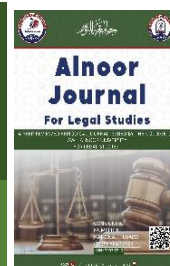




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Impediments to Exercise of Right of Access to Court in Nigeria and the United States of America

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Abstract

One of the major avenues recognized globally for accessing justice is the court of law. In Nigeria and United States of America (USA), the Constitution recognize the creation of courts to pave way for citizens' right of access to justice. Despite that, the citizens encounter some challenges which prevent them from free access to court. The challenges often arise from the Rules of Court or other subsidiary legislations. The objectives of this paper include: (1). to explore legal measures to ameliorate the injustice being occasioned by prospective litigants; (2). to analyse the extent of implementation of the citizens' rights of access to court in Nigeria and United States of America (USA); and (3). to examine whether access to court necessarily entails access to justice. The paper employed qualitative methodology, which entails doctrinal approaches. The doctrinal approach involved the use of primary and secondary sources of legal materials. The paper concluded that, in order to have effective and efficient access to court in Nigeria, there is need to ensure that all the impediments examined in this paper are not used to take away individual's right of access to court but to ensure that justice is done to all parties before the court, the court itself and the society at large.

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المعوقات التي تعيق ممارسة حق الوصول إلى المحكمة في نيجيريا والولايات المتحدة الأمريكية

كلية القانون، جامعة إيلورين، إيلورين، نيجيريا

الملخص:

إحدى السبل الرئيسية المعترف بها عالميًا للوصول إلى العدالة هي المحكمة القانونية. في نيجيريا والولايات المتحدة الأمريكية (USA)، تعترف الدساتير بإنشاء المحاكم لتمهيد الطريق أمام حق المواطنين في الوصول إلى العدالة. وعلى الرغم من ذلك، يواجه المواطنون بعض التحديات التي تمنعهم من الوصول الحر إلى المحكمة. وغالبًا ما تنشأ هذه التحديات من قواعد المحكمة أو من تشريعات فرعية أخرى. تشمل أهداف هذه الورقة ما يلي: (1). استكشاف التدابير القانونية للتخفيف من الظلم الواقع على المتقاضين المحتملين؛ (2). تحليل مدى تنفيذ حق المواطنين في الوصول إلى المحكمة في نيجيريا والولايات المتحدة الأمريكية (USA)؛ و (3). دراسة ما إذا كان الوصول إلى المحكمة يعني بالضرورة الوصول إلى العدالة. استخدمت الورقة منهجية نوعية، تتضمن الأساليب العقائدية. وقد شمل النهج العقائدي استخدام المصادر القانونية الأولية والثانوية. وخلصت الورقة إلى أنه، من أجل تحقيق وصول فعال وكفء إلى المحكمة في نيجيريا، هناك حاجة إلى التأكد من أن جميع المعوقات التي تم تناولها في هذه الورقة لا تُستخدم كوسيلة لسلب حق الفرد في الوصول إلى المحكمة، وإنما لضمان تحقيق العدالة لجميع الأطراف أمام المحكمة، وللمحكمة ذاتها، وللمجتمع ككل.

الكلمات المفتاحية: الوصول، المحكمة، العدالة



Definition of Key terms:

Access: This is the ability or opportunity to enter, approach, pass to and from or communicate with others.

Court: It is an organised body with independent judicial powers defined by law, meeting at a time and place fixed by law for the judicial public administration of justice.

Justice: Justice is the fair and proper administration of laws.

1.0: Introduction

The right of access to court or right to litigation is not at large. The exercise of the right is subject to fulfillment of certain conditions. This paper seeks to examine some of the factors that can militate against exercise of a person's right of access to court. These factors include but not limited to locus standi, cause of action, pre-action notice, proper parties, due process in filing an action in court and statute of limitation. The factors discussed in this paper are temporary impediments and cannot constitute a complete bar to the exercise of the right of access to court. For example, where the competence of a suit is challenged on the ground that a pre-action notice ought to be issued and served before the action can be commenced. The action can be struck out and the plaintiff or the claimant can refile the suit after serving the pre-action notice. This is not the case where an action is adjudged to be statute barred. Once an action is struck out for being statute barred, that is the end of the case. In fact, the case can never be resuscitated again.

2.0 Meaning of Access to Court

Access to court simply refers to individual's formal right to litigate or defend a suit.¹ It also means the right to have your day in court.² Being a global phenomenon, the right of access to court may be perceived from various perspectives. According to his Lordship, Per Justice Thurgood Marshall of the Supreme Court of the United States of America, the right of access to court means:

"The fundamental constitutional right of access to the courts in one sense, and non-controversial part of our constitutional Law;

barring usual circumstances any one can bring a lawsuit, or be heard in his or her own defense".³

It is discernible from the above definition that the right of the citizens to have uninhibited access to court is constitutional in nature. It can also be said that, even before the existence of the constitution of any nation, right of access to court formed part of the tradition of the people especially in Africa traditional society.⁴ In addition, any attempt by anyone to put barrier on the right of a citizen to maintain a lawsuit or be heard in a court of law will amount to infringement of the citizen's constitutional right of access to court. In many jurisdictions, people with legal deficiency or with lack of legal capacity are allowed to institute court actions through their next of kin or next friend. However, this not the kind of impediment referred to in this work. By its nature, the government or any constituted authority or individual person cannot interfere with the right of a citizen to approach courts of law to seek relief being a constitutional right. Justice Marshal has described the right as the "very essence of civil liberty".⁵

Access to court was viewed in another perspective as:

"The ability of citizens to turn to impartial arbiters to resolve disputes over access to information and participation in decisions that affect the environment. Such impartial arbiters include mediators, administrative courts and formal courts of law among others".⁶

From whatever perspective that the term "access to court" is viewed, it is submitted that, considering various definitions discussed above, every citizen is entitled, as of right, to have his/her complaint entertained at all times by the courts of law. People are entitled to legal protection by court of law at cheaper rate.

The Nigerian Constitution like other commonwealth countries makes establishment of courts mandatory⁷ likewise the Constitution of the United States of America.⁸ The purpose of establishing courts is to make the process of adjudication fair and accessible to people on equal basis and at all material times. Thus, the court has jurisdiction to entertain and determine



disputes between individuals on one hand and between individuals and the constituted authorities on the other hand. Therefore, where any person feels that his right is or has or likely to be threatened, he can approach the court of law for redress without fear or favour.⁹ Per Galinje, J.S.C., once held that courts are established for the purpose of settling disputes between parties appearing before them once and for all.¹⁰ He added that once a case has been rightly and properly adjudicated, the dispute should not be revisited by way of technicality or under any disguise.

3.0 Impediments to Right of Access to Court

3.1: Locus Standi

The law does not allow a meddlesome interloper or a busy body to interfere into the affairs of another person especially, when it comes to the issue of litigation. It is a fundamental requirement of the law, that every prospective plaintiff or applicant must have the legal capacity or legal standing to sue, if not, he will be said to have no locus standi to maintain a legal action. Locus standi is a Latin word which means "place of standing" or "right to bring an action" or "right to be heard in a given forum".¹¹

It has also been defined as the right to sue or defend a claim in a law court.¹² For a plaintiff to have a place of standing to sue, (s)he must exhibit sufficient interest, i.e., an interest which is peculiar to him and not the interest which he shares in common with general members of the public.¹³

In the trend of case law, locus standi has been defined variously by the superior courts of record. For instance, in the case of *Olaoye v. Makanjuola*,¹⁴ the Court of Appeal defined locus standi as follows:

"From an etymological perspective, the cliché, locus standi traces its roots to Latin Language which means place of standing. In its expounded legal form, locus standi denotes the legal right or capacity of a person to institute an action in a court of law when his right is trampled upon by somebody or authority".¹⁵

From the above submission, it can be said that, a party will have locus standi if he or she is able to show that his civil rights and obligations have been or are in danger or being infringed.¹⁶ Thus, a person can be regarded to have locus standi if he has legal standing to sue, initiate or undertake any judicial process without any let or hindrance in a court of Law.¹⁷ It is a condition precedent that must be satisfied and it goes to the competence of the legal suit or jurisdiction of the court to entertain the action/suit. Where a plaintiff lacks the requisite locus standi, his action will be incompetent and the court would have no jurisdiction to entertain his action.¹⁸

In order to determine whether a person has locus standi to access court or to litigate in a court of law, the court would, as a matter of law, consider the following: ¹⁹

- (a) Whether the plaintiff's claim is justiciable in a court of law;
- (b) Whether there exists any dispute between the plaintiff and the prospective defendant(s);
- (c) Whether the plaintiff has sufficient interest in the subject matter of the action;
- (d) Whether the plaintiff's civil rights and obligations are in danger or being infringed.

In the United States of America, individuals and group of people would be regarded as having locus standi if they are able to establish an injury to their esthetic, conservation or recreational interests.²⁰ The Supreme Court of the United States of America made a classic pronouncement on locus standi in the case of *Massachusetts v. Mellon (Frothingham)*²¹ where the court held that the plaintiff in that case would be said to have locus standi to institute the action if he succeeded in establishing some direct injury beyond the one suffered by an individual tax payer. Mr. Justice Sutherland, in delivering the decision of the court, stated that if one tax payer may champion and litigate such a cause, then every other tax payer may do the same in respect of the Act of the National Congress, the subject matter of the suit and in respect of every other Appropriation Act and statute whose administration requires the outlay of public money and whose validity



may be questioned. Therefore, the suit cannot be maintained.

The purport of the cases examined in the above is that in Nigeria and the USA, a litigant must demonstrate an injury or a threat or danger to his right/interest as distinguished from the public's right/interest before he can access the court of law or tribunal. Where a purported litigant fails to meet up with the above requirement, he cannot validly exercise his right of access to court no matter how genuine his claim may be. In *Akinyemi v. Banjoko*,²² the Court of Appeal, Ibadan Judicial Division, held that if the plaintiff is able to establish that his right or interest is in danger or likely to be in danger or has been adversely affected by the act of the defendant, he is deemed by the operation of Law to have locus standi to approach the court for the ventilation of his grievance.

Lack of locus standi to maintain a legal action usually robs the court jurisdiction to hear and determine a legal action. It is a precondition for the court to assume jurisdiction and where this condition is lacking, the plaintiff cannot have his matter heard by the court.²³ It is therefore submitted that, the fact that a case is instituted in the appropriate court with judicial jurisdiction and in accordance with the necessary procedural requirements or rules of the court, does not mean that such a case would be heard by the court if the litigant (the plaintiff) does not possess the legal standing or locus standi to institute the action.

3.2: Reasonable Cause of Action

According to the Cambridge Dictionary,²⁴ an action is the purpose of doing something. It has also been defined as "a legal proceeding in a court by which one demands one's right or the correction of a wrong."²⁵ In Law, cause of action is the fact which will entitle a claimant/plaintiff to a remedy against a defendant.²⁶ Cause of action has been described by Ejiwunmi, J.S.C. as follows:

"A cause of action is the entire set of circumstances giving rise to an enforceable claim, it is in effect the fact or combination of facts which give rise to a right to sue and it consists of two elements: (a) the wrongful act of the defendant which gives the plaintiff his

*cause of complaint and (b) the consequent damage".*²⁷

The Law expects every prospective plaintiff/claimant to show that the facts upon which he relies to initiate legal proceedings against the defendant are reasonable and not frivolous or vexatious. Therefore, a litigant cannot hide under the exercise of his right of access to court to initiate a legal action based on a mere speculation, rumour or conjecture.²⁸ Thus, accrual of cause of action is the event whereby the cause of action or facts leading to the plaintiff's complaint is complete and reasonable.²⁹ According to Black's Law Dictionary,

*"Cause of action is a group of operative facts giving rise to one or more bases for suing, a factual situation that entitles one person to obtain a remedy in court from another person".*³⁰

The term "reasonable cause of action" was examined by Chitty, J³¹ as follows.

"...a cause of action with some chance of success when only the allegations in the pleadings are considered. The practice is clear. So long as the statement of claim or the particulars disclose some cause of action or raise some question (sic) fit to be decided by a judge or jury, the mere fact that the case is weak and not likely to succeed is no ground for striking it out...where no question as to the civil rights and obligations of the plaintiff is raised in the statement of claim for determination, the statement of claim will be struck out and the action dismissed".

Premised on the foregoing, for a person to establish reasonable cause of action in a court of law, he must prove that his civil rights and obligations form the basic issues to be determined by the court; otherwise, his claim will be struck out.

3.3: Pre – Action Notice

Pre-action Notice can be described as a notice of intention of a prospective plaintiff which the law requires to be given to a 'would be' defendant. It has been defined as "a notice of intended legal action, which a statute requires to



be given to a would-be defendant to enable him decide whether to make reparations to the plaintiff or let the matter go to court for determination.³²

Where any law or statute prescribes that a pre-action notice must be served on a would-be defendant before an action can be instituted against such a defendant, issuance of the pre-action notice becomes a condition precedent to the institution of that action. It is trite Law that failure to comply with condition precedent in any legal action is fatal to the plaintiff's case.³³ Although, every citizen has a constitutional right to access the court to ventilate his/her grievance, the exercise of the right is not absolute, and the right can be curtailed in some circumstances. One of such circumstances is the one under consideration. Therefore, where the subject matter of an action is within the jurisdiction of the court, failure of the plaintiff to serve a pre-action notice on the defendant where service of same is required by law/statute gives the defendant a right to insist on service of such notice before the plaintiff can lawfully approach or access the court.³⁴ However, none service of a pre-action notice on the defendant where same is required is a temporary bar to the right of access to court on the part of the plaintiff. It merely puts the jurisdiction of the court on hold pending compliance with the requirement of service of a pre action notice and not a permanent bar to institute a legal action. In other words, it constitutes a mere irregularity which renders an action incompetent.³⁵

It should be noted that the irregularity can be waived by the defendant and where it is so waived, the court can assume jurisdiction to hear and determine the plaintiff's case. Where the defendant refuses to waive it, the issues become condition precedent which must be satisfied before the court exercises its jurisdiction.³⁶

It should be noted that one of the purposes of giving or serving a pre-action notice on a defendant is to give the defendant the opportunity to settle the case amicably without resort to court action. Therefore, it is submitted that the requirement of serving a pre-action notice on a 'would be' defendant cannot be used as a legal tool to deny a prospective

plaintiff/claimant the exercise of his right of access to court to seek redress.³⁷

Another opinion states that the requirement of giving a pre-action notice to a defendant is not to equate the said pre-action notice with processes that are integral part of the proceedings – initiating process. That its purpose is to enable the defendant decide what to do in the case against him, that is to say, to negotiate or reach a compromise or have another hard look at the matter in relation to the issues.³⁸

At this juncture, it is the view of this work that though, issuance or service of a pre-action notice is statutorily recognised in some circumstances, same should not be used as an instrument or weapon to deny a would-be plaintiff the exercise of his legitimate right of access to court and access to justice.

3.4: Proper Party

In law, there are three types of parties who may appear in court or be joined by the order of the court in a legal action before the court. The parties are "necessary party", "proper party" and "desirable party".³⁹

Necessary Party has been defined as "a person or entity who has an interest in the subject matter of a law suit and, therefore can join as a party to the legal action."⁴⁰ Necessary party has also been defined as:

"One without whom any order can be made effectively" by the court or tribunal, in other words, a necessary party" is a person who ought to have been joined as a party and in whose absence no effective order/decreed could be passed at all by the court".⁴¹

A necessary party can also be described as:

"Any person who is directly affected by the grant of an application by the court."⁴² However, proper party has been described as a party "who, though, not a necessary party, is a person whose presence would enable the court to completely adjudicate upon all matters in dispute in the suit", though, he need not be a person in favour or against whom the decree or order is to be made".⁴³



According to Judge Mc Guire, “a person whose interests may be affected by a decree, but whose presence is not essential in order for the court to adjudicate the rights of others is a ‘proper party’, but not a necessary party”⁴⁴. The Supreme Court of Nigeria has described the proper parties as “those parties who, though not interested in the plaintiffs claim, but are made parties for some reasons”⁴⁵.

Furthermore, desirable parties are parties who were not originally parties to the action but whose presence is necessary for just determination of issues in the action and need be parties to the suit in order to be bound by the order/judgment of the court since the order/judgment may affect them”⁴⁶.

Having examined the types of parties recognized by the law in any lawsuit, it is necessary to discuss the effect of none-joinder of necessary parties on a suit filed by the plaintiff who intends to exercise his right of access to court to claim certain reliefs. The presence of necessary parties in a suit is very germane to the effective and complete adjudication of any lawsuit.⁴⁷ Where it is established that there is none joinder of necessary parties in a suit, the court may strike out or dismiss the suit, depending on the circumstances of each case.⁴⁸ The same principle does not apply to none-joinder of none necessary parties.⁴⁹ Sometimes, the court treats non-joinder of necessary party to a suit as a mere irregularity that does not affect the substance of the case.⁵⁰ But where the court treats the none- joinder of necessary parties as condition precedent to the adjudication of a suit, the court can strike out the case.⁵¹ Where the plaintiff’s suit is struck out for none-joinder of necessary parties to the suit, the plaintiff’s right of access to the court is not taken away from him, rather, he can re-file the suit whenever the necessary parties are made parties to the suit. However, where the plaintiff fails to regularise the irregularity, he may not be able to exercise his right of access to court properly as the court cannot make an order in vacuum.⁵² In order to prevent a suit from being struck out as a result of none- joinder or misjoinder of parties, the court has the power to strike out the name of any party from the suit and to order the joinder of any person as plaintiff or defendant in

appropriate cases as justice of the case demands either with or without the application of the parties to the case before the court.⁵³ In a nut shell, the right of access to court of a person may be put on hold temporarily as a result of none-joinder of necessary parties either as plaintiffs or defendants where it appears to the court that the presence of such parties will enable the court to effectively and completely adjudicate and determine the claims or dispute in the matter. In addition, none joinder or misjoinder of parties can be treated as a mere irregularity and where it is so treated, the plaintiff can take necessary step(s) to regularise so as to enable him exercise his right of access to court.⁵⁴ It should be noted that where the plaintiff fails to regularise the irregularity after leave has been granted to him to do so, he cannot exercise his right of access to court under the law.

3.5: Due Process in Filing of Court Action

It is trite law that where a specific procedure is prescribed by statute for enforcement of a particular right or for seeking a particular remedy, none-compliance with that procedure is fatal to the enforcement of the right or remedy sought. In other words, any stipulated procedure by the law must be followed.⁵⁵ He who seeks equity must do equity and he who comes to equity must come with clean hands. For instance, where the law states that a particular action must be commenced by writ of summons, such an action should not be commenced by originating motion or originating summons. Also, where a statute prescribes that an action can only be instituted in a specific or particular court or tribunal, the action cannot be initiated in any other court not mentioned in the statute. It follows therefore, that for a party to exercise his right of access to court without any let or hindrance, he must follow due process in filing his action in the appropriate court or tribunal, otherwise, he may not be able to exercise his right of access to court as expected as such impediment is legal, lawful and justified.⁵⁶ *Honourable Justice Afolabi* of the Federal High Court, Ilorin Judicial Division, held that the Fundamental Rights (Enforcement Procedure) Rules is *sui generis* which means that it has its own special rules and procedure. Therefore, any error or



none-compliance, no matter how minute/slight it might be in complying with the procedure is fatal to the plaintiff's/applicant's case.⁵⁷ His Lordship further stated that:

“The enforcement of Fundamental Human Right Procedure cannot be used as a substitute for an enforcement of rights under the law of torts which is a more robust process or procedure for the enforcement and compensation of the alleged breach of rights.”

Similarly, Kutigi, J.S.C. (as he then was) once held that where the principal claim of an applicant / a plaintiff is tortious in nature, even if there exist some fundamental rights infringement in the claim, the court will hold that a wrong procedure has been adopted and the case will be dismissed accordingly.⁵⁸

Another instance where failure to follow due process or procedure to file court action can constitute a clog to the exercise of right of access to court is where a person approaches a wrong court or tribunal to ventilate his grievances. In such a situation, his suit may be struck out for lack of jurisdiction or transferred to the appropriate court that has the Jurisdiction to entertain it.

The Constitution of the Federal Republic of Nigeria 1999 has defined the jurisdiction of each court unequivocally with respect to the nature of subject matter and types or status of party that are subject to the jurisdiction of the courts created by the constitution.⁵⁹ Sometimes, a High Court of a State and the Federal High Court exercise concurrent jurisdiction in respect of some subject matters such as the enforcement of Fundamental Rights by the citizens.⁶⁰ The Supreme Court held in 2011 that both a High Court of a State and the Federal High Court have concurrent jurisdiction to hear and determine any question bothering on breach of Fundamental Rights – irrespective of whether or not the right involved comes within the legislative competence of the Federation or the state.⁶¹

Going by the above decision of the Supreme Court, prospective applicant who intends to access court for enforcement of his right against any person, government or organization should have no difficulty to decide which court to

approach to enforce his Fundamental Rights. However, there exist some confusion on which court has the requisite jurisdiction to entertain questions bothering on the enforcement of Fundamental Rights between a High Court of a State and the Federal High Court where one of the parties to the case is Federal Government or any of its agencies. Under section 251 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), it is the Federal High Court that has the jurisdiction to try any matter affecting the Federal Government or any of its agencies to the exclusion of the State High Courts or any other court. This presupposes that to ascertain the court that has jurisdiction to entertain any application for the enforcement of Fundamental Rights, parties and the subject matter must be scrutinised.⁶²

Premised on the above submissions and the decision of the Supreme Court, it is the position of this work that an applicant wishing to exercise his right of access to court against the Federal Government or any of its agencies cannot rely on the provisions of section 272 (1) (2) of the Constitution of the Federal Republic of Nigeria 1999 (as altered) to approach the state High Court for redress. Where the applicant acted otherwise, he would be held to have followed wrong procedure to claim his acclaimed right(s). In the case of *UTB v. UKpabia*,⁶³ the court held that there is no ambiguity in the provisions of section 251 of the 1999 Constitution of the Federal Republic of Nigeria 1999 (as altered) conferring exclusive jurisdiction on the Federal High Court to hear and determine any case involving the Federal Government or its agencies. Moreover, it is easily discernible from the consistency in the various judicial pronouncements mentioned above that both a High Court of a State and the Federal High Court do not share concurrent jurisdiction in respect of all subject matters and parties, there is a limit to which each of them can exercise its jurisdiction to enforce or implement the citizens' right of access to court. This position has been properly captured by the Supreme Court in the case of *Adetona v. I.G. Ent. Ltd.*⁶⁴ This further strengthened the fact that exercise of right of access to court is subject to following the due process of law in filing in a legal action in the court of law.



Although Order IX of the Fundamental Rights (Enforcement Procedure) Rules, 2009 provides a saving ground for any defect that may arise in the course of filing an application for enforcement of Fundamental Rights when it provides that:

“Where at any stage in the course of or in connection with any proceedings there has, by any reason for anything done or left undone, been failure to comply with the requirement as to time, place or manner or form, the failure shall be treated as an irregularity and may not nullify such proceedings except as they relate to

(i) Mode of commencement of the application;

(ii) The subject matter is not within chapter IV of the constitution or African charter on Human and People’s Rights (Ratification and Enforcement) Act”.

From the provisions of Order IX quoted above, it can be said that the order does not apply to any irregularity or defect that has to do with “mode of commencement of application for enforcement of fundamental right”. Therefore, where a suit for enforcement of Fundamental Rights is filed in a wrong court, the suit will be incompetent and the court will not have the requisite jurisdiction to entertain it. Consequently, the applicant will not be able to exercise his right of access to court in that situation. On whether a court that has no power or jurisdiction to hear a case can transfer same to the court that has power or jurisdiction to determine same or not, there are various opinions. One opinion is that where an action has been wrongly filed in a court that lacks jurisdiction to hear it, the action should not be struck out or dismissed, rather, same should be transfer by that court to the court that has jurisdiction to hear and determine it.⁶⁵ Another opinion is that where a court has no requisite jurisdiction to hear and determine a particular case before it, the court cannot exercise inherent jurisdiction to transfer the case to another court as it has no power to do so.⁶⁶ The third opinion is that the Federal High Court has power to transfer a case before it to a High Court of a State if it found out that it has no jurisdiction to hear and determine the case instead of striking out the case. This class of jurists further held

that the High Courts of the states or that of the Federal Capital Territory cannot do the same as they cannot transfer any case before them to the Federal High Court where they found out that they have no jurisdiction to hear the case.⁶⁷

Be that as it may, this work is of the opinion that where there are conflicting decisions of the superior courts of record, the latest in time prevails.⁶⁸ Since the Supreme Court decision in *Adetayo v. Ademola* (supra) is the latest in time among the judicial authorities examined above, it takes precedent over the other cases by virtue of the doctrine of judicial precedent.⁶⁹

Following due process of law in filing a legal action in court is not limited to taking prospective defendant to the court that has requisite jurisdiction on the defendant or on the parties generally, it extends to the subject matter of litigation. Thus, where the subject matter of dispute is not within the jurisdiction of the court where the action is filed, the court will not have jurisdiction to hear and determine the suit. For instance, filing an action for declaration of title to land in the Federal High Court or the National Industrial Court is like placing something on nothing. This is because by virtue of the relevant provisions of the Land Use Act, 1978, it is the High Courts of the states of the Federation and Area or Customary Courts that are vested with the exclusive jurisdiction to hear and determine questions relating to declaration of title to land in Nigeria.⁷⁰

Therefore, this work is of the view that a prospective plaintiff/claimant may have some legal hitches in exercising his right of access to court if he is not diligent and meticulous enough in following due process of law while instituting a legal action in court. The said legal hitch(es) may be temporary or inchoate, subject to the fulfillment of some conditions. However, the legal hitch may also be an incurable one which will debar the plaintiff/claimant from the exercise of his right of access to court as earlier discussed in this chapter.

Other instances where failure to follow due process in pursuing a legal right in the court of law affects right of access to court is when a party fails to effect proper service of court processes such as the Originating Process and



Hearing Notice. In every lawsuit, the plaintiff/claimant is required, under the Rules of Court where the action is initiated, to serve the defendant/respondent with the copy of the originating process. The service of such process on the defendant/respondent will enable the later to know the claim(s) or allegation(s) made against him in the suit. It will also enable him to know the court in which he is required to defend the suit and the time within which he is expected to enter appearance and file his defence. Therefore, failure of a plaintiff/claimant to effect proper service of originating process on the defendant is fatal to the hearing and determination of the suit. Consequently, the right of access to court of the plaintiff/claimant would be curtailed until and unless he fulfills the condition precedent by effecting proper service of the originating process on his adversary. In the case of *N.E.P.A. v. Uruakpa*⁷¹ the Court held that:

“Now, it is trite that service of the writ of summons is a condition precedent to the exercise of jurisdiction by the court...failure to effect proper service of the originating process as dictated by the rules of court as in the instant case is fundamental and far-reaching as it is a defect that goes to the roots of the trial and thus renders the entire proceedings of the court a nullity”.

The same principle applies to failure to serve hearing notice where same is required as a matter of law. A party who is present at the legal proceedings does not need to be served with hearing notice against the next adjourned date. However, where a party is absent in court and he is not represented by a legal practitioner, as a matter of law and prudence, such a party must be served with the hearing notice against the next adjourned date, otherwise any proceeding conducted in his absence shall be null and void.⁷² It is not the duty of the court to refuse to accept any law suit after same has been filed in the court's registry. However, the court has a duty to point out any irregularity in any suit (if any). Thereafter, the court can call on the parties or their counsel to address it on the competence of the suit where it is clear that necessary litigation procedure has not been followed in filing the suit. If the court eventually comes to the conclusion that the suit was filed without

following due process of law, the court can take any decision allowed by the law and then proceed to give reason(s) why such decision was taken.

3.6: Time Limit Within Which To Initiate And Conclude Legal Action

The Law of Limitation of action is connected with equitable maxim that provides that “equity aids the vigilant and not the indolent.” This is because it puts any prospective litigant on alert to the effect that if an action is not instituted within a particular period of time, it will be statute barred and it cannot be resuscitated. Therefore, any sanction inflicted by law of limitation of action is due to ignorance, carelessness or laziness on the part of the plaintiff or his counsel to act timeously.⁷³ Statute of Limitation has been described as an enactment of which the primary purpose is to set a time limit within which a legal action can be instituted and maintained in respect of a right of action accruing to a person under the common law or by virtue of some statutes.⁷⁴

The Law of Limitation of action is primarily contained in the Laws of the states of the Federation of Nigeria. The power of the states of the Federation of Nigeria to make such law is derived from the Constitution of the Federal Republic of Nigeria (as altered).⁷⁵ All causes of actions are governed by the Limitation Law of the state where the cause of action arises or the state where the action is instituted. It should be noted that the Limitation Laws of various states of the Federation of Nigeria are in respect of causes of actions similar to each other.

Therefore, reference to one or more selected states applies to other states not mentioned. While some Limitation Laws/Acts specified the time within which an action must be commenced, they did not specify the time within which the action must be determined and concluded by the court or the tribunal that hears and determines such an action. However, in an election matter, the Statute of Limitation that is applicable in Nigeria is the Constitution itself, particularly, the 1999 Constitution of the Federal republic of Nigeria (as altered).⁷⁶ In this work, the Limitation Laws that specify the time within which an action must be commenced



without indicating the time within which the action must be concluded would be examined first. In doing this, the Limitation Law of at least one state from each of the six geo – political zones in Nigeria would be referred to.⁷⁷ The North Central is made up of six states.⁷⁸ For the North Central, North West and North-East, the Limitation Laws of Kwara State will be referred to as same is similar to the Limitation laws of the states under the North West and the North-East.

The North-West contains seven states;⁷⁹ the North-East is made up of six states;⁸⁰ the South-South comprises six states;⁸¹ the South-East is made up of five states⁸² while the South West presented six states.⁸³ Apart from the Limitation Laws of Kwara State, this work will also make use of the Limitation Laws of Lagos State, Abuja and Anambra State respectively. For action founded on simple contracts or torts, the time within which a legal action can be instituted is six years from the date of accrual of cause of action.⁸⁴ Any person who intends to file a legal action for a breach of simple contracts or any relief premised on contracts or torts must do so within six years from the date of accrual of cause of action, otherwise the action will be statute barred. Consequently, the right of access to court of that individual will be jeopardised.

On action founded for damages for negligence, the limitation period is three years from the date of the accrual of cause of action.⁸⁵ Limitation period on action by state authority to recover land is 20 years.⁸⁶ But on action to recover land by individual, the limitation period is twelve years under the Limitation Act of Abuja and the Limitation Law of Lagos State.⁸⁷ In Kwara State, it is ten years,⁸⁸ to mention just but few. It is noteworthy that the various Limitation Laws examined above only state the period within which an action can be instituted in the court of law from the date of accrual of cause of action, none of the laws prescribed the time within which the legal action must be heard and determined. This implies that once a plaintiff/claimant (as the case may be) fails to commence an action within the time stipulated by the laws, the action will be statute barred and the plaintiff's/claimant's action will no longer be maintainable in Law.⁸⁹

On the other hand, there is a special class of action in Nigeria whereby the law prescribes the time within which the action must be instituted as well as the time within which the action must be concluded. The said special class of action is known as pre-election matter and post-election matter. Under the Constitution of the Federal Republic of Nigeria, pre-election matter must be filed not later than fourteen days (14 days) from the date of the occurrence of the event, decision or action complained of in the suit.⁹⁰ The Constitution further prescribed the time within which such suit must be heard and concluded by the court;⁹¹ which is one hundred and eighty days (180 days) from the date of filing the suit. Also, any appeal from a decision in pre-election matters must be filed within fourteen days (14 days) from the date of delivery of the judgment appealed against.⁹² The appeal shall also be heard and determined within sixty days (60 days) from the date of filing the appeal.⁹³ The Nigerian courts have been applying and implementing the above provisions of the Constitution since the commencement of the law to settle various pre-election matters brought before them.⁹⁴

Apart from the pre-election matter, similar provisions are available in the Constitution and the Electoral Act in respect of election matters. Thus, an election matter has a prescribed period within which it must be initiated including the specific period in which the suit must be heard and concluded. For avoidance of doubt, an election petition must be filed within twenty one days (21 days) after the date of declaration of result of the election.⁹⁵ The election Tribunal must also hear and determine any election petition including delivery of its judgment within 180 days from the date of filing of the petition.⁹⁶ If there is an appeal against the judgment of the Election Tribunal or from the decision of the Court of Appeal in respect of election petition, such appeal shall be heard and disposed of within sixty days (60 days) from the date of delivery of judgment by the tribunal or the court of Appeal.⁹⁷

The purpose of limiting the time within which pre-election matters and election matters should be filed, heard and concluded is to ensure that, as much as possible, such matters are given expeditious adjudication and to enable the



parties know their fate within a reasonable time.⁹⁸ The effect of the provisions that prescribed the time within which pre-election matters and election matters must be filed, tried and concluded is that failure to comply with the law renders the entire action/matter unenforceable, null and void and of no effect whatsoever and the petitioner's right of access to court will be impotent as a result of effluxion of time and the tribunal or court lacks the power to extend time to file or hear the matter.⁹⁹

4.0: Conclusion

Generally, every citizen is expected to enjoy any right confer on him by the constitution without any hindrance or interference by any person, government or authority, particularly, right of access to court. However, justice is not one-way traffic. Justice must be done to all the stakeholders involved in litigation such as the plaintiff/claimant, the defendant/respondent, the court and the society. Therefore, all the impediments examined in this chapter are not meant to take away individual's right of access to court but to ensure that justice is done to all parties before the court, the court itself and the society at large. For any person to have a hitch-free exercise of his right of access to court, he needs to be conversant with the impediments analysed in this chapter.

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- ³² Ese, M., ‘The Nigerian Constitutional Law’ (Ainceton Publishing Company, Lagos, 215) p. 515. See also *Mustafa v. Manguno L.G.C.* (1987) 3 NWLR (pt.62) p.663 where the Court of Appeal held that where a statute requires a pre-action notice to be given to a defendant, failure to do so renders the action incompetent and not maintainable against the defendant.
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- ³⁴ *Utuk v. Official Liquidator* (2009) ALL FWLR (pt.475) 1774 at 1791 paras D-F & Ntiero v. Nigerian Port Authority (2008) ALLFWLR (pt.430) 688 at 703-704 paras D-E.
- ³⁵ An Interview conducted with Ibrahim Ahmad Muhammad, a Chief Magistrate, Kwara State Judiciary, Ilorin, Kwara State on 12 February 2022. See also *Agboola v. Agbodemu* (2010) ALLFWLR (pt.529) 1111 at 1163 paras E-F, *Ezegbu v. F.A.T.B. Ltd.* (1992) 1 NWLR (pt.216) 197; *Umuloro v. NPA* (1979) 1 NWLR (pt.502) 655; *Amadi v. NNPC* (2000) FWLR (pt.9) 1527; *eze v. Ukechukwu* (2002) 103 LRCN 2245 OR (2003) FWLR (pt.140) 1710; *Aso v. Lagos Island Local Government Council* (2000) FWLR (pt.13) 2141 & *Mobil Producing Nig. Un Ltd v. LASEPA* (2003) FWLR (pt.137) 1029 at 1053.
- ³⁶ Ibid. See also the case of *Emmanuel Mekaowulu (Trading under the name and style of Amavic Electrical Industrial Nigeria) v. Ukwa West Local Government Council* (2018) LPELR – 43807 where the Court of Appeal Oweri Judicial Division relied on the decision of the Supreme Court in the case of *Ugwuanyi v. NICON Insurance PLC* (2013) LPELR – 2009 SC and held that: “It may be mentioned that the effect of non-service of a pre-action Notice, where it is statutorily required, as in this case, is only an irregularity which however renders an action incompetent. It follows therefore that the irregularity can be waived by a defendant... if therefore the defendant refuses to waive it and he raises it, then the issue becomes a condition which must be met before the court could exercise its jurisdiction”. See also *Nnoye v. Anyichie* (2005) 2 NWLR (pt. 910) 623 at 646.
- ³⁷ See *Amadi v. NNPC* (2000) 10 NWLR (pt.674) 76 where it was held that: “The purpose of giving notice of claim to Local Government of the claim against it is that it is not taken by surprise but to have adequate time to prepare to deal with the claim in its defence. The purpose of the notice is not to put hazards in the way of bringing



litigation against it". See also *Katsina v. Makudawa* (1971) NMLR 100.

See *NPA Plc v. Ntiero* (1998) 6 NWLR (pt.555) 640 at 651 & *Ntiero v. NPA PLC* (2008) 10 NWLR (pt.1094) 129 where the supreme Court held that a preaction notice connotes some form of legal notification or information required by operation of law, contained in an enactment agreement or contract which requires compliance by the person who is under legal duty to put on notice the person to be notified before the commencement of any legal action against such a person".

³⁹ See *Inyang v. Ebong* (2002) 2 NWLR (pt.751) 284 at 340 paras E-H; *Nduwe v. Ibezina* (2002) 12 NWLR (pt. 780) 139 at 161 – 162 paras H-B & 163 para-D (SC) A.G., *Lagos State v. A.G., Fed.* (2003) 12 NWLR (pt.833) 1 at 140 – 141 paras E-C, 149 paras E-G, 165 paras A-B & 250 – 251 paras B-C (SC); *ICON Ltd. v. F.B.N. Ltd.* (2003) 12 NWLR (pt.835) 668(CA); *Nwankwo v. Ecumenica Dev. Co. Society* (2002) 1 NWLR (pt.749) 513 (CA); *Trade Bank Plc v. Chami* (2003) 12 NWLR (pt.836) 158 (CA)

⁴⁰ Nolo's Plain-English Law Dictionary available at www.law.cornell.edu/wex/proper-party accessed on 23/11/2019.

Available at www.legal-servicesindia.com/article/2565/Necessary-Party-And-Proper-Party-In-CPC. Htm/accessed on 23/11/2019. See also the judgment of the Supreme Court of India in the case of *Mumbai International Airport (P) Ltd. v. Regency Convention Centre and Hotels (P) Ltd.* (2010)7 SCC 417.

⁴² *Oboroh v. Oghuvwu* (2000) 3 NWLR (pt.647) 120 at 128 paras F – G & H; *Rinco Const. Co. v. Veepee Ind. Ltd.* (2005) 9 NWLR (pt.929) 85 at 100 paras A-B, (SC) Ibid. See also *Lawal v. Salami* (2002)2 NWLR (pt.752) 687 at 717 – 718 paras H-E; *Tsokwa Oil & Marketing v. U.T.C. (Nig.) Plc* (2002) 12 NWLR (pt.782) 473 at 467-468 paras G-B; *Okafor Adone & Ors v. Ozo Gabriel Ikegbudu & Ors* (2001) 7 S.C.N.J. 513.

⁴⁴ *Cape Hatteras Electric Membership Corp. v. Steveson*, 2014 NCBC (Northern Carolina Business Court) 62. Also available at www.lexisnexis.com/legalnewsroom/corporate/b/business/posts/a-quot-proper-quot-party-isn-39-t-necessarily-a-quot-necessary-quot-party accessed on 23/11/2019.

⁴⁵ *Yusuf v. Akindipe* (2000) 5 SCN, 128. Also available at [www. the tidenewsonline.com /2015/06/24/parties -to-a-suit/](http://www.tidenewsonline.com/2015/06/24/parties-to-a-suit/) accessed on 23/11/2019.

⁴⁶ Ibid. see also www.nigeria-law.org/Alhaji%20Latifu%20AJuwon%20%20ors%20%20%20Madam%20Alimotu%20Adeoti%20%20ors.htm accessed on 23/11/2019

⁴⁷ Ibid. See also Amritesh, M; Non-Joinder of Parties in Civil Suit" available at [www.egal service india.com /articles/cpc](http://www.egal-service-india.com/articles/cpc). Htm accessed on 23/11/2019

⁴⁸ Ibid

⁴⁹ An Interview conducted with Celina Ogbeide Okogbo, a Legal Practitioner of Wale Olajide and Co., 4th Floor, Theodolite House, New Adeoyo State Hospita Road, Off Ring Road, Ibadan Oyo State on 22 June 2022

⁵⁰ See *Warri Refining & Petrochemical Co. Ltd.v.Onwo* (1999) 2 NWLR (pt. 630) 312; *Akanni v. Olaniyan* (2006) 8 NWLR (pt.983) 531 at 546 paras C-E (Sc)

⁵¹ See *Dada v. Bankole* (2008) 5 NWLR (pt. 1079) 26 at 51 Paras B.

⁵² *Ek peyong & 3ors v. Nyong & Ors* (1975) 2 S.C 65 at 73 (Reprint).

⁵³ Ibid, notes 29 and 30. See also *F.M.S.T. v.F.M.W.H* (2009) 17 NWLR (pt.1171) 510 at 523 paras E-F (CA). A.G; *Anambra State v.A.G; Fed* (2007) 12 NWLR (1047) 4 at 58 paras D; A.G.; *Kano State v.A.G; Fed.* (2007) 6 NWLR (pt.1029) 164 at 164 at 192 paras B-F and Bello v I.N.E.C. (2010) 8 NWLR (pt. 1196) 342 at 403 418

⁵⁴ See *Bello v. I.N.E.C.* (2010) 8 NWLR (pt.1196) 342 at 388 para-F

⁵⁵ See *Unity Bank Plc v. Igala Construction Co. Ltd* (2021) 10 NWLR (pt. 1785) 435 para D

⁵⁶ *Dongtoe v. Civil Service* (2001) 4 SCNJ 131 at 136 where the Supreme Court held emphatically that "It is a well settled principle that where a special procedure is prescribed for the enforcement of a particular right or remedy, non-compliance with or departure from such a procedure is fatal to the enforcement of the remedy". See also *Ozobia v. Anah* (1999) 5 NWLR (pt.601) 1 at 3, holding 2- p.7 paras F-G (CA); *Shugaba v. U.B.N. Plc* (1999) 11 NWLR (pt.627) 459 at 478 paras B-C; *Reymond Obeta & A.G. Enugu State v. Joseph at Maduabuchi: Okpe* (1996) 9 NWLR (pt.437) 401 at 445.

⁵⁷ Suit No: FHC/IL/CS/2016, between *Barrister Sa'ad Abdulraheem Akanbi & 3 ors v. Commissioner of Police, peal Kwara State & 7 ors* (Unreported), judgment delivered on 7th December, 2016. The court relied on the Court of Ap decision in the case of *Skye Bank v. Njoku & ors* (2016) LPELR – 4044. See also *Uzoukwu & Ors v. Ezeonu I & Ors* (1991) 6 NWLR (pt. 200) 708 and *Okanu v. Imo State Commissioner For Police* (2001) 1 CHR 407 at 411

⁵⁸ See *Abdulhamid v. Akar* (2006) 5 SCNJ 43 at 56. In his contribution, Akitan, J.S.C. (as he then was) held that the appellant's claim relating to seizure of his vehicles is therefore one of detinue and not in its strict sense a claim under fundamental rights. Therefore, the appellant has adopted a wrong procedure for claiming remedies before the court thereby disqualifying him to commence the action under Fundamental Rights (Enforcement Procedure) Rules. See also *Aina v. Jinadu & Anor* (1992) 4 NWLR (pt. 233) 99 & *Gani Fawehinmi v. Col. Halilu v. Akilu* (1987) 4 NWLR (pt.67) 797.

⁵⁹ See Section 272 (1) & (2) of the 1999 Constitution of the Federal Republic of Nigeria (as altered) for the jurisdiction of the State's High Courts in Civil and Criminal matters generally. But the section conferred the jurisdiction on the High Courts of the states of the Federation subject to section 251 (1) of the same Constitution which confers jurisdiction on the Federal High Court in respect of some items mentioned therein to the exclusion of all other courts.

⁶⁰ See section 46 of the 1999 Constitution of the Federal Republic of Nigeria (as altered).

⁶¹ *Adetona v. I.G. Ent. Ltd.* (2011) 7 NWLR (pt.1247535 at 504 paras A-E & E – F (SC); *Trade Bank Plc v. Benilux (Nig) Ltd.* (2003) 9 NWLR (pt.825) 416; *MILAD, Taraba State v. JEN* (2001)1 NWLR (pt.694) 416 at 420, *Unilorin v. Akila* (2001) 4 NWLR (pt.703) 248; *Olutola v. Unilorin* (2004) 5 NWLR (pt.905) 416 (S/C).

⁶² See *Nationa Union of Electricity Employees v. BPE* (2010). 7 NWLR (pt.1194) 538 (SC). (2010) LPER (SC) (2010); where it was held that the parties and the subject matter of dispute must be examined to determine whether the Federal High Court or the State High Court has jurisdiction to hear and determine the dispute before the court.

⁶³ (2008) 7 NWLR (pt.670) 570. See also *FUTECH, Yola v. FUTULESS* (2005) 12 NWLR (pt.938)175; *Ebhota v. P.I.D.C.* (2005) 7 SC (pt.3) 8 at 20-21. In the case of *Inegbedion v. Ojemen* (2013) 7 NWLR (pt.1356) 211, the



Supreme Court stated that the effect of paragraph (p), and (r) of Section 251 (1) of the 1999 Constitution is to vest exclusive jurisdiction on the Federal High Court over all civil causes and matters in which the Federal Government or any of its agencies is a party. See also *NEPA v. Edeghero* (2002) 103 LRCN; *Ayeni v. University of Ilorin* (2006) 6 NWLR (pt.644) 290.

⁶⁴ (2011) 7 NWLR (pt. 1247) 535 at 504 & 564. In this case the Apex Court held that “It is to be noted that the exercise of this jurisdiction by the Federal High Court is where the Fundamental Right threatened or breached falls within the enumerated matters on which that court has jurisdiction. Thus, fundamental right arising from matters outside its jurisdiction cannot be enforced by the Federal High Court. Equally, a High Court of a State shall lack jurisdiction to entertain matters of fundamental rights, although brought pursuant to section 46 (2) of the constitution where the alleged breach of such matters arose from a transaction or subject matters which fall within the exclusive jurisdiction of the Federal High Court as provided by Section 251 of the constitution”. See also *ABIEC v. KAN* (2013) 13 NWLR (pt.1370) 69; *C.C.C.I. Ltd. v. EXPO* (2008) ALLFWLR (pt.418) 198 at 225 paras B-C and *Akpene v. Barclays Bank of Nigeria* (1977) 1 SC 30 at 38 (REPRINT); *NEPA v. Uruakpa* (2010)12 NWLR (pt.1208) 298 at 324 – 325 paras H-A, *Adetayo v. Ademola* (2010) 15 NWLR (pt.1215) 169 at 194-195 paras C_H

⁶⁵ *John v. Igbo-Ekiti Local Government Area* (2013) 7 NWLR (pt. 1352) 1 at 14 paras G-H. In that case the Court of Appeal held that where the High Court found that it has no jurisdiction to hear and determine a matter that should be heard by the National Industrial Court, the High Court shall transfer the matter to the National Industrial Court instead of striking out same. Also available at http://www.Acadamia.edu>National-Industrial_Court_and_the_Prospects_of_Efficient_Industrial_Conflict_Resolution_In_Nigeria accessed on 28/11/2019.

⁶⁶ See *Adetayo v. Ademola* (2010) 15 NWLR (pt.1215) 169 at 194 – 195 paras H-B where the Supreme Court held that a court that has no jurisdiction to hear and determine an action filed before it cannot transfer same to another court, it can only strike out the action for lack of jurisdiction. The court further held that even the Federal High Court cannot also transfer such a case to another court notwithstanding the provision of section 22 of the Federal High Court Act that gives Federal High Court power to transfer such a case to another court.

See *Fasakin Foods Ltd. v. Shosanya* (2006) 4 S.C. (pt.II) 204 (1987) 1 SCNJ 94; *A.M.C. Ltd v. NPA* (1987) NWLR (pt.51) 475; *Mokelu v. Federal Commissioner For Works and Housing* (1976) ALL NLR 224, P.2 or (1976) 3 SC 60. See *Osakue v. F.C.E; Asaba* (2010)10NWLR (pt.1201)1 at 34 para C; *Ikeni v. Efamo* (2001) 5 SCNJ 144 at 148 – 149; *Seriki v. Solaru* (1965) NMLR p.1 & *Ikweakwu v. Nwamkpa* (1966) NSCC 83 at 86.

⁶⁹ See *Dallatu v. Turaki* (2005) 15 NWLR (pt.843) 310 at 336 para F & 350 paras F-G; *Akinola v. V.C., Unilorin* (2004) 11 NWLR (pt.885) 616 at 635 para H; *Eravwodo K v. U.B.T.M.H.B.* (1993) 2 NWLR (pt.277) 590; *Iyase v. U.B.T.M.H.B.* (2000) 2 NWLR (pt.643) 45 and *Adebayo v. O.A.U.T.H.C.M.B.* (2000) 9 NWLR (pt.673) 585 at 607 paras G-H.

⁷⁰ See section S. 39, 41 and 42 of the Land Use Act, 1978, Laws of the Federation of Nigeria, 2004 and the case of *Adebayo v. Ademola* (supra) where the Supreme Court held

that having regard to section 251 (1) (r) of 1999 Constitution and sections 39, 41 and 42 of the Land Use Act, 1978, there is nothing therein specifically conferring jurisdiction on the Federal High Court in causes or matters concerning Land disputes and the court is bereft of such jurisdiction.

⁷¹ (2010) 12 NWLR (pt. 1208) 298 at 318 paras D-E; 318 – 319 paras G-D. In this case a company was served with the writ of summons at its branch office instead of serving the writ of summons on the company at its registered office. The court held that the said service was in properly effected, thus setting aside the service. See also *M.G.F. (Nig) Ltd. v. Gwus International Ltd* (2001) 9 NWLR (pt.718) 413 at 423 para E; *F.D.B. Financial Service Ltd. v. Adesola* (2000) 8 NWLR (pt. 668) 170 at 180 paras B-C; *C.R.B. R.D.A. v. Sule* (2001) 6 NWLR (pt. 708) 194 and *Mark v. Eke* (2004) 1 SC (pt. II) 1 at 18

⁷² See the Supreme Court decision in the case of *Olorunlola v. Akhagbe* (2009) 2 S.C.N.J. 318 at 326 where the Supreme Court emphasised that the lack of service of the hearing notice on the appellants constituted a fundamental defect that breached the right to fair hearing of the appellants. The right to fair hearing of the appellants. The court held further that the fact that a party was in court on the day the matter is slated to come up is not necessarily a confirmation that the other party was actually served with the hearing notice. See also *Habib Nigeria Bank Ltd. v. Wahab Opomulero & Ors* (2000) 15 NWLR (pt. 690) 315.

⁷³ Elaigwu, E.A., “Nigeria Law of Limitation of Actions” (Elaingwu Apeh Law Publication, Edo State. 2001) p.iv

⁷⁴ Ibid. see also Josling, J.F; “Period of Limitation, 4th ed; (Oyez Publishing Limited, London, 1973) p.7., See also *Savanna Bank v. Pan Atlantic* (1987) 1 NWLR (pt.49)212 at 259 where the Supreme Court held that: “If a statute allows a certain period of time for bringing litigation or for commencing proceedings, it is known as statute of limitation. The statute then expresses the policy of the state prescribing the period of time within which an action or proceedings in law or in equity must be brought”.

⁷⁵ See section 4 (6) & (7), 1999 constitution of the Federal Republic of Nigeria which vest the legislative powers of a state of the Federation in the House of Assembly of the state. The House of Assembly of a state shall have power under the said section to make laws for the peace, order and good government of the state or any part thereof with respect to: (a) any matter not including in the Exclusive Legislative List set out in Part I of the Second Schedule to the Constitution (b) any matter included in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the Second Column opposite thereto; and empowered to make laws in accordance with the provisions of the constitution.

⁷⁶ See the Constitution of the Federal Republic of Nigeria, 1999 (Fourth Alteration), No. 21 Act, 2017.

⁷⁷ The Zones are the Key construction to Nigeria. States in Nigeria are implemented into the Zones. Since Nigeria contains more than 400 ethnic groups which speak more than 450 languages, people are kept in harmony within the Zones. The Federal Capital territory and the 36 states are distributed between the six geopolitical zones in Nigeria. The Yoruba speaking people takes South-West, the Hausa Takes North-East and North-West while the Igbo takes South – East. However, the six geopolitical zones in Nigeria are North Central, North West, North East, South-South; South – East and South – West respectively. See



<https://www.legit.ng>1094595-geopolitical> – zones – Nigeria-state accessed on 2/12/2019.

⁷⁸ Ibid. The states are Niger, Nassarawa, Plateau, Benue, Kogi and Kwara.

⁷⁹ Ibid. The states are Jigawa, Kano, Katsina, Kaduna, Kebbi, Zamfara and Sokoto States.

⁸⁰ Ibid. The states are Gombe, Bauchi, Yobe, Borno, Adamawa and Taraba states.

⁸¹ Ibid. The states include Akwa-Ibon, Cross-River, Bayelsa, Rivers, Delta and Edo states.

⁸² Ibid. The states are Abia, Imo, Ebonyi, Enugu, and Anambra states.

⁸³ Ekiti, Ondo, Osun, Oyo, Ogun and Lagos states.

⁸⁴ See section 18, Kwara State Limitation Law, Cap. K30; Section 20 (1) (a) Law of Actions of Anambra State, section 8 (1) (a) & (4), limitation Law of Lagos State and section 7 (1) (a) & (4) Limitation Act of Abuja.

⁸⁵ See section 8 (1), Limitation Act, Abuja, 2004; section 9 Limitation Law of Lagos State, 2003 and Proviso to section 20(1) of Law of Actions Law of Anambra State, 1986

⁸⁶ See section 16, Limitation of Lagos State and section 15, Limitation Act, Abuja.

⁸⁷ Ibid

⁸⁸ See section 4, Kwara State Limitation Law, Cap. K30, Law of Kwara State, 2006

⁸⁹ See APC v. Umah (2021) 10 NWLR (pt. 1785) 586 at 605 paras F-H; 606 paras A-F

⁹⁰ See section 285 (9) of the Constitution of the Federal Republic of Nigeria, 1999, (4th alteration.), No. 21, Act 2017.

⁹¹ Ibid. see section 285 (10) thereof.

⁹² Ibid. Section 285 (11)

⁹³ Ibid. section 285 (12)

⁹⁴ For instance, the case of *Oluwashola Abdul Waheed v. All Progressives Congress & 2 ors* (unreported) Suit No: KWS/378/2018, judgement delivered on 4th April, 2019 by Honourable Justice A.S. Oyinloye who struck out the plaintiff's case on the ground that the suit, being a pre-

election matter, was outside fourteen days prescribed by the Constitution and Electoral Act. The plaintiff's appeal to the Court of Appeal and Supreme Court was also dismissed on the same ground that the action was statute barred. See also *Obot v. Shell Petroleum Development Company Nig. Ltd.* (2013) LPELR – 201741 at 49-51 (CA); *Eboige v. N.N.P.C.* (1994) 5 NWLR (pt.308) 637; *Odubeko v. Fowler* (1993) 7 NWLR (pt. 308) 637; *Sanda v. Kukawa Local Government* (1991) 2 NWLR (pt.174) 379; *Ekeogu v. Aliri* (1991) 3 NWLR (pt.179) 258; *Egbe v. Adefarasin* (1987) 1 NWLR (pt.47) 1; *A.G., Adamawa State v. A.G. Fed* (2014) 4 – 7 SC 127 at 159, 161, 165 at 168

⁹⁵ See section 285 (5), 1999 Constitution of the Federal Republic of Nigeria (as altered in 2011)

⁹⁶ Ibid. Section 285 (6)

⁹⁷ Ibid. section 285 (7). See also section 134 (2) & (3) of the Electoral Act, 2010

⁹⁸ See preamble to the Electoral Act, 2010, *Balogun v. Odumosu* (1999) 2 NWLR (pt.592) 590 at 596-597; *PDP v. Okorocha* (2010) 15 NWLR (pt.1323) 205 at 252. See also section 82 (2) (1) schedule 5 of the Local Government (Basic Constitutional and Transitional Provisions) Decree No. 36, 1998; section 2 (1) schedule 6 of the State Government (Basic Constitutional and Transitional Provisions) Decree No.3, 1999; *Jidda v. Kachallah* (1999) 4 NWLR (pt.599) 426 at 433-434 where the Court of Appeal, Jos Judicial Division held inter-alia that “in determination of election petition matters, public policy dictates that time if of essence so that as much as possible parties affected and generality of the public would readily know the status of the contestants”.

⁹⁹ See the Supreme Court decision in *Abubakar v. Nasamu* (No. 1) (2012) 17 NWLR (pt.1330) 407 at 459-460 where the court held that: “where the limitation of time is for extension of time, the Decree or edict unless they make provision for extension of time, the courts cannot extend the time. See also *Akinuoye v. Military Administrator Ondo State* (1997) 1 NWLR (pt. 483) 564.

