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CONTRACTS OF EMPLOYMENT AND LIMITATION LAWS: IS THE NATIONAL INDUSTRIAL COURT REWRITING THE LAW?

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ABSTRACT

This article is premised on the recent decisions of the National Industrial Court of Nigeria (NICN) in Suit No. NICN/LA/553/2018 – Mr. Godson Ikechukwu Nkume v First Bank of Nigeria Limited and Suit No. NICN/LA/402/2018 – Lilian Nnenna Akumah v First Bank of Nigeria Plc wherein the NICN held that statutes providing for limitation of actions are no longer applicable to contracts of service.

The NICN, in coming to this finding relied on the Supreme Court decision in the case of National Revenue Mobilization Allocation & Fiscal Commission & Ors v Ajibola Johnson &Ors. (2019) 2 NWLR (Pt. 1656) 247.

This article therefore reviews these NICN decisions in the light of the statutory framework on limitation of actions and the Supreme Court decision in National Revenue Mobilization Allocation & Fiscal Commission & Ors v. Ajibola Johnson & Ors (supra) with the end goal of answering whether indeed the Supreme Court has exempted contracts of service from limitation laws in Nigeria and whether the position of the NICN (which carries the weighty implication of opening a floodgate of dead actions against employers) relying on that decision is correct.

INTRODUCTION

It is the position of the law that there is a time limit for instituting civil actions, and any action caught by the Statutes of limitation is dead for all ages. Regardless of the cause of action, there is no exception to this trite principle and contracts of employment/service, like other civil actions, are subject to this implication of law.

The NICN, however, in their recent decisions in Suit No. NICN/LA/553/2018 – Mr. Godson Ikechukwu Nkume v First Bank of Nigeria Ltd and Suit No. NICN/LA/402/2018 – Lilian Nnenna Akumah v First Bank of Nigeria Plc ("Akuma's case") seem to have made a radical departure from this age-long law when it held that contracts of service were no longer subject to limitation laws. In coming to this fundamental decision, the NICN, as stated above, relied on the decision of the Supreme Court in the case of National Revenue Mobilization Allocation & Fiscal Commission & Ors (NRMAFC) v Ajibola Johnson & Ors. (supra).

It becomes necessary, therefore, to consider the above cases to have a proper perspective into whether the position of the NICN that contracts of employment are no longer subject to statutes of limitation now represents the position of the law.

BRIEF FACTS OF THE CASES

In Mr. Godson Ikechukwu Nkume v First Bank of Nigeria Limited ("Nkume's case"), the claimant claimed diverse reliefs from the defendant, his former employer. It was the claimant's case that he worked in the defendant for 35 years until his retirement in 2018. While in the service of the defendant, there was an armed robbery attack on his branch sometime in 2006 and he was shot on both legs. The claimant claimed that the defendant accepted to defray the cost of his driver but however failed to pay the driver's salary which he now claimed for with interest. The claimant also claimed that the defendant maintained a Group Personal Accident Insurance policy for its staff and by his contract of employment he was entitled to compensation for the injuries sustained during the armed robbery attack. The defendant, in response, denied the Claimant's claims. In its final written address, the defendant challenged the jurisdiction of the NICN to entertain claims (a), (b), (c), (d), (e) and (f) of the claims as they were caught by Sections 8(1)(a) and 9(1) of the Limitations Law of Lagos State and thus statute barred. In response to this contention, the claimant argued that the court had the requisite jurisdiction to entertain the action as the claims arose from the claimant's contract of employment with the defendant.

In resolving this jurisdictional issue, the NICN highlighted the provisions of Section 8(1) (a) and 9(1) of the Limitations Law of Lagos State and reaffirmed the general position of law that where a statute provides for the institution of an action within a prescribed period, any action brought outside that period is statute barred. The court nevertheless went on to hold as follows:

"Furthermore, statutes of limitation of actions have been held not to apply to contracts of service. See National Revenue Mobilization Allocation and Fiscal Commission & Ors v Ajibola Johnson &Ors [supra] at pages 270-271. This decision was applied by this Court in the case of Lilian Nnenna Akumah v First Bank of Nigeria Plc, Suit No. NICN/LA/402/2018, which ruling was delivered on 10th October 2019. The objection was based on Section 8[1] [a] of the Limitation Law of Lagos State. My learned brother, Justice Essien observed that:

'The defendant counsel has [sic] tried to argue that the above cited Supreme Court decision does not apply to the present case because it was decided based on S. 2[a] of the Public Officers Protection Act, while the present case is considered under S. 8[1][A] of the Limitation Law of Lagos State. That distinction is neither here or there. Both statutes are statutes of limitation of action. The subject matter of what they deal is contract of employment. Therefore, both statutes stand side by side in so far as it relates to limitation of action in contract of employment. While one is a federal enactment the other is a state law. The decision of the Supreme Court on any of the statutes[s] must of necessity guide a court of record in the application of any of those enactment[s] on the subject matter of limitation of action in contract of employment.' I completely agree and hold that claims[a], [b], [c] and [d] are not statute barred."

[6] Rule 414, SEC Rules
[7] Rule 415, SEC Rules

In the earlier case of Lilian Nnenna Akumah v First Bank of Nigeria Plc (supra), the NICN, per Honourable Justice I.J. Essien, in a ruling delivered on 10 October 2019 held: "before July 2019 the decisions were unanimous that as regards limitation of action law, where an action is instituted outside the period stipulated for an action to be instituted such action is likely to be dismissed … the position of law changed after the decision in the case of NRMAFC & 2 Ors V Ajibola Johnson (2019) 2 NWLR (Pt. 1656) 247 at 270-271 (where) the Supreme Court was emphatic that limitation of action does not apply to contract of service."

The question then becomes whether the Supreme Court in NRMAFC v Johnson (supra) indeed decided that contracts of service were no longer subject to limitation.

The facts of NRMAFC v Johnson (supra) are that the respondents (as plaintiffs) were offered appointment by NRMAFC, a commission of the Federal Government of Nigeria. The respondents resumed work until they were orally asked to stay away from work based on a directive from the then new government that all appointments made in May, 1999 be stopped. In view of this development, the NRMAFC withdrew the respondents' respective appointments. The respondents thereafter instituted action at the Federal High Court claiming that they remain employees of NRMAFC and were entitled to their salaries from 1st June 1999.

The Federal High Court granted only the second relief and dismissed the rest of the respondents' claims. The appellants appealed against the decision while the respondents cross-appealed. In its judgment, the Court of Appeal dismissed the appeal and allowed the respondents' appeal in part. On further appeal to the Supreme Court, one of the issues raised for the determination of the apex court was whether the Court of Appeal was right in holding that the appellants were not entitled to the protection afforded by the Public Officers Protection Act (POPA) in relation to a contract of service.

In its decision, the Supreme Court held thus at page 270-271 of the Law Report:

"In this matter, while the appellants maintain that the action is caught by section 2(a) of the Public Officers Protection Act, the respondents argue that the act is inapplicable. There is no doubt, a careful reading of the respondents' claim will show clearly that it is on contract of service. It is now settled law, that section 2 of the Public Officers Protection Act does not apply to cases of contract …
In dealing with this issue, the court below had found that a party's right of action and access to relief cannot be extinguished on the basis of the Public Officers Protection Act, as it does not apply to cases of contract. The court below went further as follows:
"Assuming that the appellants had that statutory cover of the Public Officers Protection Act, it has to be restated at the risk of overflogging a legal principle that certain factors would debar that operation of the Act

Abuse of office will deprive a party who would otherwise have been entitled to the protection of section 2(a) of the Public Officers (Protection) Law, is use of power to achieve ends other than those for such power was granted, for example, for personal gain or to show undue favour for another or to wreak vengeance on an opponent."

The court below finally concluded that the appellants are not covered by the provisions of the Act as to render the action statute barred.

I have no slightest difficulty in holding that the appellants are not covered by the provisions of the Public Officers Protection Act as to render the respondents' action statute barred. In sum, I hold that the learned Justices of the court below are right in holding that the appellants do not enjoy the umbrella of Public Officers Protection Law in the contract of service involving the respondents. The issue is accordingly resolved against the appellants."

OUR POSITION

Having appraised the above decisions, it is clear that the decision of the apex court highlighted in NRMAFC v Johnson (supra), was squarely on the applicability of the protection of the POPA to the appellants in that case. Therefore, aside Section 2(a) of POPA, the Supreme Court did not in the above case consider any other limitation law nor was any other raised for its determination.

It is trite law that a case cannot be a precedent for another except the facts or the principles of law are similar. In other words, a case is only an authority for what it decides –Thomas v Federal Judicial Service Commission (2016) LPELR-48124(SC). In Udo v State (2016) LPELR-40721 (SC), Kekere-Ekun, JSC stated thus:

"It is important to bear in mind that the decision of a court must always be considered in the light of its own peculiar facts or circumstances. No case is identical to another, though they may be similar. Thus, each case is only an authority for what it decides and nothing more."

In line with the above, one wonders, and it begs the question on how the NICN arrived at its conclusion relying on the Supreme Court (SC) decision in NRMAFC v Johnson (supra) to hold that statutes of limitation no longer apply to contract of service. With respect, the NICN, by its findings, thus read into the judgment of the Supreme Court in NRMAFC v Johnson (supra) what that judgment did not in fact and in law contain. Nowhere in the entirety of its judgment did the SC generally resolve the issue of limitation with regards to contracts of employment/service nor state with particularity that contracts of service/employment were no longer caught by, or subject to statutes of limitation.

In Oni & Ors. v Governor of Ekiti State & Anor (2019) LPELR-46413(SC), Augie, JSC reiterated the attitude of the Supreme Court with regards to citing pronouncements from previous judgments without relating those pronouncements to the facts that induced them as follows:

"I will quickly say that the impression given by the Appellants that the issue at stake in the appeal has been settled by this Court in the cases cited, is not so cut and dried, because the cases cited do not qualify as authorities in the sense of the word "precedent"... It is the facts of any particular case that will frame the issues for decision and the facts of two cases must be the same or at least similar before the decision in one case can be used as a guide to the decision in another case – Fawehinmi v NBA (No. 2) (supra)."

The NICN's holding in "Akuma's case" to the effect that pre-2019, before NRMAFC v Johnson (supra), limitation laws applied to contracts of employment, respectfully, remains the law, the NICN decisions in Akumah and Nkume notwithstanding. Our position in this regard is fortified by the fact that NRMAFC v Johnson (supra) was solely decided on Section 2(a) of the POPA and not on the specific limitation laws of any of the States of the Federation such as Section 8(1)(a) of the Limitations Law of Lagos State which was the basis of the objection and argument raised by the Defendants in both NICN cases.

Section 2(a) of the POPA in itself provides as follows:

"Where any action, prosecution, or other proceedings is commenced against any person for any act done in pursuance or execution or intended execution of any law or of any public duty or authority or in respect of any such law, duty or authority, the following provisions shall have effect:
(a) the action, prosecution or proceedings shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of, or in the case of a continuance of damage or injury, within three months next after the ceasing thereof."

On its part, the Limitations Law of Lagos State provides for periods of limitation for different classes of action. In relation to contracts, the Law recognizes simple contracts and quasi-contracts in Section 8(1) and contracts under seal in Section 12(1). Section 8(1) (a) and (b) specifically prohibit the institution of actions on simple contracts and quasi-contracts after the expiration of six (6) years while Section 12(1) of the Limitations Law limits contracts under seal as follows:

"The following actions will not be brought after the expiration of 12 years from which the cause of action accrued:

a) an action upon an instrument under seal, other than an action under an instrument to recover; ..."

Following from the above, while the POPA is a statute targeted at protecting public officers acting in the execution of public duties, the Limitations Law, on its part, is a specific statute wholly concerned with setting statutory time limit for civil actions and arbitrations. The two statutes are therefore not of same substance.

The law is settled that the long title of an Act is an aid to its interpretation – Attorney-General of Ondo State v Attorney-General of Ekiti State (2001) FWLR (Pt. 79) 1431. See also Jones v Sherrington (1908) 2 KB 539. The long title of the POPA states that it is an Act "to provide for the protection against actions of persons acting in the execution of public duties," while the long title of the Limitations Law of Lagos State, on the other hand states that it is a law "to make provision for the limitation of actions and arbitrations."

It is also a cardinal principle of law that where there is a specific Statute and a Statute of general application, the specific statute takes precedence (in this case, the provisions of the Limitations Law of Lagos State). In Ibru-Stankov v Stankov (2016) LPELR-40981(CA), Agube, JCA held as follows:

"Since however, the provision of the Matrimonial Causes Act/Rules is the specific Law governing Matrimonial Causes proceedings while the Sheriffs and Civil Process Act and the Rules of Court are general in nature, the specific law on the subject matter shall prevail.

After all, the law is trite that where there are two enactments on a matter one making general provisions and the other making specific provisions, the specific provisions shall prevail."

It is our considered view that the NICN decisions relying on NRMAFC v Johnson (supra) to hold that contracts of employment are now immune from limitation laws, is with respect, incorrect, as the Supreme Court did not make such pronouncement nor provide an umbrella exception for contracts of employment as now found by the NICN. As earlier stated, the decision of the Supreme Court in NRMAFC v Johnson (supra) was premised on a consideration of the applicability of Section 2(a) of the POPA to the appellants in that case, it is wrong, in our view for the NICN to equate that finding to the Limitations Law of Lagos State (or any other State), a statute of specific application, on the ground that that statute is also a limitation law like the POPA.

In Akeredolu v Abraham &Ors (2018) LPELR-44067(SC), Okoro, JSC put the matter beyond doubt when he stated thus:

"It is trite that legal principles established in decided authorities are not to be applied across board and in all matters without regard to the facts and issues submitted for adjudication … Secondly, each case remains authority for what it decided. Therefore, an earlier decision of this Court will only bind the Court and subordinate Courts in a subsequent case if the facts and the law which informed the earlier decision are the same or similar to those in the subsequent case."

Interestingly however, it is important to herein point out that the Supreme Court had not always taken the view that Section 2(a) of the POPA was inapplicable to contracts of employment. In Yare v National Salaries & Wages Commission (2013) 12 NWLR (Pt. 1367) 173, the Appellant's employment with the Respondent had been terminated on 9 January 1999 by compulsory retirement. The Appellant did not institute action against the action of termination until 30 March 2001. In dismissing the Appellant's action, the Supreme Court held that by failing to institute his action within the three months' period provided in the POPA, the Appellant's action was statute-barred.

None of the parties in NRMAFC v Johnson (supra) referred the Supreme Court to its earlier decision in the Yare case. Our position, therefore, is that notwithstanding the NICN decisions in Lilian Nnenna Akumah v First Bank of Nigeria Plc (supra) and Mr. Godson Ikechukwu Nkume v First Bank of Nigeria Limited (supra), a blanket pronouncement that contracts of employment are not subject to limitation laws does not represent the law. We do not think it is the intention of the legislature, (and it can certainly not be that of the judiciary) to allow claims in contract that are specifically caught by the limitation law to be litigated simply because those claims relate to contracts of employment. In essence, it cannot be the intention of the draftsman to cloak contract of employment with a special toga of running in perpetuity.

Our position is reinforced by the recent decision of the Supreme Court in Abacha v. AG Federation [2021] 10 NWLR PT 1783 at 135 where that Court held, on the effect of limitation as follows:

The effect of a statutory provision which limits the time within which an action may be brought, is that it takes away the right to pursue an otherwise valid cause of action. An action instituted after the expiration of the prescribed period is said to be statute barred. The essence is that a legal right to enforce an action is not a perpetual right but a right generally limited by statute…The conspicuous effect of a limitation law is that legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period. Secondly, the court is divested of its jurisdiction in the matter as it no longer a live issue-it is dead in substance and in form.

The Limitations Law of Lagos State is still in effect and has not been challenged as being arbitrary, illegal or prejudicial. That law therefore remains binding even to the extent of its application to contracts of service/employment. The position of Nigerian courts has always been to interpret and give legal effect to the clear provisions of statute.

CONCLUSION

In line with the above authorities, we hold the view that limitation laws still apply to contracts of employment/service. To hold otherwise will defeat the age long principle of law that “equity aids the vigilant and not the indolent", encourage tardiness, and cloak employment contracts with the robe of perpetuity. More so, it is capable of opening a floodgate of otherwise stale actions at the NICN.

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