

**AN EXAMINATION OF WHEN A
SUIT/ACTION IS STATUTE-BARRED:**

**REVIEW OF THE SUPREME COURT
DECISION IN KARSHI & ORS V GWAGWA
(2022) LPELR- 57544(SC)**



INTRODUCTION

To validly institute a civil action, it is the position of the law that there is a time limit within which such action can be brought before a court for proper adjudication. The law that decides the time limit is the Statute of Limitation (hereinafter “**Limitation Law**”). The applicable limitation law stipulates that an action must be commenced within a specific period and where there is non-compliance, the right of action would be deemed to have become otiose, extinguished, or statute-barred.¹ Put differently, any action caught by the limitation law is dead for all ages.

In most cases, the determining factor of when an aggrieved person shows tardiness by suing his wrongdoer outside the time bracket prescribed by the statute (i.e., action extinguished by passage of time) is when the right of action accrued which is referred to in law as “cause of action”.² So, when the sued party becomes aware of this development, it opens the door to raise an objection as to the validity of the action before a court. Where the court is to determine whether an action is statute-barred as per the objection raised, this article will address the processes the court should examine that will enable it reach a conclusion on compliance with the prescribed time frame to bring such action.

In recent times, there has been some form of pandemonium in the judicial atmosphere in respect of the processes the court should consider in determining when an action is statute-barred and a different position of law was established in the case of **Karshi v Gwagwa**,³ on when a cause of action accrued. Therefore, it is crucial for this article to consider this case law to enable litigants to have a proper perspective on the position of the law and the right principle the court should adopt when an objection is being raised for the determination of a statute-barred action.

HOW A STATUTE BARRED ACTION IS CHALLENGED IN COURT

For decades, raising of preliminary objections as to the jurisdiction of a court to entertain an action on the basis that the action is statute-barred has been a tool in the hands of legal practitioners in urging the court to strike out a matter at the preliminary stage (often referred to as **in limine**). Limitation Law is a shield that functions at the instance of the Defendant which must be pleaded in a statement of defence or counter affidavit as the case may be. However, where a Limitation Law has not been pleaded, it can be raised subsequently at any stage of the proceedings or on appeal because limitation Law is an issue that goes to the root of jurisdiction of the court.⁴ In the case of **ADETULA V. AKINYOSOYE**,⁵ the court held thus:

1. See A.G., Adamawa State v. A.G., Federation (2014) 14 NWLR (Pt. 1428) 515 where it was held that an action is statute-barred if legal proceedings cannot be commenced in court if the period laid down by the limitation law or Act had elapsed.
2. On Meaning of cause of action: - Cause of action is a factual situation the existence of which entitles one person to obtain a remedy against another person. It is a fact or combination of fact which when proved would entitle a plaintiff to a remedy against a defendant. It consists of every fact which could be necessary for the plaintiff to prove if traversed; in order to support his right to judgement of the court. That is the fact or combination of facts which give rise to a right to sue. (Nissan (Nig.) Ltd. v. Yoganathan (2010) 4 NWLR (Pt. 1183) 135; Dantata v. Mohammed (2000) 7 NWLR (Pt. 664) 176 referred to.) Pp. 401-402, paras. H-B
3. (2022) LPELR-57544(SC)
4. Understanding Basic Concepts of Limitation Statutes Under the Nigerian Legal System - Threshold Attorneys (threshold-attorneys.com) accessed on 9th December 2022 at 12:25pm
5. (2017) 16 NWLR (PT. 1592) 492 AT 520 PARAS G-H

“An action challenged on the ground of Limitation Law is to effect a challenge to jurisdiction and this may be raised without leave even though it is a new issue of law that may not have been raised and determined at the trial court.”

On the part of the court, the duty to consider these objections cannot be waived. In **CPL IND. LTD. V. UNION HOMES S. & L. LTD.**⁶ the court held that:

“Courts have the Duty to hear and determine first, any preliminary objection before proceeding to consider and determine the substantive case on the merit where the latter step turns out to be necessary.”

The essence of preliminary objection is for the court to end a case at its earliest stage, without dissipating energy in considering a worthless matter. In **Muhammad v. I.G.P.**⁷, the court enunciated that *“Where a notice of preliminary objection is filed and moved before a court of law, that court is duty bound to consider the preliminary objection before venturing into the main or cross-appeal. For the aim of a preliminary objection is to terminate a case in limine, without dissipating unnecessary energy in considering unworthy or fruitless matter in the court's proceedings.”*

The objection strikes at the competence of the action and if found to be incompetent (i.e., the action being statute barred with the resultant effect of no cause of action), the court will be

robbed of the requisite jurisdiction to entertain the action. See **AJAYI V. ADEBIYI & ORS**⁸ where the court held that it is merely restating the obvious that an objection alleging statute bar is a challenge to the competence of the action as constituted and **ex ipso facto** the jurisdiction of the court to entertain and determine the action.

Where the court is to decide if it has jurisdiction or not as per the action being brought outside the prescribed time as stipulated in the limitation law, the court will have to consider when the cause of action accrued. See **FEDERAL POLYTECHNIC NEKEDE, OWERRI & ANOR V. NWAOROR**⁹ where it was held that

“Whenever an objection to the Court's jurisdiction is raised by a party to an action, under the Statutes of Limitation there are usually three (3) factors at play. The one is the date the cause of action arose, the other is the date of the commencement of action and the third is the period of time prescribed for the commencement of the said action by the relevant piece of legislation.”

ACCRUAL OF CAUSE OF ACTION

Cause of action accrues from the date of the occurrence of the event, decision or action complained of. Cause of action is said to have accrued when all the material facts needed by a Claimant to maintain an action in court and seek remedies have occurred. It is the conclusion of

6. (2021) 9 NWLR (Pt. 1781) 201

7. (2019) 4 NWLR (Pt. 1663) 492 (P. 507, paras. E-G); *Yaro v. Arewa Construction Ltd.* (2007) 17 NWLR (Pt. 1063) 333; *Agbareh v. Mimra* (2008) 2 NWLR (Pt. 1071) 378; *Onyekwuluje v. Animashaun* (1996) 3 NWLR (Pt. 439) 637; *Onyemeh v. Egbuchulam* (1996) 5 NWLR (Pt. 448) 255; *Efet v. I.N.E.C.* (2011) 17 NWLR (Pt. 1247) 423

8. (2012) LPELR-7811 (SC) 1 AT 40-41

9. (2014) LPELR-24289(CA) (PP. 18 PARAS. C)

events that set the limitation laws/Act in motion. It is worthy of note that, the timeframe stipulated by a limitation law or Act begins to count once all the material facts needed by a claimant to maintain an action has been completed that is, the right of action eventuates from the existence of a cause of action. In **OWIE V IGHIVI**,¹⁰ the Court enunciated that:

“time begins to run for the purpose of limitation law when the cause of action arose; that is when there is in existence a person who can sue and another who can be sued and when all the facts have happened which are material to be proved to entitle the plaintiff to succeed.”

Also in **Dantata v. Mohammed**,¹¹ the court held that:

“The accrual of a cause of action is the event whereby a cause of action becomes complete so that the aggrieved party can begin and maintain his cause of action.”

It is clear that in determining the date of accrual of a cause of action for the purpose of the application of the limitation law, it is the date of the happening of the alleged wrongful act of the Defendant(s) or the sued party that is to be considered as the date of the accrual of the cause of action from which the limitation period is reckoned. It is not the date the resulting damage manifests and as such, it does not matter that any resulting damage from the alleged wrongful act

may have continued or the injury sustained, continued ad infinitum. This is the reasoning of the Supreme Court in **FROZEN FOODS (NIG) LTD & ORS V. ESTATE OF OBA JOHN AGBOLA OJOMO & ORS**.¹² For example, in a simple contract relationship, the limitation of the action runs from the date of a breach of the contract and which calls for the person thereby injured to take a Court action in assertion or protection of his legal right that has been breached.

YARDSTICK TO DETERMINE WHETHER AN ACTION IS STATUTE-BARRED

In the exercise of the above duty, the courts have developed the trite principle of considering the originating processes of the Claimant or Plaintiff to determine whether an action is statute-barred. The originating processes amidst others includes the writ of summons accompanied by a statement of claim or an originating summons accompanied by an affidavit. Courts have maintained the position of the law in determining the yardstick of an action being statute barred and this was followed in **AGUMA V. A.P.C**,¹³ where the court enunciated that:

“In order to determine whether a case is statute-barred, it is the Claimant’s originating processes, usually the writ of summons and the statement of claim, that are considered. In the instant case, the

10. (2005) 5 NWLR (Pt. 917) 184

11. (2000) 7 NWLR (Pt. 664) 176

12. (2022) 14 NWLR (Pt. 1850) 299

13. (2021) 14 NWLR (Pt. 1796) 351; Egbe v Adefarasin (1987) 1 NWLR 9Pt. 471; Williams v Williams (2008) 10 NWLR (Pt. 1095) 364; Aremo II v Adekanye (2004) 13 NWLR (Pt. 891) 572.

action at the trial court was commenced by originating summons. Therefore, in order to determine whether the court of appeal had jurisdiction to hear and determine the appeal, the processes to consider were only the originating summons and affidavit in support of the originating summons vis-à-vis the relevant limitation law.”

Also in **FROZEN FOODS (NIG.) LTD. V. OJOMOE**,¹⁴ the supreme court stated that:

“In determining whether an action is statute barred or not, the court is enjoined to ascertain when the cause of action arose by looking at the Plaintiff’s originating processes, which include the writ of summons and the averments in the statement of claim to ascertain when the wrong giving rise to the enforceable claim was allegedly committed. Thereafter, the court is required to compare the date on which the suit was initiated. If the period of persistence of the wrong from the date of accrual thereof exceeds the period of limitation as provided by the statute, then the suit is statute-barred.”

It is therefore clear and an established law that the court has no business with the processes of the Defendant in determining whether an action is statute-barred as recourse is only had to the writ of summons and statement of claim of the claimant/plaintiff. However, there have been proceedings where the court went beyond the general position of the law and considered the processes of the Defendant in reaching a decision

on whether an action is statute-barred and this was undertaken by the court in **Karshi v. Gwagwa (Supra)** which shall be reviewed hereunder.

REVIEW ON THE PROCESSES ADOPTED BY THE COURT IN KARSHI V GWAGWA ON WHETHER AN ACTION IS STATUTE-BARRED

The case of **Karshi v Gwagwa**¹⁵ is a pre-election matter with Suit No. CV/1052/2021 instituted by the 1st Respondent (the Plaintiff at the trial court) against the Appellants and 2nd – 12th Respondents (Defendants at the trial court) on 9th June 2021 because of the dispute that arose from the 2nd Appellant’s primary election held on the 23rd April, 2021. The matter was instituted by way of originating summons supported by affidavit and written address. In opposition, the Defendants at the trial court filed counter-affidavits as well as preliminary objection to the jurisdiction of the trial court to entertain the suit. In the objection, it was contended that by virtue of section 285(9) of the 1999 constitution (as amended) that the action was statute barred. The objection and the merit of the suit were considered together. The trial Court in its judgment of 27th September 2021 upheld the preliminary objection that the suit was statute barred and that therefore it lacked the jurisdiction to entertain and determine same. The

14. (Supra); Egbe v. Adefarasin (No.2) (1987) 1
15. (2022) LPELR-57544(SC)

judgement was appealed against to the Court of Appeal and subsequently to the Supreme Court. In determining whether the action was statute barred, the Supreme Court held that:

“Generally, to determine if an action is statute barred it is the originating process that the court should look at to find out the date of the wrong that caused the suit occurred and the date the suit was filed. But where the objection that a suit is statute barred is considered and determined after the conclusion of evidence by both sides, all the processes and evidence before the court must be considered, especially where the objection is determined as part of or along with the final judgement on the merit of the dispute in the case. This approach pursues the substantial justice of the matter and reduces the incidence of unscrupulous litigants, who, knowing very well that their claim is already statute barred, coin or phrase their case in such a manner as to hide or misrepresent the fact that it is already statute barred to exploit the principle that only the originating process should be considered in determining the issue of when the cause of action accrued and abuse the process of the court by a sending it on a futile trial of a stale cause that it lacks jurisdiction to try. In this case, the preliminary objection was determined along with the question in the originating summons. The trial court was thus obliged to look at all the processes brought before it for considering. Therefore, the court of appeal rightly relied on all evidence on record before

the court in determining when the cause of action accrued and whether the suit was statute barred.”¹⁶

The implication of the decision of the Supreme Court in **Karshi v Gwagwa**¹⁷ is that the court will not always confine itself only to the originating processes of the Plaintiff in determining when an action is statute-barred, the processes of the Defendant would equally be considered. In a bid to create an osmosis for its decision, the court enunciated further that:

“The general principle that it is the origination process that must be considered to determine if an action is statute-barred limits courts from considering the processes filed by the defendant in response to the originating process, even when the objection was determined by the trial court in its final judgement after conclusion of evidence. In such case, the courts ignore other evidence in the case that discloses the actual cause of action and pretend that it does not exist. Such approach, however, violates the fundamental principle of fair hearing that requires the court to consider all evidence before it in its final judgement or to consider all evidence on a point in determining that point. In this case, the preliminary objection was determined along with the questions in the originating summons. The trial court was thus bound to look at all the processes brought before it for consideration.”

The salient question to answer at the point is, at

16. The court relied on APC v Lere (2020) 1 NWLR (Pt. 1705) 254; Egbe v Adefarasin (1987) 1 NWLR (Pt. 47) 1; Nwankere v Adewunmi (1966) 1 SCNLR 356; Egbe v Alhaji (1990) 1 NWLR (Pt. 128) 546
17. supra

what stage in the proceedings can the court examine the Defendant's processes to determine whether an action is statute-barred i.e. is it in limine or after the conclusion of evidence? If for any reason the court should consider the processes of the Defendant, it must be after the conclusion of evidence or while delivering its final judgement. An aggregate understanding of the excerpt of the judgement of the court in **Karshi v Gwagwa (Supra)** connotes that the processes of the Defendant can only be considered at the conclusion of evidence or final judgement stage.

OUR POSITION:

Having appraised the above decision in **Karshi v. Gwagwa (Supra)**, it is worthy of note that the Supreme Court in this case did not overrule the trite principle of examining the originating processes of the Plaintiff/Claimant to determine whether an action is statute-barred. However, the case expanded the scope of application of the principle to cases where ruling of the court in respect of the preliminary objection is given at the conclusion of evidence or as part of the final judgement. This approach pursues the substantial justice of the matter and reduces the incidence of unscrupulous litigants who knowing very well that their claim

is already statute barred, coin or phrase their case in such a manner as to hide or misrepresent the fact that it is statute barred to exploit the principle that only the originating processes should be looked at. Thus, in such a case, the court should consider all the processes before it in the interest of justice.

The approach adopted by the trial court in delivering its ruling on the preliminary objection at the stage of the final judgement in the case under review is in fulfilment of the constitutional provision¹⁸ on pre-election matter that:

“where a preliminary objection or other interlocutory issue touching on the jurisdiction of the tribunal or court in any pre-election matter or on the competence of the petition itself is raised by a party, the tribunal or court shall suspend its ruling and deliver it at the stage of final judgement”.

The constitution being the grundnorm and superior to every other legislation, principle and convention, the court is bound to act in accordance with it. Therefore, every objection touching on the jurisdiction of the tribunal or court or on the competence of the petition in a pre-election matter, must be considered at the stage of the final judgement. An aggregate reading of Section 285(8) of the Constitution and the case of **Karshi v Gwagwa (Supra)** implies that the court is duty bound to consider an objection on

18. Section 285 (8) 1999 Constitution of the Federal Republic of Nigeria (as amended)

whether an action is statute-barred at the stage of judgement and therefore, at liberty to consider the processes of the Defendant. This is so because at the stage of judgement, the court must have taken record of all the processes and evidence before it, therefore in the interest of justice and fair hearing, the court will consider all the processes and evidence.

Can it, therefore, be said that a court would rightly determine the date of accrual of cause of action from the originating process (the general position of the law) without a recourse to the processes filed by the sued party (Defendant)? The fact as to whether an action is statute barred is one that is deducible by a Court given the averment in relation to the accrual of a cause of action and the date of the filing of the action in question. Practically, the answer may be in the negative, and the court may need to evaluate the facts pleaded by parties to reach a conclusion on when indeed the cause of action accrued as was the case in **Karshi v. Gwagwa (Supra)**. This is because no Counsel worth his onions will deliberately plead in a statement of claim or affidavit in support the fact of an action being statute barred in his own action.

It is pertinent to note that in determination of an action being statute barred, the evaluation is that a stale claim may not only be unfair to a defendant, but it may also inflict callousness on

the court. With the quirks of events, the concatenation of avoidable and unavoidable circumstances and the sheer passage of time, such a defendant stands the chance of losing material pieces of evidence which hitherto formed part of the formidable arsenal in his defence. Limitation Laws evolve to vouchsafe a defendant, to protect the defendant against long dormant claims that may have more cruelty than Justice. Without Limitation Laws, a defendant may be forced to face a claim that he might have lost the evidence to disprove the plaintiff's claim. Limitation law forces the Plaintiff to be diligent in pursuing his cause of action.¹⁹

In light of the above, the case of **Karshi v Gwagwa (Supra)** could best be cited as an authority in pre-election matters (and all other matters that permit objections to be taken together with the substantive suit) in respect of the processes the court would examine to determine an objection on whether a cause of action is statute-barred. This is reflective of the constitutional provision in respect of objections touching on the Jurisdiction of the court or competence of the petition itself. Therefore, in respect of matter that are not pre-election matters or matters commenced by writ of summons, the case of **Karshi v Gwagwa (Supra)** will only apply where a preliminary objection as to whether an action is statute-barred is considered at the conclusion of evidence or as part of or along with the final judgement of

19. Understanding Basic Concepts of Limitation Statutes Under the Nigerian Legal System – Threshold Attorneys (threshold-attorneys.com) accessed on 9th December 2022 at 12:25pm

the court. Thus, where the court intends to determine such preliminary objection in limine, it must confine itself to Plaintiff or Claimant's originating processes.

As was held in **Frozen Food Nigeria Limited v Ojomo (Supra)**, *"in determining whether an action is statute barred or not, the court is enjoined to ascertain when the cause of action arose by looking at the Plaintiff's originating processes, which include the writ of summon and the averments in the statement of claim to ascertain when the wrong giving rise to the enforceable claim was allegedly committed."*

The above **Frozen Food's** case is of more recent origin than **Karshi's case**. Therefore, the courts, litigants and/or legal practitioners should thread with caution when citing **Karshi's** case as it does not apply to where an action subject of statute-bar challenge is determined in limine. It is trite that legal principles established in decided authorities are not to be applied across board and in all matters without regard to the peculiar facts and issues submitted for adjudication. Each case remains authority for what it decides. Therefore, an earlier decision of a Supreme Court will only bind the Supreme Court and subordinate Courts in a subsequent case if the facts and the law which informed the earlier decision are the same or similar to those in the subsequent case. See

AKEREDOLU V. ABRAHAM & ORS. Also, in ONI & ORS. V GOVERNOR OF EKITI STATE & ANOR,²⁰ Augie, JSC reiterated the attitude of the Supreme Court with regards to citing pronouncements from previous judgments without relating those pronouncements to the facts that induced them.²²

CONCLUSION

The case of **Karshi v Gwagwa (Supra)** did not overrule the hornbook principle that the court should consider the originating Processes of the claimant/plaintiff in determining whether an action is statute-barred, however the case made an addendum to the application of the principle of the processes the court would consider in determining whether or not an action is statute-barred.

20. (2018) LPELR-44067(SC)

21. (2019) LPELR-46413(SC)

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

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