IN THE HIGH COURT OF JUSTICE

OF EDO STATE OF NIGERIA

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,

ON MONDAY THE

7TH DAY OF JULY, 2025.

BETWEEN: ***SUIT NO. B/466/23***

MRS. ABIEMWENSE HELEN WOLSTEN CROFT ……..... CLAIMANT
(Suing through Lawful Attorney
MS. GLORIA ODOBO)

AND

1. ***MR. EDOMWONYI BELLO***
2. ***MRS. OSARUMWENSE BELLO*** } ***DEFENDANTS***

RULING

This is a Ruling on the Defendants/Applicants preliminary point of law brought pursuant to ***Order 13 Rule 18(2), Order 22 Rule 2 of the Edo State High Court (Civil Procedure) Rules, 2018*** and under the inherent jurisdiction of this Honourable Court. The defendants/applicants are praying for an order striking out or dismissing this suit on the ground that the 2nd Defendant is not a necessary party for the determination of this case, that the Claimant has no cause of action against the Defendants, and the action as presently constituted is statute barred.

In his written address, learned counsel for the defendants/applicants, **Dorcas O. Ogunleye (Miss), Esq.** formulated three (3) issues for determination as follows:

1. ***Whether the 2nd Defendant is needed for a proper and effectual determination of this suit.***

2. ***Whether the Claimant's claim discloses any cause of action against the Defendants.***
3. ***Whether the Claimant action as presently constituted before this Honourable Court is statute barred***

In arguing the first issue, learned counsel for the defendants stated that the 2nd Defendant in this suit has no contractual relationship with the Claimant and she is not a party to the alleged negotiation or understanding between the Claimant and the 1st Defendant. Therefore the 2nd Defendant is not a proper party to be sued in this suit.

Citing the case of **MOBIL PRODUCING UNLIMITED V. LASEPA (2002)**12 SCNJ 1 at 25, learned counsel defined a proper party as one whose interest will be affected directly if a relief claimed in the action is granted. Learned counsel submitted that that the reliefs sought by the Claimant do not affect the 2nd Defendant directly because she has no contractual relationship with the Claimant.

Learned counsel for the defendants/applicants also stated that the resultant effect of suing an improper person is striking out the name of the person from the suit. She cited ***Order 13 Rule 18(2) of the Edo State High Court (Civil Procedure) Rules, 2018*** which provides as follows:

> ***"A Judge may at any stage of the proceeding either upon or without the application of either party; and on such terms as may appear to the Judge to be just, order that the names of any parties improperly joined be struck out".***

Learned counsel also submitted that the Rules of court are meant to be obeyed and are also binding on all parties before the court. She cited the case of **OWNERS OF THE MV "ARABELLA" V. NAIC (2008)** ALL FWLR (pt 443) 1208 at 1227 Para E. where the Supreme Court Per Ogbuagu JSC stated as follows:

> *"Firstly, as to how rules of court are treated, it is now firmly settled that rules of court are not mere rules but they partake of the nature of subsidiary legislations by virtue of Section 18(1) of the Interpretation Act and therefore have force of law. That is why rules of court must be obeyed……"*

She also cited the case of **ADC V. BELLO (2017)**1 NWLR (pt 1545) at 130 Para F, G Per Okoro JSC, where the Supreme Court defined a necessary party as follows:

> *"But who is a necessary party? A necessary party in a case is one whose presence or involvement in the matter is not only necessary but crucial and*

unavoidable for the effective, effectual, exhaustive, complete and comprehensive adjudication of all questions raised in a cause or matter such a party is one who is not only interested in the subject matter of the proceedings but also who in his absence the proceedings cannot be fairly dealt with".

She therefore submitted that all questions raised by the Claimant can be effectually and completely settled and determined by this Honourable Court without the presence of the 2nd Defendant. She urged this Honourable Court to apply its inherent powers and strike out the name of the 2nd Defendant from this suit as the 2nd Defendant is neither a proper party nor a necessary party to this suit.

Arguing Issue 2, learned counsel for the defendants/applicants stated that it is trite law that the writ of summons and the statement of claim are the essential court process to look into to see if there is a cause of action in a suit.

Learned counsel stated that what constitutes a cause of action has been well settled in plethora of cases. Counsel cited the cases of **OKAFOR V. BENDE DIVISIONAL UNION, JOS BRANCH (2017)**5 NWLR (pt 1559) 385 at 417. **EGBE V. ADEFARASIN (1987)**1 NWLR (pt 47) 1 at 20, in support of this point. She submitted that a close examination of the writ of summons and statement of claim clearly shows that it does not disclose any reasonable cause of action against the Defendants.

She also submitted that relevant facts to sustain an action of this nature is not placed before this Honourable Court. She stated that the Claimant in paragraph 10 of the statement of claim, claimed that all the receipts evidencing all payments to the Defendants' UK Bank Accounts were destroyed by her. Learned counsel submitted that without these said documents, this suit is a mere voyage of discovery, as the essence of the cause of action is defeated and void.

Learned Counsel stated that the Court is not obliged to consider seriatim all the averments in the statement of claim, and it is sufficient that the court looks at and/or refer to few averments that form the gravamen of the claim. She cited the case of **SEVEN UP BOTTLING COMPANY V. ABIOLA & SONS (2001)**13 NWLR (pt 730) 469 at 495.

Learned counsel submitted that in the absence of a cause of action, the option left to the court is to strike out the action and/or dismiss same. She cited the case of **THOMAS V. OLUFOSOYE (1986)**1 NWLR (pt 18) 699 at 682-683 Para H where the Supreme Court stated as follows:

"Where the statement of claim discloses no cause of action and if the court is satisfied that no amendment, however ingenious will cure the defect, the statement of claim will be struck out, and the action dismissed."

She therefore urged this Court to resolve issue 2 in favour of the defendants.

In arguing Issue 3, learned counsel for the defendants/applicants stated that the Claimant in her claim alleged that she paid at various times the sum of **£**51,610.00 into the Defendants' bank accounts in UK between 2004-2014, and had made several demands for the said sum, but the Defendants failed to pay or credit her account with the said sum of money.

Learned counsel submitted that this suit was instituted by the Claimant on 5th June, 2013, after a period of about 9 years when the cause of action has accrued. She cited the case of **WOHEREM V. EMEREUWA (2004)**13 NWLR (pt 890) 398 at 315 where the Supreme Court stated as follows:

"It cannot be disputed that a cause of action matures or arises on a date or from the time when a breach of any duty or act 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 has been breached."

Learned counsel for the defendants also stated that the duration of a right or cause of action which is conferred on an injured party is necessarily limited and does not last till eternity. She submitted that the Claimant failed or neglected to comply with Section 4(1)(a) of the Limitation law, Laws of the defunct Bendel State applicable in Edo State, which provides as follows:

"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) action founded on simple contract or tort."

Learned counsel submitted that the present action must be instituted within six years when the cause of action accrued. She cited the case of **OBOMHENSE V. ERHAHON (1993)** LPELR-2191 (SC). She stated that this action was instituted on 5th July, 2023, nine (9) years after the cause of action accrued. Thus it is therefore a period far in excess of the stipulated period of six years as required by the Limitation Law.

Learned counsel submitted that the Claimant having failed or neglected to commence the action within which the action must be brought as stipulated by the Limitation Law, the suit has become stale, statute barred and unmaintainable.

Thus, the rights of the Claimant in this suit has been extinguished by the Limitation Law, and cannot enforce same anymore. She cited the case of **EGBE V. ADEFARASIN (1987)** LPELR- 1032 (SC).

Learned counsel also stated that the period of negotiation is not reckoned with as it does not break the period of limitation. Thus, time for limitation runs during negotiation. In support of this she cited the case of **EBIOGBE V. NNPC (1994)** 5 NWLR (pt 347) 649 at 659 Para G.

She stated that that the failure to take action within the stipulated period of the Limitation Law, makes the court to lose the jurisdiction to entertain the claim. She cited the case of **AJAYI V. THE MILITARY ADMINISTRATION, ONDO STATE (1997)**5 NWLR (pt 504) 237 at 254.

She submitted that this Honourable Court lacks the jurisdiction to entertain the suit as presently constituted as the suit is statute barred. She urged this Court to resolve issue 3 in favour of the Defendants, strike out the suit and/or dismiss the claim in its entirety.

In his reply to the Defendants points of law/preliminary objection, learned counsel for the Claimant/Respondent, **O. K. Agbonghae Esq.,** raised three (3) issues for determination as follows;

1. ***Whether the 2nd Defendant is a proper and desirable party who will be directly affected by the decision of the Court in this suit?***
2. ***Whether the Claimant's claim discloses any cause of action against the Defendants?***
3. ***Whether the Claimant's action as presently constituted before this Honourable Court is statute barred?***

In arguing his first issue, learned counsel for the Claimant/Respondent stated that the word "party" or "parties" is a correlative term. He cited the case of ***GANI-TARZAN MARINE ENTERPRISES LTD v. CARAVELLE RESOURCES AND INVESTMENT LTD & ANOR (2011) LPELR-4185(CA) (Pp. 17-18 paras. E)*** where the court of appeal Per Saulaw, J.C.A, made a distinction between **proper parties, desirable parties and necessary parties,** as follows:

> ***Proper parties are those who, though not actually interested in the claim, are joined as parties for some good reasons. Desirable parties are those who have an interest in the suit or may be affected by the result thereof.***

Necessary parties are those who not only have interest in the matter, but also who in their absence, the proceedings could not be fairly dealt with.

He cited the cases of ***AMONU VS. RAPHEAL TUCK & SONS (1956) 1 WN 3571; SETTLEMENT CORPORATION VS HOSHSCHILD (NO. 2) (1959) 1 WLR 1664; RE VANEVILLS TRUST (1971) AC 812; RE - VANDERVELLE (1969) 3 ALL ER 496;*** and ***GREEN VS GREEN 3 NWLR (Pt. 61) 480 at 493 paragraph D- F.***

Learned counsel for the Claimant/Respondent submitted that the 2nd Defendant is a desirable and proper party to this suit because the 2nd Defendant needs to be a party in order to be bound (by the decision of Court) as the decision of the Court in this suit will directly affect the 2nd Defendant. Learned counsel stated that it is trite that "***any party whose interest will be directly affected if a relief claimed in the action were granted is a proper party to a suit***." He cited the case of ***MOBIL PRODUCING (NIG) UNLTD. V. LASEPA & ORS (2002) LPELR - 1887 (SC) and YUSUF V. OGUNOLA (2015) LPELR - 41728 (CA). "Per DONGBAN-MENSEM, JCA (P. 54, paras. A-E).***

Learned counsel stated that in this instant case, the Claimant has clearly shown from the reliefs sought in the Statement of Claim, that the 2nd Defendant will be directly affected by the decision of this Honourable Court should the Claimant's reliefs be granted. This is because in paragraphs eight (8) to ten (10) of the Statement of Claim, the Claimant stated clearly that the 2nd Defendant accepted regular payments from the Claimant into her UK NATWEST bank account. Learned counsel therefore concluded that in accordance with the law of banking, should the Court grant the reliefs of the Claimant, only the 2nd Defendant can access that account and any money in it.

Learned counsel therefore submitted that the 2nd Defendant is a **desirable party** and a proper party for the decision of this Honourable Court to bind her. He stated that a desirable party is one who needs to be a party in a suit in order to be bound where the decision in case may directly affect him. He cited the case of ***Col. HASSAN YAKUBU (RTD) v. THE GOVERNOR OF KOGI STATE 3 ORS and THE EJEN OF ANKPA 1995 8 NWLR pt.414 pg 386 at 402 and 403 SC***

In answering the question how does the court determine whether a party is a proper defendant or party in a suit, learned counsel for the Responmdents quoted SHUAIBU, J.C.A in ***EMENE OIL (NIG) LTD & ORS v. OKIKA (2021) LPELR-55153(CA) (Pp. 28 paras. A),*** where the court stated that "***In order to determine whether a party is a proper defendant in an action or suit, all what the Court needs to do is to examine the claim of the plaintiff before the Court.***"

Learned counsel emphasized that the Claimant stated in paragraphs eight (8) to ten (10) of the Statement of Claim that the Claimant made regular payments into the UK NATWEST bank account of the 2nd Defendant same way she made regular payments into the 1st Defendant's UK bank account. He also stated that in paragraph twelve (12) of the Statement of Claim the Claimant stated that she demanded for release of the said money which was deposited in the 1st Defendant and 2nd Defendant's UK bank accounts for safekeeping, but the Defendants have failed, refused and neglected to release or refund the money to the Claimant, hence this suit. Thus, from the Statement of Claim, it is clear that the 2nd Defendant is a proper defendant in this action and that she most likely will be affected by the decision of this Honourable Court.

Learned counsel for the Claimant/Respondent also stated that in the case of ***EMENE OIL (NIG) LTD & ORS v. OKIKA (2021) LPELR-55153 (CA) (Pp. 28 para. A),*** it was held that another test the courts have applied in determining whether a person should be a party to an action is whether the defendant or the person will have his interest irreparably prejudiced if he is not made a party in the action.

Learned counsel stated that from the Statement of Claim of the Claimant and the reliefs sought, it is clear that the 2nd Defendant will be affected by the decision of this Honourable Court and as such the 2nd Defendant has to be a party for the decision of this Court to bind the 2nd Defendant. He queried whether if the 2nd Defendant's name is struck out as prayed by the Defendants, she would still be bound by the judgment of this Court. In answering whether a court can give judgment against a person who is not a party to a suit, he cited **Iguh, JSC**, in the case of ***BUHARI & ORS V. OBASANJO & ORS (2003) LPELR-24859(SC) (Pp. 54 paras. A)*** where the court stated:

> ***The Court, however, cannot pursuant to the audi alteram partem rule enter judgment against a person who will be affected directly by its decision if such a person is not made a party to the action and he had no opportunity of defending the action. See Permanent Secretary, Ministry of Works Kwara State v Balogun (1975) 5 SC 57 at 59.***

It was thus the learned counsel's submission that the 2nd Defendant is a desirable and proper party to this suit since the decision of the Court will directly affect the 2nd Defendant and as such the 2nd Defendant needs to be a party to be bound by the judgment of this Honourable Court.

He therefore urged this Court to resolve issue one in favour of the Claimant and discountenance the contention and submissions of the Defendants that the 2nd Defendant's name be struck out.

On ISSUE 2, learned counsel cited the case of ***BELLO V. ATTORNEY GENERAL OF OYO STATE (1986) LPELR-764(SC)***, where Karibi-Whyte, JSC defined a cause of action in these terms:

> ***I think a cause of action is constituted by the bundle or aggregate of facts which the law will recognize as giving the Plaintiff a substantive right to make the claim against the relief or remedy being sought. Thus, the factual situation on which the Plaintiff relies to support his claim must be recognised by the law as giving rise to a substantive right capable of being claimed or enforced against the Defendant. In other words, the factual situation relied upon must constitute the essential ingredients of an enforceable right or claim. See Trower & Sons Ltd. v. Ripstein (1944) A.C. 254 at p. 263; Read v. Brown 22Q.B.D.128, Cooke v. Gill (1873) L.R.8 C.A.107, Sugden v. Sugden (1957) All ER.300, Jackson v. Spinal (lR 70) L.R.5C.P. 542. Concisely stated, any act on the part of the defendant which gives to the Plaintiff his cause of complaint is a cause of action.***

He also quoted Kekere-Ekun, JSC in the case of ***ILIYASU V RIJAU & ORS (2019) LPELR-48120(SC) at page 23***, as follows:

> ***In a plethora of decisions of this Court, a cause of action has been defined severally as consisting of the fact or combination of facts which establish or give rise to a right of action - a factual situation which gives a person a right to judicial relief; every fact which it would be necessary to prove, if traversed, to support the plaintiff's right to the judgment of the Court, the entire set of circumstances giving rise to an enforceable claim, and as the act on the part of the defendant which gives the plaintiff his cause of complaint. See Egbe Vs Adefarasin (1985) 1 NWLR (Pt. 3) 549; (1985) 3 SC 214; A.G. Federation Vs A.G. Abia State (2001) LPELR 24862 SC @ 58 59 G C; Savage vs Uwechia (1972) 3 SC 214 @ 221; Elabanjo Vs Dawodu (2006) 15 NWLR (Pt. 1001) 70 @ 152 G H; A.G. Lagos State Vs Eko Hotel Ltd. & Anor. (2006) 18 NWLR (Pt. 1011) 378 @ 435 E F.***

Learned counsel submitted that from the Supreme Court's authorities above, it is crystal clear that any act on the part of the Defendants which gives to the Claimant her cause of complaint or a reason to approach this Honourable Court is the Claimant's cause of action.

According to learned counsel for the Claimant/Respondent, in order to determine whether the Claimant's suit discloses a cause or reasonable cause of action, the originating processes are to be examined by this Court to ascertain whether they raise some questions fit to be determined by this Honourable Court. He relied on the Supreme Court case of ***JOSIAH KAYODE OWODUNNI V. THE REGISTERED TRUSTEES OF CELESTIAL CHURCH OF CHRIST & 3 ORS (2000) 10 NWLR (Pt. 675) 315 at 354***; and the case of ***OLISA AGBAKOBA v. ATTORNEY GENERAL OF THE FEDERATION & ANOR (2021) LPELR-55906 (CA).***

Learned counsel stated that a proper examination of the Writ of Summons and Statement of Claim shows that the Claimant's claim discloses a reasonable cause of action against the Defendants in this suit.

He submitted that relevant facts outlining the acts of the Defendants which gave the Claimant her cause of complaint or a reason to approach this Honourable Court are clearly stated in paragraphs three (3) to twenty-nine (29) of the Claimant's Statement of Claim. He stated that while the parties were living in the UK, Claimant who at the time had no right to work could not operate a bank account. As a result, Defendants made their UK bank account available to the Claimant to be making regular cash deposit for safekeeping with the understanding that the moneys would be released and/or returned to the Claimant when needed. Learned counsel stated that this was a common practice in the UK at the time.

Learned counsel further reiterated that when the Claimant eventually demanded for her money amounting to a total sum of **£51,610.00**, the Defendants refused, failed and/or neglected to pay back the money to the Claimant, an act that amounts to wrongful conversion tainted with fraud. The Claimant sent letters of demand through her lawyers to the Defendants and even held meetings with the defendants, yet the Defendant refused to pay back the money. Therefore as clearly seen, the Claimant has a cause of action which raises some questions fit to be determined by this Honourable Court.

Thus, learned counsel submitted that the Claimant's Statement of Claim discloses a reasonable cause of action against the Defendants. He therefore urged this Honourable to resolve issue two in favour of the Claimant and discountenance the contention and submissions of the Defendants that the Claimant's claim do not discloses any cause of action.

On Issue 3 of his written address, learned counsel for the Claimant/Respondent stated that the essence of a limitation law is that the legal right to enforce an action is not a perpetual right but a right generally limited by statute. Thus where a statute

of limitation prescribes a period within which an action should be brought, legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period. Therefore a cause of action is statute-barred if legal proceedings cannot be commenced in respect of same because the period laid down by the limitation law had lapsed. According to the learned counsel, an action which is not brought within the prescribed period, offends the provisions of the law and not give rise to a cause of action. He cited **INEC V. OGBADIBO LOCAL GOVT & ORS** (2015) LPELR-24839(SC) (Pp. 31-32 paras. E).

Learned counsel stated that this third issue is best addressed by answering the following two (2) questions:

a) Whether this suit is statute barred considering the date the cause of action arose and the date this present suit was filed?

b) Whether the refiling of a suit after its initial striking out for lack of diligent prosecution impacts the applicability of the statute of limitations, considering the time elapsed between the original filing and the subsequent refiling.

In answering the first question, learned counsel for the Claimant/Respondent stated that the question as to whether an action is statute barred is dependent on the nature of the action, and the relevant provisions of the statute of limitations. He cited the case of ***IKINE & ORS V. EDJERODE & ORS (2001) LPELR-1479 (SC).***

She posited that in the present suit, the relevant and applicable limitation law is the **Limitation Law, Cap. 89 of the Laws of Bendel the Defunct State of Nigeria, 1976**, now applicable in Edo State. According to him, **Section 4 (1) (a)** of the said Limitation Law provides that an action of this nature shall not be brought after the expiration of **six (6) years** from the date which the cause of action accrued.

According to the learned counsel, the action of the Defendants is based on wrongful conversion tainted with fraud, and as a result, the period of limitation did not commence until the fraud was discovered or could reasonably have been discovered. He cited the Supreme Court case of **CHIEF A. O. NWOSU & ANOR V. CHUKWURAH OFFOR (1997) LPELR-2130 (SC)**. He stated that first point is to establish the yardstick a court must apply in order to determine that an action is statute barred. Per Otisi, J.C.A in ***SAINT GOBAIN PAM S. A. V. INTERNATIONAL CONSULTANTS INCORPORATED (2015) LPELR-24663(CA) (Pp. 34-35 paras. B)*** where the Court held as follows:

In determining whether an action is statute barred, all that is required is for the Court to examine the writ of summons and the statement of claim alleging when

the wrong was committed, which gave the plaintiff a cause of action and comparing that date with the date on which the writ of summons was filed. This can be done without taking oral evidence. If the time on the writ is beyond the period allowed by the limitation law, then the action is statute barred; Egbe v. Adefarasin (supra); Aremo II v. Adekanye (2004) ALL FWLR (PT 224) 2113 at 2132 - 2133; Hassan v. Aliyu (2010) 17 NWLR (PT1223) 547. The Supreme Court, per Adekeye, JSC, in Ajayi v. Adebiyi (2012) LPELR-7811(SC) restated the guiding elements of limitation of action thus: "The yardsticks to determine whether an action is statute-barred are. a) The date when the cause of action accrued. b) The date of commencement of the suit as indicated in the writ of summons. c) Period of time prescribed to bringing an action to be ascertained from the statute in question. Time begins to run for the purposes of the limitation law from the date the cause of action accrues.

According to the learned counsel, in the present suit, the date of commencement of this suit as indicated in the Writ of Summons is the **30th day of May, 2023**. Also, as can be ascertained from the applicable Limitation Law in Edo State, the time prescribed to bring this action is **six (6) years**. Furthermore, an examination of the Claimant's Statement of Claim will clearly reveal the date when the cause of action accrued, which is the date the Claimant demanded for the refund in addition to the seven (7) days ultimatum given in the letter of demand dated the 13th day of July, 2017. It therefore follows that the Claimant's right of action accrued on the **20th day of July, 2017**, which date is after the expiration of the seven (7) days ultimatum stated in the demand letter dated 13th day of July, 2017. Thus, 20th day of July, 2017 is the actual date the statute of limitation begins to run in the matter at hand. This is because in a claim for recovery of debt, the cause of action accrues when a demand is made and the debtor refuses to pay. He cited ***VICTOR V. U.B.A. (2007) LPELR - 9043 (CA), OKONTA & ANOR. V. EGBUNA (2013) LPELR 021253 (CA). Per BOLAJI-YUSUFF ,J.C.A in HUNG & ORS V. E.C INVESTMENT CO. (NIG) LTD & ANOR (2016) LPELR-42125(CA) (Pp. 14 paras. B).***

Learned counsel stated that in an action for the recovery of a debt the cause of action accrues upon demand for the payment of the debt. If no demand is made, a cause of action does not arise and no action can be commenced. He cited ***ISHOLA V. S. G. BANK (1997) 2 SCNJ, 1 at 19, also reported in (1997) 2 NWLR (Pt. 488) 405 at 422,*** where the Supreme Court held that where a creditor sought to recover money or a debt, there should be no right of action until there has been a demand or notice given for the repayment. Until such letter of demand is issued, no right of action would arise.

Learned counsel emphasized that by the Letter of Demand dated 13th day of July, 2017 which is specifically pleaded by the Claimant at paragraph twenty-five (25) of the Statement of Claim, it is clear that the Claimant's right of action accrued on the **20th day of July, 2017**. Thus, a computation of the period of time between the 20th day of July, 2017 and the 30th day of May, 2023 which is the date on the Writ of Summons in this suit will reveal clearly that this case is not statute barred as the period of time is not even up to six (6) years.

Thus, it was learned counsel's submission that this suit is not statute barred.

In answering question 2 as to whether the refiling of a suit after its initial striking out for lack of diligent prosecution impacts the applicability of the statute of limitations, considering the time elapsed between the original filing and the subsequent refiling, learned counsel stated that assuming but not conceding that the date the cause of action in this suit arose and the date this present suit was filed is more than six (6) years, this present suit is still not impacted by the applicability of Section 4(1)(a) of the Limitation Law applicable in Edo State.

According to learned counsel for the Claimant/Respondent, the act of earlier filing this same suit on the 28th day of January, 2020 which was later struck out on the 14th day of July, 2021 for lack of diligent prosecution initially froze the limitation period.

Learned counsel explained that the Claimant first filed this suit (which was having **Suit No: B/41/2020**) at the High Court of Edo State on the 28th day of January, 2020. A copy of the Writ of Summons and receipt of filing is annexed to the affidavit, showing that the said suit was duly filed.

He further explained that on the 14th day of July, 2021 the above mentioned suit with Suit No: B/41/2020 was struck out by the Court because the Claimant and his counsel were not present in Court when the matter came up. The said suit could not be relisted within the time prescribed by the Rules of Court and the Claimant lost track of the case after the EndSARS Protest and the Covid-19 era because the lawyer who was previously handling the matter relocated from the country after the said protest. Thus, the Claimant refiled this extant suit at the High Court of Edo State on the 30th day of May, 2023. This suit has the same subject matter as the previous suit which was struck out and the Claimant is seeking the same reliefs.

Learned counsel submitted that the refiling of a suit after its initial striking out does not inherently reset the limitation period. The original filing of the suit effectively froze the limitation period. Therefore, the time between the original or first filing and the striking out should not be counted in favour of the limitation

period. The subsequent or second refiling should be considered a continuation of the original action for the purposes of the limitation period. He submitted that the period during which the original case was pending is to be excluded from the calculation of the limitation period. Therefore, the actual time elapsed relevant to the limitation period is less than the statutory period prescribed, rendering the Defendants' claim invalid.

Learned counsel cited the case of ***SIFAX (NIG) LTD & ORS VS MIGFO (NIG) LTD & ANOR (2015) LPELR-24655 (CA) at pages 47E to 48E,*** where the Court of Appeal in resolving a similar issue on the running of the limitation period during the pendency of an action and which action was subsequently struck out for want of jurisdiction, stated as follows:

> ***Nonetheless, I am of the humble view that the postulation of the learned author relied on by the learned trial judge to the effect that time ceases to run when the Plaintiff commences legal proceedings in respect of a cause of the action in question is quite persuasive on this recondite area of law and it accords with justice and common sense. Where an aggrieved person commences an action within the period prescribed by the statute and such action is subsequently struck out for one reason or the other without being heard on the merit or subjected to an outright dismissal, such action is still open to be recommenced at the instance of the Claimant and the limitation period shall not count during the pendency of the earlier suit. In other words, computation of time during the pendency of an action shall remain frozen from the filing of the action until it is determined or abates. Thus in the instant case, time ceases to run from the filing of Suit No. FHC/L/CS/664/2006 on 9-8-2006 until the 8-6-12 when it was struck out by the Supreme Court. My conclusion therefore is that the instant case is not caught by the statute of limitation."***

He also cited the case of ***AMERICAN UNIVERSITY OF (NIG) V. NETCOM AFRICA LTD (2023) LPELR-59965(CA) (Pp. 35-37 paras. F)*** where it was held that the interruption caused by the striking out of a suit earlier filed does not negate the tolling effect initiated by that suit and that the period during which the original case was pending is excluded from the calculation of the limitation period. He quoted Per Abiru, J.C.A where he stated in this judgment that:

> ***The period of time that Suit No. LD/2257CMW/2016 spent in the High Court of Lagos State, 2016 to 13th of June, 2018, will not be taken into consideration in calculating the limitation period. The present action was commenced in the lower Court on the 3rd of December, 2018, within a***

period of six months after the striking out of Suit No. LD/2257CMW/2016. The present action is not statute barred.

Learned counsel for the Claimant/Respondent therefore stated that given that the earlier suit filed in January 2020 with Suit No: B/41/2020 tolled the limitation period, and considering that the refiling of the same suit being the present suit is treated as a continuation of the original suit as stated in the authorities cited above, this Honourable Court retains jurisdiction to adjudicate the matter. Thus, the interruption caused by the striking out does not negate the tolling effect initiated by the original filing, maintaining the court's jurisdiction.

Learned counsel therefore stated that the contention of the Defendants that this suit statute barred is misconceived and not valid. He urged this Court to resolve this third issue in favour of the Claimant.

In conclusion, learned counsel for the Claimant/Respondent submitted that this Honourable Court is well clothed with the jurisdiction and power to entertain this suit. He urged this Court to discountenance the contention of the Defendants in its entirety and resolve all three (3) issues in favour of the Claimant.

Upon a careful consideration of all the processes filed in this application, together with the arguments of the learned counsel for the parties, I am of the view that there are three main issues for determination namely:

i. ***Whether the 2nd Defendant is a proper party needed for a proper and effectual determination of this suit.***
ii. ***Whether there is a reasonable cause of action against the Defendants.***
iii. ***Whether the Claimant action as presently constituted before this Honourable Court is statute barred.***

I shall begin by first addressing the first issue.

<u>ISSUE 1.</u>

Whether the 2nd Defendant is a proper party needed for a proper and effectual determination of this suit.

It is settled law that for a Court to be competent and have Jurisdiction over a matter, proper parties must be identified, and shown to be proper parties to whom rights and obligations arising from the cause of action attach. The question of proper parties invariably, is such an important question as same affects the jurisdiction of the Court and goes to the root of the suit in limine. It is the existence

of the proper parties that cloths the Court with jurisdiction. Thus, where one of the parties or both parties are not proper parties before the Court, the Court lacks jurisdiction to hear the matter. See the cases of ***PEENOK INVESTMENT LTD V. HOTEL PRESIDENTIAL LTD (1982) 4 NCLR 122; EHIDIMHEN V. MUSA (2000) FWLR (PT 21) 930; GOODWILL & TRUST INV. LTD V. WITT AND BUSH LTD (2011 ALL FWLR (PT 576) 517; and AKINDELE V. ABIODUN (2010) ALL FWLR (PT.518) 894, 913.***

In the instant case, the Defendants are alleging that the 2nd Defendant is not a proper party in this suit because the 2nd Defendant has no contractual relationship with the Claimant and was not a party to the alleged negotiation between the Claimant and the 1st Defendant.

It is trite law that it is the prerogative of a claimant to determine the defendants in a suit. The liability of each of the parties in the suit would be determined having regards to the pleadings and evidence led by the claimant in the light of the applicable laws. Therefore in order to determine whether a party is a proper defendant to a suit, all the Court needs to do is to examine the claim of the claimant before the Court. It is the statement of claim that gives a claimant the right to initiate the action of the alleged wrongful act. See the following decisions on the point: ***Dantata Vs Mohammed (2000) 7 NWLR (Pt 664) 17;, Adekoya Vs Federal Housing Authority (2000) 4 NWLR (Pt 652) 215; Ogbebo Vs Independent National Electoral Commission (2005) 15 NWLR (Pt 948) 376; and Bello Vs Independent National Electoral Commission (2010) 8 NWLR (Pt 1196) 342.***

From the statement of claim, the Claimant in this case claims against the Defendants jointly and severally as follows:

a. ***A DECLARATION that the act of the Defendants refusing, failing and/or neglecting to pay back the sum of £51,610.00 which the Claimant paid into the Defendants' bank accounts on trust for safekeeping in the UK and with the understanding of returning same to the Claimant amounts to fraudulent conversion.***
b. ***AN ORDER of specific performance on the Defendants to pay to the Claimant the total sum of £51,610.00 which is made up of the sums of money paid into the Defendants' bank accounts in the UK between 2004 and 2014 for the Defendants to hold in trust, with the perfect understanding that it would be returned to the Claimant in full.***
c. ***AN ORDER of award of N5,000,000.00 (Five Million Naira) only as general damages against the Defendants in favour of the Claimant.***

Also in Paragraph 8, 9 and 10 of her statement of claim, the Claimant alleges that;

8. ***In 2006, the Claimant was informed by the 1st Defendant that he had transferred the Claimant's money to the UK NATWEST bank account of one Osarumwense Ewere (with account number: 11541121) the 2nd Defendant in this suit and then fiancée of the 1st Defendant who came to the UK to study at the time. The 1st Defendant further told the Claimant to be making her regular payments into the said Osarumwense Ewere's account from then on, which the Claimant did.***

9. ***That from 2006 to 2008 after the 1st Defendant got married to the 2nd Defendant, the Claimant continued to pay money regularly in cash into the account that was designated by the 1st Defendant as belonging to himself and his wife the 2nd Defendant. That at all material time the following accounts are the different bank accounts provided by the 1st Defendant which the Claimant paid various sums of cash into:***

    a) ***Bank: Lloyds TSB, Account Name: Edomwonyi Bello, Account Number: 13336860, Sort-Code: 309842.***
    b) ***Bank: Barclays, Account Name: Edomwonyi Bello, Account Number: 03957330, Sort-Code: 204981.***
    c) ***Bank: NatWest, Account Name: Ewere Osarumwense, Account Number: 11541121, Sort-Code: 600436.***
    d) ***Bank: HSBC, Name: Mrs. Osarumwense Bello; ; Account Number: 22854589, Sort-Code: 400500;***

10. ***That the Claimant does not have all the bank receipts evidencing all the payments as the 1st Defendant had advised her to destroy them. However, the Claimant was able to savage some of these receipts and shall at the trial of the case rely on some of these receipts of payment into the 1st Defendant's UK bank account and the UK bank account of 2nd Defendant, the then fiancée of the Defendant (now the Defendant' wife), including the twoco-joined receipts of payment containing the sum of £600.00 (Six Hundred Pounds) and £200.00 (Two Hundred Pounds)paid into the NatWest bank account of Ewere Osarumwense (the 2nd Defendant), and another paymentreceipt containing the sum of £600.00 (Six Hundred Pounds) paid into the Barclays bank account of Edomwonyi Bello (the 1st Defendant). Copies of the receipts are hereby pleaded and attached as "annexures B and C".***

It is therefore clear from the Claimant's Statement of Claim that the Claimant has a cause of action against the 2nd Defendant to enable 2nd Defendant be a proper party before this Court.

In light of this, I therefore hold that the 2nd Defendant is a proper party before this Court. Issue one is therefore resolved in favour of the Claimant/Respondent.

ISSUE 2.

Whether there is a reasonable cause of action against the Defendants.

It is well settled that a cause of action is the fact or aggregate of facts which establish or give rise to a right of action. It is a factual situation which gives a person a right to judicial relief. It is thus the factual situation stated by the Claimant which if proved, will entitle him to a remedy against the Defendant, See the following decisions on the point: ***A. G ADAMAWA V. A. G FEDERATION (2014) LPELR - 23221 (SC) PER ODILI JSC; NIGERIAN PORT AUTHORITY PLC V. LOTUS PLASTTCS LTD (2005) LPELR - 2028 SC and OSHOBOJA v. AMUDA (1992) NWLR (pt 250) 690.***

In the old case of ***Savage & Ors. v. Uwechia (1972) 1 All N.L.R. (Part 1) 251 at p.257; (1972) 3 SC. 24 at p.221***, Fatai-Williams, J.S.C. (as he then was) exposited as follows:

> ***"A cause of action is defined In Stroud's Judicial Dictionary as the entire set of circumstances giving rise to an enforceable claim. To our mind, it is, in effect, the fact or combination of facts, which give rise to a right to sue and it consists of two elements the wrongful act of the defendant which gives the plaintiff his cause of complaint and the consequent damage"***

In ascertaining the cause of action, Courts are enjoined to consider the primary Originating process such as a Writ of Summons and the Statement of claim. See the case of ***BRAWAL LINES LTD V DEE - DAMOR DEVELOPMENT COMPANY LTD (2015) LPELR - 2451-5 (CA).***

The Defendants in this instant case are alleging that the writ of summons and statement of claim does not disclose any reasonable cause of action because the claimant stated in paragraph 10 of her Statement of Claim that all the receipts evidencing all payments to the Defendants' UK Bank Accounts were destroyed by her. Thus the Claimant is unable to prove her claim making this suit a mere voyage of discovery.

However, a reading of the statement of claim filed by the Claimant on the 30th of May 2023, the Claimant stated expressly that although she does not have all the bank receipts evidencing the payments made to the 1st Defendant, she was however able to salvage some of these receipts and shall at the trial rely on the receipts of payment into the 1st Defendant's UK bank account and the UK bank account of 2nd Defendant. Thus, the statement of Claim clearly discloses a reasonable cause of action against the Defendants.

Also, it should be noted that as long as the Statement of Claim discloses some cause of action or raise some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. See the following English decisions on the point: ***Moore v. Lawson 31 TLR. 418 C.A.; Wenlock v. Moloney (1965) 1 WLR. 1238; (1965) 2 All EA. 871 C.A.).*** See also the Nigerian case of ***DR. IRENE THOMAS & ORS VS THE MOST REVEREND T. O. OLUFOSOYE (1986) 1 NWLR (PT. 18) 669 AT 682 (F-H) TO 683.***

I am of the view that the issue of whether or not the Claimant is able to prove her case is a substantive issue to be determined in the main trial. It is not an issue to be resolved in an interlocutory application.

It is settled law that the Court has a duty not to determine substantive issues at the stage of considering an interlocutory application. It is an established rule that live issues in a case must be left for the substantive trial of the suit. If live issues are tried at the interlocutory stage, there will be nothing left for the trial at the substantive hearing of the suit. See the following decisions on the point: ***Hashim Ogunsola v. Usman (2002) 14 NWLR (Pt.788) 636, North-South Petroleum (Nig.) Ltd. v. FGN (2002) 17 NWLR (Pt. 797) 639;*** and ***Adedolapo & Ors V. The Military Administrator of Ondo State & Ors (2005) LPELR-7538(CA) (Pp. 18 paras. C).***

I therefore hold that there exists a reasonable cause of action against the Defendants. I resolve Issue 2 in favour of the Claimants.

ISSUE 3.

Whether the Claimant action as presently constituted before this Honourable Court is statute barred.

The Defendants are alleging that this suit was instituted on 5th June, 2023, a period of about 9 years from when the alleged cause of action arose. Thus, in accordance

with ***4(1)(a) of the Limitation law, laws of the defunct Bendel State applicable in Edo State***, this suit is therefore statute barred.

Section 4 of the Limitation Law of Bendel State 1976 as applicable in Edo State which stipulates that an action for simple contract must be brought within six years from the date the cause of action arose.

The Defendants are alleging that the cause of action arose in 2014 which was the final year the Claimant allegedly paid money into the Defendants' bank account.

The Claimant on the other hand alleges that the cause of action arose on the 20th day of July, 2017, after the expiration of the seven (7) days ultimatum stated in the Claimant's demand letter dated 13th day of July, 2017. According to the Claimant the first demand letter written to the Defendants for repayment of the alleged debt owed to the Claimant was dated 13th July, 2017. The said demand letter was written by the Claimant's lawyer giving a seven (7) days ultimatum to the Defendants to refund money to the Claimant otherwise the Claimant would institute legal proceedings against the Defendants both in Nigeria and in the United Kingdom.

In ***Oluyoye v. Gov. of Ogun State & Ors (2024) LPELR-62397 (CA), per Nimpar, JCA (Pp. 14-17, paras. F-A)*** the court stated that;

> ***"In determining the issue of statute bar or limitation, the Court must first determine the cause of action and when the cause of action arose. A cause of action was defined in the case of OKO V. A.G., EBONYI STATE (2021) 14 NWLR (PT. 1795) 63 (SC); as follows: "A 'cause of action' denotes a combination or group of operative facts resulting in one or more bases for suing. In a sense, a cause of action is a factual situation that entitles one person to a remedy in court from another person." The commencement period of a cause of action is determined by looking at the writ of summons and the statement of claim alleging when the wrong was committed, which gave the plaintiff a cause of action and by comparing that date with the date on which the writ of summons was filed. This can be done without taking oral evidence. See JFS INV. LTD. V. BRAWAL LINE LTD. (2010) 18 NWLR (PT. 1225) 495 (SC), where it was held that; "When the issue for determination is whether a claim is time-barred, the trial court resolves the issue, (a) Firstly, by examining the applicable limitation period provided in the enabling statute to see the period stipulated therein for the claim before it; (b) Secondly, the trial Court determines when the cause of action arose by examining carefully the writ of summons and the statement of claim; (c) Thirdly, when the trial Court***

is satisfied as to when the claimant's cause of action arose, the trial Court compares that date with the date the writ of summons was filed. If the time from when the cause of action arose to when the writ of summons was filed is beyond the period allowed in the enabling statute, then the suit is statute barred and the court has no discretion in respect of such suit." where the time on the writ is beyond the period allowed by the limitation law, then the action is statute-barred and even the Court cannot exercise any discretion in respect of such suit. See WILLIAMS V. WILLIAMS (2008) LPELR-3493 (SC), where the apex Court held as follows: "Now, the general principle of law is that where the law provides for the bringing of an action within a prescribed period in respect of a cause of action, accruing to the plaintiff, proceedings shall not be brought after the period prescribed by law. See Obiefuna v. Okoye [1961] ALL NLR 357. An action brought outside the prescribed period, offends the section of the law and does not give any cause of action.

It therefore follows that in determining when the cause of action arose in this instant case, the right action is to examine the Claimants writ of summons and statement of claim.

In her statement of claim the Claimant alleged that in October 2004 she started paying money into 1st Defendant's UK bank account for safekeeping with the understanding that when she returns to Nigeria her savings would be transferred back to her. She however stated that in November, 2014 when she later travelled to Nigeria, she requested on several occasions that the money she had saved and placed under the care of the Defendants be returned to her but the 1st Defendant paid no serious attention to her demands.

Thus, after a period of mediation that lasted between 2014 – 2017, the claimant sent a formal letter of demand dated 13th of July, 2017 through her lawyers in the law office of Aibangbee Law Firm. The letter asked for a payment of the money within seven (7) days of receipt of the letter.

However a clear reading of the statement of claim shows that the Claimant demand for repayment started in November 2014 when she returned to Nigeria. A look at the proceedings shows that this present suit was filed on the 30th of May 2023. The question then is, did the period of mediation forestall the limitation period from running? In ***Tunde v. Ajewole Microfinance Bank (2019) LPELR-47939 (CA),*** the court of appeal, ***per Ojo, JCA (Pp. 11-19, paras. D-C)*** stated as follows;

"… The general position of the law is that when in respect of a cause of action, the period of limitation begins to run, it is not broken and it does

not cease to run merely because the parties engaged in negotiation. See EBOIGBE VS. NNPC (1994) 5 NWLR (PT. 347) PAGE 649 and EKEOCHA VS. C.I. & P.S.B. (2007) ALL FWLR (PT. 392) PAGE 1976."

In paragraph 12 of her statement of claim, the claimant stated as follows;

12. In November, 2014 when the Claimant travelled to Nigeria, the Claimant requested on several occasions that the money she had saved and placed under the care of the Defendants be returned to her but the 1st Defendant paid no serious attention to the Claimant's demands.

It is therefore clear that the cause of action arose in November 2014 when demands were first made by the Claimant. Thus, notwithstanding the period of mediation, the cause of action continued to run from November 2014.

In an action for recovery of debt, the cause of action accrues when demand for payment of debt is made. In ***Govina & Anor v. Access Bank Plc & Ors (2023) LPELR-60738(CA), per Wambai, J.C.A. (pp. 11-12, paras. F-E)***, the court stated as follows:

"However, in an action for recovery of debt, generally, the cause of action accrues upon demand for the payment of the debt or upon notice or any other condition agreed upon by the parties as specified in the contract. The cause of action does not accrue and no action can be commenced against the debtor until the demand for payment is made or a notice is served on the debtor or the agreed date expires and the debtor refuses to pay. See ISHOLA V. S.G.B. (NIG) LTD (1997) 2 NWLR (PT. 488) 405 AT 422 where the apex Court held thus; "… The cause of action does not arise until there has been a demand made or notice given, when therefore there is no specific date agreed upon for the repayment of an overdraft, as in the present case, a demand should be made or notice given. In other words, a cause of action on an overpaid overdraft is not deemed to accrue where no specific date repayment is agreed upon until there has been a demand made or notice given."

However, it is the Defendants contention that since this action was first filed in January 2020 with Suit No: B/41/2020, the limitation period was paused from the date this case was first filed on the 28th day of January, 2020 till when it was struck out on the 14th day of July, 2021 for want of diligent prosecution.

In NPA v. Godwin & Ors (2017) LPELR-50402 (CA), the court of appeal stated as follows:

> ***"With respect to the contention, of the Respondents' counsel that the suit will be caught up by the limitation law, I must say this is not the correct position of the law as it is settled that when a suit is struck out in the circumstances of the instant case, it is not caught up by the Limitation Law or Statute as same can still be relisted. It is, not the case that the Claimants, that is the Respondent herein failed and/or neglected to approach the Court to ventilate their grievance within the period prescribed, the circumstance herein is such that due to the apparent defect in manner in which the Court was approached, the suit could not have been competently entertained by the lower Court. During the period spent at the lower Court up till now, the period for purpose of Limitation Law does not run. See MBANG V. OFFIONG (2012) LPELR - 19723 (CA). As a matter of fact, the Respondents are at liberty to approach the appropriate Court considering the circumstance of the instance case to have their matter heard and determined. In SIFAX NIGERIA LTD & ORS V. MIGFO NIGERIA, LTD & ANOR (2015) LPELR - 24655 (CA), paras A - C, this Court, per OSEJI, JCA held:***
>
> ***"Where an aggrieved person commences an action within the period prescribed by the statute and such action is subsequently struck out for one reason or the other without being heard on the merit is subjected to an outright dismissal, such an action is still open to be recommenced at the instance of the Claimant and the limitation period shall not count during the pendency of the earlier suit. In order words, computation of time during the pendency of an action shall remain frozen from the filing of the action until it is determined or abates..." Per OBASEKI-ADEJUMO ,J.C.A in npa v. godwin & ors (Pp. 22-23 paras. B)***

Also in American University of (Nig) v. Netcom Africa Ltd (2023) LPELR-59965 (CA), the court of appeal stated as follows:

> ***"In Sifax (Nig) Ltd & Ors Vs Migfo (Nig) Ltd & Anor (2015) LPELR-24655(CA) at pages 47E to 48E, this Court, per my Noble Lord, Oseji, JCA, (as he then was) commented on the running of the limitation period during the pendency of an action and which action was subsequently struck out for want of jurisdiction thus:***
>
> ***"... Nonetheless, I am of the humble view that the postulation of the learned author relied on by the learned trial judge to the effect that time***

ceases to run when the Plaintiff commences legal proceedings in respect of a cause of the action in question is quite persuasive on this recondite area of law and it accords with justice and common sense. Where an aggrieved person commences an action within the period prescribed by the statute and such action is subsequently struck out for one reason or the other without being heard on the merit or subjected to an outright dismissal, such action is still open to be recommenced at the instance of the Claimant and the limitation period shall not count during the pendency of the earlier suit. In other words, computation of time during the pendency of an action shall remain frozen from the filing of the action until it is determined or abates. Thus in the instant case, time ceases to run from the filing of Suit No. FHC/L/CS/664/2006 on 9-8-2006 until the 8-6-12 when it was struck out by the Supreme Court. My conclusion therefore is that the instant case is not caught by the statute of limitation."

This position of law was approved and affirmed by the Supreme Court in Sifax (Nig) Ltd & Ors Vs Migfo (Nig) Ltd & Anor (2018) LPELR-49735(SC). Following this principle, the period of time that Suit No. LD/2257CMW/2016 spent in the High Court of Lagos State, 2016 to 13th of June, 2018, will not be taken into consideration in calculating the limitation period. The present action was commenced in the lower Court on the 3rd of December, 2018, within a period of six months after the striking out of Suit No. LD/2257CMW/2016. The present action is not statute barred." Per ABIRU ,J.C.A in american university of (nig) v. netcom africa ltd (Pp. 35-37 paras. F)

Therefore, based on the above authorities, it is clear that where an aggrieved person commences an action within the limitation period, and that action is later struck out (not dismissed), the time spent during the pendency of the earlier suit is excluded from the computation of the limitation period. Thus, The limitation clock freezes from the date of filing the initial suit until it is struck out, dismissed, or abates.

It should be noted that in order to determine whether an action is statute-barred or not, the Court must be involved in the exercise of calculation of years, months and days to the minutest detail. In ***ADEOYA VS. FEDERAL HOUSING AUTHOIUTY (2008) ALL FWLR (pt, 434) PG.1452 at 1454, RATIO 3***, the Supreme Court stated the position of the Law thus;

"In order to determine whether an action is statute-barred or not, the Court must be involved in the exercise of calculation of years, months and

days to the minutest detail. It is really an arithmetic exercise which needs a most accurate answer. Using the limitation period in the enabling statute as the baseline, the judge then works out when the cause of action arose and when the plaintiff actually instituted the action. If in the course of his calculation, there is a plus on the baseline year, then the action is statute – barred. But if there is a minus, then the action is competent… This is not a matter of calculation of raw figures in the determination of whether an action is statute-barred or not. A court of law has no discretion in the matter."

In this instant case, the cause of action arose in November 2014 when the Claimant demanded repayment. The initial suit, **Suit No: B/41/2020** was filed on 28 January 2020 (well within 6 years of November 2014). It was then consequently struck out on the 14th of July 2021 without any hearing on the merits.

It is settled law that a matter that is struck out is in the eyes of the law, a sleeping cause that is on vacation waiting for the affected party to exercise his right to have it relisted on the cause list of a court.

More importantly, a matter that is struck out cannot be caught in the intractable nest of the law of limitation because it has not been determined on the merit.

Put differently, time does not run between the time when the matter is relisted or re-filed. The law treats such a struck out matter which was re-listed or re-filed as an old suit, not a new one. See the following cases: ***Kassim vs. Ebert (1966) NMLR 23; Famu vs. Kassim (2013) 7 NWLR (Pt.1352) 166; and Zubair vs. Kolawole (2019) 11 NWLR (Pt.1682) 66.***

This suit which was struck out on the 14th of July, 2021 was later re-filed on the 30th of May 2023. In the eyes of the law, the order of the Court striking out the suit did not terminate the existence of the suit because the action was merely in abeyance during the period from when it was struck out to the time it was re-filed.

By the same token, the period of limitation as enshrined in the Limitation Law will not be applicable to the suit while it was struck out.

In essence, by re-filing the suit, the Claimant simply revived the live cause of action which was in abeyance during the period between the striking out and the re-filing. Consequently, I hold that the suit is not statute barred.

I therefore resolve issue 3 in favour of the Claimant

In view of the foregoing, the Defendants' Preliminary Objection is hereby dismissed with N100, 000.00 (One Hundred Thousand Naira) costs in favour of the Claimant.

Hon. Justice P.A. Akhihiero
Judge
07/07/25

<u>COUNSEL</u>:

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DORCAS O. OGUNLEYE (MISS) ----------DEFENDANTS/APPLICANTS