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ACCRUAL OF CAUSE OF ACTION FOR THE OPERATION OF LIMITATION PERIOD IN EMPLOYMENT MATTERS IN NIGERIA: DR. FABUNMI V. UNIVERSITY OF IBADAN & ANOR: LESSONS FROM GHANA AND UGANDA

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ABSTRACT

Crystalisation of the right to seek legal redress is known as accrual of cause of action, which is when all the factual circumstances that would justify and enable an aggrieved party to seek legal redress have occurred and to his/her knowledge. However, the Nigerian Court of Appeal in *Dr. Fabunmi v. University of Ibadan & Anor.* held that the cause of action for dismissal of an employee arises from the date the letter of dismissal was dated, not when it was delivered or received by the dismissed employee. This paper adopts doctrinal and comparative methods, relying on primary and secondary data to examine the impact of this decision on the security of employment in Nigeria and its sustainability. It raises the question of whether it is legally practicable for an employee whose termination has not been communicated to by the employer to take steps to challenge the same in court. The paper argues that this decision is capable of enabling employers to perpetuate fraud and unfair labour practices in the course of termination of employment, since it holds that the cause of action accrues based on the date the termination letter is written, rather than the date it is delivered or received. It found that the court failed to take cognisance of the fact that countenancing when the letter of dismissal/termination is dated as opposed to when it was delivered/received by the concerned employee is encouraging concealment by employers to ensure that before employees would take steps to challenge dismissal/termination of

their employment, limitation period would have set in. Also, the decision is diametrically opposed to the principle that the law does not require the doing of the impossible, as a person cannot be expected to seek legal redress over a wrong unknown to him/her. Giving the prevalence of unemployment in Nigeria, the decision is an unwelcomed development; while it is noted that by virtue of Section 253 of the Constitution of the Federal Republic of Nigeria 1999, the decision of the Court of Appeal on civil matters from the National Industrial Court is final, therefore, there cannot be further appeal to the Supreme Court. To address the problem created by Fabunmi's case, it is recommended that the Court of Appeal, in subsequent cases, should jettison the position taken in this case so that it will not be a precedent.

Keywords: Accrual of cause of action, access to court, Nigeria, limitation period in contract of employment, statute barred, Ghana, Uganda.

INTRODUCTION

For a person to approach the court to ventilate any grievance, a cause of action (hereinafter simply referred to as C of A) (i.e., fact(s) justifying the seeking of a remedy from the court) have occurred and there is a person to sue and be sued as was held in *P. N. Udoh Trading Company v. Abere* (1996). Failure of this, the action will be pre-emptive and the court will not have the requisite jurisdiction to entertain the same as decided in *Charles & Anor. v. Governor of Ondo State* (2013). It is a settled position of law that where there is a legal wrong, there will be a remedy or put in another way, equity will not suffer a wrong to be without a remedy as was held by the Supreme Court of Nigeria (the SCN) in *Bello v. AG, Oyo State* (1986). By this, anyone who has suffered a legally recognised wrong, where he/she approach the court for redress, the court is bound to give an appropriate remedy for the injury suffered as was decided by the court in *Oyekanmi v. N.E.P.A.* (2000).

However, where a C of A has arisen, the same may not subsist in perpetuity, requiring the aggrieved party to approach the court within a particular period of time, or the right to do so would be abated, rendering the C of A sterile as was held in *Omomeji v. Kolawole* (2008). This is hinged on the principle of limitation period, which requires that actions against public officers, pursuant to the provisions of the Public Officer Protection Act (POPA) (and its State equivalents), be filed within three months from the date of the accrual of the cause of action as in *Nwankwo v. Yar'Adua* (2010). Failure to comply with this mandatory requirement of the law will extinguish the right of the aggrieved party to ventilate their grievance in the law court in perpetuity as determined by the Nigerian Court of Appeal (hereinafter simply referred to as CA) in *Yare v. N.S.W.I.C.* (2013). Thus, it is correct to assert that in litigating grievances against a public officer, time is of the essence. Aside from the POPA, the Limitation Act/Law also specifies a timeframe within which certain disputes must be instituted in court; otherwise, the right to do so will be permanently extinguished.

In *Dr. Fabunmi v. University of Ibadan* (2016), the CA held that where an employee is dismissed and seeks to challenge the same, the C of A arises from the date the letter of dismissal was dated and not the date it was delivered/received by the employee. This decision raises some questions, including but not limited to: how can an employee be logically expected to challenge the decision of an employer, which he has neither expressed nor implied notice of? Does countenancing the date the dismissal letter was dated and not the date it was delivered or even received as the date the C of A crystallises for the purpose of computation of period of limitation, not negate the position that the law does not command the doing of the impossible? Does the act of countenancing the date the letter of dismissal is dated, as

opposed to when it was delivered/received, not amount to tacit encouragement of employers to withhold dismissal letters so that the limitation period will set in before the employee can take steps to challenge the same? Given the unparalleled surging level of unemployment in Nigeria, which necessitates the protection of workers and their work, is this decision a welcome development? What is the potential impact of this decision on the security of employment and decent employment in Nigeria? These questions form the crux of this paper. The paper contends that the decision is unfair, inequitable and fails to align with the equitable principles that although equity follows the law, it does not do so slavishly or sheepishly, and that equity will not follow the law, where doing so will result in avoidable and unjustifiable hardship. The employer in this case seems to have been permitted by the CA to benefit from its wrong or perceived wrong of giving notice of the dismissal at a later date, which circumvents the time statutorily allowed for the appellant to challenge its alleged unlawful action.

The article adopts doctrinal and comparative methods in interrogating the question: when is a C of A said to have accrued for the limitation period to start counting under Nigerian, Ghanaian and Ugandan law? This was achieved by relying on primary data such as the Constitution of the Federal Republic of Nigeria, 1999, case law and statutes from the three jurisdictions and secondary data such as articles in learned journals, standard textbooks, and online materials relevant to the issue under consideration. These literatures were subjected to content and jurisprudential analysis from which findings and recommendations were drawn and made.

By structure, the article has five parts. Part one includes the introduction. Part two examines the law on accrual of C of A and limitation of time for adjudication of a C of A. Part three reviews the decision in Fabunmi's case. Part four focuses on matters arising from the CA's decision in Fabunmi's case. Part five contains the conclusion and recommendations.

METHODOLOGY

The paper was written using the analytical method based on content analysis of the case under review. It adopted comparative analysis of the position of the law in Ghana and Uganda on the subject of accrual of time for the operation of limitation period by analysing case laws from these jurisdictions in comparison with Nigeria on the issue: when is a C of A said to have accrued for limitation period to start counting under Nigerian, Ghanaian and Ugandan law? This was achieved by relying on primary data such as the Constitution of the Federal Republic of Nigeria, 1999, case laws and statutes from the three jurisdictions and secondary data such as articles in learned journals, standard textbooks, and online materials relevant to the theme of analysis. These literatures were subjected to content and jurisprudential analyses from which findings were drawn, and recommendations were made. Moreover, the use of the qualitative method aligns with the in-depth explanation of phenomena and involves collecting data in a comprehensive manner. This method is particularly suited for interrogating legal themes on a comparative basis, particularly with regard to the accrual of C of A for the operation of the limitation period. Conclusions were drawn using a deductive approach, solving problems by reasoning from general principles to specific conclusions.

RESULTS

Accrual of Cause of Action and Operation of Limitation Period Under Nigeria's Corpus Juris

Where a legal wrong has been occasioned and an injury has been or is likely to be suffered by the person against whom the wrong is directed, there is said to be an action C of A as was held in *Adimora v. Ajufo* (1988). What this means is that where there is either an action or omission by one party which has or is capable of injuring the interest of another, who is as a result of the action/omission, entitled under the law to set in motion legal machinery for the purpose of seeking redress, either to avert the potentially injurious action/omission or claimed damages or other appropriate remedy for the injury a C of A exists. Thus, a C of A is the fact(s) that establishes or engenders a right of action. It is the factual condition which invests an individual with a right to judicial relief, as was held in *Shell Petroleum Development Company Ltd. v. Ajuwa* (2015).

Thus, the SCN in *Nweke v. Nnamdi Azikiwe University, Awka* (2017) in defining action C of A held that a "cause of action comprises of every necessary fact which would be required for the plaintiff to prove if denied, in order to support his/her right to judgment." The CA in *Akwa Ibom State University v. Ikpe* (2016), in an elaborate manner, affirmed the position above. What the foregoing connotes is that a C of A is the aggregate of facts, which, when proved, entitles a claimant to a remedy against the defendant. Thus, where any fact which proof is necessary for the claimant to be awarded the remedy sought is yet to occur, there is no C of A for the court to adjudicate upon. Take for instance: where A entered into a contract to supply twenty tons of cement to B on June 30, 2024. Whereupon B made a deposit of ₦200,000 (two hundred thousand naira) and the balance was paid on June 26, 2024, as agreed. Ordinarily, a C of A for breach of contract will lie in favour of B where, upon the completion of the agreement (i.e., payment of the agreed sum), A either expressly or by conduct, fails or refuses to deliver the cement on or before the agreed date. However, B will not be able to maintain an action against A for breach of contract on a date later than the agreed date for supply, except A has acted in a way and manner that it is conclusive that he is not going to honour his obligation under the contract. Thus, accrual of C of A is germane to litigation as it is the substratum upon which litigation is built.

Thus, in *Egbe v. Adefarasin* (1987), it was held that a C of A is a matter of fact opposed to law. A right of action is distinguishable from C of A. Thus, in *P. N. Udoh Trading Co. Ltd. v. Abere* (2001), it was held that a right of action is the right to enforce presently a C of A; it is the right of an aggrieved party to set in motion legal machinery in order to ventilate his/her grievance in a court of competent jurisdiction. The right to institute an action entails of the unlawful conduct or a lawful conduct in an unlawful manner of the defendant, which entitles the claimant the right to complain and damages pursuant to the unlawful conduct or lawful conduct in an unlawful manner complaint of as was held in *Okafor v. Bende Divisional Union, Jos Branch & Ors.* (2017). A C of A is said to accrue for the purpose of limitation period upon the happening of an event, whereby a C of A becomes complete so that the aggrieved party can begin and maintain their action by exploiting their right of action in a competent court of jurisdiction. Once the event(s) which entitles an injured person to maintain an action against the person who he/she has legal grievances are complete to his knowledge, a C of A is regarded to have been concretised, and where same is subject to limitation period, time begins to run from the period the fact(s) became complete.

The implication of this is that it is not only important for all the factual situations to have taken place but the claimant to whom the right of action inures must be aware of their occurrence, especially when their occurrence is at the behest of the defendant. The SCN in *Sifax (Nig.) Ltd. v. Migfo (Nig.) Ltd.* (2018) authoritatively espousing on the issue of accrual of cause of action held as follows:

> "*Stated differently, the cause of action accrues when the plaintiff gets to know that his enforceable claim or right has come into existence or become a present enforceable demand or right or has arisen and to prove as a fact during trial, the time a cause of action accrued or arose in determining whether a cause of action is statute barred or not, the most crucial consideration is when the cause of action arose or accrued*."

In ascertaining whether or not a cause of action has arisen, the court usually has recourse to the writ of summons and statement of claims filed by the claimant, the one who seeks a remedy from the court and not the statement of defence of the defendant, as was held in *Dantata v. Mohammed* (2000). Under the Nigerian law, an aggrieved party can maintain an action against anyone, including the government or its agents/agencies, for an alleged wrongdoing pursuant to the provisions of Sections 6(6) (b) and 36 (1) of the Constitution of the Federal Republic of Nigeria, 1999.

However, where a person has been wronged by a public officer, the aggrieved person is expected to approach the court for remedy within a particular period of time, failure which the right of action would lapsed and the C of A will become unenforceable, as same has become statute-barred as in *Woherem v. Emereuwa* (2004). The business of governance is a serious one, which should not be disturbed by defending the lawsuit at the pleasure of the person against whom an alleged wrong has been committed. This is one of the rationales for prescribing a limitation period for action against a public officer. Suffice it to say that the propriety of this rationale is highly contestable as it seems that rather than protecting the populace who in contradistinction to the government, are weaker, the idea of limitation period as practiced in Nigeria, is tacitly empowering the government against its citizens by shielding the government with the cloak of limitation time. In *Ibrahim v. Lawal* (2015), the court held that where a person seeks a remedy against the government or any of its agents/agencies, the same must be sought timely. This is because there are statutes of limitation in Nigeria. The statute of limitations is a law that defines the period during which a lawsuit can be brought in court. To this end, the Public Officers Protection Act (and its State equivalents; i.e., Public Officers Protection Law [POPA and POPL]) as well as statutes setting up governmental agencies, contain limitation periods within which, anyone who has a cause of action against them, must set in motion legal machinery to ventilate the grievance else, the right to do so irreversibly abate. Also, the Limitation Act 2004 and the Limitation laws of the various States contain time frames within which certain grievances must be instituted in court for adjudication. For instance, Sections 7 of the Limitation Act and 8 of Limitation Law of Lagos State, provide that action predicated on breach of contract must be instituted within six years from the accrual of the cause of action, and Section 8(1) of the Limitation Act and Section 9 of the Limitation Law of Lagos State, provide that action for damages for negligence must be brought within three years from when the C of A arose; action for damages for slander by virtue of Section 9 Limitation Act and Section 10 of Limitation Law of Lagos State must be commenced within three years from the time the incident occurred.

Also, Section 2(a) of the POPA limits the time for instituting litigation against a public officer for official acts/omissions to three months after the act/omission. According to Iluyomade and Eka (1992), the government often incurs some liability in defence of cases instituted against its agents/agencies for wrongdoings committed by its servants in furtherance of their duties. It is to assuage this that a provision

has been made restricting the period during which litigation can be initiated against the government for the torts of its servants as provided under limitation statutes. According to Oyewo (2016), the statute of limitation restricts the right to maintain an action and not the C of A, which is rendered nugatory and unenforceable, although its existence cannot be denied. According to Chinwo (2021), the essence of the Public Officer Protection Act and its equivalents is to smother the C of A if it is commenced when the period provided for bringing the same has lapsed. The foregoing notwithstanding, Iluyomade and Eka (1992) argued that this is, of course, subject to the permissible exception of continuance of injury, which gives rise to a fresh action C of A as often as damage or injury is caused. In *Obiefuna v. Okoye* (1961), the court held that the continuation of damage connotes the protraction of the legal injury and not merely the injurious effects of a legal injury. It must be noted that limitation law is designed to only protect a public officer who acts in good faith and does not apply to acts done in abuse of office and without semblance of legal justification, as was held by the court in *Yabugbe v. Commissioner of Police* (1992). The legal implication of the foregoing is that for the act/omission of a public officer to be covered by the provision of limitation law, the same must be done in good faith and in the course of official duties only. Also, the limitation law only applies to civil liability and not criminal. Thus, where a public officer commits a crime in the course of performing their official duties, the three-month limitation period prescribed under Section 2(a) of the Public Officers Protection Act/Law cannot be invoked to exculpate them from prosecution. The reason is that criminal liability is not covered by the statute. The only limitation period available in such circumstance is the one generally provided under criminal statutes for certain offences, which is available to every member of society without any special status.

According to Folarin and Taiwo (2017), the period of limitation is usually time-specific and cannot be enlarged by the court, except where an exception applies. Once the limitation period has crystallised, the action becomes statute-barred, disentitling any court from entertaining the disputes for the purpose of adjudication. The position as established in *Forestry Research Institute of Nigeria v. Gold* (2007) is that, since limitation period goes to the jurisdiction of the court, it can be raised at any stage of the proceedings and even on appeal at the SCN for the first time, although it is ideal to raise it at the earliest opportunity so that the court does not dissipate judicial time on an unproductive proceeding. It must be noted that the statute of limitation, by its nature, ousts the jurisdiction of the court over a matter that, but not for its application, the court would adjudicate upon. As a result, Nigerian courts adopt a strict interpretation approach as the courts are mindful that citizens' right of access to court is of paramount importance and should, as much as it is practicable, be guarded jealously as was held in *Governor, Kwara State v. Dada* (2011).

Also, it is apposite to note that the limitation period afforded to public officers is purely for civil actions performed in the course of official duties and the same is inapplicable to criminal matters. Malemi (2013) opined that one of the ways a claimant who is exploring amicable resolution can safeguard their C of A from becoming statute-barred is to file an action in court timely and explore out-of-court settlement with the defendant. This is because negotiation does not keep at abeyance, time from running, nor is it an exception to limitation period. Thus, where the claimant resort to filing an action in court while engaging in exploration of amicable settlement, the claimant is guaranteed that where negotiation towards amicable settlement breaks down irretrievably, the period which amicable settlement was explored, would be inconsequential as limitation time had been set off as far as the C of A is concern by the filing of the action in court. Also, where there is a continuance of injury, limitation of time does not start to run from the time the C of A actually arose but from the time the injury ceases. There is a legal possibility that where a person is incarcerated or is under a legal disability (for instance, where a person's property is demolished or any other shocking occurrence takes place and the fellow goes into coma or becomes mentally unstable), these unforeseeable and legally incapacitating events may suspend

the setting on of limitation time, as it would be unreasonable to expect a person who is in coma to institute an action in court especially where the facts are personal and only known by the fellow. The law is only good when it has a human face and disposition, which the foregoing circumstances require that the limitation time be suspended in the overall interest of justice. From the above, the decision in the Fabunmi's case is significant because as its stands, where a claimant, in this case a person whose employment has been terminated or dismissed from service, fails to file an action in court challenging the termination based on the date the letter of termination was dated, if it exceeds three months therefrom, the action becomes statute-barred if it is against a public officer.

Ex-raying Dr. Fabunmi v. University of Ibadan & Anor

The facts of the case are as follows: The claimant was employed as assistant lecturer in 1997 in the 1st respondent, his employment was confirmed on September 30, 2000, and steadily rose to the rank of professor in the Department of Education Management, Faculty of Education. On July 14, 2008, he was attacked and assaulted at the Agbowo Area by four suspects, namely Miss Thelma Uzomah Adoseh, Kolawole Adesina, Peter Ogere and Femi Adesina, who were students of the 1st respondent. The appellant promptly reported the incident to the police and notified the 1st respondent of what had transpired by writing personally and through his solicitors, the law firm of Olujimi & Akeredolu. On July 29, 2010, he received a query from the 1st respondent alleging that he demanded sexual gratification from Miss Thelma Uzomah Adoseh on July 14, 2008, before awarding her B.Ed. Research Project score. In his response to the query, he denied the allegation of demanding sexual gratification from the student or anyone. He stated that his attackers subsequently apologised to him and their parents jointly wrote a letter of apology to him, and that the police carried out a comprehensive investigation and absolved him of the allegation of demanding sexual gratification as alleged.

In spite of his explanation, he was summoned by various disciplinary committees set up by the 1st respondent, including but not limited to the Students Disciplinary Committee for Jointly Committed Offences (SDCJCO), Central Students Disciplinary Committee (CSDC), the Panel of Investigation and the Senior Staff Disciplinary Committee (SDDC). None of the committees made their findings and report available to him; instead, on July 30, 2011, he was served with a letter of dismissal from the employ of the 1st respondent. He wrote a letter of appeal to the 2nd respondent over the dismissal, but he received no response. As a result, he approached the trial court seeking several reliefs including an order quashing the findings and recommendations of the committees set up by the 1st respondent, a declaration that his dismissal was unlawful, a declaration that he was still a *bona fide* staff of the 1st respondent, a declaration that his dismissal was null and void, illegal and unconstitutional, an order directing that he be reinstated in the service of the 1st respondent with all his entitlements and benefits intact.

Upon being served with the processes of the appellant as claimant, the respondents as defendants, entered appearance and filed a Notice of Preliminary Objection (PO) dated April 22, 2013, to the competence of the suit. The grounds of the objection are that the suit of the claimant is statute-barred by virtue of the Statute of Limitation Act, and that the claim was caught by the provision of Section 2(a) of POPA, 2004. The PO was supported by a written address. The appellant, as claimant, in response to the PO, filed a counter affidavit and a written address. The learned trial judge, upon hearing the objection, delivered the ruling of the court on January 27, 2014, wherein it held that the suit was statute-barred and dismissed the suit based on the objection. Being aggrieved, the appellant appealed the decision to the CA vide a Notice of Appeal dated February 10, 2014.

The parties filed and exchanged their briefs of argument. The appellant contended that the learned trial judge erred in law and thereby occasioned a miscarriage of justice when he dismissed its suit on the ground that the same was statute-barred, having been caught up by the limitation period provided for under the POPA. This is based on the fact that the C of A accrued on July 13, 2011, when the appellant was served and received the letter of dismissal and not on June 30, 2011, which the letter was dated. The appellant placed reliance on the CA decision in *NIIA v. Ayanfalu* (2007) where the court held that in calculating time for the purpose limitation of time, the date the respondent received the letter opposed to the date it was dated is what is reckoned with as was decided in *Sanda v. Kakawa Local Government* (1991). The appellant, therefore, urged the CA to allow the appeal. The respondents, on the other hand, argued that the C of A arose on June 30, 2011, when the letter of dismissal was dated and the date it was delivered/received was immaterial hence, the learned trial judge was right to have upheld the objection, they urged the court to dismiss the appeal. They placed reliance on *Eboigbe v. N.N.P.C* (1994) in which it was held that time began to run from the time the C of A arises and not when it was discovered, and the lack of court to ventilate the same is inconsequential.

The court, based on the contention of the parties, narrowed the issue for determination to when the C of A arose, i.e., was it on June 30, 2011, when the letter of dismissal was dated or July 13, 2011, when the letter was delivered/received as contended? The court found that the fact that gives the appellant the right to sue is the fact of his dismissal. Therefore, the cause of action was the claimant/appellant's dismissal from the service of the 1st respondent. The court held that "even though the appellant discovered the cause of action on July 13, 2011, when he was served the letter of dismissal, it did not remove, negate or obliterate the fact that the cause of action accrued on June 30, 2011, the date the appellant was dismissed as shown in the date of the letter of dismissal." The court came to the conclusion that the date pleaded by the claimant/appellant as the date the letter of dismissal was dated is what is relevant and not the conflicting dates pleaded by the defendants/respondents because, in determining whether a C of A has accrued, the court must exclusively have regards to the originating processes filed by the claimant and not any process filed by the defendant.

Thus, the court came to the surprising and highly contestable conclusion that the date the dismissal letter was dated, as opposed to the date it was delivered, was the date the C of A accrued, and time began to run from then. While it is conceded that this decision is final since the decision of the CA on civil appeal from the NICN is final pursuant to Section 253 of the CFRN, 1999 (Third Alteration) Act, 2010, nevertheless, it raises more questions than proffered answers. This decision raises some questions, including but not limited to: how can an employee be logically expected to challenge the decision of an employer, which he has neither expressed nor implied notice of? Does countenancing the date of the dismissal letter and not the date it was delivered or even received as the date the C of A arose for the purpose of computation of period of limitation not negate the position that the law does not command the doing of the impossible? Does the act of countenancing the date the letter of dismissal was dated, as opposed to the date it was delivered/received, not amount to tacit encouragement of employers to withhold dismissal letters so that the limitation period will set in before the employee can take steps to challenge the same? Is this decision a welcome development in light of the unprecedented high levels of unemployment and underemployment in Nigeria, which necessitate greater protection for workers and their jobs? These issues are addressed as matters arising from the decision.

It is important to note that while the decision in Fabunmi's case pertains to a civil servant, its effects transcend civil service to all persons who may be employed or transact business with the government or any of its agencies. Where, for instance, a foreigner or foreign firm enters into a contractual or commercial transaction with the government of Nigeria or any of its agencies, in the event of breach,

the statute of limitations is applicable. The effect is that, for the foreigner/entity to institute an action seeking a remedy, the court would be guided by the position enunciated in the decision. Considering the unfairness of the decision, any person contracting with the government or any of its agencies will be doing so at a high risk. In fact, the position is not incapable of dissuading foreigners from contracting with the government or any of its agencies owing to the fact that the operation of limitation of time to seek redress in Nigeria courts, aside the general reluctance of foreigners to surrender to the courts of a foreign jurisdiction, it is skewed in undue favour of the government. This does not give a level ground for transacting. This position, if not checked, is capable of prejudicing Nigeria's economic fortunes.

The point must be noted that by virtue of Section 243(3) of the Constitution of the Federal Republic of Nigeria, 1999 (Third Alteration) Act, 2010 and the decision of the Supreme Court of Nigeria in *Skye Bank Ltd. v. Victor Iwu* (2017), decisions of the CA on civil appeals from the NICN are final. The implication of the foregoing is that no appeal can lie to the Supreme Court from the determination of the CA, which is the final court. Thus, civil appeals from the NICN are one of the instances where the CA is a final court. The implication of this is that the determination by the CA in Fabunmi's case is final and there is no further appeal. To date, the CA has yet to have the opportunity to adjudicate on the issue adjudicated in Fabunmi's case. Hence, there is no superior pronouncement that can in anyway affect (whether by nullifying or modifying) the position laid down by the decision, despite the fact that the decision is undesirable, it remains the position of the law, unless and until the CA overrules itself or modify it or there is legislative intervention by amendment of the POPA expressly making employment disputes an exception to its application.

Matters Arising from the Decision in Fabunmi's Case

From the preceding section, it was stated that the decision of the court raised some salient questions. The court came to the conclusion that the date, i.e., June 30, 2011, on which the letter of dismissal was dated, as opposed to July 13, 2011, when the same was delivered to the appellant, is the time to be reckoned with in computing the time for limitation of the action. As to the first question, does countenancing the date the letter of dismissal was dated, rather than the date it was delivered, for the purpose of the limitation period, not amount to commanding the doing of the impossible? One may rightly ask: how was the appellant expected to institute legal proceedings against the action of the respondent, which was unknown to him? The reason is, on June 30, 2011, which the letter was written; the intended or actual dismissal as the case may be was only known to the respondent hence, it would amount to requiring the doing of the impossible for the appellant to have instituted proceedings before July 13, 2013 when the fact of dismissal was made known to him. The appellant is not imbued with Nostradamus's ability, nor is he a superhuman with the ability to hear and see what others intend to do or are doing in their closet. Unfortunately, the position taken by the CA tends to unrealistically suggest this.

The SCN in *Sifax (Nig.) Ltd. v. Migfo (Nig.) Ltd.* (2018), being mindful of the fact that you cannot expect a defendant to set in motion legal machinery over an alleged wrong that the person has no actual/constructive knowledge of, held that the C of A accrues when the plaintiff gets to know that his enforceable claim or right has come into existence or become at present an enforceable demand or right to prove as a fact during trial. It is not only imperative that the facts required to grant a right of action have occurred. But more importantly, these facts must come to the express or constructive knowledge of the claimant, which will enable the person to take legal steps to seek remedy from a court of competent jurisdiction. In fact, unless and until the wrong or breach has come to the knowledge of the claimant, the accrual of the C of A is inchoate, as this knowledge is a vital component of the accrual of C of A in law. It is not only logical but morally right that one's hair should not be shaved in his absence, nor a person's obituary be announced while the fellow is still alive.

The argument that the lack of knowledge or absence of the claimant when the breach was occasioned, entitling him to seek legal redress, is immaterial, is preposterous and bereft of logic. The application of the limitation statute has the effect of extinguishing the rights of citizens, and access to court to ventilate grievances is a constitutional right. When the court is faced with a situation where the rights and privileges of citizens are under threat, a purposive interpretation must be adopted. This implies that the court must interpret or apply the law in favour of upholding rather than extinguishing the rights of citizens. The ideal is to ensure that the impartial scale of justice preponderates towards promoting and protecting the rights of citizens, which is the whole essence of governance and hallmark of civilisation.

It is preposterous for anyone to argue that the limitation period was intended to be used as an engine of fraud to perpetuate avoidable and reprehensible hardship on citizens in favour of public officers. It is difficult to come to terms with the decision of the SCN in *Eboigbe v. N.N.P.C.* (1994) wherein the court held that the C of A accrues from the time the wrong took place and not when it was discovered or that there is no court within the jurisdiction for the claimant to seek legal redress. This is a clear case of commanding the doing of the impossible. One can rightly ask: how can the C of A accrue when there is no claimant to seek legal redress, despite the occurrence of a legal wrong? In the case (i.e., *Eboigbe v. N.N.P.C.* [1994]) the appellants had brought a representative action which the court may take the risk of assuming that at least, one person from the large group, could have been aware but in the case under review (i.e., Fabunmi's case), the action was personal to the appellant and there was no room for any assumption which is even unnecessary. For all intents and purposes, the decision does not serve the cause of justice. If the case were one of indolence or mischief on the part of the appellants who now seek the aid of the law, it would have been just and equitable for the court not to countenance the action. In fact, the occurrence of all facts in the absence of a person to seek redress or without his/her knowledge makes the C of A premature. Besides, a case is only an authority for what it decides, and no two cases have the same facts. Thus, the position of the SCN in the *N.N.P.C.* case is distinguishable and totally inapplicable to the facts and circumstances of Fabunmi's case.

By its decision, the CA seems to howbeit, unintentionally encourage unscrupulous behaviour. In fact, the possibility of a wrongdoer, especially in cases where such wrongdoing is within his/her exclusive knowledge, to conceal the same and bring it to the knowledge of the claimant when the limitation time has set in cannot be overruled. Based on the court's view, the fact that the alleged wrong was discovered by the claimant at a time when it is practically impossible to seek a remedy would be immaterial. This position, with due respect, is preposterous and capable of encouraging anarchy owing to the dissatisfaction it engenders. Encouraging wrongdoers or employers to withhold a letter of dismissal or termination of employment from the concerned employees, which invariably sets them against time, is a practice that is counterproductive, shambolic, inhumane, barbaric, and reprehensible. In this instant case, the CA ought to have asked the question: how was the appellant expected to institute legal proceedings against a dismissal that had not come to his actual/constructive knowledge and why did the respondents keep the letter which had been written since June 30, 2011 but only delivered on July 13, 2011? This shows *mala fide* on the part of the respondent, calculated to compress the time within which the appellant could challenge their alleged unlawful action. Although the court found that the appellant pleaded that the letter was dated June 30, 2011, the appellant had pleaded that the same was delivered July 13, 2011. Concentrating on the earlier date rather than the latter is being technical, which weighs against substantial justice, which is what courts are enjoined to do at present. Substantial justice is averse to technicality, even though the law is a technical phenomenon; its aim is to propagate and perpetuate the course of justice. The effect of the decision of the court is tantamount to legitimising the impracticality of shaving a man's hair in his absence, which is objectionable.

Furthermore, giving the indisputable unprecedented high level of unemployment and underemployment in Nigeria, the CA ought to have countenanced the date the dismissal letter was received as opposed to when it was dated, so as to protect the employment of the appellant or at least, give him an opportunity to contest his dismissal, which was being challenged on grounds of fundamental procedural irregularities. Labour is one of the factors of production and unarguably, the most essential; hence, its description as human capital. Without the presence of labour, all other factors of production are redundant and incapable of achieving production, making it imperative to protect labour despite the ongoing debate for its commodification. Fasogbon's (2019) position justifies the point that it is needless for anyone to attempt to argue against the fact that the security of employment, as well as securing suitable employment in Nigeria, is a herculean task. According to Eyongndi and Okongwu (2018), in Nigeria, there are more workers than available work, and this has placed the employers in an undue advantageous position over employees and job seekers. Buttressing the foregoing, Amechi and Eyongndi (2018–2019) have argued that this situation (availability of more workers than available work and some other factors) has led to the rise of precarious employment practices, which have made the employee a victim. Thus, Ajayi and Eyongndi (2019) have argued that it is necessary that only on reasonable grounds a person should be rendered jobless. The courts, as the vanguard of human rights protection, must safeguard the rights of workers, especially their work. Work is one of the legitimate means through which humans meet their needs and those of their dependents. Thus, where a person is gainfully employed as desired by all, the social/economic benefits of employment transcend the employed person to others who depend on the fellow for their sustenance/maintenance, either wholly or partially.

According to Eyongndi (2022), the socioeconomic interest of the appellant's continuous employment extends to his family, who depend on him for upkeep. This interest of his dependents and every worker must be jealously guarded by the courts. Labour, of course, is a means of production, but its commodification must be discouraged. It is argued that labour is a prime factor of production, and without it (notwithstanding the presence of all others), production would not be achieved. As such, it must not be treated with careless abandon by employers. While the business of governance is a serious one and therefore requires that anyone who is likely to or has been aggrieved by the act/omission of the government take steps timeously to seek appropriate legal redress, being aware of such act/omission by the victim, is a *sine qua non* to seeking legal redress. Just as a man's hair cannot be shaved in his absence, no one can be reasonably expected to seek a remedy for an act/omission which occurrence is unknown to him. Human beings are not spirits, nor do they possess an extraordinary ability to become aware of what is not apparent or explicit. The reality of this fact must be recognised and approved by the court; otherwise, unquantifiable and unjustifiable damage will be done to innocent citizens.

The point must be noted that as from 2010 when the jurisdiction and status of the NICN was enhanced and fortified by the CFRN, 1999 (Third Alteration) Act, 2010, the Court of Appeal; contingent on section 243(4) thereof, became the final court to which civil appeals lie from the decisions of the NICN (Ezenwa, 2020). This point has been underscored by Akeredolu and Eyongndi (2019) that this was probably done to ensure quick dispensation of labour disputes, bearing in mind the importance of the sector to the economy, requiring that disputes arising therefrom are not protracted up to the SCN or exposed to needless delay. By this, the quiet argument which one may raise is that, considering the fact that *stare decisis* (judicial precedent) is applicable in Nigeria and the SCN has determined that a C of A accrues when all that needs to occur has occurred and to the knowledge of the party who can sue, of what value is the contrary decision of the CA? While it is correct that judicial precedence is applicable in Nigeria, with regard to NICN's civil decisions, the SCN itself, in the case of *Skye Bank Ltd. v. Victor Iwu* (2017), held that the determination of the CA from civil appeals from the NICN is final. Thus, the

CA's decision in Babatunde's case (2016) is the law and not those earlier decided by the SCN, which are contrary and incorrect. The implication of this finality on Nigeria's labour jurisprudence is profound. Hitherto, the SCN had wielded this finality and was therefore not just final but a policy-making court. This enormous responsibility of finality and policy making now rests squarely on the CA.

Thus, the CA must be conscious of this and act judiciously and cautiously in its determination of appeals from the NICN, bearing in mind that it is now the *alpha* and *omega* as far as those matters are concerned. Its determinations are not only judgments but judicial policies on the subject that they pertain to. Decisions that are capable of fostering hardship, highhandedness, executive malevolence, arbitrariness and deprivation of rights or privileges, such as the one herein examined, must be avoided in the interest of justice, fairness and equity. Nigeria is at a crossroads; the indicia for development, particularly availability of gainful employment opportunities and security of employment, are mirages. The reason is that there are a lot of Nigerians roaming the streets seeking non-existent jobs, others are constrained to work simply as a result of the aphorism, 'half bread is better than none.' While universities and other tertiary institutions graduate thousands of youths and young people, making the labour market extremely saturated and employment prospects bleak, successive governments in Nigeria have failed to put in place the necessary architecture for the creation of gainful employment. This harsh reality must be borne in mind by the judges/justices when adjudicating over cases of wrongful/unlawful termination/dismissal; otherwise, the resultant effects will be inimical to society. Thus, Eyongndi and Onu (2022) have noted that over the years, there has been a steady increase and unfortunate acceptance of non-standard forms of employment, particularly casualisation of the workforce and triangular employment, exposing employees to excruciating labour exploitation. There is therefore an urgent and unflinching need for employees in Nigeria to be protected by stakeholders from brazen labour exploitation, just as capital is being protected; striking a balance between these contending interests is imperative.

Any judicial pronouncement or policy that tends to exacerbate or expose the populace to exploitation and hardship is not only unpopular, uncharitable, and inhumane but also unwelcome. The purpose of the court is to do substantial justice according to the law, as was held in *Buhari v. Obasanjo* (2003). It is reassuring to note that the SCN in *Josiah v. State* (1985) held that justice is not a one-way traffic, not even two but three. Courts must always be guarded and guided by this truth in the course of adjudication, especially over labour and employment matters. Their decisions must dispense justice to the parties litigating before them, both as claimant and defendant and the society at large. Bearing this in mind will help prevent a situation where a judgment will be favourable to a party but deleterious to the other party and society at large, as in the instant CA decision herein examined.

The point must be made that being employed has socioeconomic benefits that transcend the person who is employed to his dependents. For instance, where a man is employed, his wife, children, parents and even siblings directly and indirectly benefit from his employment, as their economic sustenance is tied to his employment. This interest is no less important and, therefore, deserving of protection. Where a court is to adjudicate over a suit resulting from loss of employment, these ancillary interests/beneficiaries must be taken into consideration in its determination. In the case under review, the ancillary interests tied to the continuous employment of the appellant were arbitrarily severed by the position taken by the court. Thus, not only did the appellant feel the brunt of the decision(s), but everyone who looked up to him for their daily bread regularly or irregularly.

A Peep into the Practice in Selected Jurisdictions

The issue of when it is said that a C of A has arisen is germane to civil litigation and applies in all civil proceedings irrespective of the jurisdiction. This part of the article scrutinises the practice in certain climes with a view to comparing with Nigeria against the backdrop of the Nigerian CA decision under review.

Ghana

Ghana is a common law jurisdiction that shares several affinities with Nigeria, as both were colonised by Britain, are members of the Commonwealth, and fall within the West African sub-region; hence, members of the Economic Community of West African States (ECOWAS). Also, Ghana is an emerging economy like Nigeria; hence, a comparison between the two countries is apposite, as lessons could be drawn for Nigeria from Ghana's experience. Bediako (2021) has opined that a C of A is said to have accrued under Ghanaian law when all the facts necessary to maintain an action in court have occurred to the knowledge of the party that should sue. Thus, knowledge, either actual or constructive, of the crystallisation of the C of A is important (Asirifi, 2022). In *Roomjin v. Boadi* (2016), the Supreme Court of Ghana (hereinafter referred to as SCG) held that a C of A accrues when the circumstances that will warrant an aggrieved party to maintain an action have all occurred and to his knowledge. Thus, where the appellant sought the reversal of the CA decision that reversed the trial court's decision dismissing the respondent's application to set aside the default judgment entered in its favour on the basis that the respondent was unaware of the return date on which the motion for summary judgment was heard and delivered. This was due to the fact that the adjourned date was not communicated to him. Hence, the time within which the respondent contended to apply for the setting aside of the decision started from the time he became aware. The respondent's argument was overruled by the court on the basis that, having filed processes in compliance with the applicable rules of court, the issue of not being aware does not arise. By taking this position, the court made it clear that knowledge of the occurrence of all the facts necessary to maintain an action is germane for a C of A to crystallise. This position is in consonance with its earlier decision in *Morkor v. Kuma* (1998–99).

In *Bonnie v. Ghana Ports and Harbour Authority* (2014), the SCG held that the limitation period will start counting from the time the C of A accrued, which is when all the factual incidents that will enable a person to maintain an action have occurred and to his/her knowledge. In *Plange v. Ghana Commercial Bank Ltd* (2014), where the respondent in 1990, abrogated the pension scheme it instituted in accordance with Section 24 of the Social Security Decree 1972, to the knowledge of the claimant. The claimant's action was instituted 16 years later, which was outside the period to bring the action; the SCG upheld the concurrent decision of the two lower courts that the action was statute-barred, having been filed outside the limitation period. The basis for the decision was that when the C of A accrued in 1990, the appellant was aware and ought to have instituted proceedings timeously as time started counting from that time. His refusal or indolence was unpardonable in the circumstance.

It does appear that in Ghana, aside from the occurrence of the factual situation that would necessitate the commencement of action in court, their occurrence to the knowledge (either actual or constructive) of the claimant is necessary. Thus, where the right of the claimant is infracted in circumstances that the infraction is justifiably unknown to him/her, the time for the limitation period will not start counting unless and until the claimant becomes aware of the infraction. This does not mean that where the claimant chooses to behave like an ostrich, the Ghanaian courts will indulge him. The totality of the facts and circumstances of the case will determine whether or not all that is required to set legal

machinery in action has been concretised. This Ghanaian position, unlike the position taken by the Nigerian CA in Fabunmi's case, gives the law a human face. There is the possibility that, like in Nigeria, the limitation period will not set in, where there is a continuity of injury until there is cessation. As a general principle of law, fraud, duress and other vitiating elements, where present, the limitation period will be kept at abeyance as time will not start to run owing to their presence.

Uganda

The issue of limitation time has also been adjudicated upon by the courts in Uganda. A peep into the law and practice there in comparison to Nigeria may shed some light or bring a fresh perspective to the issue in Nigeria as a lesson learnt. Thus, the Ugandan High Court in *Lakwo & Anor. v. Santa Sarah Ochen* (2020) held that a C of A crystallises when factual events occur, constituting a threat to an infringement or actual infringement of a right which entitles a person to sue. The critical elements of a C of A are the claimant has a legal right which the defendant is obligated to act towards or forebear; the breach of this right with resultant damage being suffered by the claimant for which remedy can be sought; awareness of the occurrence of the violation with its concomitant injury as was in *Assusi v. Uganda Electricity Board* (2021). These elements enumerated by the court invariably encompass the knowledge of the person whose right is threatened or breached. It would appear that being aware either actually or constructively is essential for time to begin to run, as it is only then that a person can seek a remedy. The foregoing position has been affirmed by the Ugandan High Court Coram Rwakakooko J in *Okello v. Obel* (2022) emphasising the point that the time a C of A accrues, is a matter of fact which the court is to ascertain from the pleadings of the parties, particularly the claimant as was established in *Iga v. M.U.* (1972).

From the comparisons, the position in Ghana and Uganda is that, for a cause of action to accrue, two factors must be present. All the factual situations must have taken place and the occurrence must have come to the actual or constructive knowledge of the party whose right is threatened or infracted, culminating in the filing of action in court. The second element of knowledge is profound, as the occurrence of the facts without the knowledge of the victim is inchoate. This position is not only logical but fair and equitable, as a person cannot be reasonably expected to seek the remedy for an infraction he/she has no knowledge of.

In Ghana and Uganda, it is pretty clear that knowledge, either express or by necessary implication of the occurrence of the breach entitling a party to sue, is a *sine qua non* for the accrual of a cause of action and not its mere occurrence as held by the Nigerian Court of Appeal in the Fabunmi's case. The position in these jurisdictions is fair and equitable in comparison to that taken by the Nigerian Court of Appeal.

CONCLUSION AND RECOMMENDATIONS

From the discussion, it is a trite law that once a cause of action has arisen, the aggrieved party's right of action becomes exploitable. Where the grievance is against a public officer based on action/omission committed in the course of official duties, the POPA or its State equivalent provides that legal remedy must be sought within three months from the date the C of A accrued. Failure to do so, the C of A becomes statute-barred, and the right of action is extinguished as no court can sit over the matter for adjudication. For a C of A to be said to have accrued, all the facts that need to occur, which the claimant will prove to be entitled to the remedy sought, must be completed. Aside from this, the accrual of the C of A must be to the knowledge of the claimant, which will enable him to take steps to seek redress.

Thus, the Nigerian CA decision herein reviewed, which is to the effect that the C of A accrued from the date the dismissal letter of the appellant was dated and not when it was delivered or received, is untenable and lacks legal justification. One may ask: how can the court or any reasonable person expect the appellant to take steps to seek a remedy for an infraction that is within the exclusive knowledge of the respondent, and of which the appellant could only become aware when informed? This is impractical to say the least. The decision is tacitly allowing a person to profit from his own wrongdoing, which is not only unjust, but inequitable, and does not seem to recognise the need for security of employment in Nigeria, given the surging level of unemployment at present. Thus, this decision is not in tandem with the law as well as prevailing socioeconomic circumstances of Nigeria despite the fact that it is final since by the provision of Section 253 of the CFRN, 1999 (Third Alteration) Act, 2010; the decision of the CA on an appeal from the NICN is final. The decision taken by the Ghanaian and Ugandan courts is preferred to the one taken by the Nigerian CA reviewed herein. The reason for the preference is that the courts of these jurisdictions have recognised the fact that actual or constructive knowledge of the claimant of the crystallisation of the C of A is a crucial element for time to start running for the purposes of the period of limitation.

Given that this decision is *per incuriam* and not a welcome development, it is recommended that whenever the opportunity presents itself, the CA should jettison the position in the interest of justice. Also, the NICN pending the jettisoning by the CA, should not follow the decision based on *stare decisis*, since it is *per incuriam*, so that litigants are not exposed to avoidable hardship, which would be occasioned by following the decision.

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