into the merit of the matter, ***UBA Plc v. ACB (Nig.) Ltd*** (2005) 12 NWLR (pt. 939) page 242. This is so because the primary purpose of Preliminary objection is to terminate the application in *limine, Adelekan v. ECU-Line NV* (2006) 12 NWLR (pt. 993) page 33. Its success may render the consideration of the matter unnecessary. Nigeria

Fees – ₦5000
Rec – 11659703
Date – 14/11/2019

FEDERAL REPUBLIC OF NIGERIA F.C.T. JUDICIARY CERTIFIED TRUE COPY SIGN ..... DATE 14/11/2019 NAME ..... HIGH COURT OF JUSTICE

Navy v. Gawick (2006) 4 NWLR (Pt. 969) page 69 and avoid an exercise in futility by the Court, ***William v. Ibejiako (2008) 15 NWLR (Pt. 1110) page 367.*** I will therefore consider and dispose of ***Motion No. M/8938/19*** first in line with the directive of established authorities, ***Bamilile v. Osasuvi (2007) 13 NWLR (Pt. 996) page 1.***

From the ancient past in the often-cited and venerable case of ***Madukolu v. Nkemdilim (1962) NSCC Volume 2, 374 at pages 379-380***, the courts have always delimited the contours of a court's jurisdiction in this now venerable passage;

> ***"Before discussing those portions of the record, I shall make observations on jurisdiction and the competence of a court. Put briefly, a Court is competent when- (a) It is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or another; and (b) The subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction; and (c) The case comes before the court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of its jurisdiction."***

In the present preliminary objection challenging this Court's jurisdiction, the Defendant/Objector anchored his agitations on the ground, among others, that (a) *the Claimant's suit is statute barred therefore this Honourable Court lacks the jurisdiction to entertain them, (b) The suit is frivolous and a palpable abuse of court process, (c) The suit has no cause of action for this Honourable Court to adjudicate upon and that (d) the reliefs sought in the instant suit are not grantable therefore this suit is incompetent.* In consequence, the Defendant entreated this Honourable Court to enter *an Order dismissing/striking out this suit for being statute barred and incompetent, an Order of this Honourable Court dismissing this suit for being an abuse of judicial process and an Order awarding the cost of NGN 50, 000, 000. 00 (Fifty Million Naira Only) jointly and severally against the Claimant and her Solicitor pursuit (sic) to relief two (2).* It has been said that a plea by a Defendant that an action is statute barred is a plea which raises the issue of jurisdiction. To determine whether or not an action is statute barred, the determinant are the writ of summons and the statement of claim, ***ESTATE OF LATE MR. EMMANUEL AKOSA IBEGBU & ORS v. ODUM (2017) LPELR-42636(CA).*** In *Egbe v. Adefarasin (1987) 2 NWLR (Pt.47) 1,* the Supreme Court had considered and simplified the duty of the Court when faced with the resolution of the issue whether or not a suit is statute barred and had succinctly pronounced with finality thus:

"How does one determine the period of limitation? The answer is simply by looking at the writ of summons and the statement of claim alleging when the wrong was committed which gave the plaintiff a cause of action and by comparing that date with the date on which the writ of summons was filed. This can be done without taking oral evidence from witnesses. If the time on the writ is beyond the period allowed by the limitation law, then the action is statute barred."

In determination of whether a suit is statute barred or not, the law is well settled that the Court will have recourse to the endorsement of the writ of summons, ***Egbe v. Adefarasin (1987) 2 NWLR (Pt.47) 1*** where the statement of claim has not been filed, or the statement of claim of the Claimant, where it has been filed, to examine to ascertain when the cause of action arose and compare same with the date the writ was filed to see if it was filed within time or not, ***P. N. Udoh Trading Co. Ltd v. Abere (2001) FWLR (Pt.57) 900***. In other words, the issue whether a claim is statute barred or not can be determined on the pleadings of the Claimant, ***Obiefuna v. Okoye (1961) All NLR 357*** even without taking evidence of the parties, ***Anwu v. Aniboye (2001) FWLR (Pt.4) 845***. Since the Claimant's endorsement on her Writ of Summons and her Statement of Claim are before me in this suit, I am to proceed to examine them, as I am entitled to, in determining whether or not the instant suit has, as strenuously canvassed by the Defendant's Counsel, become dormant and fallen into the category of stale actions said in law to be statute-barred, ***Egboigbe v. NNPC (1994) 5 NWLR (Pt.346) 649***.

The Claimant's claims are for:

A. A DECLARATION of this Honourable Court that the Defendant's acts, to wit: (i) forcefully pushing the Claimant until she fell on the couch close to the front door of her house; (ii) pinning her to the couch (iii) undressing her; (iv) caressing her body; (v) fondling her breast; (vi) exposing her genitals to her glare; (vii) forcing a bottle of soda (Krest) down her throat thereby making her breathing difficult, (viii) all the while covering her mouth to muffle her screams, and; (ix) threatening her life on the 23rd day of September, 2002, jointly and/or severally are outrageous and reckless, and have caused the Claimant continuous emotional distress and amount to Intentional Infliction of Emotional Distress on the Claimant.

B. A DECLARATION of this Honourable Court that the Defendant's acts, to wit: (i) driving the Claimant to a secluded area; (ii) forcefully pulling her out of the car; (iii) undressing her, (iii) spanking her buttocks; (iv) threatening her life (v) caressing her; (iv) fondling her breasts; and (v) exposing her genitals to her glare on the 26th day of September, 2002, jointly and/or severally are outrageous and reckless, and have caused the Claimant continuous emotional distress and amount to Intentional Infliction of Emotional Distress on the Claimant.

C. A DECLARATION of this Honourable Court that the Defendant's acts, to wit: (i) having sexual intercourse with the Claimant on the 23rd and 26th of September, 2002 jointly and/or severally are outrageous and reckless, and have caused the Claimant continuous emotional distress and amount to Intentional Infliction of Emotional Distress on the Claimant.

D. A DECLARATION of this Honourable Court that the Defendant's denial of his acts contained in A, B, and C, jointly and/or severally above, through a press statement released on the 28th day of June, 2019 has caused the Claimant continuous emotional distress and amount to Intentional Infliction of Emotional Distress on the Claimant.

E. AN ORDER of this Honourable Court directing the Defendant to publish a clearly worded apology to the Claimant on the front page of at least two (2) National Newspapers and two National Televisions for seven days running consecutively.

F. AN ORDER of this Honourable Court directing the Defendant to address a personal letter of apology to the Claimant, showing honest remorse for his misdeeds.

G. Cost of this action estimated at the sum of N10, 000, 000.00 (Ten Million Naira).

I have read the entirety of the Claimant's Statement of Claim and my attention has been drawn to ***paragraphs 29, 31, 32, 34 and 37*** of the Claimant's Statement of Claim as bringing out in their aggregate content the date of the accrual of the Claimant's cause of action. I will reproduce the said paragraphs for a thorough scrutiny thus:

29. The Claimant avers that on the next day, 23rd day of September, 2002, between the hours of 6:30 and 7:30 am, while she was still dressed in her night gown and in the kitchen all by herself doing her routine chores, with Mrs Funto Oluyori (nee Amupitan) - her only sibling present at home and who had returned late the previous night, still in bed upstairs, she heard a knock on the front door of her family house.

31. The Claimant avers that as she opened the door to let the Defendant in, he hurriedly pushed her backwards forcefully, causing her to fall on her back onto a couch close to a front door in the living room.

32. The Claimant avers that she was immediately terrified and in shock while the Defendant pinned her down on the couch following which he caressed her, fondled her breasts, pulled her pant, quickly half-pulled his trousers and ordered her to allow him have his way with her.

34. The Claimant avers that Defendant made efforts to penetrate her vagina, whilst she struggled to fight him off; however, the Defendant overpowered her and penetrated her vagina and had sexual intercourse with her.

37. The Claimant avers that she has since been emotionally and psychologically traumatised, and has continued to live in fear and emotional distress and, greatly grieved by the Defendant's threats, forced herself to repress the memory of her ordeals at his hands, to wit: (i) forcefully pushing the Claimant until she fell on the couch close to the front door of her house; (ii) pinning her to the couch (iii) undressing her; (iv) caressing her body; (v) fondling her breast; (vi) exposing her genitals to her glare; (vii) all the while covering her mouth to muffle her screams ; (viii) forcing a bottle of soda (Krest) down her throat thereby making her breathing difficult, and; (ix) threatening her life.

One of the most crucial aspects of the dispensation of justice is that of time. It has been the law that an action is statute-barred where 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, ***Odubeko v. Fowler (1993) 3 N.W.L.R. (Pt. 308) 637***. In other words, the plaintiff's action commenced after the expiration of the period within which the action must be brought as stipulated in the statute of limitation is not maintainable, ***Ekogu v. Aliri (1991) 3 N.W.L.R. (Pt. 179) 258; Etim v. IGP (2000)***

*11 N.W.L.R. (Pt. 724) 266 @ 284; (2000) 4 W.R.N. 134 @ 148.*A statute which prescribes or limits the period of time within which the right to enforce a legal right or claim by use of the judicial processes of a court of law, is known as a statute of limitation in relation to any action taken to enforce such a right or claim in court, ***Civil Service Commission &Anor V. AkwaIbom State Newspaper Limited &Anor (2013) LPELR 21138(CA),Garba, J. C.A.*** Limitation laws are enacted to protect persons against claims made after disputes have become stale, evidence has been lost, memories have faded, or witnesses have disappeared.

A suit is said to be statute barred if initiated or commenced after the expiration or effluxion of the period of time prescribed and limited by the provisions of statute for the initiation or commencement of such a suit by way of the judicial processes of a court of law, ***Civil Service Commission &Anor V. AkwaIbom State Newspaper Limited &Anor (supra).*** It was stated in ***Ogboru v. Uduaghan*(2012) 11 N.W.L.R. (Pt. 1131) 357 at 393**, that the effect of a limitation law is that legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period, *@ 393, para G, per Adekeye, J.S.C.* The principle of statute of limitation of action is premised on the notion that no one should remain under threat of being sued indefinitely and that the right to enforce a claim through the judicial processes of a court of law should not be forever. It has been said that although the periods prescribed in some limitation laws may appear to be arbitrary, they bear a rough relation to the times for which reliable evidence of the respective transactions may be expected to endure.

The rationale for the existence of such statutes is premised on the following factors:-

(a) *that long dormant claims have more cruelty than justice in them,*

Horikolo v. AGF (2003) FWLR (184) 349 at 363:

(b) *that the person against who they might be made may have lost the requisite evidence to disprove the claim due to passage of time,*

Aremo II v. Adekanye (2004) 7 SC (Pt.II) 28; and

(c) *that a person with good cause of action should pursue them with reasonable diligence,* ***Egbe v Adefarasin (1987) 1 NWLR (47) 1 at 20.***

The effect of the application of the principle of the statute of limitation is that a party who might have had a right or cause of action, loses the right to enforce the cause of action through or by the judicial processes of a court of law because the period of limitation laid down by the relevant law for instituting or commencing the action or suit has expired or lapsed, ***Adimora v Ajufo (1988) 6 SCNJ, 18; Adekoya v FHA (2008) 6 MJSC, 66***. It is to be reiterated that an action instituted after the expiration of the prescribed period is said to be statute barred, ***Ogundipe v NDIC (2008) ALL FWLR (Pt. 432) 1220 at 1239***.That is to say that where the limitation of time is imposed in a statute unless that same law makes provision for extension of time, the Courts have their hands tied from extending the time as the action filed outside the stipulated period will lapse by effluxion of time, ***Eboigbe v NNPC (1994) NWLR (Pt.347) 549***. The rational underpinning these limitation laws was most adroitly explained by the Supreme Court speaking through Nweze, J.S.C. in the case of ***Mrs. Comfort OlufunmilayoAsaboro&Anor v. Pan Ocean Oil Corporation Nigeria Limited &Anor, (2017) LPELR-41558(SC)*** thus:

> *All Limitation Statutes owe their evolution to considerations founded on public policy. First, there is the ancient principle which is now famous for its ubiquity. It is expressed in Latin: interest relpublicaeut sit finis litium - it is in the public interest that there should be an end to litigation. In addition to this requirement of public policy, the Law has also taken the view that a stale claim may not only be unfair to a defendant, it may wreak cruelty on him. The reason is simple: with the vagaries of events; the concatenation of avoidable and unavoidable circumstances and the sheer passage of time, such a defendant stands the chance of losing material pieces of evidence which, hitherto, formed part of the formidable arsenal in his defence. Limitation statutes thus evolved to vouchsafe to such a defendant a statutory defence to such a stale action. That is why such an action is said to be statute barred. This formulation has an illustrious judicial ancestry.*

It bears no repetition that all limitation laws have for their object the prevention of the rearing up of claims that are stale, ***Odekilekun v. Hassan (1997) 12 NWLR (Pt.531) 56***. It is equally important to note that a statute of limitation begins to run from the moment the cause of action arose, ***Eboigbe v. The Nigerian National Petroleum Corporation (1994) 5 NWLR (Pt. 347) 649***. It is immaterial that a party was absent from the jurisdiction or that there was no court within the jurisdiction to

entertain the claim, ***Ajibona v. Kolawole (1996) 10 NWLR (Pt.476) 22***. Similarly, illiteracy will also not avail the plaintiff because ignorance of the law is no excuse, ***Akibu& Ors v. Azeez& Ors (2003) 5 NWLR (Pt.814)643; (2003) 1 S.C (Pt.II) 71.***

I have undertaken a very thoughtful and critical examination to the claims of the Claimant which I have earlier reproduced verbatim and her Statement of Claim from which I have made excerpts especially the paragraphs bearing out the dates of the occurrence of the events forming the Claimant's cause of action. I have listened to and anxiously studied the submissions of Counsel on the both sides respecting this preliminary objection woven around the relevant limitation law as applicable to the case of the Claimant and its interpretation thereof. The limitation law governing limitation periods for the institution of different suits within the Federal Capital Territory, Abuja is the ***Limitation Act of the Laws of the Federal Capital Territory Abuja which by its Sections 7 (4), 8 (1) & (2) and 68*** clearly provides as follows:

> *S. 7 (4) Subject to the provisions of Section 8 of this Act, an action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued.*
>
> *S. 8 (1) The section applies to action claiming damages for negligence, nuisance, or breach of duty (whether the duty exits by virtue of a contract or of a provision made by or under an enactment or independently of a contract or of the provision), where the damages claimed by the Plaintiff for the negligence, nuisance or breach of duty consist of or include damage in respect of personal injuries to a person.*
>
> *S. 8 (2) Subject to the provisions of this section, no action to which this section applies shall be brought after the expiration of three years from the date on which the cause of action accrued.*
>
> *Section 68 of the Act which is the definition section defines personal injuries to include "an impairment of a person's physical or mental condition."*

Indeed after fastidiously reflecting on these provisions of the Limitation Act and juxtaposing it with the Claimant's Writ of Summons and her Statement of Claim, I have no difficulty in finding as a fact that no matter how one wishes to calculate the Claimant's cause of action and no matter the calendar deployed, all her claims as projected by her Writ of Summons and Statement of Claim have become stale

being clearly caught up by the combined provisions of the above identified portions of the Limitation Act that extantly holds sway in the Federal Capital Territory, Abuja. For the avoidance of doubt, the recurring decimal in the entirety of the Claimant's processes are ***23rd and 26th September, 2002***. This is vindicated by the wordings of ***reliefs A, B, and C*** earlier reproduced. That is over sixteen (16) years now by our Gregorian Calendar! The argument of the Claimant that a new cause of action arose on the 28th day of June, 2019 is a non-starter and tasteless. Truth is, relief D resting on the purported fresh cause of action that purportedly arose on the 28th day of June, 2019 *is tied to and feeding on reliefs A, B, and C which are the principal claim*. Whatever is the fate of reliefs A, B, and C equally befalls relief D. Relief D is therefore ancillary to reliefs A, B, and C. This is vindicated by the language used by the Claimant in couching the said relief which at the risk of prolixity I reproduce once more:

> *A DECLARATION of this Honourable Court that the Defendant's denial of his acts contained in A, B, and C, jointly and/or severally above, through a press statement released on the 28th day of June, 2019 has caused the Claimant continuous emotional distress and amount to Intentional Infliction of Emotional Distress on the Claimant.*

I must state that the argument of the Claimant to the effect "*that the cause of action of the respondent is predicated on the Tort of the Intentional Infliction of Emotional Distress, which is different from Negligent Infliction of Emotional Distress*" is rather a disingenuous attempt at confusing apples with oranges. It is a futile attempt at establishing a difference between six and half a dozen. The same goes for his tenuous agitations suggesting that the claims of the Claimant does not come under "*personal injury*" as contemplated by the Limitation Act. This argument is skewed to the extent that no matter the nomenclature ascribed to the claims of the Claimant, it still comes under the general rubric of Tortuous acts covered by ***Section 7 (4) of the FCT Limitation Act*** prescribing that the ventilation of such claims must be commenced within six years and not be brought after six years of the occurrence or the accrual of the cause of action. Let me say quietly that such unnecessary hairsplitting, wind-chasing and semantic rigmarole by the Claimant's Counsel amounts to stretching of logic to a ridiculous extreme which is rather unhelpful to the case the Claimant strove to push forward in this Court. I choose to say no more on this. The Claimant's Counsel made clever by half efforts

to avoid using the word "rape" in his processes. But at ***paragraph 34 of the Claimant's Statement of Claim***, the Claimant's Counsel clearly pleaded thus:

> *34. The Claimant avers that Defendant made efforts to penetrate her vagina, whilst she struggled to fight him off; however, the Defendant overpowered her and penetrated her vagina and had sexual intercourse with her.*

When in law a man overpowers a woman being not his wife and forcefully penetrates her vagina and has sexual intercourse with her against her will, what offence is said to be committed if not rape? The Claimant's Counsel can now see that all along he has been hiding behind one finger. The Claimant is the owner of her case and not the Court. Her Counsel in this Court has insisted *that the cause of action of the respondent is predicated on the Tort of the Intentional Infliction of Emotional Distress.* I shall therefore continue to confine myself with the case of Tort and no more.

With the above factual findings, I find as strongly persuasive and endorse the deductions made by the Defendant's Counsel when he neatly itemised the under-listed facts as being not in dispute:

1. It was the alleged rape as claimed against the defendant that caused the emotional distress or injuries of the Claimant.

2. The said alleged rape is claimed to have happened in 2002 as alleged by the Claimant against the Defendant in the Statement of Claim and Writ of Summons.

3. The said Statement of Claim and Writ of Summons was filed on the 19th day of September, 2019.

4. The Claimant's action is a Tortuous action brought before this Honourable Court

5. There is a Statute of Limitation which prescribes the duration within which a party can institute Tortuous actions in Court.

6. The claim of the Claimant is for damage suffered in respect of personal injuries or Emotional distress suffered as a result of the alleged rape.

7. Section 68 of the FCT Limitation Act defines personal injuries to include "an impairment of a person's physical or mental condition."

To be able, therefore, to enjoy the dividends which recourse to the judicial process affords, such a plaintiff [as the Claimant in the instant case] must commence his action within the period stipulated by statute [that is within 3 years in the case of personal injury and 6 years in the case of any action founded on tort counting from the *23rd day of September, 2002 and 26th day of September, 2002*], ***Sanda v Kukawa Local Government (1991) 2 NWLR (Pt. 174) 374.*** In other words, it is a mandatory requirement, ***Sidi Ali v Takwa (2004) WRN 180.*** Thus, legal proceedings cannot be validly instituted after the expiration of the prescribed period, ***Patkum Industries Ltd v Niger Shoes Ltd (1988) 5 NWLR (Pt. 93) 138.*** What emerges from all that has been said is that whereas the plaintiff's cause of action remains intact, although in a vacuous and bare form, a statute of limitation denudes him (the Claimant) of his action, that is, his right of enforcement, ***Jallco Ltd. Vs Owoniboys Technical Services Ltd. (1995) 4 NWLR (Pt.391) 534;*** the right to judicial relief, ***Sosan& Ors. v. Ademuyiwa& Ors. (1986) 3 NWLR (pt. 27) 241 at 256.***

The undoubted jurisprudence eventuating from a conspectus of authorities on the point points irresistibly to the effect that all superior courts are imbued with inherent powers to enter an order dismissing an action where the delay is intentional and contumelious either on the application of the party likely to be prejudiced by such delay or on the court's own volition as long affirmed in ***Chime V. Ude (1996) 7 NWLR (pt. 461) S.C. 379***. The rational for this unbending policy of the law was forcefully brought to the fore by no less a person than that great and fine Judge, Lord Denning, MR in ***ALLEN V. MCALPINE (1968) 1 ALL E.R. 543 at pages 546-547*** where he stated thus;

> *"All through the years men have protested at the law's delay and counted it as a grievous wrong, hard to bear. Shakespeare ranks it among the whips and scorns of time (Hamlet, Act 3, SC 1). Dickens tells how it exhausts finances, patience, courage, hope (Bleak House, C. 1). To put right this wrong, we will in this court do all in our power to enforce expedition; and if need be, we will strike out actions when there has been excessive delay. This is a stern measure; but it is within the inherent jurisdiction of the court... In all the circumstances, I think the delay was so great as to amount a denial of justice... That claim depended on an investigation of facts which took place nearly nine years ago. The delay has been so great that two out of six*

witnesses cannot now be traced: and the memory of the other four must be greatly impaired. It is impossible to have a fair trial after so long a time."

More telling is the classic contribution of Lord Diplock. His incisive contribution has a more defining impact on the point we are making. Hear him;

"Moreover, where the case is one in which at the trial disputed facts will have to be ascertained from oral testimony of witnesses recounting what they then recall of events which happened in the past, memories grow dim, witnesses may die or disappear. The chances of the court's being able to find out what really happened are progressively reduced as time goes on. This puts justice to hazard... There may come a time, however, when the interval between the events alleged to constitute the cause of action and the trial of the action is so prolonged that there is a substantial risk that a fair trial of the issues will no longer be possible. When this stage has been reached, the public interest in the administration of justice demands that the action should not be allowed to proceed."

Here in Nigeria, our Supreme Court, relying on the ratio laid down by Lord Denning in the above cited English case, pronounced with greater force in favour of the proposition that courts have the inherent jurisdiction to dismiss an action afflicted with the deadly virus of inordinate delay in the case of ***Ajayi v. Omoregbe (1993) 6 NWLR (Pt. 301) 512*** thus;

"This inherent jurisdiction is the power resident in all courts of superior jurisdiction, which is necessary for the proper and complete administration of justice and essential to their existence... It seems to me that the exercise by the court of its inherent jurisdiction to dismiss an action before it is an answer to the risks likely to result from trial of actions where there is an inexcusable, inordinate delay. The general experience at the trial of actions is that recollection of events must have been dim and waned by the effluxion of time – See Ariori & Ors v. Elemo & Co (1983) 1 SCNLR 1. vital witnesses might have been lost by death or are now outside the jurisdiction and cannot be traced. In some cases apathy has set in and there is the unwillingness or indeed lack of desire of available important witnesses to give evidence. This is the scourge of delay on justice. Hence the aphorism, justice delayed is justice denied. A hearing under such a situation as stated above cannot be described as fair to the parties, and cannot survive the test of fairness under

section 33 of our constitution 1979 – See Mohammed v. Kano N.A. (1968) 1 ALL NLR 424"

The incidence we are dealing with here occurred over the past sixteen years. It is clear that *inordinate delay* which our laws and the courts have protested against can have no better definition than this! The argument canvassed by the Claimant [6.1 to 6.47 of the Claimant's written address] suggesting that the affidavit of the Defendant in support of the his preliminary objection is in violation of Section 115 of the Evidence Act is neither here nor there. It may well be so that the said affidavit has breached Section 115 of the Evidence Act [which is not my finding], however, the overriding consideration which the Claimant's Counsel seems to have overlooked is that agitations of jurisdiction can be raised at any time even for the first time at the Supreme Court and can even been raised anyhow whether in writing or viva voce as extrapolated and confirmed by the Supreme Court, Per Nweze, J.S.C. in ***Oni vs. Cadbury Nigeria PLC [2016] LPELR-26061 (SC)***, thus:

> *Thus, although it is desirable that preliminary objection on issues of jurisdiction be raised early, once it is apparent to any party that the Court may not have jurisdiction, it can be raised even viva voce. What is more, it is always in the interest of justice where necessary, to raise jurisdictional issues so as to save time and costs and to avoid a trial which may ultimately amount to a nullity. Osadebay v. A G., Bendel State (1991) 1 NWLR (pt.169) 525; Owoniboys Tech. Services Ltd v. John Holt Ltd (1991) 6 NWLR (pt.199) 550, Okesuji v. Lawal (1991) 1 NWLR (pt.170) 661; Katto v. Central Bank of Nigeria (1991) 1 NWLR (pt. 214) 126; Utih v. Onaytare (1991) 1 NWLR(pt. 166)166*

Let the Learned Counsel for the Claimant's learn this jurisdictional ground rule once and for all. The Defendant's Learned Senior Counsel, prayed for cost against the Claimant's Counsel for bringing this suit, which he argues is frivolous and borders on extreme recklessness. I have adverted my mind to the submissions made by the Claimant's Counsel [at paragraphs 5.21.1 to 5.21. 10 of the Claimant's written address] in resisting the award of cost either against him or the Claimant. I have calmly reflected on the entire circumstances of this case and after due weight accorded to the submissions of Counsel on the point, I am satisfied that this suit being an abuse of court process is a deserving case for award of cost favour of the Defendant as prayed and against the Learned Counsel for the Claimant which I is hereby assessed at One Million Naira [N1, 000, 000.00]. This is in line with his

undertaking to pay damages in the event this suit turns frivolous, there is nothing ingenious in not looking at the statute of limitation before bringing this action. I would have awarded ten times that amount, but in the interest of women who have cases that are not dormant this court shall always encourage them to come forward.

In passing, I observe that what we are now left with in this suit is sentiment. This suit is soaked in emotions and ferried into this Court by the Claimant riding on the thick clouds of burgeoning sentiments, ***Onyia vs. Onyia (1989) 1 NWLR (Pt.99) 514*** with every intent of submerging the Defendant in the miasma of its catastrophic dust. Time and again courts have persistently posited that emotions and sentiments, no matter how they are dredged up, and even public opinion do not command any place in the adjudicatory processes, ***Ezeugo vs. Ohanyere (1978) 6-7 SC 171***. The Court reminds us in ***Eze vs. State (2017) LPELR-42006 (CA)*** that:

> *A trial court must be careful to sift facts from sentiment in adjudication. He must stay off the miasma of sentiment and use the clean lens of the law to scrutinize the facts before him. Sentiments are poisonous to rational thinking. They becloud reasoning.*

The commandment is that *'A judex should avoid apparent sentimental adjudication. He must call a spade by its real name; not a shovel'*, ***State vs. John (2013) LPELR-20590 (SC)***, per Fabiyi, J.S.C.

Indeed there is no escape route for the Claimant's claims, ***Ajayi v. Omoregbe (1993) 6 NWLR (Pt. 301) 512***. They are all statute barred, ***ALLEN V. MCALPINE (1968) 1 ALL E.R. 543*** and the doors of this Temple of Justice are permanently shut against them. Forever and ever they can never be revived, litigated and/or ventilated, ***Mohammed v. Kano N.A. (1968) 1 ALL NLR 424*** . They have become dormant, ***Sosan& Ors. v. Ademuyiwa& Ors. (1986) 3 NWLR (pt. 27) 241 at 256*** and stale! I find that there is a substantial risk that a fair trial of the issues in this case will no longer be possible, ***Chime V. Ude (1996) 7 NWLR (pt. 461) S.C. 379***. Indeed, proceeding to hear this matter on the merit will certainly put justice to hazard, ***Ekogu v. Aliri (1991) 3 N.W.L.R. (Pt. 179) 258***. The essence of a fair trial will on the premise of this pleading, which are dormant and stale be defeated. I must caution that dormant claims, such as this, have injustice written all over it. No matter how one views the claim, having compassion, that an issue such as rape is pleaded herein, it is my view that

notwithstanding the statute of limitation, it will occasion a grave miscarriage of justice to ask the defendant to defend an action that is well over 16 years. Hence the claims carry more of cruelty in them, than justice. There are no new facts resurrecting the broken chain of causation in the instant action. Where, as in this case, the claimant ought to demonstrate the reason why the action was not filed for over 16 years. This she ought to have done by claiming, for instance, due to DNA evidence, they have been able to discover new facts that were allegedly not available and tie the said DNA to the defendant. This is not the case in the instant action.

It is for all the reasons I advanced herein before, that I declare this action as a vehicle of injustice, judicial intimidation and thorough abuse of judicial process carrying in it an overload of dormant claim and injustice , it must and is hereby dismissed. I hereby award the cost of One Million Naira (N1, 000,000.00) against the Claimant's Counsel Personally.

APPEARANCES:

Omega Emmanuel Esq. with me Samuel Ibrahim Esq. for the Claimant / Respondent

F. O. Izinyon Esq. With me Alex Izinyon II, Esq., Ayompe Ungiton, Esq. for the Defendant / Applicant .

Sign

Hon. Judge

14/11/2019

FEDERAL REPUBLIC OF NIGERIA
F. C. T. JUDICIARY
CERTIFIED TRUE COPY
DATE 14/11/2019
SIGN
NAME
HIGH COURT OF JUSTICE ABUJA