

The Statute of Limitation and its Applicability to Tax Matters

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Abstract. The right to litigate is not usually everlasting and may be restricted by a statute of limitation which stipulates a period of time within which a claim may no longer be filed. If it is filed, it could be liable to be struck out if the defence to that claim is, or includes that, it is statute-barred as having been filed after the limitation period. The intention of these laws is to facilitate resolution of disputes within a reasonable length of time. This is predicated on the fact that legal proceedings are not meant to last in perpetuity. Thus, limitation period generally begins when the plaintiff's cause of action accrues or when they become aware of the legal wrong or injury occasioned to them. Limitation of actions virtually covers almost all areas of litigation, but, for the purpose of this work, particular attention is paid to limitation of actions against tax matters.

1. Introduction

In every country, there are usually limitation laws, which require that a law suit must be commenced within a specific period of time, after the injury or omission, causing the damage or loss, arose or occurred. These are laws that set the deadline for filing of suits. In Nigeria, the general legislation, for the limitation law is that of the various States of the Federation. There is also the Limitation Act of FCT which applies to those States that do not have their own Act. The 36 States of the Federation therefore have their respective limitation laws which apply to civil suit within their territories.

The primary essence of having a limitation law is to ensure that all claims are diligently and promptly presented while the evidence in support of the claim, or the defence to a claim, is still available and the memory of the witness is still fresh. The further essence of limitation law is to guarantee finality to the expectation or fear of litigation.

The effect of not commencing a law suit or judicial proceeding within the period limited for bringing the action is that such a law suit or claim will be extinguished after the time limited for commencing the law suit has elapsed. Thus, the claim or injury, with the resulting damage or loss becomes, "otiose with the effluxion of time".

Ignorance of the statutorily provided period for bringing a legal action, after having knowledge of the injury or loss, will not be a defence to a claim that is already statute barred. Among the key elements of the limitation laws are that the following actions cannot be brought after the expiration of six years. They are actions founded on simple contracts, quasi contracts, to enforce recognizance actions and actions to enforce arbitral award. The following actions cannot be brought after 12 years from the date of cause of action. They are, action to recover any principal sum secured by a mortgage or charge, action to recover interest for a sum secured by a mortgage or charge or arrears of an annuity charged as moveable property. Some international contracts for carriage of goods by sea cannot be brought if they are not instituted within 2 years. Also, international Aviation claims must be brought within 2 years. Actions against public officers in

Nigeria cannot be instituted after a period of three months of actions carried out within the authorities of their power.

The statute of limitation has the effect of rubbing parties of the right to sue in an action even when they have a valid cause of action. Where the statute of limitation applies, time will continue to run even while the parties are negotiating.

1.1 Definition of Terms

1.1.1 Statute: This is a law passed by a legislative body. Specifically, it is legislation enacted by any lawmaking body, including the legislature, administrative boards, and municipal courts. It denotes a body of legislation comprising various chapters on different subjects enacted into law by an Act of Parliament.

1.1.2 Limitation: This is defined as the act of limiting or the state of being limited. It is the statutory period after which a law suit or prosecution cannot be brought to court.

1.1.3 Statute of limitation: These are laws passed by a legislative body in common law system to set the maximum time after an event within which legal proceedings may not be initiated. Where there is a statute of limitation setting forth a definite period of time for limitation, no court shall entertain proceedings for enforcement of certain rights filed after the lapse of the period stated.

A case cannot therefore be brought after the period so stated, as the courts will have no jurisdiction over cases filed after the statute of limitations has expired. Once filed, cases do not need to be resolved within the period specified by the statute of limitation.

1.1.4 Tax: This has been defined as a compulsory contribution or charge, usually monetary, imposed by the government on persons, entities, transactions, or property to yield public revenue for support of government. Most broadly, the term embraces all governmental impositions on the persons, property, privileges, occupations, and enjoyment of people, and include duties, imposts, and excises. Although a tax is often thought of as being pecuniary in nature, it is not necessarily payable in money, as payment could be in kind.

1.2 History

Historically, limitation periods were imported into the common law by statute to restrict the bringing of common law actions by persons who seem to have slept over their rights for a long time. Meanwhile, courts of equity developed limitation periods of their own to govern actions in equity's exclusive jurisdiction. For example, the Limitation Act 2005 incorporates all claims (whether legal or equitable) into the limitation regime.

Statutes of limitations, which date back to early Roman law, are a fundamental part of European and U.S. law. These statutes, which apply to both civil and criminal actions, are designed to prevent fraudulent and stale claims from arising after all evidence have been lost or after the facts have become obscure through the passage of time or the defective memory, death, or disappearance of witnesses.

The statute of limitation is a defence that is ordinarily asserted by the defendant to defeat an action brought against him after the appropriate time has elapsed. Therefore, the defendant must plead the defence before the court upon answering the plaintiff's complaint. If the defendant does not do so, he is regarded as having waived the defence and will not be permitted to use it in any subsequent proceedings. Once this defence is pleaded the court is bound to determine it one way or the other, without paying consideration to the justification of the plaintiff's claim.

Statutes of limitations are enacted by the legislature, which may extend or reduce the time limits, subject to certain restrictions. A court cannot extend the time period unless the statute provides such authority. With respect to civil lawsuits, a statute must afford a reasonable period in which an action can be brought. A statute of limitations is unconstitutional if it immediately curtails an existing remedy, or provides such a little time that it deprives an individual a reasonable opportunity to start a lawsuit. Depending upon the state statute, the parties themselves may either shorten or extend

the prescribed time period by agreement, such as a provision in a contract.

1.3 Application of Statute of limitation to tax matters

Certainty is one of the hallmarks identified by Adam Smith as a characteristic of a good tax system. In order to be fair to a tax payer, he should know the timeframe within which he can be held responsible for previous noncompliance or sue for a wrong assessment. This is probably one of the reasons that the National Tax Policy (NTP) of Nigeria, canvasses for periodic and timely audit by tax authorities of returns filed by tax payers.

This would ensure that difficulties associated with recovery of relevant information/documents by tax payers due to passage of time, loss or deterioration of information, deliberate destruction of information in line with tax payers' policy, staff movement and liquidation of tax payer etc. is minimized.

By virtue of the provisions of the Companies Income Tax Act (CITA), the Personal Income Tax (PITA) and the Petroleum Profit Tax Act (PPTA), tax payers have an opportunity to recover any over payment of tax within a six year period. The tax laws also impose a six year limitation (from the relevant year of assessment) on the timeframe within which the tax authorities may raise additional tax in connection with the returns filed by the tax payers.

The Federal Inland Revenue Service (Establishment) Act (FIRSEA), 2007 also stipulates that no officer shall make a demand for an under-assessment or erroneous repayment of tax after five years. While the other bodies of tax legislation stipulate a limitation period of 6 years, FIRSEA stipulates 5 years. One may wonder whether to apply the limitation of 6 years or 5 years when there is conflict. By virtue of section 68(2) FIRSEA, the provision of FIRSEA shall prevail where there is conflict with any of the provisions of the Acts mentioned in the First Schedule to the Act.

The provisions of Section 34 of the FIRS ACT 2007 provides:

Without prejudice to any other provision of this Act or any other law listed in the First Schedule to this Act, any amount due by way of tax shall constitute a debt due to the service and may be recovered by a civil action brought by the service.

Where any tax has been under- assessed or erroneously repaid, the person who should have paid the amount under-assessed or to whom the repayment has erroneously been made shall on demand by the proper officer, pay the amount under-assessed or erroneously repaid as the case may be, and any such amount may be recovered as if it were tax to which a person to whom the amount was so under-assessed or erroneously repaid were liable:

Provided that the appropriate officer shall not make any such demand after five years of such under-assessment or erroneous repayment unless such under-assessment or erroneous repayment was caused by the production of a document or the making of a statement which was untrue in any material particular.

In determining whether an action is statute barred, the court will look at the writ of summons and the statement of claim only or the Notice of Appeal and its Particulars as the case may be. In *Ibekwe v. Imo State Education Management Board*, it was held that, in determining whether or not a cause of action is statute barred, it is only necessary to consider when the cause of action arose.

A cause of action accrues the moment a wrong is done to the plaintiff by the defendant. The Court of Appeal in the case of *Oranyeli v. First Bank Plc* held that to determine period of limitation, a comparison of the date the cause of action accrued with the date on the writ of summons and the statement of claim alleging the wrong would, without taking evidence, suffice to determine whether or not the cause of action is statute barred. In other words it can be deduced by simple mathematical calculation. It is therefore clear from a mathematical comparison if the accrual of the cause of action as alleged in the Notice of Appeal itself and the date of filing of this suit that the suit includes a cause of

action accruing over five years before the action was filed. This is in contravention of section 34 of the F.I.R.S. Act and as such the suit is time barred.

Furthermore, the authority upon which the FIRS can undertake the assessment of the respondent's account is established in S. 66(1) of the Companies Income Tax 2004 and is reproduced below:

(1) If the board discovers or is of the opinion at any time that any company liable to tax has not been assessed or has been assessed at a less amount than that which ought to have been charged, the board may, within the year of assessment or within 6 years after the expiration thereof and as may be necessary, assess such company at such amount or additional amount, as ought to have been charged, and the provisions of this Act as to notice of assessment, appeal and other proceedings shall apply to such assessment or additional assessment of the tax charged thereunder:

Provided that where any form of fraud, willful default or neglect has been committed by or on behalf of any company in connection with any tax imposed under this Act or under the Companies Income Tax Act 1961 the board may at any time and as often as may be necessary, assess such company at such amount or additional amount as may be necessary for the purpose of making good any loss of tax attributable to the fraud, willful default or neglect.

The case of *N.C.C. v. MTN* sheds light on the issue of the interpretation of clear and unambiguous words in a statute:

Where the words of a statute are clear, the court should give effect to their literal meaning ... This is because the object of interpretation of statutes is to discover the intention of the law maker, which is deducible from the language used ...

It is important to note that, by virtue of the proviso, the FIRS is not bound by any limiting law where it is shown that the respondent committed 'any form of fraud, willful default or neglect'. For example, where the documents

upon which the first assessment was done, or for which tax clearance certificates were issued were not representative of the true position of the respondent's resources at the time the assessment was done.

1.5 Exclusion of Limitation Period for Fraud and Neglect:

The law gives the FIRS a means of opening the barred period when it discovers fraud, willful default or neglect of the tax payer. See for example section 36(4) of Petroleum Profit Tax Act (PPTA), which provides

Notwithstanding the other provisions of this section, where any form of fraud, willful default or neglect has been committed by or on behalf of any company in connection with any tax imposed under this Act, the Board may at any time and as often as may be necessary, assess the company on such amount as may be necessary for the purpose of recovering any loss of tax attributable to the fraud or neglect.

It means therefore, that where the tax authorities have not carried out an audit for a period exceeding 6 years or 5 years in the case of underassessment or erroneous repayments as the case may be; the amount should ordinarily become statute barred. The window for such tax assessment or collection can only be reopened where the proviso applies. This could trigger tax investigation for alleged tax evasion rather than a national or routine tax audit. This could bring about an action for additional tax or invoke the tax payer's right to reclaim a refund of excess payment of tax. An action can be jeopardized if competent period is lumped with an incompetent period in a single action. The incompetent period may contaminate the competent period and render the whole action statute barred.

In the case of *Nigerian Deposit Insurance Corporation (N.I.D.C.) v. The Governing Council of the Industrial Training Fund*, the Plaintiff/Respondent claimed the sum of three hundred and fifty million naira N350, 000, 000 against the Appellant/Defendant covering the year 1998-2004 without specifying what was due for each year. The Court of Appeal held that the claim was Statute barred. The court, per *Baba, J.C.A.*, held extensively as follows:

It is trite that the period of limitation begins to run at the time that the action accrued, or from the moment the action arose.

In *Sosanya v. Onadeko* the court had to consider the propriety of lumping competent and incompetent grounds together under an issue. This court held among others following the principle in *Nwadike v. Ibekwe* that an incompetent ground of Appeal cannot be argued together with the competent ground as the incompetent ground contaminates the valid ground and they are liable to be struck out.

Although the sections may bring succor tax payers who may choose to hide from the relevant tax authority until the time effluxes, such comfort may be short lived if they had carried out any form of fraud or deceit to enhance the failure of the relevant tax authority to collect or assess the sum required.

Where tax payer has probably been fraudulent in the tax returns filed or has willfully defaulted or neglected to file appropriate returns with the tax authorities or otherwise has actively facilitated the circumstances from which he now seeks to benefit, the barred period for recovery of tax can be reopened.

Tax evasion is a criminal offence and therefore, cannot be statute barred to warrant any interpretation of 6 year 5 years. Thus, where at any time and as often as necessary the tax authorities are "of the opinion" that fraud, willful default, neglect or misinformation has been committed by the tax payer; it may irrespective of the number of years, commission an investigation to recover any lost tax.

Thus although the tax authorities are enjoined to carry out a tax audit and issue an additional assessment within six years from the relevant tax year, the limitation does not apply in the event of a fraud, willful default, or neglect by the company.

Depending on the direction of interpretation, a review of the provisions around a tax payer's right to reclaim excess taxes either shows a strict six year window (according to CITA) or a refund after a proper audit by the tax authority's management board (according to FIRSEA).

When the provisions of any of the tax laws are inconsistent with the provisions of FIRSEA, the FIRSEA prevails.

There is a risk that a tax payer who fails to institute a tax recovery process within the six year window would be exposed to forfeiture of excess taxes paid to the tax authorities. Sometimes, such over payment could be done to an ambiguity in the law which is subsequently clarified in favour of the tax payer by the judiciary. A tax payer does not have the kind of perpetual right to sue like the tax authorities.

According to Justice Chukwuma-Eneh JSC, in the case of *Nigeria Social Insurance Trust Fund Management Board (Formerly National Provident Fund Management Board v. Klifco Nigeria Ltd.*

What I must further state as settled law is that the law of limitation here has not extinguished the right to debt. The instant debt has not been extinguished but it merely bars the right to recover the debt because of lapse of specified period of time in the law of limitation from the accrual of cause of action. However, where there is acknowledgement of debt, which must be in writing signed by the party that is liable, the right to recover the debt by action is revived and what constitutes acknowledgement in such causes is a matter of fact in each case...

Since the Tribunal is revenue oriented, its rules are construed liberally to allow for revenue collection and generation.

In the case of *Phoenix Motors Ltd v. National Provident Fund Management Board*, the Court of Appeal held;

No court of law should lend its hands to a person or body bent on beating the efforts of Government at collecting revenue by relying on technicalities of the law with a frugal aim to cheat the Government of its legitimate income... If a statute is revenue based or revenue oriented, it will be part of sound public policy for a court to construe the provisions of the statute liberally in favour of revenue or in favour of deriving revenue for Government, unless there is a clear provision to the contrary. This is because it is in the interest of the generality of the public and to the common good and welfare of the citizenry for Government to be in revenue and affluence to cater for the people

Furthermore, the provision of paragraph 19 of the 5th Schedule to the Federal Inland Revenue Service (Establishment) Act is however very instructive. The section provides thus:

The provisions of any statute of limitation shall not apply to any appeal brought before the Tribunal.

By virtue of S. 2(b) of the Limitation Act, the Statute of Limitation does not apply to tax matters. It provides that –

This Act shall not apply to –

... A proceeding for the recovery of a fine or penalty incurred in connection with a tax or duty ...

S. 1(2) (ii) Limitation Act 1966 provides that the statute shall not apply to any proceedings for the recovery of any sum under the care of the Federal Board of Inland Revenue. However, S. 4 of the same law “appears” to preclude its application to “an action for which a period of limitation is fixed by any other enactment.”

1.5 Types of limitation statute:

There two types of statutes of limitation namely, criminal and civil. Most statutes of limitation refer to civil cases. While crimes such as misdemeanors or petty crimes have statutes of limitation, most crimes such as homicide or robbery and to large extent, taxation, do not.

Such statutes can present themselves in different ways:

- A limitation Act nullifying the right of the parties to sue due to passage of time.
- Removing the jurisdiction of the courts abinitio for certain reasons whether or not there is fault on the part of the parties.
- Failure to give pre-action notice within a particular time among others.

Some of such statutes are discussed below

Limitation Act

Where a statute prescribes a period within which an action must be commenced, legal proceedings cannot be properly instituted after the expiration of the prescribed period.

In the Supreme Court case of Ibrahim v. Judicial Service Committee, Kaduna State PerIgu J.S.C (as he then was) held:

The general principle of law is that where a statute provides for the institution of an action within a prescribed period, proceedings shall not be brought after the time prescribed by such statute. Any action that is instituted after the period stipulated is totally barred, as the right of the plaintiff or the injured person to commence the action would have been extinguished by such law

The issue of statute bar may be raised from the stand point of Order 3 Rule 2 of the Tax Appeal Tribunal (Procedure) Rules, 2010, which states that;

An Appeal under the Rule shall be filed within a period of 30 days from the date on which the action, decision, assessment or demand notice being appealed against was made provided that the Tribunal may entertain an Appeal after the expiration of the said period of 30 days if it is satisfied that there is a sufficient cause for the delay.

This proviso is one which gives discretion to the Tribunal to extend the period beyond 30 days if it is satisfied that there is a sufficient cause for the delay. Following the authority of *Nwadiaro v. Shell Petroleum Development Community Nig. Ltd* it would be unjust to foreclose the opportunity to hear the appellant where the respondent clearly admits liability on the face of the processes but merely says that although it had previously agreed to pay a debt, time has passed.

Without any such enlargement of time for filing by the court for good reason or admission of debt, an action becomes statute barred once the time stipulated by statute has passed.

In the case of *Eboigbe v. N.N.P.C.* the Supreme Court also held:

Where an action is statute barred, a plaintiff who might have had a cause of action loses the right to enforce the cause of action by judicial process because the period of time laid down by the limitation law for instituting such an action has elapsed. An action commenced after the expiration of the period, within which an action must be brought, as stipulated in a statute of limitation is not maintainable.

In the case of *N.E.P.A. v. Olagunju*, the Court of Appeal dealt very extensively on the issue as follows:

In order to determine the period of limitation, consideration must be given to the writ of summons and the statement of claim alleging when the wrong was committed and comparing that date with the date on which the writ of summons was filed. This can be done without taking oral evidence from witnesses. If the time on the writ of summons is beyond the period allowed by the limitation law then the action is statute barred.

A defence which is founded on a statute of limitation is a defence that the plaintiff has no cause of action. It is a defence of law which can be raised in limine and without any evidence in support. It is sufficient if, prima facie, the date of taking the cause of action is outside the prescribed period disclosed in the writ of summons and statement of claim... In the instant case, the trial court should have considered the issue of jurisdiction first before going into the merit of the case when it was faced with naked averments that the respondents' action was brought about thirty months after the cause of action arose.

When a court's jurisdiction is challenged in a statement of defence, it is better for the court to settle that issue one way or the other before proceeding to the hearing of the case on the merits. The reason being that jurisdiction is a radical and crucial question of competence such that if the court has no jurisdiction to hear the case, the proceedings are rendered a nullity, however well conducted and brilliantly decided. A defect in competence is not intrinsic but extrinsic to adjudication. The Courts are wary to liberalize the provision of any Limitation Act or law. They must be invoked when the circumstances are right.

The issue as to whether or not an action is statute barred touches on the jurisdiction of the court. This is because once an action is found to be statute barred, the plaintiff's right of action is taken away by statute although he may still have his cause of action. In that circumstance, no court has the jurisdiction to entertain his action. The trial court when faced with such an issue, lacks the jurisdiction to go into the merits of the case. For example when it was disclosed that the respondents' action was brought about thirty months after the cause of action arose.

In the case of *N.C.C. v. MTN*, Odili JCA held that:

A statute ousting the ordinary jurisdiction of a court must be construed strictly. And if it is capable of two meanings, the meaning that preserves the ordinary jurisdiction of the court should be adopted. Any statute which ousts the jurisdiction of a court is to be construed very strictly in order to ensure that the jurisdiction existing is preserved and not withdrawn without very clear words to that effect.

Public Officer's Protection Act 2004 on Tax Authorities:

Section 2(a) of the Public Officer's Protection Act 2004 provides as follows;

Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Act or law or any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, law, duty or authority, the following provisions shall have effect-

The action, prosecution or proceeding shall not lie or be instituted unless it is commenced within three (3) months next after the act, neglect or default complained of, or in case of a continuance of damage or injury, within three (3) months next after the ceasing thereof.

The effect of this law is that once a Public Officer (like the relevant tax authority) is alleged to have committed a wrong or omitted to do an act in the course of carrying out his/her public duties of such public officer, the statute of limitation will bar any action commenced against it after the expiration of three (3) months from the day of the alleged wrong. A tax payer can therefore allege that from the date it is served with a notice of refusal to amend, the tax authority has 3 months within which to act by suing for the sum alleged to be owed or be rendered statute barred.

Section 34 FIRS Act seems to provide an answer to this by making such a tax liability a debt due to the Service. Unlike debts owed to individuals, a debt due to the service does not have a limiting statute. Section 1(i) of the Limitation Act 1966 which has still not been repealed and is therefore still in force today, provides:

- This Decree shall not apply to
- Any proceedings for the recovery of any sum due
- In respect of a tax which is for the time being under the care and management of the Federal Board of Inland Revenue.

Even though this Act was not listed in the Laws of the Federation of Nigeria (LFN) 2004, the ambiguity was cured by Section 2 of the Revised Edition of LFN, 2007 which provides that any existing statute shall not affect the validity and applicability of the statute which has not been repealed or over taken by another law.

Since the limitation law of 1966 has not been overtaken by any law in force or been repealed, it is assumed that it is still in force and therefore applicable.

Section 77(2) CITA states that:

The Board shall serve a demand note upon the company or person in whose name the company is chargeable and if there is no objection payment is made within two months from the date of service of such demand note after deduction of any set off, otherwise, the Board may proceed to enforce payment as herein after provided. To understand the above provision, notice must also be taken of section 77 (2) (c) which states that,

'The board in its discretion may, extend the time within which payment is to be made'.

This section purports to give unlimited powers without any limitation to time as to when the Board can commence proceedings against a defaulting tax payer. While the Board is mandated to enforce payment of tax due, it is silent on when the action should be commenced.

Other Limiting Enactments in Tax Law

In S. 85 (1) (c) of the Companies Income Tax Act (CITA) provides that, if taxes are not paid within the times stipulated in section 77 CITA, the FIRS shall serve a demand note requiring payment to be made within 30 days of the service of the notice and a sum equal to ten percentum of the tax payable shall be added thereto.

S. 69(1) and (2)(a) CITA state:

(1) If a company disputes the assessment it may apply to the Board by notice of objection in

writing, to review and to revise the assessment made upon it.

(2) An application under subsection (1) of this section shall –

(a) be made within thirty days from the date of service of the notice of assessment.

The case of Oando Supply and Trading PLC v. FIRS can be used here as a guide. It was held therein that

Where no timetable is stipulated for the taking of a step required by law, the law does not lie prostrate but has always imposed a reasonable time. What is a reasonable time in each particular case depends on the circumstances of the case.

Also S. 20(1) of the Value Added Tax Act (VATA) allows the FIRS to recover any tax penalty or interest due to it through proceedings in the Value Added Tax Tribunal now replaced by the Tax Appeal Tribunal. However, neither the VATA Act nor CITA states the time of commencement of any such proceedings. It provides that,

Any tax penalty or interest which remains unpaid after the period specified for payment may be recovered by the Board through proceedings in the Value Added tax Tribunal.

Again, this Act is silent on the issue of time within which payment of tax is to be enforced.

Furthermore, the Board's power to enforce recovery in respect of education tax is governed by section 2(1) of TETFund Act which is also silent as to time. The Act states that,

The provisions of the Act relating to the collection of companies income tax or petroleum profit tax shall subject to the education Act, apply to the tax due under this Act.

Thus, the manner of collection of petroleum profits and companies income tax will be applied to the collection of education tax, subject to the provision that the time limited for payment of tax is sixty days after service of notice of assessment.

All the Acts referred to are silent as to the time within which enforcement procedures must begin. Depending on the merits of the case, a reasonable time must therefore be determined.

The Tax Appeal Tribunal Rules 2010 seem to provide a clear guide in this respect in Order 3 Rule 2 which states that,

An appeal under these rules shall be filed within 30 days from the date on which the action, decision, assessment or demand notice which is being appealed against was made by the Service. Provided that the Tribunal may entertain an appeal after the expiration of the said period of 30 days if it is satisfied that there was sufficient cause for the delay.

If the claim is caught up by any statute of limitation, paragraph 19 of the 5th schedule to FIRSEA which is quite insightful provides that, the provision of any statute of limitation shall not apply to any appeal brought before the tribunal.

On the strength of the FIRS Act, section 32 (1) (d) provides that the Service shall serve a demand notice upon the company or person in whose name a tax is chargeable, and when payment is not made within one month from the date of the service of such demand notice, the Service may proceed to enforce payment under this Act. The Act is also silent on the period of time for enforcement. It only states the period that payment should be made. While some laws stipulate 60 days, others stipulate 30 days. Section 68 FIRS Act is quite relevant in areas of such conflict as the provisions of the FIRS Act shall prevail.

1.5 1 Pre action notice:

As a prelude to having access to courts, many laws provide that the prospective plaintiff must serve a pre-action notice on the relevant officer. A suit commenced in default of pre-action notice where notice is required by law is incompetent irrespective of the actual fact of the case or guilt of the person being sued. Such requirement is found in many establishments or government organs such as, the Nigerian Railway Corporation, Universities, Nigerian National Petroleum Corporation (NNPC), Local Government Councils, Nigerian Port Authority etc. The purpose of this notice is to make the defendant aware of the intention to sue and make arrangements to resist it or settle as the case may be. The court cannot refuse to give effect to such unambiguous intentions of the legislature which is the law making organ of the government. Such clauses are in the form

reflected by section 110 (2) of the Ports Authority Act which states:

No suit shall be commenced against the authority until one month at least after written notice of intention to commence the same shall have been served upon the authority by the intending plaintiff or his agent. Such notice shall state the cause of action, the name and place of abode of the intending plaintiff and the reliefs which he claims

Such terms have been held in a plethora of cases not to infringe the right to sue under section 6(6) (b) of the 1999 Constitution of the Federal Republic of Nigeria, and are therefore valid and not unconstitutional. When courts are confronted with the issue of pre-action notice, the issues to be considered include; condition precedent, pleadings, jurisdiction of the court and waiver. Once it is established that a pre-action notice is a condition precedent, the court will have no competence to deal with such an issue unless the notice has been given. Such a suit will be liable to be struck out. Since parties are bound by their pleadings, a party wishing to raise this as a defence must plead the condition precedent in clear terms. Failure to do this would raise a presumption of waiver of the rights he possesses on the subject matter. Where he raises it on appeal, his notice of appeal, grounds or affidavit as the case may be, is looked upon as an after thought. The burden of proof of pre-action notice does not arise until the fact of non compliance is alleged in a proper way and put as issue by an opponent. The issue of pre-action notice may be raised by a nation or in the pleadings.

1.6 Need for Compliance With Timeframe:

Jurisdiction is the authority a court has to decide a matter placed before it, and any defect incompetence renders the proceedings a nullity. In the case of Okolo v. Union Bank of Nigeria Plc it was held that:

Lack of jurisdiction will nullify proceedings. Jurisdiction is the pillar upon which the entire case stands. Once the defendant shows that the court has no jurisdiction the entire foundation of the case crumbles. Then parties cannot be heard on the merits of the case and that puts an end to the litigation.

Once a written law stipulates a time frame within which an action can be validly instituted, any action of that class brought outside that period is statute barred and as such the honourable court will lack the jurisdiction to hear the matter on its merits. The principle of statutes of limitation of action is that no one should remain under the threat of being sued indefinitely.

In the case of P.N Udoh Trading Company Ltd. v. Sunday Abere& Anor the Supreme court held that when an action is statute barred a plaintiff who might have had a cause of action loses the right to enforce the cause of action by judicial process because the period of limitation laid down by the limitation law for instituting such an action has elapsed. A complaint of statute bar is one against competence of the suit as a result of which the court will not have jurisdiction to hear it, rather than the merit or substance of the claim.

A further essence of a specific time frame is to guarantee finality in litigation. In line with this, section 66 CITA, section 55 Personal Income Tax Act (PITA), S. 36, Petroleum Profits Tax Act (PPTA), all impose a six year limitation (from the relevant year of assessment) on the time frame within which the tax authority may raise additional assessment in connection with the returns filed by the tax payer.

1.7 When to Raise Issue of Limitation:

The issue of limitation of action being an issue touching on the jurisdiction of the court can be raised and determined at any stage of the proceedings. It is most prudent to raise it at the earliest stage of the proceedings in order not to allow the court or tribunal to embark on an exercise in futility. In the case of Ajayi v. Adebisi the Supreme Court held as follows:

Where the issue of limitation is raised in defence of an action, it is only proper that the issue should be addressed first as it makes no sense to decide the merits of a matter that is statute barred. In the event of a successful plea of limitation law against the plaintiff's right of action, the action becomes extinguished and unmaintainable in law. In the instant case the trial court erred by not determining the issue of limitation of action raised by the defendant first.

It is also settled law that where fraudulent concealment is occasioned, it will take a case out of law of limitation. The Supreme Court in the case of U.B.A PLC v. BTL Industry Limited per Onu JSC held thus:

Accordingly the respondent's case falls squarely outside the contention of the appellant and thus falls within the exception created under the authority of Akibu v. Azeez where this honourable court held as follows:

Apart from fraudulent concealment of right of action which itself furnishes a cause of action, knowledge cannot be said to be relevant. In order to constitute such fraudulent concealment as would, in equity, take a case out of the law of limitation, it is not enough that these should be merely tortuous acts unknown to the injured party or the enjoyment of property...there has to be some abuse of a confidential position, some intention as imposition, or even some deliberate concealment of facts... Thus it must be emphasized, that the plaintiff would not reasonably file any suit against the defendant bank as long as it was assuring the plaintiff that its bills were being processed by the central bank. Indeed, there will be no cause of action as at that time.

2. Conclusion

It is essential that in order to prevent a claimant from permanently forfeiting the right to seek a legal relief or remedy to an injury or loss, he or she must bring a legal action for judicial intervention within the statutorily required period of time. Timely collation of evidence and the filing of a law suit before a competent court with jurisdiction to hear the matter, is strongly required. The immunity of tax matters from the statute of limitation is not unconnected with the need to keep debts to the government alive so as to support government's legitimate income. This should obviously not be used as a ground for undue laxity.

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