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TEMPLARS ThoughtLab

Limitation Periods Under Nigerian Law: Breaking Down the Concept of Continuing Legal Damage or Injury

Introduction

Generally, all juristic persons have the right to sue and be sued in court.¹ However, this right is not absolute and may be qualified by various factors, including limitation periods. A limitation period is the time frame within which a person or entity must bring a legal claim in court to enforce a right recognised under the law.² This means that where an alleged wrong is committed and a law in force in Nigeria stipulates that an action against such wrong can only be brought within a specific time, such action will become statute-barred if it is not instituted within the stipulated timeframe. In effect, limitation of action seeks to invalidate a person's right to seek legal redress after the limit prescribed by a valid law has lapsed,³ and is often referred to as the general limitation rule. For litigants, this means that the failure to bring a claim within the specified period may result in losing the right to seek redress altogether. Where an action is statute-barred, a plaintiff who otherwise has a valid cause of action loses the right to seek redress through the judicial process once the prescribed time limit has lapsed.⁴

Limitation laws serve as more than just procedural requirements;⁵ they are underpinned by the principles of fairness, efficiency, and legal certainty. The objective is to ensure that all claims are made diligently and timeously while evidence is still available, and memory is intact.⁶ Hence, the principle of limitation of action is founded on the public policy that litigation should have an end.⁷ It protects defendants, ensures that claimants with a valid cause of action exercise reasonable diligence and timeliness, and prevents a miscarriage of justice arising from litigating stale actions.

¹ *Maersk Line v. Addide Invest. Ltd.* (2001) 1 NWLR (Pt. 694) 405; Also see, *N.N.B. Plc v. Denclag Ltd.* (2005) 4 NWLR (Pt. 916) 583, paras. B-C where the court held that "Only a person known to law can initiate an action in court".

² See section 16(2) of the Limitation Law of Lagos State 2005 which specifies a period of twelve years for individual right holders to initiate actions to recover land.

³ The Court in *Esuwoye v. Boyero* (2017) 1 NWLR (Pt. 1546), succinctly explained the doctrine to mean that where an aggrieved party exhibits tardiness by suing his wrongdoer outside his statutorily allowed time bracket, his suit becomes statute barred.

⁴ *Ogunko v. Shelle* (2004) 6 NWLR (Pt. 868) 17; *Osun State Government v Dalami Nig Ltd* (2007) All FWLR (Pt. 365) 438.

⁵ There are generally three limitation law regimes in Nigeria. They are: (i) the Limitation Act which primarily applies only to the Federal Capital Territory (Abuja); (ii) the respective limitation laws of various states applicable only within the territories of the respective states that have passed such laws; and (iii) the English Limitation Act 1623, a Statute of General Application which is the default limitation law in Nigeria, applicable only as local circumstances permit and to the extent that a particular state or a federating unit in Nigeria has not enacted a limitation law. Also prominent in this regard, is the Public Officers (Protection) Act which prescribes a three-month limitation period within an action may be commenced against a public officer in Nigeria.

⁶ *Sulgrave Holdings Inc v. Federal Government of Nigeria* (2012) 17 NWLR 4 (Pt. 1329) 309, 343.

⁷ *Nasir v. C.S.C Kano* (2010) 6 NWLR (Pt. 1190) 253.

While limitation laws are generally strict, there are notable exceptions that can extend the time allowed for bringing claims. These exceptions include instances of fraud, legal disability, express provisions of an extant law, action arising from a contract of service, and continuing or recurring damage or injury. This note focuses on the exception to the general limitation rule to the effect that where there is continuing damage or injury, the action will not be statute-barred until after the cessation of the damage or injury. As simple as this exception may appear, it is oftentimes misunderstood and misapplied in litigation and arbitration proceedings. This note provides a high-level analysis of the principles regarding limitation of actions under Nigerian law, focusing specifically on explaining the concept of continuing damage or injury.⁸

An Exception to the Doctrine: Continuing Injury versus Ripple Effect of an Injury

As discussed above, the doctrine of continuing damage or injury allows a fresh cause of action to arise so long as the wrongful act continues. Indeed, Nigerian courts have recognized that in cases of ongoing damage or injury, the limitation period may restart with each new instance of harm.⁹ This exception is particularly relevant in cases involving recurring contractual breaches or environmental damage, where the wrongful act causes continuous harm over time.

Continuing damage or injury is the continuance of the act which caused the injury. It does not mean the concomitant effect of the damage or injury.¹⁰ Hence, litigants need to be cautious in distinguishing continuing injury from the ripple effects of a one-time injury. To put it simply, if an injury has been completed but its effects continue, the limitation period starts from the date the injury occurred, not from the persistence of its effects.¹¹ Understanding this distinction is crucial in determining whether a fresh cause of action exists or if the claim is time-barred.

To demonstrate, in *Radiographers Reg. Board, Nigeria v M.&H.W.U.N.*,¹² the Radiographers Registration Board of Nigeria wrote certain letters and publications in 2004, 2010 and 2012 which were addressed to some public higher tertiary institutions, health institutions, and print media newspapers in Nigeria. In the letters, the Board claimed that certain education institutions in Nigeria training medical x-ray technicians/technologists and medical image technologists were illegal and non-registrable under the Nigerian Radiographers (Regulations, etc.) Act. The Board also characterised the graduates of those institutions as quacks and unemployable. In February 2014, the institutions commenced an action against the Board alleging that the publications were defamatory and oppressive to their members. On appeal, after the trial court had granted the reliefs, the Board as the appellant contended that the suit was statute barred having been filed outside the three-month period set out in the Nigerian Public Officers' Protection Act. In response, the institutions as respondents, argued that the publication was causing a negative effect on the psyche of their students and therefore there was a continuance of legal injury. In dismissing the appeal, the Nigerian Court of Appeal held as follows:

"...While a continuance of damage/injury may abate at the instance of the tortfeasor, the injurious effects may outlive it. Continuance of damage/injury connotes a repeat or continual repetitions of the legal

⁸ This note does not deal with the controversy generated by the exception.

⁹ *Aremo II v. Adehenye* (2004) 42 WRN 1 at 21; See also, *A.G. of Rivers State v. A.G. of Bayelsa State* (2012) LPELR-9336 (SC); *NNPC v. Zaria & Anor* (2014) LPELR-22362 (CA) 56, para. E-G.

¹⁰ *Obiefuna v. Okoye* (1961) 11 NLR 357 at 360, (1961) 1 SCNLR144 where the Nigerian Supreme Court held that "[c]ontinuance of injury or damage means continuance of the legal injury and not merely continuance of the injurious effect of a legal injury."

¹¹ *Gulf Oil Co. (Nig.) Ltd. v. Oluba* [2002] 12 NWLR (Pt. 780) 92 at 113

¹² *Radiographers Reg. Board, Nigeria v M.&H.W.U.N.* (2021) 8 NWLR (Pt.1777) 149 at 205-206.

injury that may impregnate injurious effects. In paragraph 3(i) of the respondents' affidavit, it was deposed "that the publication in the Vanguard Newspaper of August 5, 2010, by the defendant is already causing negative effect to the psyche of the students of the School of Medical Imaging and allX-Ray Technicians in the Country". To my mind, this is, totally, divorced from the firmament of continuance of damage. It is rather a classic exemplification of continuance of injurious effect of a legal injury as the negative effects of the publication continue to afflict the psyche and mind sets of the students and members of the respondents nationwide. The affidavit is bereft of any repeated publication by the appellant within three months preceding/anterior to the institution of the suit to make it come within the ambit of the doctrine of continuance of damage/injury. In essence, the respondents, in their infinite wisdom, starved this court of the impregnable evidence of repetition of the cause of action in order to harness from the vineyard of the doctrine of continuance of damage. The want of fresh action/publication by the appellant, with due reverence, exposes the poverty of the dazzling argument of the learned respondents' counsel on the effervescence of the defence. In effect, the defence is disabled from its birth. It does not avail the respondents." [Emphasis added]

Flowing from the above vivid explanation by the Nigerian Court of Appeal regarding the concept of continuing damage or injury, what the respondents referred to as continuance of legal injury was, in fact, a continuance of the effect of the legal injury.¹³ Hence, litigants, lawyers and even judges/arbitrators oftentimes fall into this error.

Conclusion

Limitation of actions is an essential aspect of the Nigerian legal system, one that litigants must fully understand to protect their rights and navigate the judicial process effectively. For individuals and entities, understanding both the applicable limitation periods and particularly in this instance, the exception of continuing damage or injury, can make a difference between a successful claim and a barred one. From the authorities, the position of the law is settled that the continuance of damage or injury means a repeat or continual repetition of the legal damage or injury complained of. It is not the continuance of the injurious effect of a legal injury. A one-off incident, however long the injurious effect or damage may be, cannot amount to continuing damage or injury.

¹³ Similar conclusion was reached in *INEC v. Ogbadibo Local Government & Ors* (2015) LPELR-24839(SC) where the respondents filed an action against the appellant for the exclusion of certain persons from the Ogbadibo Local Government from being represented in their State House of Assembly outside the applicable limitation period based on the principle of continuing legal damage/injury. The Nigerian Supreme Court, in distinguishing between legal damage and injurious effects of a legal damage, held that the legal injury or damage complained of by the respondents was the excision of Otukpa State Constituency in 1996. The act was completed in 1996. The fact that the respondents have since the excision not been represented in their State House of Assembly constitutes the effect of the legal injury they allegedly suffered by that singular act. The legal injury occurred once. Ultimately, the Supreme Court held that the respondents in that case ought to have filed their action within the time the injury occurred and failing to do so, the action was statute-barred.