

IN THE HIGH COURT OF JUSTICE
EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN

BEFORE HIS LORDSHIP, THE HON. JUSTICE M. N. ASEMOTA,
SITTING IN BENIN, COURT 6, ON THE RULING DELIVERED
ON FRIDAY THE 2ND DAY OF MAY 2025.

B E T W E E N:

SUIT NO: B/211/2023

1. PA. SUNDAY ENODOLOMWANYI
2. CHIEF OSEMWINGIE ERO
3. ENGR. ALEXANDER OGHOGHO GUOBADIA
4. ELDER BENJAMIN IYARE
(For themselves and on behalf of
Ugbowo Community

A N D

1. EDO STATE GOVERNMENT
2. THE HON. ATTORNEY GENERAL, EDO STATE
3. EDO STATE GEOGRAPHICAL SERVICE
4. FEDERAL MINISTRY OF LANDS, HOUSING
AND URBAN DEVELOPMENT
5. THE HON. MINISTER, FEDERAL MINISTRY
OF LANDS, HOUSING AND URBAN
DEVELOPMENT
6. THE HON. ATTORNEY GENERAL OF THE
FEDERATION
7. UNIVERSITY OF BENIN TEACHING
HOSPITAL MANAGEMENT BOARD
8. UNIVERSITY OF BENIN TEACHING
HOSPITAL (U.B.T.H.)

CLAIMANTS/
RESPONDENTS
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SIGNATURE *[Signature]*
NAME *Eiwan Stephen*
RANK *Principal Registrar*
DATE *26-5-25*

DEFENDANTS/
RESPONDENTS

DEFENDANTS/
APPLICANTS

R U L I N G

This Ruling is predicated on a Notice of Preliminary Objection to the suit filed on behalf of the 7th and 8th Defendants/Applicants. The Notice of preliminary objection dated and filed on **08/05/2024** is brought pursuant to Order 40, Rules 1, 2, 3 and 5 of the Edo State High Court (Civil Procedure Rules) 2018, Section 1, 4 and 8 of the Midwestern State Public Lands

Acquisition Law (Cap 105) of Notice No. 735 of the Midwestern State of Nigeria Gazette No. 55, Vol. 6 of the Limitation Law of Bendel State 1976, applicable in Edo State, Section 49 of the Land Use Act 1978, Section 56(1), (2) and (3) of the EDOGIS Law and under the inherent jurisdiction of the Court.

5 The 7th and 8th Defendants/Applicants are praying the Court for *"An order of this Honourable Court striking out/dismissing the suit for being statute barred, incompetent and want of jurisdiction."*

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DATE *26-5-20*

The grounds for the application are stated thus:

"a) Lack of Jurisdiction: That by virtue of Section 8 of the Public

10 Lands Acquisition Law (Cap 105) of the Midwestern State of Nigeria as conveyed through the Midwestern State of Nigeria Gazette No. 55. Vol. 6 of 4th December 1969, the jurisdiction of this Honourable Court is estopped from entertaining any claim not instituted within twelve (12) months from the publication of Notice
15 No. 735 in the Midwestern State of Nigeria Gazette of 1969 and under Section 49 of the Land Use Act, 1978.

b) This suit is statute barred. The Claimants/Respondents were under a statutory duty to bring the action within the twelve (12) months of Midwestern State Notice No. 735 under the Public Land Acquisition Law (Cap 105) conveyed by the Midwestern State of Nigeria through the Midwestern State of Nigeria Gazette No. 55, Vol. 6 of 4th December, 1969, 12 years under Section 6(2) of the
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Limitation Law of Bendel State, 1976 as applicable to Edo State and three (3) months under Section 56 of EDOGIS Law 2018.

- c) The Claimants' action is incompetent for failure to comply with Section 56(1), (2) and (3) of the EDOGIS Law, 2018..."

5 The preliminary objection is supported by an Affidavit of 18(Eighteen) paragraphs deposed to by Uyi Okhiria, a Chief Legal Officer in the 8th Defendant. In compliance with the Rules of this Court learned counsel for the 7th and 8th Defendants/Applicants, Dr. S. O. Daudu filed a written address in support of the preliminary objection.

10 In opposition to the preliminary objection, the Claimants/Respondents with leave of this Court granted on **20/02/2025** filed a Counter Affidavit dated **25/06/2024** of 41(Forty-One) paragraphs deposed to by the 2nd Claimant. There are three Exhibits attached namely: -

- i) **Exhibit "A"** – Allocation Letters issued by the 4th and 5th Defendants to some purchasers of the res
- ii) **Exhibit "B"** – Compact Disc
- iii) **Exhibit "C"** – Photocopy of Deed of Assignment between Mr. Haruna Adam Ogweda and Mr. Ambrose Ngozi Nwachokor.

In consonance with the Rules of this Court, learned counsel Oluwole Iyamu SAN filed a written address in opposition to the preliminary objection. In reaction to the Claimants' Counter Affidavit, the 7th and 8th

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Defendants/Applicant filed a Further Affidavit of 30(Thirty) paragraphs and a reply on Point of Law deemed as properly filed and served on 20/02/2025.

In his written address in support of the preliminary objection, learned counsel for the 7th and 8th Defendants/Applicants formulated three issues for determination as follows: -

- “1. *Whether this Honourable Court has jurisdiction to entertain any matter relating to or connected with the subjected matter of this suit.*
2. *Whether this suit is not statute barred having regards to Section 7 of the Public land Acquisition Law (Cap 105) of the Midwestern State Notice No. 735 published in the Midwestern State of Nigeria Gazette No. 55 Vol. 6 of 4th December 1969 Section 6(2) of Limitation Law of Bendel State 1979 applicable to Edo State and Section 56(1) of EDOGIS Law of 2018.*
3. *Whether this suit is competent having regards to Section 56(2) and (3) of EDOGIS Law 2028.”*

On their part, learned counsel for the Claimants/Respondents in the written address canvassed a sole issue for determination as follows “*Regard being had to the facts and circumstances of this case as revealed in the pleadings, whether this Honourable Court has the requisite jurisdiction to entertain and adjudicate the matter as presented by the Claimants/Respondents.*”


In his oral administration, Stanley Imhanruor Esq. for the Claimants/Respondents submitted that the Claimants do not challenge the acquisition of the subject matter of the suit but their complaint is that the Defendants continue to sell the land to is private individuals. He contended that

the Statute of Limitation is therefore not applicable. Counsel cited in support the case of *NURSING & MIDWIFERY COUNCIL OF NIGERIA V. PATRICK OGU & ORS (2016) LPELR – 45516* and *ORIRIO V. OSAIN (2012) 16 NWLR (Pt. 1327) 583*.

I have carefully considered the Notice of preliminary objection, the Affidavits in support, the Counter Affidavit in opposition and the Written Address/submissions of learned counsel for the parties which were duly adopted. The issues as canvassed touch on the jurisdiction/competence of the Court to entertain this suit. I adopt the issue as canvassed by learned counsel for the Claimants/Respondents and slightly modify it as follows – *whether having regard to the facts and circumstances of this case, this Court is divested of the jurisdiction to entertain the suit.*

Learned counsel for the 7th and 8th Defendants in his submissions argued that the parcel of land the subject matter of this suit was acquired by the defunct Midwestern State Government or public purpose by Gazette No. 55, Vol. 6 of 4th December 1969. The counsel contended that the Claimants have failed to indicate their interest or right over the land by virtue of Section 2 of the Public Lands Acquisition Law Cap 105, within six weeks of the notice, the Claimants are estopped from instituting the action. Counsel added that the Court is therefore divested of this jurisdiction to entertain the suit.

It was learned counsel further submission that this action is statute barred not having been commenced within twelve months when Gazette No. 55, Vol. 6

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of 4th December 1969 was published acquiring the parcel of land, the subjection matter of this action. Counsel referred to Section 8 of the Public Lands Acquisition Law (Cap 105), Section 6(2) of the Limitation Law of Bendel State 1976 as applicable to Edo State and Section 56(1) and (2) of the EDOGIS Law, 2018. He cited in support the following cases: -

- 1) *NEPA V. OLAGUNJU (2005) 3 NWLR (Pt 913) 602 at 611 - 612.*
- 2) *MKPEDEM V. UDO (2000) 9 NWLR (Pt 673) 632.*
- 3) *OKAFOR V. A. G. ANAMBRA STATE (2005) 14 NWLR (Pt. 945) 210 at 222 - 223.*

On their part, learned counsel for the Claimants submitted inter alia that the Claimants' suit is not a challenge of the compulsory acquisition but for the fact that the land acquired is being converted and diverted for private rather than for public purposes. Counsel contended that the cause of action arose in 2016 and referred to paragraphs 19, 20 - 26 of the Statement of Claim and paragraph 20 of the 7th and 8th Defendants' Counter Affidavit.

Counsel submitted that when an issue of an action being statute barred is raised, the Court is restricted to examine only the originating processes to determine when the cause of action arose. He cited in support the following cases: -

- 1) *KASANDUBU V. ULTIMATE PETROLEUM LTD. (2008) ALL FWLR (Pt 417) 155 r. 13.*
- 2) *MR. GBEJE V. MR. DARE OKE (2018) 10 NWLR (Pt 1627) 382 at 383.*

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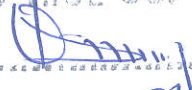
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It was counsel's further submission that the Defendants have no lawful authority to convert the Claimants' ancestral land acquired for public purposes into private estate for private individuals. He contended that the Statute of Limitation is inoperative where there are concealments of facts which amount to fraud. He added that by the concealment of facts by the Defendants they cannot plead the Statute of Limitation. Counsel cited in support the case of *AGALA V. AYILARA (2012) ALL FWLR (Pt. 608) 8 AND 9 r. 8*. According to counsel, time started to run in 2016 when the Claimants became aware of the unlawful acts of the 7th and 8th Defendants in giving out portions of the unutilized land to private individuals. Counsel submitted that the Claimants are the radical title holder of the land under customary law until the acquisition and that the Statute of Limitation is inapplicable to land held under customary tenure.

On the 3rd Defendant not having been issued a pre-action notice, counsel submitted that it does not lie with the 7th and 8th Defendants to raise the issue. He added that the 3rd Defendant who has participated actively in the proceedings can not be heard to complain having waved such right. Counsel opined that the 3rd Defendant is a nominal party and that the action can still be maintained against the other Defendants.

RESOLUTION OF THE ISSUE

The preliminary objection is predicated on the following: -(1) That the land the subject matter of this action was compulsorily acquired in 1969. (2) That the action is statute barred.

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It needs to be stated from the outset that the Claimants have maintained that the basis of their challenge is not against the compulsory acquisition of the land but rather the purpose for which some of the unutilized portions of the acquired land have or are being used. The pith and substance of their challenge is that the unutilized land has been converted by the 7th and 8th Defendants to private use rather than for public use. See paragraphs 18 – 27 of the Statement of Claim and paragraphs 13 – 29 of the Counter Affidavit in opposition of the Application.

The 7th and 8th Defendants/Applicants contend that the compulsory acquisition took place in 1969 and that the action is statute barred. The position of the law which is well settled is that in determining whether an action is statute barred as to divest the trial Court of the necessary vires to entertain the claim, the Court is required to examine the Writ of Summons and Statement of Claim. See the following cases: -

- 1) *EGBE V. ADEFARASIN (1987) LPELR – 1032 (SC)*
- 2) *AREMO II V. ADEKANYE (2004) ALL FWLR (Pt. 224) 2113 at 2132 – 2133*
- 3) *HASSAN V. ALIYU (2010) 17 NWLR (Pt. 1223) 547*
- 4) *AJAYI V. ADEBIYI (2012) LPELR – 7811 (SC)*

The yardstick for determining whether an action is statute barred is to look: -

- “a) *The date when the cause of action accrued.*

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- b) *The date of commencement of the suit and*
- c) *The period of time prescribed by the statute for bringing an action. In a case instituted by Writ of Summons such as the present one, it is a matter of simple calculation using the limitation period in the enabling statute as the base line and the Statement of Claim alleging when the wrong was committed which gave the Plaintiff a cause of action as the mirror to ascertain the act complained of, then and comparing the date with the date the Writ of Summons was filed. If from the simple computation of time on the writ when the action is instituted is beyond the period in the Limitation Law the action is statute barred...” per Wambai JCA (PP. 37 – 39, PARA. B – B) in the case of ACTION ALLIANCE V. INEC & ORS (2023) LPELR – 60057 (CA).*

A critical examination of the Writ of Summons and Statement of Claim reveals as stated earlier that the Claimants’ challenge is to the use of the unutilized portions of the land acquired. The reliefs claimed are set as follows for ease of reference: -

- “1) A declaration that the conversion of the unutilized portion of the Claimants’ land measuring 80.792 Hectares lying and situate at Ugbowo Community acquired for public purpose of establishing the University of Benin Teaching Hospital (8th Defendant) to private use by the 4th and 5th Defendants is unconstitutional, illegal, null and void.
- 2) A declaration that the letter of allocation of sale of a house in Bendel state issued to land purchase within the unutilized parties is ineffective to transfer any title to such persons and is therefore null and void.

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- 3) A declaration that on the failure of the object of public purpose for which the unutilized portion of land measuring 80.792 Hectares was acquired compulsorily the land reverted to the Claimants.
- 4) An order directing the 1st and 2nd Defendants to de-acquire the said parcel of land measuring 80.792 Hectares lying and situate at Ugbowo Community and revert back to the Claimants.
- 5) An order directing the 3rd Defendant to register the de-acquisition when made and register the Claimants as the rightful owners of the land.
- 6) An order of perpetual injunction restraining the 4th, 5th, 6th and 8th Defendants from any further allocation of any parcel of land within the land measuring 80.792 Hectares now in dispute.
- 7) General damages of ₦1,000,000,000.00 (One Billion Naira) for the 4th – 8th Defendants for their acts of trespass on the land.
- 8) Cost of this action.”

Following from the above, the Claimants' claim is clear and distinct. It is not in respect of the compulsory acquisition as stated earlier. In paragraphs 18 – 20 in their Statement of Claim, the Claimants averred that the unutilized portion measuring 199.637 Acres (80.792 hectares) had remained fallow and unused until sometime in 2016 that the 4th Defendant was surreptitiously allocating the land to private individuals for the erection of their buildings. That according to the Claimant is when the cause of action arose.

In the instant case the crucial question is when did the cause of action arise. The Claimants conceded or admitted that their action is not in respect of the compulsory acquisition but the allocation to private individuals. The issue of

compulsory acquisition takes backstage. As stated by *Abba Aji (JCA)* in the case of *N.M.C.N V. OGU & ANOR (supra)* (p. 21, para. B) thus: -

"It is thus settled principle of law on Statutes of Limitation that the period of Limitation begins to run from the date on which the right or cause of action accrues to the person entitled to it.

In simple terms, a cause of action means a fact or combination of facts which gives rise to a right to sue and it accrues when there exists, a person who can be sued in respect thereof. Put another way, a cause of action is every fact that is necessary to be proved to support a claim by one person against another and it occurs or happens resulting in the breach which entitled him to seek redress in a Court of Law..."

See also paragraphs 19, 20 – 26 of the Statement of Claim, as well as paragraphs 13 – 20 of the Counter Affidavit in opposition to the preliminary objection. The cause of action in this case can be said to have arisen when the 4th Defendant was said to have started to allocate the unutilized portions to private individuals in 2016. This action was filed on **23/02/2023**, a period of about seven years when the cause of action arose. The period is within the twelve-year period of limitation provided for under Section 6(2) of the Limitation Law of Bendel State 1976 as applicable to Edo State for instituting actions of this nature.

I must hasten to add that all the arguments canvassed by learned counsel for the 7th and 8th Defendants/Applicants with respect to the applicability of the Statute of Limitation, Section 8 of the Public is of little benefit as it dwelt extensively on Lands Acquisition Law, Section 49 of the Land Use Act etc., the Acquisition of the parcel of land in 1969 which has no bearing with the Claimants' Statement of Claim and the Writ of Summons at this preliminary

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stage, more so when the arguments are juxtaposed with the originating processes. I hold therefore that this Court is clothed with the jurisdiction to entertain this suit. See Section 39 of the Land Use Act 1978.


I am not unmindful of the fact that it is not at the preliminary stage that a Court should delve into the substantive case which would require evidence to be led to establish the facts pleaded. I will refrain from doing that at this stage.

However, before I bring this Ruling to a close, I consider it imperative to state that the matter of the non-issuance of a pre-action notice on 3rd Defendant, in my firm view would not divest the Court of the jurisdiction to hear this matter. I have taken the liberty to examine the case file. Indeed, there is an application dated **24/06/2024** by the Claimants which is yet to be proved to strike out the name of the 3rd Defendant among others as parties in this suit. I agree with the Claimants' counsel that the 3rd Defendant is at best a nominal party notwithstanding, reliefs of the Statement of Claim. A nominal party as defined by Blacks Law Dictionary Ninth Edition is *"A party to an action who has no control over it and no financial interest in its outcome; especially a party who by some immaterial interest in the subject matter of a law suit and who will not be affected by any judgment, but who nonetheless is joined in the law suit to avoid procedural defects"* (underlining for emphasis).

In conclusion, I do not find merit in the preliminary objection, and it is accordingly dismissed. The lone issue formulated is resolved in favour of the

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Claimants/Respondents. the sum of ₦50,000.00 (Fifty Thousand Naira) is awarded as costs in favour of the Claimants against the 7th and 8th Defendants.


HON. JUSTICE M. N. ASEMOTA
J U D G E
02/05/2025

COUNSEL:

SAM OSUNDE ESQ.,

Counsel for the Claimants/Respondents

I. U. OMORUYI ESQ.,

Counsel for the 1st– 3rd Defendants/
Respondents


E. O AFOLABI SAN with
S. EZENWA ESQ. AND

Counsel for the 4th Defendants

DR. S. O. DAUDU ESQ.

Counsel for the 7th and 8th Defendants/
Applicants



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