

CONTINUOUS LEGAL INJURY – AN EXCEPTION TO THE STATUTE OF LIMITATION

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CONTINUOUS LEGAL INJURY – AN EXCEPTION TO THE STATUTE OF LIMITATION.

1. INTRODUCTION

Limitation of action is defined as a certain time a statute allows for litigation.¹ It is the timeframe within which every action must be instituted, failure of which the aggrieved party may lose the right of action.

The rationale behind the doctrine of limitation of action is that it will cause serious injustice for the Defendant if the Claimant is permitted to institute a stale claim. A plaintiff who sleeps over his rights is not expected to be allowed to bring an action as equity aids the vigilant and not the indolent. The assumption is, due to the effluxion of time, the Defendant may have lost access to the pieces of evidence (to aid his defence) that were erstwhile present during the period of accrual of the cause of action. Lastly, it is in the public interest that there should be an end to litigation.²

In Nigeria, the principal statutes regulating limitation of actions are the limitation laws of the various states of the Federation, and the Limitation Act Cap 522, Laws of the Federal Capital Territory, 2006, for the Federal Capital Territory, Abuja.

What determines the applicability of limitation of action is the subject matter. In the oil and gas sector, there has been a sharp increase in the rate of litigation in recent times involving individuals, communities, cooperative societies, and companies who believe that the operations of oil-producing firms have impacted their means of livelihood.³

The concept of limitation of action has always been a significant issue in the legal system. Continuous legal injury is an important aspect of this principle, and it affects how the law deals with a variety of cases. This article aims to provide a comprehensive legal analysis of continuous legal injury and its effect on the limitation of action. The article will explore the various legal theories and principles involved in this concept and how it impacts the rights of individuals seeking redress for harm suffered over a period

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¹ Black's Law Dictionary, 2nd Ed.

² Opuokolo & Ors v. SPDC (2022) LPELR-57301(CA) (Pp 20, Paras A – C)

³ T. Krukubo SAN, S. Sado, E. Ugbeta. Evaluating the Current Trend in Oil Spill Litigation in Nigeria, (March 10, 2023), available at <https://www.aluko-oyebode.com/insights/evaluating-the-current-trend-in-oil-spill-litigation-in-nigeria/>. Accessed on March 14, 2023

and the ways in which limitation law affects the ability of a party to assert a cause of action and vice versa. By doing so, we hope to provide a valuable resource for legal practitioners and individuals seeking to understand their rights and obligations in civil litigation.

2. THE NEXUS BETWEEN LIMITATION LAW AND CAUSE OF ACTION

The intersection between limitation law and cause of action can be complicated to navigate. Limitation laws establish a time frame within which a legal action can be initiated, while cause of action refers to the specific grounds on which a legal claim can be filed.

It is important to note that a cause of action is distinguishable from a right of action which is the right to enforce the cause of action within the time allowed by law. This means that although a Plaintiff may have a cause of action, the operative statute may limit his right to Judicial relief after the expiration of the prescribed period allowed for enforcing the cause of action or injury. Right of action cannot exist without the presence of a cause of action. Thus, the cause of action can be said to be the facts or combination of facts which the Plaintiff must adduce to entitle him to the relief(s) claimed, while the right of action or right to institute the action remains the means or medium allowing the Plaintiff to ventilate his grievances.

Cause of Action has been defined in a plethora of cases in Nigeria. For instance, in *Oko v AG Ebonyi State*⁴, the Supreme Court defined Cause of Action as “a situation or state of facts that entitles a party to maintain an action in a Court of Competent Jurisdiction, and this situation may be the violation or threatened violation of a primary right of the plaintiff or it may be that there are doubts as to some apparent adverse right or claim which the plaintiff is entitled to have cleared up, so that he may safely perform his duty, or enjoy his property”.

To calculate the limitation period, knowing when the time starts to run is crucial. Time, for the purpose of limitation laws, does not begin to run until a cause of action has arisen. The rationale behind this is that until a cause of

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⁴(2021) 14 NWLR (PL 1795) 63

action has arisen, there is no enforceable legal right, and it would be unjust for time to count against a party unaware of an enforceable legal right.

Accordingly, before a cause of action could result in an enforceable legal right (right of action), the cause of action must have arisen. This is because the aggregate of facts would not automatically give birth to an enforceable right simply because they exist. The facts must come to the attention and knowledge of the aggrieved party. It is at this point that the time for the purpose of limitation of action begins to count.

Thus, a cause of action can be said to have arisen when the aggrieved party becomes aware of the infringement of his enforceable right. The case of *Sifax (Nig) Ltd v. Migfo (Nig) Ltd supra*⁵ is very instructive on the accrual of a cause of action. The Apex Court in this case held that the cause of action accrues when the Plaintiff learns that his enforceable claim or right has come into existence or become a present enforceable demand or right or has arisen.

3. EXCEPTIONS TO STATUTES OF LIMITATION

As most laws have exceptions, Limitation Laws are not left out. There are various exceptions to limitation Laws and such exceptions include:

- (a) where the wrongful act of the Defendant is fraudulently concealed
- (b) cases involving personal injury or death
- (c) where an action is struck out by the Court and re-listed
- (d) where there is acknowledgment and part-payment of debts and
- (e) where there has been a continuance of damages, a fresh cause of action arises from time to time, as often as damage is caused.⁶

Prominent among the various exceptions to the operation and applicability of statutes of limitation is the plea of continuance of damages. Some scholars believe that an aggrieved litigant is more inclined to rely on this ground because of its ability to extend the statute of limitation when the Claimant suffers multiple damages.⁷

Continuous damage is the carrying out of a wrongful act repeatedly, causing multiple injuries at different times. While continuous damage qualifies as an exception to the

Prominent among the various exceptions to the operation and applicability of statutes of limitation is the plea of continuance of damages.

⁵ (2018) 9 NWLR (Pt. 1623) 138

⁶ Miracle, A., Understanding Basic Concepts of Limitation Statutes Under the Nigerian Legal System, (Threshold Attorneys) <<https://threshold-attorneys.com/understanding-basic-concepts-of-limitation-statutes-under-the-nigerian-legalsystem/#:-:text=The%20exceptions%20of%20Limitation%20of%20often%20as%20damage%20is%20caused>> accessed March 14, 2023

⁷ Michael G. When is the Statute of Limitations Extended for a Continuous Wrong (2020), available at <https://www.noglaw.com/statute-of-limitations-extended-continuous-wrong/> accessed on March 14, 2023

limitation law, the continuous effect of the legal injury does not qualify as an exception to limitation law. In other words, continuance of injury or damage means continuance of the legal injury and not merely a continuance of the injurious effects of a legal injury.⁸

For example, suppose there is an oil spill from the Defendant's oil tank which results in the destruction or contamination of the Plaintiff's environment each time the oil spilled and crosses the Plaintiff's property line. In that case, the spilling of the oil is considered a continuous legal damage, wrong or action. Whilst the effect of this oil spill such as environmental degradation and loss of clean water or fishes in their natural habitat in the ponds is referred to as the continuous effect of the legal injury.

A distinction between Continuous Legal Injury and Continuous Effect of the Legal Injury was made by the Court of Appeal in the case of Radiographers Reg. Board, Nig. v. M. & H.W.U.N.⁹ The Court held that "Continuance of injury or damage means continuance of the legal injury and not merely continuance of the injurious effect of a legal injury. Continuance of damage/ injury connotes a repeat or continual repetitions of the legal injury that may cause injurious effects."¹⁰

In the case of Obot & Ors v SPDC (Nig) Ltd¹¹ the Court of Appeal in added that in an action in tort, the limitation of the action runs from the date of its commission. It is immaterial to the date when the cause of action accrued that the effect of the complainant's injury or wrong continues ad infinitum. Such continuation will only serve to enhance the quantum of damages. From the courts' decisions above, only the recurring incidence that resulted in damage to the Plaintiff would qualify as an exception to the statute of limitation. This issue is particularly relevant in cases where the effect of the legal injury is ongoing, such as in cases of environmental harm or ongoing breaches of contract. While there is some disagreement amongst judges and legal scholars on this issue, it is clear that the determination of whether the continuous effect of a legal injury can operate as an exception to the limitation period will depend on the specific facts and circumstances of each case.

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⁸ INEC v. OGBADIBO LOCAL GOVT & ORS (2015) LPELR-24839(SC)

⁹ (2021) 8 NWLR (Pt. 1777) 149

¹⁰ See also the Supreme Court decision in I.N.E.C. v. Enasito (2018) 2 NWLR (Pt. 1602) 63

¹¹ (2013) LPELR-20704 (CA)

4. WHETHER CONTINUOUS EFFECT OF THE LEGAL INJURY OPERATES AS AN EXCEPTION TO THE OPERATION OF THE LIMITATION PERIOD

The central issue in legal disputes involving oil-producing companies, individuals, and societies is frequently the assertion by the oil-producing companies that the action instituted is statute-barred and the denial by the individuals and communities that there is still a continuing legal wrong and as there is still in existence a cause of action not overtaken by the Limitation Law.

The close similarities in substance and manifestation between Continuous Legal Injury and Continuous Effect of the Legal Injury often confuse litigants and raises complicated questions for determination before the Court. This is because a Plaintiff whose cause of action is at the risk of being adjudged statute barred would ordinarily seek to sustain same by telling the Court that he had suffered multiple damage since the Defendant caused the first damage. On the other hand, the Defendant would argue that though the damage was done, it has since ceased, and the Plaintiff having slept on his right is barred from bringing any action.

In settling this conflict, especially in oil spill litigation, the Court looks at the Originating Processes, which often state that the alleged spill occurred on a particular date with a Continuous effect. There is a need now to differentiate between Continuous Legal Injury and the Continuous effect of a legal injury. The resolution of this question lies in the careful analysis of some cases.

The Court in a plethora of suits, has established that it is the date of the happening of the alleged wrongful act of the Defendants as pleaded in the statement of claim that is to be considered as the date of the accrual of the cause of action from which the limitation period is reckoned and not the date the resulting damage manifested.

On January 27, 2021, the Court of Appeal in the Royal Courts of Justice Strand, London, gave judgment in the high-profile case of Harrison Jalla and others V. Shell International Trading and Shipping Company (STASCO) and Shell Nigeria Exploration and Production Company Limited (SNEPCO)¹². The issue which had been referred to

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¹² [2021] EWCA Civ 63

the Court of Appeal bothered on jurisdiction and limitation in the context of common law nuisance, and the question the Court of Appeal had to deliberate on and and give an answer was on whether with the date upon which the Claimants' cause of action accrued, the nuisance was 'continuing' or 'one off'. The Court of Appeal first considered what constitutes a case of continuing nuisance (damage/injury). It was stated that a continuing cause of action is "a cause of action which arises from the repetition of acts or omissions of the same kind as that for which the action was brought". The Court in its Judgment concluded that the spill "was a single, one-off event giving rise to a single, one-off cause of action".

It was stated that a continuing cause of action is "a cause of action which arises from the repetition of acts or omissions of the same kind as that for which the action was brought".

The Court determined that the Claimant's attempt to equate the continued presence of the oil in their environment with a "continued state of affairs" i.e. equating the nuisance with the damage or harm it caused was wrong. The Court's view was that no authority supports the contention that, in a case like this, there is a fresh cause of action every day that the oil remained on the land. It would be a radical departure from the case law to say that a continuing nuisance does not require a continuing event or hazard but merely continuing harm after a single event has ended or the hazard has been removed.

The Court particularly noted that it was within the Defendants' control to stop the pipe from leaking oil into the sea but could not control what happened once the oil was in the sea (notwithstanding that they may be liable for the consequences of this). The Court concluded that the Claimants' pleadings suggested "a devastating single event, which had a terminal effect on fishing, fish trading, farmland, drinking water, mangrove swamps and other features of the land" and did not support the view that there is a continuing claim.

On this basis, the Court rejected the appeal and concluded that "this is not a case of continuing nuisance in law. The judge was right to find that the cause of action accrued to the appellants when the oil first struck their land, which is why many of the claims are likely to be statute-barred."

The Court was plainly concerned about the policy effects of finding otherwise, noting that "It would mean that from a one-off oil leak, companies like STASCO and SNEPCO could be faced with litigation fifty years later. They would be unable

to identify their future liabilities with any certainty. The provisions of the Limitation Act would be rendered ineffective.”

The Supreme Court has also recognised the above as the position of the law in Nigeria through their judgment in *Frozen Foods (Nig) Ltd & Ors V. Estate of Oba John Agbola Ojomo & Ors*¹³.

The fact of the case revolves around an alleged illegal takeover of the management and control of the 1st Appellant (*Frozen Foods Nig Ltd*) by the applicants from December 15 1990. The Respondents contended that the applicants had received rents from or have been in possession of various properties of the 1st Plaintiff since December 15, 1990, without rendering accounts in respect thereof and the appointment, removal and/ or resignation of any director made after December 15, 1990 and before May 6, 2004 is null and void. It should be noted that the cause of action arose on December 15, 1990, when the existing director was allegedly removed and replaced by the applicants. The Plaintiff instituted the suit on June 1, 2005 (15 years after the accrual of the cause of action) well outside the five-year limitation period prescribed by Section 16 of the Limitation Law of Rivers State, Cap. 80, Laws of Rivers State .

The Plaintiff's contention was that numerous actions were taken after the removal of the director and as such, there was continuing damage giving rise to a fresh cause of action for as long as the applicant failed to render accounts.

The Supreme Court put the controversy to rest when it held as follows:

“There is nothing in the statement of claim to warrant such an inference. Apart from the fact that there is nothing in the statement of claim to warrant such an inference, it is also clear that in determining the date of accrual of a cause of action for the purpose of the application of the statute of limitation, it is the date of the happening of the alleged wrongful act of the Defendants as pleaded in the statement of claim that is to be considered as the date of the accrual of the cause of action from which the limitation period is reckoned. It is not the date the resulting damage manifest and as such, it does not matter that any resulting damage from the alleged wrongful act may have continued or the injury sustained, continued *ad infinitum*”¹⁴.

¹³ (2022) LPELR-57815 (SC) Per Mary Ukaego Peter-Odili J.S.C. in support of the lead judgment of John Inyang Okoro, J.S.C.

¹⁴ See also *SANDA Vs. KUKAWA LOCAL GOVT.* (1991) 2 NWLR (pt. 174) 379 at 391. per Kawu JSC

In the spirit of stare decisis, the ratio of the Supreme Court in *Frozen Foods (Nig) Ltd & Ors v. Estate of Oba* (supra) has been followed by some Lower Courts. In a recent decision by the Honourable Justice J.E. Inyang of the Federal High Court Uyo, in *Ini-Abasi Port Harcourt Global Fishing Cooperative Investment And Credit Society Ltd V Mobil Producing Nigeria Unlimited*¹⁵, on March 6, 2023, it was held on Pages 16 & 17 as follows;

“To determine the issues raised by the Court, the Court must determine when the cause of action arose and compare the date of the wrong which gave rise to the enforceable claim with the date the suit was initiated. It is the date of the happening of the alleged wrongful act of the Defendant as pleaded in the Statement of Claim that is to be considered as the date of accrual of the cause of action from which limitation period is reckoned. It is not the date the resulting damage became manifest and as such it does not matter that any resulting damage from the alleged wrongful act may have continued, or the injury sustained continued ad infinitum. See *SANDA v KUKAWA LOCAL GOVERNMENT* (1991) 2 NWLR (PT. 174) 379 and *FROZEN FOODS NIGERIA LIMITED & ANOR v ESTATE OF OBA JOHN AGBOLA OJOMO* delivered by the Supreme Court on Friday, April 8, 2022 per the erudite Jurist, Inyang-Okoro, JSC, which represents the current state of the law on accrual of cause of action in determining limitation period.

A careful analysis of all the cases cited above clearly reveals that it is essential for claimants to be aware of the laws governing limitation period when dealing with a legal injury. While the general rule is that an action must be instituted within the prescribed time, the principle of continuing effect of a legal injury does not operate as an exception or a bar to the operation of the limitation period. Claimants who fail to institute an action within the statutory period, relying on the principle of continuing effect of a legal injury as a defense, risk having their claims deemed statute barred. Claimants must seek legal advice promptly upon discovering a legal injury to ensure their claims are not time-barred.

5. CONCLUSION

In conclusion, this paper has delved into the intricacies of limitation of action and provided a comprehensive understanding of the doctrine. We have explored the rationale behind this legal principle and examined the relationship between limitation law and cause of action. Additionally, we have discussed the exceptions to statutes of limitation and provided an answer to the frequently asked question of whether the continuous effect of a legal injury operates as an exception to the operation of the limitation period.

¹⁵ Suit No: FHC/UY/CS/175/2022 – Unreported

With the above in perspective, a Plaintiff who intends to plead that the injury is continuous as an exception to the statute bar should be mindful that the existence of the effects of every injury does not equate to a party suffering a fresh legal injury. The Court has been called numerous times to pronounce the difference between “the continuing effect of a legal injury” and “the Continuous Legal Injury”. While it may be argued that there is a thin line between the continuous legal injury and the effect of the legal injury, the Courts have established in a plethora of authorities that aggregation of the damages from an action is separate from the continuous effect of the legal damage which occurred only once but resulted in diverse manifestation of the injuries.

The Supreme Court in its judgment in *Frozen Foods (Nig) Ltd & Ors V. Estate of Oba John Agbola Ojomo & Ors*, has settled the issue and clarified that inconveniences and losses suffered because of a one-off infraction or breach would be deemed to be an effect of the breach and not a continuing legal injury. Thus, a renewal of the limitation period will only occur where a chain of actions occurs independently but, at each incidence, results in a separate injury and cause of action.

CONTRIBUTORS



Daze Nga
Senior Associate



Onyemauche Ibezim
Senior Associate



Sunday Obia
Associate



Chidera Mbaogu
Associate



CONTACT US

LAGOS

Kenna Place
8, Ogunyemi Road, Palace Way, Oniru
PO Box 73002, Victoria Island,
Lagos, Nigeria

ABUJA

1st Floor, Novare Central
Plot 502 Dalaba Street,
Wuse Zone 5 Abuja
FCT, 900285, Nigeria

ENUGU

23 Umuawulu Street
Independence Layout
Enugu, 400271, Nigeria

+234 811 395 1052, +234 811 395 1053
counsel@kennapartners.com

    @kennapartners

www.kennapartners.com