Dispute Resolution
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EXAMINING THE EFFECT OF CONTINUING BREACH IN THE DETERMINATION OF LIMITATION PERIOD IN NIGERIA

1. INTRODUCTION

Whilst the ultimate goal of the law is the attainment of justice, the law does not aid an indolent party in the pursuit of justice. This means that even though the law makes provisions for remedies to address legal wrongs, a victim of an alleged legal wrong may well be denied possible remedies by the law where he is not deemed to have been diligent in seeking remedy. This creates a balance by ensuring that legal rights and liabilities do not inure in perpetuity. This is the whole essence of the principle of limitation of action, which is, however, not without exceptions, such as the continuance of legal damage, fraudulent concealment,[2] service/employment contracts,[3] and legal disability.[4]

This is an opinion paper on how continuing breach (as a variance of continuance of legal damage) could impact limitation periods. Reference has been made in this article to the ruling of the High Court of Rivers State in *Oil and Industrial Services Ltd v. Hempel A/S & Ors*.[5] where the court seemed to have applied this principle. The pressing question to be answered is whether continuing breach can revive an otherwise dead cause of action or create a new one.

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1 **Associate, Dispute Resolution Department, SPA Ajibade & Co., Lagos, Nigeria.**
2 Ibeju/Lekki Local Govt & Ors v. Sanni & Ors (2023) LPELR-60779(CA).
3 Adamawa State Govt. & Anor v. Umaru & Ors (2021) LPELR-55659(CA).
4 N.U. Stanley and E. Chidiebere: "Limitation Periods Under Nigerian Law: Breaking Down the Concept of Continuing Legal Damage or Injury," accessed on <www.templars-law.com/app/uploads/2024/10/LIMITATION-PERIODS-UNDER-NIGERIAN-LAW.pdf> accessed 21st March 2025, at 6 pm.
5 Suit No. PHC/1199/2016.

2. LIMITATION PERIOD IN BRIEF

Limitation period (also known as the statutes of limitation) refers to the time within which a legal claim must be instituted in court, outside of which the Claimant's right of action becomes extinguished.[6] The general principle of law is that where the law provides for the bringing of action within a prescribed period, in respect of a cause of action accruing to the Claimant, proceedings shall not be brought after the time prescribed by the statute.[7] Any action brought outside the prescribed period is said to be statute-barred; as it is deemed fundamentally incompetent and the court would lack jurisdiction to entertain it.

It must be pointed out that the limitation period is statutory. This means that it is created by statute, and where there is no statute specifically creating it, then no period of limitation can be inferred.

As pointed out by the court in **Aremo II v. Adekanye,**[8] the law of limitation of actions is not unreasonably strict such that it recognizes no exceptions.

3. THE CONCEPT OF CONTINUANCE OF LEGAL DAMAGE/INJURY

Continuance of damage or injury, as an exception to the statute of limitations, refers to an instance where there are continuous acts causing injury thereby allowing an individual who is aggrieved by those injurious acts to maintain an action even outside the limitation period applicable to those acts.[9] In a contractual setting where the continuous acts are breaches of contract, the concept is known as continuing breach. Noteworthy in the application of this principle are the following rules:

(a) It only applies where there are recurring acts causing injury and not merely the enduring consequences/ripple effects of a single act. In **Obiefuna v. Okoye,**[10] the Supreme Court stated that "continuance of injury or damage means continuance of the legal injury and not merely continuance of the injurious effects of a legal injury."[11]

(b) Each injurious act creates a fresh actionable cause of action. In **Aremo II v. Adekanye,**[12] the court observed that, "…where there has been a continuance

6 See, Oko & Ors v. A.G., Ebonyi State (2021) LPELR-54988 (SC).
7 Nwosu v. A.P.P. (2020) 16 NWLR (Pt. 1749) 28.
8 (2004) All FWLR (Pt. 224) 2113 at 2132.
9 See, AG Rivers State v. AG Bayelsa State & Anor**.** (2012) LPELR-9336 (SC).
10 (1961) All NLR 357 at page 360.
11 See, INEC v. Enasito & Ors (2017) LPELR-47991 (SC).
12 Supra.

of the damage, a fresh cause of action arises from time to time as often as the damage is caused."[13]

(c) The principle cannot revive or extend the lifespan of a statute-barred cause of action where the causes of action are severable or distinguishable from the initial act.[14] In **AG Rivers State v. AG Bayelsa State & Anor.,**[15] the apex court subtly made this point when it held that, "…an action in respect of the fresh damage is not barred as the fresh subsidence resulting in injury gives a fresh cause of action."

4. THE EFFECT OF CONTINUING BREACH ON LIMITATION PERIOD

The effect of continuing breach as an exception to the period of limitation, where applicable, is to create a fresh cause of action. Whilst respecting the statute of limitation, it operates to ensure that each new/repeated breach creates a fresh actionable cause of action so that a claimant is not restricted only to the initial/original breach, especially where the same has become statute-barred. On whether this principle can revive or extend the life of a dead cause of action, it is opined that a claimant who relies on it is entitled to sue only on those recent breaches that are within the limitation period, but not the original or any other breach that has become statute-barred. This is because each breach is a one-time, completed act, which gives rise to a fresh, distinguishable cause of action, as against an ongoing act of trespass/nuisance.

Hence, the claimant's right of action ought to remain completely extinguished as far as a statute-barred cause of action is concerned.[16] Accordingly, the Supreme Court in applying the principle in the case of **AG Rivers State v. AG Bayelsa State & Anor.**,[17] cited an example and held as follows: "…for example, if the owner of mines works them and causes damage to the surface more than six years before the action, and within 6 years of (*sic.*) action, a fresh subsidence causing damage occurs without any fresh working by the owner, an action in respect of the fresh damage is not barred as the fresh subsidence resulting in injury gives a fresh cause of action." This postulates

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13 This decision has been adopted in subsequent cases such as AG Rivers State v. AG Bayelsa State & Anor**.** (supra) and Folarin v. Idowu (2014) All FWLR (Pt. 727) 743 at p. 763.

14 This is quite unlike in continuing trespass/nuisance where the continuing damage is usually constituted by the initial act of unlawful entry into/interference with land in another's possession, and continues as long as the trespasser remains on the land/the interference continues, thereby removing the need to distinguish between causes of action. See, Olusanya v Abdulbaki & Ors (2022) LPELR-58771(CA).

15 Supra, at p. 149.

16 Ogun State Government v. Dalami Nigeria Ltd. (2007) All FWLR (Pt. 365) 439.

17 Supra, pp. 148 – 149.

that damage caused to the surface more than 6 years before the action is statute-barred and no longer actionable. Applying this exception to revive a long-dead cause of action would be unreasonable and would defeat the very essence of the statute of limitations, which is to ensure diligent prosecution of grievances and ensuring there is an end to disputes. On this note, a recent ruling of the High Court of Rivers State in **Oil and Industrial Services Ltd v. Hempel A/S & Ors**.,[18] is apposite.

By a motion on notice dated 15th January 2019, the Applicants (Defendants) sought the dismissal of the Respondent's (Claimant's) action for want of jurisdiction on the ground that the action was statute-barred, having been instituted more than 5 years after the accrual of the cause of action contrary to the provisions of section 16 of the Limitation Law of Rivers State. The Respondent argued that the Applicants' acts of breach did not abate but continued up to a period within the 5 years preceding the institution of the action. Hence, the principle of continuing breach applied, and the Claimant's cause of action was not barred. Relying on the case of **Folarin v. Idowu,**[19] the Court bought the arguments of the Claimant and held as follows:

> I do not hesitate to agree with the contention of the Learned Counsel to the Respondent that a cause of action will continue to arose (*sic.*) provided the acts amounting to a breach of contract are repeated and not when the first breach contracted (*sic.*) was committed.
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> In **FOLARIN V IDOWU (2014) ALL FWLR (PT.727) 743 AT 747** ratio 4:
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> It was held that -
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> The Law of limitation of action recognizes some exceptions. Thus, where there has been a continuance of the damage, a fresh cause of action arises from time to time as often as the damage is caused. For example, if the owner of crimes (*sic.*) works them and caused damage to the surface more than 6 years before the action and within 6 years before the (*sic.*) and within 6 years of the action, a fresh subsidence causing damage occurs without any fresh working by the owner, the fresh subsidence resulting in injury gives a fresh cause of action.
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> In the instant case, parties entered into a fresh or new agreement between 19th April, 2012 and 11th May, 2012. The Applicant between 19th April, 2012 and 2nd May, 2012 entered the same agreement with the Portland Paints and Products Nigeria Ltd. to supply the Applicants' Paints to Chevron Nig. Ltd. and this constitute (*sic.*) a violation or breach of the agreement entered between the Applicant and the Respondent between the parties between 11th April, 2012 and the 11th May, 2012. Therefore a cause of action arose in 2012 when the Applicant are in breach of the agreement signed by the parties in the same 2012. ***(underline mine)***

[18] Suit No. PHC/1199/2016.
[19] Supra.

In **FOLARIN V IDOWU SUPRA AT 746** Ratio. 2.

It was held that -

A cause of action matures or arises on a date or from the time when a breach of any duty or at (*sic.*) occurs which warrants the person thereby injured or the victim who is adversely affected by such breach to take a court action in assertion or protection of his legal right that had been breached.

As I have earlier said, this action was instituted in 2016 and the breach of the violation of the new sole Distributorship between the parties occurred in 2012 which is not up to 5 years as provided by the Statute of Limitation Law Cap 80, Laws of Rivers State 1999. Hence this Suit No. PHC/1199/2016 is not statute barred.

In the finally (*sic.*) analysis, this application fails and same is accordingly dismiss (*sic.*) with a cost of ₦50,000.00 (Fifty thousand Naira) awarded against the Applicant and in favour of the Respondents. ***(underline mine)***

To provide more context, the Applicants contended that the Respondent's cause of action arose at the latest on 11th August 2010 while the writ of summons was filed on 13th May 2016, a period of 5 years and 9 months after the accrual of the cause of action. This contention was not challenged by the Respondent, and the Court did not also make a contrary finding. The Respondent however, argued, and the Court agreed and ruled, that the suit was not statute-barred because there was a continuing breach and a fresh cause of action arose in 2012, a period within 5 years preceding the institution of the suit in 2016. It is also interesting to note that the purported cause of action of 11th August 2010, upon which the suit is based, arose under a contract entirely different from that under which the purported cause of action of 2012 arose.

The ruling of the Honourable Court is quite strange vis-à-vis the principle as analysed above and the Court might have misunderstood how the principle ought to operate, having used a cause of action that allegedly arose in 2012 to sustain a suit, which is entirely based on a cause of action that allegedly arose on 11th August 2010, and already caught by the period of limitation, thereby reviving a dead cause of action. This is even more so considering that both causes of action arose under totally different contracts. A proper conception of the principle should mean that the Respondent's action could only have been brought in respect of the fresh cause of action that allegedly arose in 2012, if at all it was possible to apply the principle across different contracts. However, the Respondent's case was entirely based on a breach that allegedly occurred on 11th August 2010. It is accordingly the opinion of the writer that the Respondent's suit was fundamentally incompetent having been based on a dead cause of action and could not be salvaged by the continuing breach exception.

5. CONCLUSION

In conclusion, it is the considered view of the writer, that while continuing breach creates a new cause of action in respect of each breach, it neither revives nor extends the lifespan of a dead one, especially in the manner delineated above. It is hoped that the Court of Appeal will clarify this point, which appears slightly recondite, in the appeal against the above ruling of the High Court, which now lies before the Court.

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