

CHAPTER 4

ACTIONS LAW

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CHAPTER 4

ACTIONS LAW

A Law relating to cause of action, parties to an action and limitation of actions, of a civil nature.

A N S I.CAP
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[27th August 1991]

Short title

1. This Law may be cited in the Actions Law.

Interpretation

2. In this Law —

“act” includes an omission to act where there is a legal duty to act. “action” means, subject to this law and any other written Law in force in the State, a proceeding whereby a party seeks in a court of law to enforce some right or to obtain a remedy against another party, or to restrain the commission of some wrong by another party, or otherwise to have an issue tried, and includes a counter-claim and a set-off but does not include a criminal proceeding;

“cause of action” means the sum total of the facts which are necessary to establish a plaintiff’s entitlement to the remedy which he claims:

“community” means the State or any section of it;

“damages” means pecuniary damage or loss suffered or presumed by the Law to be suffered by any person as a consequence of the act of another person;

“damages” means monetary compensation recoverable in an action by a successful party but does not include costs.

“duty” means any legally recognized duty that is a duty to act or refrain from acting created or otherwise recognized by any law from time to time in force in the State:

“injury ” with its derivatives has the same meaning as “damage” “person” includes a body corporate and any group or entity which under any Law or rule in force in the State has capacity to sue or be sued in a court of Law;

“right” means any interest to which a person is entitled under any law, whether such interest is in respect of things corporeal or incorporeal and whether it arises in contract or otherwise; also tire liberty of doing or possessing something for the infringement of which there is a legal sanction:

“right” of action” means a right to sue:

“State” means Enugu State of Nigeria.

Action lies for
infringement
and damage

3. (1) Subject to this Law and any other law from time to time in force in the State, no action for infringement of a right shall be brought unless the person seeking in do so has suffered damage in consequence of such infringement

(2) Notwithstanding subsection (I) where the right alleged to be infringed is a private right, being a right which attaches to a person and is not shared by him with the community at large that person may bring an action for its infringement whether or not he has suffered any damage

Breach of
statutory
obligation

4. (1) Where a written law creates an obligation and also prescribes a penalty for breach of that obligation no action other than far the penalty so prescribed shall be brought in respect of a breach of that obligation.

(2) Notwithstanding subsection (I) where a written law creates an obligation for the benefit cd particular persons or class of persons, any one of the persons for whose benefit that obligation is created may, if he suffers damage in consequence of its breach, bring an action against the person who commits such breach.

Infringement
of public
right

5. Where a public right is infringed, being a right which is shared by the community at large, any person may bring an action against the person commuting such infringement if, but only if, he suffers damage over and above That suffered by other members of the community in consequence of such infringement: or if some private right of his or some statutory provision made for his protection is infringed along with such public right.

Remoteness
of damage.

6. (1) No action may he brought in respect of a damage which, is remote.

(2) Damage is remote where, in the normal course of events a person doing the net from which it results cannot reasonably he expected to foresee it as a probable consequence of such act, or where there is want of connection between the act complained of and the damage alleged to arise from it

Action in
respect of legal
proceedings.

7. (1) No action may be brought for damages by whatever name called by a defendant in a

previous action against the plaintiff in that action merely because such previous action was motivated by malice or brought without reasonable and probable cause:

Provided that nothing in this subsection shall be Construed to present any court from awarding punitive costs against an unsuccessful plaintiff in any action where, in the opinion of the court, such action was motivated by malice or brought without reasonable and probable cause

(2) A person against whom criminal proceedings have been taken has a right of action against the person who took such proceedings or the person at whose complaint they were taken, where such proceedings were motivated by malice or were taken without reasonable or probable cause.

8. (1) No person shall claim any benefit from his own criminal act.

No one can
benefit from
his crime

(2) Neither a personal representative nor the person of a deceased person shall claim any benefit from a criminal act of such person.

(3) “Benefit” for the purpose of this section includes indemnity, contribution or damages arising out of contract or otherwise.

9. (1) Subject to any written law in force in the state where an act constitutes a felony and at the same time infringes some right of, or causes damage to the person whose right is thus infringed or who thus suffers damage shall bring an action against the person doing the felonious act until such person shall have been prosecuted for the felony, unless satisfactory explanation is given for non-prosecution.

Civil action
against felony

(2) Nothing in subsection (1) shall affect the right of action of the personal representative of the person whose right was infringed or who suffered damage or any right of action against the estate of the person who did the felonious act.

10. No action shall be brought in respect of—

(a) any act which in the opinion of the court, is of such little consequences; or

De minimis non
curat lex

(b) any damage which is in the opinion of the court is so small that action ought not to be brought in respect of it.

Assignment of
right of action.

11. (1) A right of action may subject to subsection (2), be assigned by one person to another person for valuable consideration or by deed

(2) No assignment of a right of action shall be valid unless it is accompanied by sale or other transfer of the property the subject-Matter or the action. Any assignment which is not so accompanied, being void shall not entitle the assignee to bring or continue an action.

(2) A person against whom criminal proceedings have been taken has a right of action against the person who took such proceedings or the person whose complaint they were taken, where motivated by malice or were taken without reasonable and probable cause.

(3) "Property" includes a debt or other thing in action.

12. A right of Action shall cease to exist in the following circumstances

Extinction of
right of action

(a) Accord and satisfaction- where a person who has a right of action for a tort or a breach or a breach of contract agrees with the person against whom that right exists to accept advantage, monetary or otherwise in satisfaction of his claim and that other person performs his side of such agreement;

(b) Assignment - where a person who has a right at action lawfully assigns that right of another person, in which case that right of action can thereafter be exercised by the assignee only;

(c) Lapse of time - where the time allowed under the law for bringing action in respect of a particular matter has lapsed;

(d) Death - as regard right of action for defamation seduction or inducing one spouse to leave or remain apart from the other or for damages for adultery, when the person who has the right of action dies;

(e) Merger - where one cause of action is by the action of one or both of the parties merged in a cause of action of greater legal significance, as when a party accepts a security in place of his right under a simple contract;

(f) judgement - where payment is made in full satisfaction of a case of action, or the person against whom the right of action exists is released

by deed or by unsealed contract supported by consideration.

Any person
may sue or be
sued

13. (I) Subject to section 3 and any other law in force in the State

(a) where a person infringes a right of another person, the person whose right is thus infringed has a cause of action against the person who infringes that right, and may bring an action for redress accordingly to any court of competent jurisdiction;

(b) where a person suffers damage in consequence of another person's act or the person who suffers such damage has a cause of action against the person doing that act, and may bring an action for redress accordingly in any court of competent jurisdiction;

(c) any person who has a cause of action, and any person to whom a cause of action has been lawfully assigned, may either by himself or by his attorney sue in a court of competent jurisdiction the person against whom such a cause or right of action exists.

(2) This section is without prejudice to any written law or rule in force in the State regarding —

(a) a person's capacity to sue or be sued;

(b) steps which must be taken before an action is brought,

(c) the manner in which an action is to be brought

(3) For the purpose of this section, "attorney" means a person to whom a power of attorney is duly given or a legal practitioner duly retained in that behalf.

14. (I) A person appointed executor under the will of a deceased person may sue or be sued as such executor both before and after a grant of probate is made to him.

Action by and
against
executors and
Administrators

(2) Action may be brought by or against a person as administrator of the estate of a deceased person after but not before letters of administration have been granted to him.

(3) Nothing in subsection (2) shall prevent an action being brought against a person who,

without being executor or being made administrator in respect of a deceased person's estate, intermeddles with such estate without lawful authority'.

15. An agreement by which parties to a contract stipulate that claims or disputes arising under such contract shall not be taken to a court of law shall be void whether or not the parties also stipulate that such claims and disputes shall be referred to arbitration:

Arbitration
agreement
forbidding court
action

Provided that nothing in this section shall affect the validity or effect of an agreement which stipulates that claims and disputes arising under a contract shall, as a condition precedent to their being taken to a court of law, be referred to arbitration.

16. (1) No action may be brought in a court of law to enforce directly or indirectly an indirectly an agreement or instrument which constitutes or resembles maintenance or champerty, or which tends to promote unnecessary litigation or is otherwise contrary to public policy or good conscience.

Agreement to
assistance

(2) For the purpose of this section —

“maintenance” means the giving of assistance or encouragement to one of the parties to an action by a person who has no interest known to law in the action and who has no motive recognized by law to justify his interference in the action, and includes the act of a person who without reasons and probable cause instigates another person to bring an action;

“champerty” is maintenance given in consideration of a promise to give to the maintainer a share in any benefit accruing from the action.

(3) Nothing in this section shall apply to an agreement whereby a person undertakes to supply information to be used in an action on terms that he will get a share of a property or money recovered in the action by the person to whom the information is given if the person supplying the information does not himself recover take any active part in recovering such property or money apart from supplying such information.

17. (1) Where a person has habitually and persistently and without any reasonable ground commenced vexatious actions whether to the same court or in different courts and whether against the same defendant or against different defendants the

Restriction on
bringing vexation
actions.

High Court may. on the application of any defendant against whom such person has ever Liken an action in any court and after hearing that person or giving him an opportunity of being heard, order that no action shall thereafter be brought by him without leave of the High Court.

(2) If the person against whom an order is sought under this section is unable on account of poverty to retain counsel, the court before which such order is sought shall assign counsel to him

(3) A copy of any order made under this section shall be published in the Enugu State Gazette

(4) If a person against whom an order has been made under this section seeks leave of a court to bring an action, that court shall not grant leave unless it is satisfied that the intended action is not an abuse of the process of the court and that there is prima facie ground for the action, and for this purpose the person applying for such leave shall annex to his application a statement of the grounds for the intended action

Claims under customary law.

18. The provision as regards limitation of actions provided in this Law shall have no application where a person bringing an action to recover land, or the person through whom he claims, derived his title to such kind solely under customary law.

Definitions for purpose of section 18

19. For the purpose of section 18 —

- (a) "land" includes houses and other things fixed to the land;
- (b) "title" includes right of possession or occupancy;
- (c) "customary law" has the meaning attached to it in the High Court Law.

Limitation of actions on contract and tort and certain other actions.

20. (1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say —

- (a) actions founded on simple contract or on tort;
- (b) actions to enforce a recognizance;
- (c) actions to enforce sui award, where the submission is not by an instrument under seal;
- (d) actions to recover any sum recoverable by virtue of any enactment, other than a penalty or sum by way of penalty or forfeiture;

Provided that in the case of action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provisions made by or under a statute or independently of any contract or any such provisions) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injury to any person, this section shall have effect as if for reference to six years there were substituted a reference to three years;

(2) An action for an account shall not be brought in respect of any matter which arose more than six years before the commencement of the action

(3) An action upon a specialty shall not be brought after the expiration of twelve years from the date on which the cause of action occurred.

Provided that this subsection shall not affect any action for which a shorter period of limitation is prescribed by any other provision of this Law

(4) An action shall not be brought upon any judgment after the expiration of twelve years from the date on which the judgment became enforceable, and no arrears of interest in respect of any judgment debt shall lie recovered after the expiration of six years from the date on which the interest became due-

(5) An action to recover any penalty or forfeiture, or sum by way of penalty or forfeiture, recoverable by virtue of any enactment shall not be brought after the expiration of two years from the date on which the cause of action accrued.

Provided that for the purpose of this subsection the expression "penalty" shall not include a fine to which any person is liable on conviction for a criminal offence

(6) This section shall not apply to a claim for specific performance of a contract or for an injunction or for other equitable relief

21. (I) Where any cause of action in respect of the conversion or wrongful detention of a chattel has accrued to any person and, before he recovers possession of the chattel a further conversion or wrongful detention thereof takes place, no action shall be brought in respect of the further conversion or detention after the expiration of six years from the accrual of the cause of action in respect of the original conversion or detention

Limitation in case of successive conversion and extinction of title of owner of converted goods

(2) Where any such cause of action has accrued to any person and the period prescribed for bringing that action and for bringing any action in respect of such further conversion or wrongful detention as aforesaid has expired and he has not during that period recovered possession of the chattel, the title of that person to the chattel shall be extinguished.

22.(1) No action shall be brought by the State to recover any land after the expiration of thirty years from the date on which the right of action accrued to the State or, if it first accrued to some person through whom the State claims to that person

(2) No action shall be brought by any other person to recover any land after the expiration of twenty years from the date on which the right of action accrued to him or if it accrued to some persons through whom he claims, to that person:

Provided that if the right of the action first accrued to the State, the action may be brought at any time before the expiration of the period during which the action could have been brought by the State of twelve years from the date on which the right of action accrued to some person other than the State whichever period first expires.

23. (1) where the person bringing an action to recover land, or some person through whom he claims has been in possession thereof, and has while entitled thereto been disposed or discontinued his possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance.

(2) Where any person brings an action to recover any land of a deceased person, whether under a will or on intestacy, and the deceased person was on the date of his death in possession of the land and was the last person entitled to the land to be in possession thereof, the right of action shall be deemed to have accrued on the date of his death

(3) Where any person brings an action to recover land, being an estate or interest in possession assured otherwise than by will to him, to some person through whom he claims, by a person who, at the date when the assurance took effect, was in possession of the land and no person has been in possession of the land by virtue of the assurance, the right of action shall

Limitation of action to recover land.

Accrued of right of action in case of present interests in land

Accrued of right of action in case of future interests.

be deemed to have accrued on the date when the assurance took effect.

24. (1) Subject as hereafter in this section provided the right of action to recover any land shall, in case where the estate or interest claimed was an estate or interest in reversion or remainder or any other future estate or interest and no person has taken possession of the land by virtue of the estate or Interest claimed, be deemed to have accrued on the date in which the estate or interest tell into possession by the determination of the preceding estate or interest.

(2) If the person entitled to the preceding estate or interest. not being term of years absolute was not in possession of the land on the date of the determination thereof no action shall be brought by the person entitled to the succeeding estate or interest or after the expiration of twelve years from the date on which the right of action accrued to the person entitled to the preceding estate or interest, or six years from the date of which the right of action accrued to the person entitled to the succeeding estate of interest, whichever period last expired:

Provided that, where the State is entitled to the succeeding estate or interest, the foregoing provisions of this subsection shall have effect with the substitution for the reference to twelve years of a reference to thirty years and for the reference to six years of a reference to twelve years,

(3) The foregoing provisions of this section shall not apply to any estate or interest which fall into possession on the determination of an entailed interest which might have been barred by the person entitled to the entailed interest.

(4) No person shall bring an action to recover any estate or interest in land under an assurance taking effect after the right of action to recover the land has accrued to the person by whom the assurance was made or some person through whom he claims or some person entitled to a preceding estate or interest, unless the action is brought within the period during which the person by whom the assurance was made could have brought such action

(5) Where any person is entitled to any estate or interest in land in possession and while so entitled is also entitled to any future estate or interest in that land, and his light to recover the estate or interest in possession is barred under this Law. no

action shall be brought by the person, or by any person claiming through him in respect of the future estate or interest, unless in the meantime possession of the land has been recovered by a person entitled to an intermediate estate or interest.

25. (1) This Law shall apply to equitable interests to land, including interests in the proceeds of the estate held upon trust for side, in like manner as they apply to legal estates, and accordingly a right to recover the land shall for the purpose of this law but not otherwise, be deemed to accrue to a person entitled in possession to an equitable interest in the like manner and circumstances and on the same date as it would accrue if this interest were a legal estate in the land

Provision in case of settled land held on trust.

(2) Where the period prescribed by this Law has expired lot' bringing an action to recover the land by a tenant for life or a statutory owner of settled land, his legal estate shall not be extinguished, if and so long as the right of action to recover the land for any person entitled to a beneficial interest in the kind either has not accrued or has not been barred by this Law, and the legal estate shall accordingly remain vested in the tenant for life or statutory owner and shall devolve in accordance with the law for the time being in force regarding settled land, but if and when every such right of action as aforesaid has been barred by this Law, the said legal estate shall be extinguished.

(3) Where any land is held upon trust including a trust for sale, and live period prescribed by this Law has expired for the bringing of an action to recover the land by the trustees, the estate of the trustees shall not be extinguished if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land or in the proceeds of sale either has not accrued or has not been barred by this Law but if and when every such right of action has been barred, the estate of the trustees shall be extinguished.

(4) Where settled land is vested in a statutory owner or any land is held upon trust, including a trust for sale, an action to recover the land may be brought by the statutory owner or trustees On behalf of any person entitled to a beneficial interest in possession m the land or in the proceeds of sale whose right of action has not been barred by this Law, notwithstanding that the right of action of the statutory' owner or trustees would apart from this provision have been barred by this Law,

(5) Where any settled land or any land held on trust for sale is in the possession of a person entitled to a beneficial interest in the Land or in the proceeds of sale not being a person solely and absolutely entitled thereto, no right of action to recover the land shall be deemed for the purpose of this Law to accrue during such possession to any person in whom the land is vested as tenant for life, statutory owner or trustee or to any other person entitled to a beneficial interest in the land or the proceeds of sale,

(6) The provisions of this section shall not apply to an action by a beneficiary under a trust being an action –

(a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or

(b) to recover from the trustee, trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.

Accrual of right of action in case of forfeiture or breach of condition.

26. A right of action to recover land by virtue of a forfeiture or breach of condition shall be deemed to have accrued on the date on which the forfeiture was incurred or the condition broken;

Provided that, if such a right has accrued to a person entitled to an estate or interest in reversion or remainder and the land was not recovered by virtue thereof, the right of action to recover the land shall not be deemed to have accrued to that person until his estate or interest fell into possession, as if no such forfeiture or breach of condition has occurred.

27. (1) A tenancy at will shall, for the purpose of this Law, be deemed to be determined at the expiration of a period of one year from the commencement thereof, unless it has previously been determined, and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued on the date of such determination.

(2) A tenancy from year to year or other period, without a lease in writing, shall, for the purpose of this Law be deemed to be determined at the expiration of the first year or other period and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued at the date of such determination:

Provided that, where any rent has subsequently been received in respect of the tenancy, the right of action shall be deemed to have accrued on the date of the last receipt of rent.

Accrual of right of action in case of forfeiture or breach of conditions

(3) Where any person is in possession of land by virtue of a lease in writing by which a rent is reserved, and the rent is received by some person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease, and no rent is subsequently received by the person rightfully so entitled, the right of action of the last named person to recover the land shall be deemed to have accrued at the date when the rent was first received by the person wrongfully claiming as aforesaid and not at the date of the determination of the lease.

(4) Subsections (1) and (3) shall not apply to any tenancy at will or lease granted by the State.

28. (1) No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run thereafter in this section referred to as ('adverse possession') and where under the foregoing provisions of this Law any such right of action is deemed to accrue on a certain date, the right of action shall not be deemed to accrue unless and until adverse possession is taken of the land.

(2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action shall no longer be deemed to have accrued and no fresh right shall be deemed to accrue unless and until the land is again taken into adverse possession.

(3) For the purpose of this section —

- (a) possession of any land subject to a rent-charge by a person (other than the person entitled to rent-charge) who does not pay the rent shall be deemed to be in adverse possession of the rent-charge; and
- (b) receipt of rent under a lease by a person wrongfully claiming, in accordance with subsection (3) of section 27 shall be deemed to be in adverse possession of the land

29. When a mortgagee of land has been in possession of the mortgaged land for a period of twelve years, no action to redeem the land of which the mortgagee has been so in possession shall thereafter be brought by the mortgagor or any person claiming

Limitation
of
redemption
actions

Right of action not to
accrue or continue
unless there is adverse
possession

through him.

30. For the purpose of the Law, no person shall be deemed to have been in possession to any land by reason only of having made a normal entry thereon, and no continual or oilier claim upon or near any land shall preserve any right of action to recover the land.

31. For the purpose of this Law relating to actions for the recovery of land, an administrator of the estate of a deceased person shall be deemed to claim as if there had been no interval of lime between the death of the deceased person and the grant of letters of administration.

32. Subject to the provisions of section 25, at the expiration of the period prescribed by this Law for any person to bring an action to recover land (including a redemption action), the title of that person to the land shall be extinguished.

33. No action shall be brought, or distress made to recover arrears of rent or damages in respect thereof, after the expiration of six years from the date on which the rent became due.

34. (I) No action shall be brought to recover any principal sum of money secured by a mortgage or other charge on property, whether real or personal or to recover proceeds of the sale of land, alter the expiration of twelve years from the date when the right to receive the money accrued.

(2) No foreclosure action in respect of mortgaged personal property shall be brought after the expiration of twelve years from the date on which the right to foreclose accrued:

Provided that it, after that dare the mortgagee was in possession of the mortgaged property, the right to foreclose on the property which was in his possession shall not, for the purpose of this subsection, be deemed to have accrued until the date on which his possession discontinued

(3) the right to receive any principal sum of money secured by a mortgage or other charge and the right to foreclose on the property subject to the mortgage or charge shall not be deemed to accrue so long as that property comprises any future interest or any life insurance policy which has not matured or been determined.

No right of action
to be preserved by
formal entry or
continued claim

Administration to
date back to death

Extinction of title
after expiration of
period

Limitation of
actions to recover
rent

Limitation of
actions to recover
money secured by
mortgage or
charge or to
recover proceeds
of the sale land

(4) Nothing in this section shall apply to a foreclosure action in respect of mortgaged land, but the provisions of this Law relating to actions to recover land shall apply to such an action.

(5) No action to recover arrears of interest payable in respect of any sum of money secured by a mortgage or other charge or payable in respect of proceeds of the sale of land, or to recover damages in respect of such arrears shall be brought after the expiration of six years from the date on which the interest became due;

Provided that —

(a) where a prior mortgagee or other encumbrancer has been in possession of the property charged, and an action is brought within one year of the discontinuance of such possession by the subsequent encumbrancer, he may recover by that action all the arrears of interest which fell due during the period of possession by the prior encumbrancer or damages in respect thereof, notwithstanding that the period exceeded six years:

(b) where the property subject to the mortgage or charge comprises any future interest or life insurance policy and it is a term of the mortgage or charge that arrears of interest shall be treated as part of the principal sum of money secured by the mortgage or charge, interest shall not be deemed to become due before the right to receive the principle sum of money has accrued or is deemed to have accrued.

(6) this section shall not apply to any mortgage or charge on a ship.

35 (1) No period of limitation prescribed by this Law shall apply to an action by a beneficiary under a trust, being an action —

(a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or

(b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.

(2) Subject as aforesaid, an action by a beneficiary to recover trust property or

Limitation of
action in respect
of trust
property.

in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Law shall not be brought after the expiration of six years from the date on which the right of action accrued:

Provided that the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property, until the interest falls into possession.

(3) No beneficiary as against whom there would be a good defence under this Law shall derive any greater or oilier benefit from a judgment or order obtained by any other beneficiary than he could have obtained if he had brought the action and this Law hail been pleaded in defence.

Limitation of
actions claiming
personal estate of
a deceased person.

36. Subject to subsection (I) of section 35, no action in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, where under a will or on intestacy, shall be brought after the expiration of twelve years from the date when the right to receive the share of interest accrued and no action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, shall he brought after the expiration of six years from the date on which the interest became due-

Limitation of
action against
public offenders.

37. (1) Subject to any written law from time to time in. force in the State, no action shall be brought against any person for any act done in pursuance, or execution, or intended execution of any written law or of any public duty or authority, or in respect of any neglect or default in the execution of any such law duty or authority unless it is commenced before the expiration of one year from the date on which the cause of action accrued:

Provided that where the act, neglect or default is a continuing one, no cause of action in respect thereof shall be deemed to have accrued, for the purposes of this subsection, until the act, neglect or default has ceased.

(2) This section shall not apply to any criminal proceedings

Extension
of
limitation
period in
case of
disability

38. (1) if on the date when any right of action accrued for which a period of limitation

is prescribed by the law, the person to whom it accrued was under a disability the action may be brought at any time before the expiration of six years, or in the case of actions to which section 37 applies, one year from the date when the person ceased to be under a disability or dies, whichever event first occurred, notwithstanding that the period of limitation has expired;

Provided that—

- (a) this section shall not affect any case where the right of action first accrued to some person (not under a disability) through whom the person under a disability claims;
 - (b) when a right of action which has accrued to a person under a disability accrues, on the death of that person while still under a disability accrues, on another person under a disability, no further extension of time shall be allowed by reason of the disability of the second person;
 - (c) no action to recover land or money charged on land shall be brought by virtue of this section by any person after the expiration of thirty years from the date on which the right of action accrued to that person or some person through whom he claims
 - (d) this section, so far as it relates to the disability of infancy or unsoundness of mind, shall not apply to any action to which the last foregoing section applies, unless the plaintiff proves that the person under a disability was not, at the time when the right of action accrued to him, in the custody of a parent;
 - (e) this section shall not apply to any action to recover a penalty or forfeiture, or sum by way thereof, by virtue of any enactment, except where the action of brought by an aggrieved party
- (2) In the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or any such provisions) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist

of or include damages in respect of personal injury to any person -

- (a) the preceding provisions of this section shall have effect as if for the words “six years*” there were substituted the words “three years”.
- (b) this section shall not apply unless the plaintiff proves that the person under the disability was not at the time when the right of action accrued to him, in the custody of a parent

Fresh accrue of
acknowledgment
s or part payment

39. (1) Where there accrued any right of action (including a foreclosure action) to recover land or any right of a mortgagee of personal property to bring a foreclosure action in respect of the property, and —

- (a) the person in possession of the land, benefit or personal property acknowledges the title of the person to whom the right of action has accrued;
- or
- (b) in the case of a foreclosure or other action by a mortgagee the person in possession as aforesaid or the person liable for the mortgage debt makes any payment in respect thereof, whether of principal or interest,

the right shall be deemed to have accrued on and not before the date of the acknowledgment of payment

(2) Where a mortgagee is by virtue of the mortgage in possession of any mortgaged land and either receives any sum in respect of the principal or interest of the mortgage debt or acknowledges the title of the mortgagor, or his equity of redemption, an action to redeem the land in his possession may be brought at any time before the expiration of twelve years from the date of the payment or acknowledgment

(3) Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person any share or interest therein, and the person liable or accountable therefor acknowledges the claim or makes payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment

Provided that a payment of a part of the rent or interest due at anytime shall not extend the period for claiming the remainder then due, but any payment of interest

shall be treated as a payment in respect of the principal debt.

Formal
provisions as to
acknowledgme
nt and part
payments

40. (1) Every such acknowledgment as aforesaid shall be in writing and signed by the person making the acknowledgment,

(2) Any such acknowledgment or payment as aforesaid may be made by the agent of the person whom it is required to be made under section 39 and shall be made to person, or to an agent of the person, whose title or claim is being acknowledged or as the case may be, in respect of whose claim the payment is being made.

Effect of
acknowledgment
or part payment
on person other
than make or
recipient.

41. (1) An acknowledgment of the title to any land, benefit, or mortgaged property, by any person in possession thereof shall bind all other persons in possession during the ensuing period of limitation.

(2) A payment in respect of a mortgage debt by the mortgagor or any person in possession of the mortgaged property shall so far as any right of the mortgagee to foreclose or otherwise recover the property is concerned, bind all other persons in possession of the mortgaged property during the ensuing period of limitation.

(3) Where two or more mortgagees are by virtue of the mortgage, in possession of the mortgaged land, an acknowledgment of the mortgagor's title or of his equity of redemption by one of the mortgagees shall only bind him and his successors and shall not bind any other mortgagee or his successors and where the mortgagee by whom the acknowledgment is given is entitled to a part of the mortgaged land and not to any ascertained part of the mortgage debt, the mortgagor shall be entitled to redeem that part of the land on payment, with interest, or the part of the mortgage debt which bears the same proportion to the whole of the debt as the value of the part of the land bears to the whole of the mortgaged land

(4) Where there are two or more mortgagors, and the title or right to redemption of one of the mortgagors is acknowledged as aforesaid, the acknowledgment shall be deemed to have been made to all the mortgagors.

(5) An acknowledgment of any debt or other liquidated pecuniary claim shall bind the acknowledger and his successor but not any other person.

Provided that an acknowledgment made after the expiration of the period of limitation prescribed for the bringing of an action to recover the debt or other claim

shall not bind any person other than the person making the payment and his successors, and shall not bind any successor on whom the liability devolves on the determination of a preceding estate or interest in property, under a settlement taking effect before the date of the payment,

(6) A payment made in respect of any debt or other liquidated pecuniary claim shall bind all persons liable in respect thereof:

Provided that a payment made after the expiration of the period of limitation prescribed for the bringing of an action to recover the debt or other claim shall not bind any person other than the person making the payment and his successors, and shall not bind any successor on whom the liability devolves on the determination of a preceding estate or interest in property under a settlement taking effect before the date of the payment.

(7) An acknowledgment by one of several personal representatives, of any claim to the personal estate of a deceased person, or to any share or interest therein, or a payment by one of several personal representatives in respect of any such claim shall bind the estate of the deceased person.

(8) In this section, the expression "successor" in relation to any mortgagee or person liable in respect to any debt or claim, means his personal representatives and any other persons on whom the rights under the mortgage or, as the case may be, the liability in respect of the debt or claim devolves, whether on death or bankruptcy or the disposition of property or the determination of a limited estate or interest in settled property or otherwise

42. Where in the case of any action for which a period of limitation is prescribed by this Law, either —

Postponement
Of limitation
Period a case of
fraud or mistake

- (a) the action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent: or
- (b) the right of action is concealed by the fraud of any such person as aforesaid; or
- (c) the action is for relief from the consequences of a mistake.

the period of limitation shall not begin to run until the plaintiff has discovered the fraud

or mistake, as the case may be or could with reasonable diligence have discovered it;

Provided that nothing in this section shall enable any action to be brought to recover, or enforce any charge against, or set aside any transaction affecting any property which —

- (i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party in the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed, or
- (ii) in the case of mistake, has been purchased for valuable consideration, subsequently to the transaction in which the mistake was made by a person who did not know or have reason to believe that the mistake had been made.

Application of law and
other limitation
Enactment to
arbitrations.

43. (1) This Law and any other enactment in force in this State relating to the limitation of actions shall apply to arbitration as they apply to actions in the High Court.
- (2) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue to respect of any matter required by the cause of action shall, for the purpose of this Law and of any other such agreement to be deferred until an award is made under the agreement, the enactment (whether in their application to arbitrations or to other proceedings), be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.
- (3) For the purpose of this Law and of any such enactment as aforesaid, an arbitration shall be deemed to be commenced when one party to the arbitration serves on the other party or parties a notice requiring him or them to appoint an arbitrator, or to agree to the appointment of an arbitrator, or where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring him or them to submit the dispute to the person so named or designated.
- (4) Any such notice as aforementioned may be served either —
- (a) by delivering it to the person on whom it is to be served, or

(b) by leaving it at the usual or last known place of abode in Nigeria of that person; or

(c) by sending it by post in a registered letter addressed to the person at his usual or last known place of abode in Nigeria as well as in any other manner provided in the arbitration agreement:

Provided that where a notice is sent by post in a manner prescribed by paragraph (c), service thereof shall unless the contrary is proved, be deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of post.

(5) Where the High Court orders that an award be set aside or orders after the commencement of an arbitration that the arbitration shall cease to have effect With respect to the dispute referred, the court may further order that the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed by this Law or any such enactment as aforesaid for the commencement of proceedings (including arbitration) with respect to the dispute referred.

(6) This section shall apply to an arbitration under any written law as well as to an arbitration pursuant to an arbitration agreement, and subsections (3) and (4) hereof shall have effect, in relationship to an arbitration under a written law as if to the references to the arbitration agreement there were substituted references to such of the provisions of the written law or of any order, scheme. rules, regulations, or bye-laws made thereunder as they relate to the arbitration

(7) In this section the expressions, “arbitration”, “arbitration agreement” and “award” have the same meaning as in the Contract Law.

44. For the purpose of this Law, any claim by way of set-off or counter- claim shall be deemed to be a separate action and to have been commenced on the same date as the action in which live set-off or counter-claim is pleaded.

Provisions as to
set-off or counter-
claim

45. Nothing in this Law shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise.

Acquiescence

Application to
the State

46. The provisions of this Law as regards limitation of actions shall not apply to any proceedings by the State for the recovery of any tax or duty, or interest thereon, but shall, except as may otherwise be provided in any section of this Law or in another written law in force in the State apply to the State as though it were a person.

47. (1) For the purpose of this Law, a person shall be deemed to be under a disability while he is an infant, or of unsound mind.

Interpretation.

(2) A person shall be deemed to claim through another person, if he became entitled by through, under, or by the act of that other person to the right claimed:

Provided that a person becoming entitled to any estate or interest by virtue of a special power of appointment shall not be deemed to claim through the appointor

(3) References in this Law to a right of action to recover land shall include references to a right to enter into possession of the land or, in the case of rent charges to distrain for arrears of rent and references to the bringing of such an action shall include references to the making of such an entry or distress

(4) References in this Law to the possession of land shall, in the case of rent charges, be construed as references to the receipt of the rent and references to the date of dispossession or discontinuance of possession of land shall, in the case of the rent charges, be construed as references to the date of the last receipt of rent

(5) In sections 38 to 42 references to a right of action shall include references to a cause of action and to a right to receive money secured by a mortgage or charge on any property or to recover proceeds of the sale of land, and to a right to receive a share or interest in the personal estate of a deceased person, and references to the date of the accrual of a right of action shall -

- (a) in the case of an action for an account, be construed as references to the date on which the matter arose in respect of which an account is claimed,
- (b) in the case of an action upon a judgment be construed as references to the date on which the judgment became enforceable
- (c) in the case of an action to recover arrears of rent or interest, or damages in

respect thereof, be construed as references to the date on which the rent, or interest became due.

Saving for other
limitation
enactments

48. For avoidance of doubt, this Law shall not apply to any action or arbitration for which a period of limitation is prescribed by any other enactment, or to any action or arbitration to which the State is a party and for which, if it were between subjects, a period of limitation would be prescribed by any other enactment.

SUBSIDIARY LEGISLATION

(No subsidiary legislation)