

LIMITATION LAW AND CONTRACT CASES: IS THERE A PERPETUAL RIGHT OF ACTION IN CONTRACT OF EMPLOYMENT MATTERS?

By

Osmond U. Nwanya, Esq*

Abstract

There has been an ongoing juridical deliberation on the application of limitation laws to court claims relating to contract of employment. The discussions were triggered by a wave of judicial decisions from the National Industrial Court of Nigeria which have posited that limitation laws do not operate to bar actions relating to contract of employment. The judicial impression created by those decisions evidently run counter to the time-honoured policy behind statutes of limitation. Central to that policy is that long dormant claims have more of cruelty than justice in them and that a defendant might have lost the evidence to disprove a stale claim. The policy further postulates that persons with good causes of action should pursue them with reasonable diligence. This article found that the Supreme Court judgments on the basis of which the National Industrial Court of Nigeria founded their decisions exempting contract of employment cases from the grip of limitation laws were considered out of contexts and misapplied. Those decisions of the Supreme Court of Nigeria were focused on the non-application of Public Officers Protection Act or Law to breach of contract cases. They did not make a new rule that limitation laws do not apply to contract cases; rather they re-emphasized and reiterated the existing principle as established in earlier cases that Public Officers Protection Law have no application in actions founded on contract. This article concluded that there is a need for clarification and recommended that

* O U Nwanya, LLB (Calabar); BL (Abuja); LLM (RSU), Managing Partner
George Etomi & Partners Port Harcourt, 08034333092,
Email:osmond,nwanya@geplaw.com.

the Court of Appeal should intervene when called upon to settle the lingering controversy.

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1.0 Introduction

Actions founded on contract have always been subjected to limitation by statute.¹ The argument therefore, that suits relating to contract of employment cannot be defeated by statute of limitation appears completely strange. There is no doubt that the ongoing controversy relating to the application of limitation laws to contracts of employment cases was precipitated by the recent decision of the Supreme Court of Nigeria in *NRMA&FC v Ajibola Johnson*.² That apex court's decision has continued to serve as an anchor for the wave of decisions emanating from the National Industrial Court of Nigeria (NICN) positing that contract of employment cases cannot be caught by statutes of limitation. Recently, there was another decision of the Supreme Court in *Rector of Kwara Poly v Adefila*³ to the effect that Public Officers Protection Law does not apply in breach of contract cases. This recent decision seems to have further strengthened the position of the Industrial courts that limitation laws should leave labour matters alone. The fact that the labour courts have added that decision to the list of decisions supporting their controversial position was evident in the judgment of the NICN in *Grant Iheanacho v BAP Services Limited*⁴ decided on the 20th of August 2024.

Interestingly, the above Supreme Court decisions were categorical, clear and explicit on what they decided which is that Public Officers

¹ Limitation Act 1980 (UK), s 5; Limitation Law 1999 (Rivers State), s 16.

² [2019] 2 NWLR (Pt 1656) 247 (SC).

³ [2024] 3 NWLR (Pt 1944) 529 (SC).

⁴ <<https://www.nicnadr.gov.ng>> accessed 15 May 2025.

Protection Act or Law (POPA or POPL) do not apply to contract cases. The utilization of these decisions by the NICN as having laid down a rule that statutes of limitations do not apply to contract of employment cases is what this article seeks to interrogate in order to awaken the consciousness of a need for further judicial intervention and clarification especially by our appellate courts.

The article adopts a doctrinal research methodology and shall first briefly examine the general principles relating to statute of limitation. It will restate the object and goals of statutes of limitation and the policy behind them and proceed to examine some of the decisions of the NICN alongside the above mentioned apex court decisions with the view to attend to the question whether contract of employment suits are exempted from the operation of limitation laws in Nigeria. The article will conclude and make some recommendation.

2.0 General Principles Relating to Limitation Statutes

Given that statutes of limitation is central to our discourse, this general considerations of principles relating to limitation laws will provide some guides necessary in addressing the fundamental concerns raised in this article. In the United Kingdom, statutes of limitation date back to centuries before the enactment of the 1623 Act which amongst others, limited the filing of civil claims, to six years.⁵ The time period for bringing an action varies depending on the nature of civil claim involved. Once the time limit imposed by statute for bringing a claim in court has elapsed, proceedings shall not be brought after that period as that will offend the provision of statute.⁶ In the case of *Folarin v Augusto*, it was held that “where the court finds that an action is caught up by the statute of limitation, a plaintiff who might have had enforceable right loses the right to

⁵ Limitation Act 1623 (UK).

⁶*Egbe v Adefarasin* [1985] 1 NWLR (Pt 3) 549, 568 (SC).

enforce that cause by a judicial process.⁷ His right to commence that action would have been extinguished by statute. For instance, under the United Kingdom Limitation Act, claims relating to a simple contract are barred after six (6) years while actions relating to contracts under seal, bond, deed or covenant are barred after twelve (12) years.⁸

In Nigeria, various statutes govern limitation of actions in relation to different forms of civil claims. For instance, *section 16* of Limitation Law of Rivers State provides for the time limit for actions in contract, tort etc. It states: “No action founded on contract, tort or any other action not specifically provided for in parts 1 and 11 of this Law shall be brought after the expiration of five years from the date in which the cause of action accrued.”

The paramount consideration whenever statute of limitation is invoked is (a) the cause of action (b) when the cause of action accrued and (c) when the action became statute-barred.⁹ Again, the relevant court processes that the court looks at to determine whether an action is caught by statute is the claimant’s originating processes such as writ of summons and statement of claim alleging when the wrong which gave the plaintiff a cause of action was committed and comparing that date with the date on which the writ of summons was filed.¹⁰ In labour matters, the court looks at the originating processes such as the complaint and the statement of facts which are akin to writ of summons and statement of claim. Considering the new frontloading regime applicable in civil proceedings at the High Courts and other courts of co-ordinate jurisdiction, it has been

⁷ [2023] 1 NWLR (Pt 1896) 559, 585 (SC).

⁸ Limitation Act (n 1).

⁹ *A.G. Adamawa State v A.G. Federation* [2014] 14 NWLR (Pt 1428) 515, 550 (SC).

¹⁰ *Ibid*; *Elabanjo v Dawadu* [2006] 15 NWLR (Pt 1001) 76 (SC); *Muhammed v Military Administrator Plateau State* [2001] 16 NWLR (Pt 740) 524, 545 (CA); *British Airways PLC v Akinyosoye* [1995] 1 NWLR (Pt 374) 722, 730 (CA).

suggested that the court should look at every process including documents attached to the claimant's originating processes in determining when the cause of action accrued.¹¹

Where the court finds that an action is caught by statute of limitation, that automatically raises the issue of the jurisdiction of that court to entertain the matter.¹² It has been canvassed that since the issue of statute bar touches on the jurisdiction of the court to hear a matter, the point can be taken at any stage of proceedings including on appeal.¹³ It can equally be raised by the court *suo motu*.¹⁴ In *Elf Oil Nig Ltd v Oyo State Board of Internal Revenue*, it was held that although the effect of limitation law of Oyo State 1989 was not raised at the Court of Appeal, the point could be taken *suo motu* by that court.¹⁵ In that case however, the issue of statute bar was raised at the court of first instance.

The decision of the Supreme Court in *Folarin v Augusto*¹⁶ supports the principle that statute of limitation must be specifically pleaded by the defendant. This view was however based on the requirement of *Order 17 Rule 11* of the repealed Lagos State High Court Rules which provides that defense of statute bar must be specifically pleaded in order not to take the plaintiff by surprise. It appears that in such situation, pleadings have to be filed and exchanged by the parties before the objection on statute of limitation can be properly taken. It will however, not be procedurally out of place if the issue of statute bar is raised by way of preliminary objection by the defendant upon being served the originating processes. After all, the

¹¹ Jerry Amadi, *Limitation of Action: Statutory and Equitable Principles* (Pearl Publishers 2011)64-66.

¹² *University of Jos v Adam* [2013] LPELR-20276 (CA).

¹³ *University of Jos* (n 11).

¹⁴ *Elf Oil Nig Ltd v Oyo State Board of Internal Revenue* [2002] LPELR-12260 (CA).

¹⁵ *Ibid.*

¹⁶ *Folarin* (n 7) 586.

purpose of the requirement that the plea should be raised in the defense is in order not to take the claimant by surprise.¹⁷

Another paramount principle relating to statute of limitation is that negotiation by parties does not stop statute of limitation from running.¹⁸ Where however, negotiation has reached an advanced stage and admission or acknowledgment of indebtedness has been made, it stops statute of limitation from running.¹⁹ In *University of Ibadan v Adetoro*, it was held that admission following negotiation is capable of reviving a cause of action.²⁰ Admission or acknowledgment of indebtedness must however, be clear.²¹ It is not the duty of the court to read meaning into a document claimed to be an acknowledgment of debt but which does not show so.²²

3.0. The Policy behind Statute of Limitation

The idea behind imposing time limits by statutes within which civil grievances and claims should be pursued in court is to protect potential defendants from unfair litigated claims.²³ It was thought that after a significant passage of time, it would be unfair and inequitable to allow a claimant pursue a cause when relevant evidence may have been lost, obscured or not retrievable and when witnesses may have forgotten facts touching on such cases. Such stale claims were considered to have more of cruelty than justice in them.²⁴ Thus, the proponents of statutes of limitation hinge their support on the passage of time and its effect on the evidence and testimonies of the parties. The Supreme Court of Oklahoma, a State in the United States of America (USA) captured the essence

¹⁷*Oyebanji v Lawanson* [2004] 13 NWLR (Pt 889) 62, 75 (CA).

¹⁸*Nwadiaro v Shell Dev. Co. Ltd* [1990] 5 NWLR (Pt 150) 322, 338(CA).

¹⁹*Ibid*, 339.

²⁰[1991] 4 NWLR (Pt 185) 375, 386(CA).

²¹*Pas(Nig)Ltd v New Nigeria Salt Ltd*[1990] 6 NWLR (Pt 159) 764 (CA).

²²*University of Ibadan* (n 20) 386.

²³*Nwadiaro* (n 18) 337.

²⁴*Ibid*.

of limitation laws when in the case of *Seitz v Jones*, stated as follows: “The underlying purpose of statutes of limitation is to prevent the unexpected enforcement of stale claims concerning which persons interested have been thrown off their guard by want of prosecution.”²⁵

The Nigerian Court of Appeal in *Nwadiaro v Shell Dev. Co. Ltd* appreciated the basis and policy behind limitation laws. In the words of Kolawole JCA:

Now, what is the policy of limitation Acts? I believe that the courts have expressed at least differing reasons supporting the existence of statutes of limitations namely,

- (1) that a defendant claim have more of cruelty than justice in them;
- (2) that a defendant might have lost the evidence to disprove a stale claim;
- (3) that persons with good causes of action should pursue them with reasonable diligence.²⁶

In essence, those that go to sleep on their claims should not wake up and expect the assistance of the court. This rule of equity and fairness is further reinforced by a statement now common place in law, that there should be an end to litigation. The statement of Oputa JSC in *Atunrase v Sunmola* though had laches and acquiescence in focus, is equally of considerable force when dealing with all delayed suits. There, his Lordship stated:

In all actions, suits and other proceedings at law and in equity, the diligent and careful actor or suitor is favoured to the prejudice to him who is careless and

²⁵ Justia Law, < <https://law.justia.com> > accessed 20 May 2025.

²⁶ *Nwadiaro* (n 18).

slothful, who sleeps over his rights. The law may therefore deny relief to a party who by his conduct has acquiesced or assented to the infraction of his rights...²⁷

The net effect therefore is that perceived complaints and grievances of persons ought to be ventilated and pursued in court with all diligence. Where this is not the case, a party who has a good cause may lose the right to get a redress in court simply because he was not diligent to sue within the time prescribed by law. The law frowns at such a suitor and will close the door of judicial redress against him in the interest of justice.

4.0. Are Contracts of Employment Suits Exempted from Limitation Laws?

In answering the crucial question whether contracts of employment cases cannot be defeated by statutes of limitation, it will be necessary to review the judicial attitude towards cases of contract and Public Officers Protection Act and other related laws. How the labour courts have interpreted and applied those decisions will also be considered.

4.1 Judicial Attitude to Limitation Law and Contract Related Cases

The position of the Supreme Court in *NRMA&FC v Ajibola Johnson* that section 2(a) of POPA which is a limitation of action provision does not apply to bar an action in contract is not new.²⁸ That law has been there ever since and has been stated and restated by our apex court in a plethora of cases.²⁹ The judicial attitude has always

²⁷[1985] 1 NWLR (Pt 1) 105, 120(SC).

²⁸ NRMA&FC (n 2).

²⁹*Salako v L.E.D.B (1953)20 NLR 169; NPA v Construzioni Generali F.S.C [1974]NSCC 622; O sun State Govt v Dalami (Nig) Ltd (2007) 9 NWLR (Pt. 1038) 66.*

been that where an action has been brought for something done or omitted to be done under an express contract, provisions such as section 2(a) of POPA do not apply.³⁰

The view appears to be in consonance with the trend of judgments pronounced in English cases dealing with similar provisions in certain English Statutes. In *Midland Railway Company v The Local Board for the District of Withington*,³¹ the English Court of Appeal construed an English statute with a limitation provision. Section 254 of the Act states as follows:

A writ or process shall not be sued out against or served on any local authority or any member thereof or any officer of a local authority or person acting in his aid, for anything done or intended to be done or omitted to be done under the provisions of the Act, until the expiration of one month after notice in writing has been served on such local authority member, officer or person....³²

The key requirement under the above provision is that an action shall not be commenced until the expiration of one month after notice in writing has been served. This is a limitation provision in a sense, though not exactly in the nature of section 2(a) of POPA. But the crucial point is that it limited the right of action to the happening of an event which is expiration of one month after notice in writing has been served on such local authority, member, officer or person. It conferred a statutory privilege on the local authority, member, officer or person by circumscribing the right of action to the expiration of one month after notice in writing has been served. In dealing with the question whether the above provision applies to

³⁰*NPA v Construzioni Generali F.S.C; Osun State Govt* (n 28).

³¹ (1882-3) 11 QBD 788 (CA).

³² Public Health Act 1875 (UK). [1985] 1 NWLR (Pt 1) 105, 386(CA).

case of contract Brett M.R. made the following illuminating observation:

It has been contended that this is an action in contract and that whenever an action is brought upon a contract, the section does not apply. I think that where an action has been brought for something done or omitted to be done under an express contract, the section does not apply; according to the cases cited, an enactment of this kind does not apply to specific contracts.³³

Reasoning by analogy as a way of strengthening the principle just stated, the court took the view that when goods have been sold and the price is to be paid upon a *quantum meruit*, the section will not apply to the action for the price, because the refusal or omission to pay would be a failure to comply with the terms of the contract and not with the provisions of the statute.³⁴

In *NPA v Construzioni Generali F.S.C.*, their Lordships of the Supreme Court of Nigeria approved and followed the above English case. In their words: “We agree with their Lordships exposition of the law on this point.” In that case section 97 of the Ports Act part of which share similar wordings with section 254 of the English Public Health Act was considered. The illuminating pronouncement of Ibekwe JSC in his judgment is worth reproducing. His Lordship stated:

We shall now deal with the other point which to our mind does not seem to be well-settled, namely whether the kind of statutory privilege which we have been considering is applicable to an action founded upon a contract. In other words, whether S..97 of the Ports Act applies to cases of contract. We think that the answer to this question must be in the

³³*Midland Railway*(n 31).

³⁴*Ibid.*

negative. We agree that the section applies to everything done or omitted or neglected to be done under the powers granted by the act. But we are not prepared to give to the section the stress which it does not possess. We take the view that the section does not apply to cases of contract.³⁵

Interestingly, the court in reaching the above decision referred with approval, to the earlier pronouncement of *Commarmond S.P.J in Salako v L.E.D.B* where his Lordship stated: “I am of the opinion that section 2 of the Public Officers (Protection) Ordinance does not apply in cases of recovery of land, breaches of contract, claims for the work and labour done etc.”³⁶

This settled position of the law that section 2 of the Public Officers Protection Act and of course other similar provisions such as section 97 of the Ports Act do not apply to cases of contract was again restated in the latter case of *Osun State Govt v Dalami (Nig) Ltd*. It must be borne in mind that both section 97 of the Ports Act and section 2(a) of POPA are limitation provisions. While the former suspends and keeps the right of action in abeyance until the fulfilment of a pre-action condition, the latter restricts access to court and the right to commence an action to a period of three months upon the accrual of a cause of action.

The much trumpeted case of *NRMA&FC v Ajibola Johnson* referred to *NPA v Construzioni and Osun State Government v Dalami* in arriving at the decision that section 2(a) of POPA does not apply to cases of contract.³⁷ From the above exposition of the law, it has become abundantly clear that what is now settled is that POPA (and of course other related laws containing provisions such as section 97 of Ports Act) do not apply to cases of contract. This restriction is not applicable to specific statutes on limitation of action, such as

³⁵ [1974] NSCC 622, 630.

³⁶(1953) 20 NLR 169.

³⁷NRMA&FC (n 2).

Limitation Law of Rivers State which expressly provides for time limit within which an action in contract can be brought. In *Sanda v Kukawa Local Government*, it was held that in an action for breach of contract, the cause of action accrues to the plaintiff's benefit from the time the breach of the contract occurred.³⁸ It must be noted that the facts of Sanda's case relates to breach of contract of appointment as village head. In other words, it was a contract of employment matter. This notwithstanding, the plaintiff action was barred having not been commenced within the time provided by State statute with a limitation provision.³⁹

The recent decision of the Supreme Court in *Rector Kwara Poly v Adefila*⁴⁰ relied upon by Ogbuanya J in Grant's case to hold that Rivers State Limitation Law does not apply to cases of contract of employment did not say anything new from what earlier authorities on the point had said. In that case, the 1st-3rd respondents for themselves and on behalf of all members of the Academic Staff Union of the 4th appellant sued the appellants as public officers and public institutions. Their grievance was that the appellants cannot independently reduce the retirement age of Academic Staff of Kwara State Polytechnic from 65 years to 60 years or at all.

Evidently, it was a suit against public officers and public offices. The defense raised by the appellants that the action was brought outside the three months prescribed period could not avail them since the action was founded on contract. In the court's view: "It has long been settled by this court that the Public Officers (Protection) Law the appellants rest their challenge to the competence of this suit does not apply to breach of contract cases."⁴¹

³⁸ [1991] 2 NWLR (Pt 174) 379, 391(SC).

³⁹ Local Government Law 1976 (Bornu State), s 175.

⁴⁰ [2024] 3 NWLR (Pt 1944) 529.

⁴¹ *Ibid*, 544; *FGN v Zebra Energy Ltd* (2002) 18 NWLR (Pt. 798) 162, 196; *Roe Limited v University of Nigeria* (2018) 6 NWLR (Pt.1616) 420; *Rahamaniya*

4.2. What the Case of *NRMA & FC v Ajibola Johnson* Actually Decided

As stated earlier, the wave of decisions of the Industrial courts in Nigeria that actions founded on contract of employment cannot be defeated by limitation laws got the inspiration from the decision of the Supreme Court of Nigeria in *NRMA&FC v Ajibola Johnson*.⁴² In that appeal, the second issue formulated by the appellant in the main appeal, for the determination of the Supreme Court was whether the learned Justices of the Court of Appeal were right in holding that the appellants do not enjoy the umbrella of Public Officers Protection Law in contract of service. In resolving the issue, the court held: “There is no doubt a careful reading of the respondent’s 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.”⁴³

It is therefore palpably clear from the above pronouncement, made in the light of the facts of the case that what was in issue in that case was whether the limitation of action provision contained in section 2(a) of the Public Officers Protection Act applies to cases of contract. The Supreme court in affirming the position of the Court of Appeal on that point answered the question in the negative. The court concluded as follows: “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.”⁴⁴

Obviously, the position of the Supreme Court on that issue is not new. What the court did was to restate the earlier settled position of the law already considered, that the Public Officers Protection Act

United Nigeria Limited v Minister of Federal Capital Territory (2021) LPELR-556 33 (SC), (2021) 17 NWLR (Pt. 1806)481 (SC).

⁴²(2019) 2 NWLR (Pt.1656) 247.

⁴³(2019) 2 NWLR (Pt.1656) 247, 270.

⁴⁴ NRMA&FC (n 2) 271.

does not apply to cases of contract. With due respect, it is a total misconception of the above case to hold that it laid down a new rule in relation to application of Limitation Law to cases of contract. Some important clarifications that must be made in relation to the decision are as follows:

(a)The decision was limited to the application of the Public Officers Protection Act to cases of contract. Indeed, the defendants in the case were public officers.

(b)The decision cannot be extended to the application of limitation laws of the various States in Nigeria to matters of contract of employment unrelated to public officers.

(c)The decision did not lay down a new rule but merely reiterated an existing and established principle of law in relation to the application of Public Officers Protection Act to matters of contract.

(d) In a plethora of cases, the apex court had recognized certain exceptions to the protection provided for under the Public Officers Protection Act. Such exceptions are (i) instances of continuance of damage or injury (ii) situation when the public officer acted outside the bound of his office or outside his statutory or constitutional duty (iii) cases of recovery of land (iv) breaches of contract (v) claims for work and labour done and (vi) good faith.

It is therefore clear that what the Supreme Court did in NRMA&FC was to reiterate one of the already established exceptions in relation to limitation of action provision under the Public Officers Protection Act. It is must be contended that the decision of the apex court in N.R.M.A & FC case must be considered and applied in the light of its peculiar facts. That case did not by any stretch of the imagination say that statute of limitation applicable in various States of the country should not apply to contract of employment: The law is

settled that a decided case is only an authority for the peculiar issues in the case and it must be considered and utilized in the light of its own peculiar facts and circumstances.⁴⁵ The appellants in *NRMA&FC* were Public Officers and that was why the provisions of Public Officers Protection Act was invoked in an attempt to bar their action.

As a way forward, it is contended that another Judge of an Industrial court is not bound by the decisions of his brother Judges in the cases of *Nkume* and *Akume* yet to be considered. The law is that a decision of a court of co-ordinate or concurrent jurisdiction does not bind another court of similar jurisdiction. In other words, one Judge is not bound by the decision of another Judge on any point of law decided by the former.⁴⁶ Decision of a court is only persuasive authority for a court of co-ordinate jurisdiction.⁴⁷

4.3 Industrial Courts Erroneous Perception of Johnson Ajobola's Case

The case of *Lilian Nnenna Akumah v FBN PLC*⁴⁸ is our first port of call. It was a Ruling of the NICN sitting in Lagos delivered on the 10th day of October 2019. The Defendant in that case by way of notice of preliminary objection challenged the jurisdiction of the court to entertain the action. One of the grounds of the objection was that the cause of action is irreparably statute-barred by virtue of 8(a) of the Limitation Law of Lagos State. The other ground of the objection is not relevant to our inquiry. After considering the arguments of counsel to the parties in the suit, the court held that the matter was not statute-barred on the following grounds:

- (i) the contract of employment between the parties was not simple contract and therefore section 8(1) (a) of the

⁴⁵*Yaba tech v M. C. D. Ltd* [2014] 3 NWLR (Pt.1395) 61.

⁴⁶*Gambari v Gambari* [1990] 5 NWLR (Pt.152) 572, 583.

⁴⁷*Abdulkareem v Lagos State Government* (2016) 15 NWLR (Pt.1538) 177, 230.

⁴⁸< <https://www.nicnadr.gov.ng> > accessed 1 May 2025.

Limitation Law of Lagos State cannot bar the action

(ii) by the decision of the Supreme Court in *NRMA&FC v Ajibola Johnson*, limitation of action law do not apply to contract of service.

It was the court's further view that limitation laws used to apply to contracts of employment matters but after the aforementioned decision of the Supreme Court, the law changed:

While I agree with the learned counsel that 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.... However, the position of the law has since changed after the decision in the case of *N.R.M. & FC 2 ORS v Ajibola Johnson (2019) 2 NWLR (Pt. 1656) 247 at 270- 271*. The Supreme Court was emphatic that limitation of action does not apply to contract of service.⁴⁹

The forgoing pronouncement of the NICN clearly admits that before July 2019, limitation laws apply to suits touching on contracts of employment. According to the court however, the law changed after *NRMA&FC* emerged. This position has informed our critical examination of the decision of our apex court in *NRMA & FC* case to ascertain whether it truly introduced a change into the existing law. Regrettably, the case did not introduce any change but merely restated a settled position of the law.

The next decision of the NICN which evidently followed the decision in *Akumah* is the case of *Godson Ikechukwu Nkume v FBN*.⁵⁰ In that case, having pleaded the issue of statute of limitation in the Amended the Statement of Defence, one of the issues

⁴⁹*Akumah* (n 48).

⁵⁰< <https://www.nicnadr.gov.ng>> accessed 15 May 2025.

formulated by the Defendant bank in its final written address was whether the court has jurisdiction to hear claimant's claims A (i) A (ii), B, C, D, E and F having regard to the Limitation Law of Lagos State, the National Industrial Court Act and the 1999 Constitution. The trial court in resolving this issue stated in *paragraph 29* of the Judgment:

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. The 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 (I) (a) of Limitation Law of Lagos State. My learned brother, Justice Essien observed that... I completely agree and hold that claims (a)(i) (b) (c) and (d) are not statute barred.⁵¹

From the above, it is obvious that the learned trial Judge completely agreed with the pronouncement of the court in Akumah's case that statutes of limitation no longer operate to bar actions relating to contract of employment. Still in the spirit of ensuring that limitation laws do not operate to defeat actions founded on contract of employment, the NICN sitting in Port Harcourt in a Ruling delivered on 25th day of April 2024 in *Bamidele Esebame v Ciskon Nig. Ltd*,⁵² appeared to have followed the position of the courts in Akumah and Nkume. In that action, the defendant upon filing its statement of defence had followed same up with a motion on notice challenging the court's jurisdiction to hear the matter on the sole ground that the action is statute-barred by virtue of section 16 of the Limitation Law of Rivers State which provides: "No action founded on contract, tort

⁵¹*Nkume* (n 50).

⁵²< <https://www.nicnadr.gov.ng>> accessed 20 May 2025.

or any other action not specially provided for in *Part 1* and 11 of this Law shall be brought after the expiration of five (5) years from the date on which the cause of action accrued.”

In dismissing the application Hamza J. towed the path of his learned brothers in the cases of *Akumah and Nkume* and held as follows:

It suffices saying that from the nature of the relationship between the parties, it could be deciphered (sic) that it was a contract of service. If that is settled, thus, the Supreme Court per Ariwoola JSC now the CJN in *NRMAFC VS ATOBOLA JOHNSON* (sic) (*supra*) at pages 270-271 paragraphs F-G stated the position as follows:

“There is no doubt, a careful reading of the Respondent’s 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... “⁵³

The latest, to the knowledge of this writer, in the wave of decisions exempting cases, of contract of employment from the grip of statute of limitation is the case of *Grant Iheanacho v BAP Services Limited*⁵⁴ decided by the NICN on the 20th day of August 2024. In that case, a company known as BAP Services Limited in 2012, terminated the contract of employment with its former General Manager - the claimant. The claimant waited till 2021 when he instituted an action against the defendant and claimed outstanding salaries and other entitlements due to him in addition to unremitted pension deductions. The defendant filed a defence and in addition challenged the court’s jurisdiction to hear the matter on the ground that the matter was statute-barred having been filed after nine (9) years upon the accrual of the cause of action. In holding that the

⁵³*Bamidele* (n 52).

⁵⁴< <https://www.nicnadr.gov.ng>> accessed 15 May 2025.

Rivers State Limitation Law is not applicable to defeat the action, the court stated:

I have noted the trend of judicial authorities on the applicability of statute of limitation such as Public Officers Protection Act (POPA) on employment contract claims, which has rested on upholding the inapplicability of such limitation law, going by the latest authority of the Supreme Court case of *Rector Kwara Poly v Adefila* (2024) 9 NWLR (Pt. 1944) 529 which towed the same line with the earlier Supreme Court case of *National Revenue Mobilization Allocation and Fiscal Commission v Ajibola Johnson & Ors* (2019 2 NWLR (Pt. 1656) 247 cited and relied on by the learned Claimant's counsel. There is no doubt that all categories of statute of limitation have the same effect on validity of a suit challenged. Thus, if a particular model of statute of limitation such as POPA has been held inapplicable to employment contract claim, invariably the effect applies to similar model such as the Limitation Law of Rivers State in issue herein. To that end, I share a considered view that the said Limitation Law of Rivers State is similarly not applicable to defeat the instant suit.⁵⁵

To the learned trial Judge therefore, if it has been decided that contract cases cannot be defeated by the limitation provision contained in POPA, it logically follows that all contract matters cannot be barred by limitation provisions contained in any other limitation law apart from POPA. With due respect to the learned trial Judge, the above view seems to have lost sight of the fact that the very section 16 of the Limitation Law considered in that case with the heading "Time limit for actions in contract, tort, etc" clearly bars

⁵⁵*Grant Iheanacho* (n 54).

actions in contract brought after the expiration of five (5) years from the date on which the cause of action accrued.

The simple and literal interpretation of *section 16* of that Law is that contract actions can be defeated when brought outside the period prescribed by that same statute. It is this writer's view that using POPA as a model in interpreting specific limitation statutes will lead to an absurd end. The POPA or POPL are types of statutes enacted for the protection against actions of persons acting in the execution of public duties. Its application is limited to public officers. The limitation laws of the States on the other hand are specific in nature and apply to different forms of claims except those clearly exempted by the statute. For instance, in section 41 of the Rivers State Limitation Law contract is not one of the items exempted from the application of the Law. Of course, it would have been absurd for the Law to have on one hand made provision barring contract actions in appropriate cases and on the other hand exempt contract matters from the application of the law. The legislature would not had intended that contract matters cannot be caught by limitation provisions and the Supreme Court's interpretation of section 2(a) of POPA could not have given the section the stress which it does not possess. Godwin and Linda have argued that it cannot be the intention of the legislature to cloak contract of employment with a special toga of running in perpetuity.⁵⁶

It will indeed be absurd and against the policy behind limitation laws to allow actions relating to labour matters to lie in perpetuity. Ogbuanya J saw this in Grant Iheanacho's case under consideration but decided to tow the part of his learned brothers. He however, attempted to create a window under the common law doctrine of laches and acquiescence which allows a defendant to resist a suit commenced after a reasonable length of time has passed. That was

⁵⁶ Godwin Etim and Linda Osuagwu, *Contracts of Employment and Limitation Laws: Is the National Industrial Court Rewriting the Law*<
[https://www.aelx.com/contract of employment](https://www.aelx.com/contract%20of%20employment)> accessed 15 May 2025.

an innovative attempt. His reasoning is that a claim not caught by statute may still be defeated on ground of conscience, by the laches committed by a party or by his acquiescing attitude.⁵⁷ The defense was however not considered as it was not raised by the defendant in that case. The “reasonable time test” associated with the doctrine of laches and acquiescence does not make a popular option considering that it is at the court’s discretion to decide whether a reasonable time capable of defeating the action has passed.⁵⁸

5.0. Conclusion and Recommendations

It has been clearly shown that actions bordering on contract (simple or formal, general or specific) have always been a subject of limitation by relevant statutes. This has been the position both in Nigeria and other common law jurisdictions. Contract of employment is no doubt an aspect of contract and action relating to it comes within a contract case. Indeed, there appears to be no valuable basis to exempt contract of employment matters from the grip of statute of limitation in appropriate cases.

As we have seen, in an action for breach of contract, the course of action accrues to the plaintiff from the time the breach occurred. Indeed, where an action is not commenced within the time allowed by statute, such an action will be statute-barred, this shows that contract cases of whatever form can be limited by statute, subject however to the exceptions already discussed.

The decisions of the Supreme Court in *NRMA&FC v Johnson and Rector of Kwara Poly v Adefila* claimed to have changed the rule on limitation law in relation to contract cases did not do so. Those decisions merely reiterated the trite law on the subject. The NICN with due respect, completely misconceived and misapplied those

⁵⁷ Jerry Amadi (n 11) 1.

⁵⁸ Stephen Azubuike, *Application of Limitation Law to Employment Contracts and the Common Law Principle of Laches and Acquiescence* <<https://stephenlegal.ng>> accessed 15 May 2025.

decisions. The cases of Akumah and Nkume ignited the fire and set it burning. Bamidele, Grant and other joined in the raging inferno. The decision in those cases notwithstanding, it has been sufficiently demonstrated that there is no perpetual right of action in contract of employment matters.

It is the recommendation of this article that other Judges of NICN should not follow since the law permits them to depart from those decisions being that of their brother Judges of the same court. Finally, the Court of Appeal being the final court in most labour matters now has a herculean task of salvaging the situation by clarifying the law on the subject in order to put to rest the ongoing controversy. This can only happen when appeals on the issue are lodged and pursued to conclusion.