

TIME FREEZES FOR PURPOSES OF THE STATUTE OF LIMITATION WHEN AN ACTION IS INSTITUTED: THE SUPREME COURT'S DECISION IN SIFAX V MIGFO

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Introduction

On 16 February 2018, the Supreme Court of Nigeria unanimously decided in the case of *Sifax Nigeria Ltd v Migfo Nigeria Ltd*¹ that where a statute of limitation prescribes a time frame within which a claimant must file an action in respect of his grievances, time will stop running against the Claimant from the moment an action is commenced. The Court further stated that even where the action is instituted in a court that lacks jurisdiction and is struck out for that reason, the time expended in the wrong court will be discounted for purposes of computation of time under the relevant statute of limitation.

Facts of the Case

Sometime in 2005, the Federal Government of Nigeria, through the Bureau of Public Enterprises and the Nigerian Ports Authority, decided to concession Terminal 'C' of the Tin Can Island Port in Lagos. Sifax Nigeria Ltd. (Sifax/1st Appellant), Migfo Nigeria Ltd. (Migfo/1st Respondent) and Denca Services Ltd (Denca/2nd Respondent) (the parties) agreed to make a joint bid for the concession and joint management of the said terminal. The parties entered into a Memorandum of Understanding (MoU) dated 27 May 2005, by which they agreed to work together as joint venture partners if they emerged as the preferred bidders.

¹ SC. 417/2015

They also agreed to incorporate a “special purpose vehicle” which would be used to operate and manage the terminal. Under the MOU, the parties agreed that Sifax, Migfo and Denca Services Ltd (the 2nd Respondent) would hold the shares in the proposed SPV in the ratio of 40%, 30% and 30% respectively, and that the respective Chairmen or Chief Executive Officers of these companies would be entitled to be appointed as directors of the said SPV.²

When the joint bid succeeded, the 1st Appellant incorporated an entity known as ‘Ports and Cargo Handling Services Ltd’(the 5th Appellant) along with the 3rd and 4th Appellants, and to the exclusion of Migfo and Denca (the Respondents).

Consequently, the Respondents filed an action against the Appellants at the Federal High Court seeking an order of specific performance of the terms of the MoU. Judgment was given in favour of the Respondents at the Federal High Court and on the Appellants’ appeal to the Court of Appeal, the appeal was dismissed, and the Federal High Court’s decision was upheld. Dissatisfied, the Appellants further appealed to the Supreme Court³, which struck out the appeal on the basis that the Federal High Court’s jurisdiction does not include adjudicating on disputes arising from simple contracts, as was the case in the instant appeal.

Following the Supreme Court’s decision, the Respondents filed a new suit at the High Court of Lagos State on 18 July 2012. In response to the suit, the Appellants filed an objection, invoking section 8(1)(a) of the Limitation Law of Lagos State which provides that claims based on simple contracts cannot be sued on after 6 years. The Appellants, therefore, argued that the Respondents’ claim had become time-barred having been instituted after 6 years from the date the Respondents’ alleged claim for breach of the MOU arose in 2006.

² See *Sifax Nigeria Limited & Ors v. Migfo Nigeria Limited & Anor* (2015) LPELR-24655 (CA), P.1

³ See *Ports and Cargo Handling Services Company Ltd v Migfo Nigeria Ltd* (2012) 18 NWLR (PT 1333) 555, delivered on 8/06/2012.

The High Court of Lagos State and the Court of Appeal both dismissed the **Appellants'** objection and held that the **Respondents'** claim was not time-barred. Dissatisfied with both decisions, the Appellants then appealed to the Supreme Court.

The decision of the Supreme Court

In a unanimous decision delivered by Honourable Justice Amina Augie, the Supreme Court dismissed the appeal. The Court reasoned that:

1. The Court of Appeal was right in its determination that the **Respondents'** suit was not time-barred under the Limitation Law because time begins to run against a claimant from the day such Claimant becomes or ought to become aware of the injury/breach that formed the basis for the cause of action. In this case, the Court held that the **Respondents'** 6-year period would start to run from 20 July 2006 when their search at the Corporate Affairs Corporation (CAC) revealed that the 1st, 3rd and 4th Appellants had incorporated the 5th Appellant to manage Terminal C of the Port to the **Respondents'** exclusion. Accordingly, even if time continued to run when the Respondents were litigating the dispute in a wrong court, the prescribed 6 years had not elapsed at the time the Supreme Court struck out that first suit on the 8 June 2012.
2. When the Respondents first filed their suit at the Federal High Court, time stopped running against them under the Limitation Law. When the Supreme Court struck out the first suit because it had been commenced in the wrong court, the **Respondents'** action remained "pending", and they had the right to re-institute the suit in the proper court as they did. The Court relied on its decision in *Alhaji Haruna Kassim (Trading as Cash Stores) v Herman Ebert*⁴ to buttress the point that a matter that has been struck out remains pending.

⁴ (1966-69) NNLR 75

Therefore, when a party timeously files an action in court, time will cease to run against that party until the matter is decided.

Impact of Sifax on Future Cases

On the authority of the *Sifax case*, once a party files an action within the time prescribed by the limitation statutes, the statutory period specified by the law will be halted until the matter is finally determined. In other words, time bar provisions become suspended the moment an aggrieved party sues a defendant; and it remains suspended until the dispute is either determined with finality or abandoned by the aggrieved party. If the dispute is resolved with finality, the decision of the Court will bind the disputing parties for good; however, where the aggrieved party abandons its claim, it will not be allowed to re-open its case after the limitation period.

The *Sifax case* also appears to be a decision based on public policy. In other words, it is a decision that seeks to protect the interest of justice, as against adhering to rigid procedural requirements. As the Supreme Court noted⁵, it is not only unconstitutional but also unreasonable for the Limitation Law to provide that disputes brought before the Court must be concluded within the specified period prescribed in the law so that litigants would stand to lose their right of action if, for no fault of theirs, the Court failed to meet the deadline.

On this issue, Augie, JSC adopted the Court of **Appeal**'s reasoning as follows:

“...to accede to the ... contention that time should not run during the pendency of an action in court for the purpose of Limitation Law would, in my modest opinion, unwittingly permit the Legislature, to take over control of the timetable of litigation indirectly or by subtle means, to wrongly/technically dictate the pace at which cases are heard in court under the cloak of limitation enactment. This will create the alarming scenario in which pending cases caught

⁵ Page 33 of the lead Judgment

by the effluxion of time and objection to their determination on the merit on account of lapse of time so upheld would meet undeserved grief. Or it may create the dangerous repercussion of stampeding the court to operate on full throttle to grapple with time in the course of which justice may be sacrificed on the altar of neck-breaking speed or indecent haste which will drain the adjudication of the dispute of the patience, fairness, diligence, or balanced/even-handed justice which it is wont to have, which will be a sad day for the administration of justice..."⁶

This decision is a welcome relief for litigants who are denied justice due to procedural technicalities. It also reiterates the position that litigants should not, under compelling circumstances, be punished for the inadvertence of their counsel.

If you would like to get more information on this, you may contact the Dispute Resolution Practice Group of the firm through its email address: drp@aelex.com.

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⁶ See Pp. 33-34 of the Lead Judgment