

Knowledge Exchange

Cause of Action, Right of Action and the Acknowledgement of Debt

A cause of action and a right of action are two essential prerequisites to the institution of an action in court. This article seeks to analyse the relationship between both concepts and the effect of the limitation laws on them; with particular focus on the acknowledgement of debt.

The interplay between a cause of action and a right of action has been described by one legal author as the “*the logical progression of ideas which first considers the operative facts...and from these draws conclusions as to the legal rights which the court will enforce.*”¹ This is to say that a right of action is birthed from a matrix of facts which constitute the cause of action, in which the legal right to an action is embedded. Accordingly, a cause of action has also been defined as “*a situation or state of facts that entitles a party to maintain an action in a judicial tribunal*”²; it can therefore be described

as the factual basis upon which the legal right to an action is established.

There is a fine but crucial distinction to be made between both concepts and the definitions provided assist in identifying it; as they illustrate the fact that a right of action emerges from a cause of action. It therefore follows that while a plaintiff may be in possession of a cause of action, this does not guarantee his right to institute an action; neither can he possess the latter without the former. This is consistent with the conclusion of decided cases on the relationship between both concepts; notably that of the Supreme Court of Nigeria in the case of **Adekoya v. FHA**³ where it held that “*a cause of action is the emergence of a factual situation which enables a party to bring an action in court.*”⁴

¹ Charles E. Clark, *The Cause of Action*, Yale Law School, Yale Law School Legal Scholarship Repository, Faculty Scholarship Series, Page 661, Paragraph 1.

² Edwin. E. Byrant, *The Law of Pleading Under the Codes of Civil Procedure* 170 (2d ed. 1899)

³ (2008) 11 NWLR (Pt. 1099), page 539.

⁴ *Supra*. Per Tabai, JSC at Page 551, Paragraph G. Reference was also made in Paragraph F to the case of *Fred Egbe v. Hon. Justice J.A. Adefarasin* (1987) 1 NWLR (Pt 47), 1 at Page 20 Per Oputa, JSC where a cause of action was defined as “*operative fact or facts (the factual situation) which give rise to a right of action which itself is a remedial right ...*”

The limitation laws touch directly on a plaintiff's right to institute an action by curtailing it at the expiration of a prescribed period of time. In the case of **Odubeko v. Fowler**⁵, the Supreme Court of Nigeria held that "*the general rule of law is that a plaintiff may have a cause of action but loses the right to enforce that cause of action by judicial process because the period of time laid down by the limitation law for bringing such actions has elapsed.*"⁶ The limitation laws seek to limit the period within which an action can be instituted in specified cases, thereby curtailing the occurrence of stale claims. Thus, their concern is not with the facts that gave rise to a plaintiff's right to bring a claim before the court, but with the exercise of the right itself. Accordingly, the expiry of a limitation period serves as a complete defence to an action⁷; the defence being that the plaintiff no longer has a right to institute the action, notwithstanding the continued existence of his cause of action. At the expiry of a limitation period, the claimant still has a cause of action, but one that cannot be enforced."⁸ In the case of **Araka v. Ejeagwu**⁹, the Supreme Court went a step further in stating the effect of a statute bar on a

right of action by illuminating the consequential bar to a judicial remedy. The Court held that "*a Limitation Law or Act removes the right of enforcement and the right to judicial relief...*"¹⁰

The acknowledgement of a debt can be said to operate as an exception to the rules on limitation as it has the effect, when valid of "turning the hand of the clock"¹¹ and causing the limitation period to run afresh. Consequentially, when the acknowledgement of a debt is made before the cause of action becomes statute barred, the right of action is deemed to have accrued on the date of the acknowledgement.¹² Accordingly, **Section 29(5) of the English Limitation Act, 1980** provides that the acknowledgement of a debt affects (by renewing) a right of action to recover any debt by stating that "*the right shall be treated as having accrued on and not before the date of the acknowledgment or payment.*" Similarly, **Section 38(1) of the Limitation Law of Lagos State**¹³ provides that "*the right of action shall be deemed to have accrued on and not before the date of the acknowledgement.*"

⁵ (1993) 7 NWLR [pt.308] 637

⁶ *Supra.* at 660, Pp. 660. Paragraphs. C-D and E-F

⁷ *Blackstone's Civil Practice 2009, OUP, Page 152, Paragraph 10.1*

⁸ *Blackstone's Civil Practice 2009, OUP, Page 153, Paragraph 10.1.*

⁹ (2000) 15 NWLR (Pt. 692) Page 684

¹⁰ *Supra.* Page 710, Paragraphs C-D

¹¹ *Jerry Amadi, Limitation of Action, Statutory and Equitable Principles, Volume 1, at Page 1069, Paragraph 2.*

¹² *Chartered Brains Ltd. v. Intercity Bank Plc (2009) 12 NWLR (pt. 1165) 459 Paragraphs E-F*

¹³ *Laws of Lagos State of Nigeria, Cap L67*

By implication, under the rule governing acknowledgement of debt, the limitation period recommences upon the acknowledgement by a debtor of his indebtedness. It is however important to note and correct a misconception on the effect of an acknowledgement of debt occurring after the expiration of the limitation period prescribed by law. The position of the law is that while the limitation period may be repeatedly extended¹⁴, a right of action, once barred by the law of limitation cannot be revived by any subsequent acknowledgement.¹⁵ The effect of this is that while a current limitation period may be repeatedly extended under the limitation laws by further acknowledgements or payments, a right of action cannot be revived by any subsequent acknowledgement or payment once barred by the limitation law or statute. Therefore, an acknowledgement is only valid when it is made within the limitation period and it cannot restart the period of limitation if it is made after the expiration of such period.

This point was decided upon in the case of **SPDC Nigeria Ltd. v. Ejebu & Anor**¹⁶, where the Supreme Court of Nigeria considered the issue of whether

an acknowledgement of debt or promise to pay after a limitation period has the effect of enlarging the limitation period. In upholding the dictum of Coker JSC in *Thandant v. National Bank*, the Supreme Court held that "*the principle of acknowledgment or promise to pay debt does not extend the period of limitation.*"¹⁷ Such an acknowledgement was held to be statute barred, as "*the limitation statute extinguishes both the remedy and the right to maintain the action for the remedy.*"¹⁸

The futility of an acknowledgement of debt made after the expiration of the limitation period is perhaps more clearly articulated by **Section 19 of the Indian Limitation Act, 1908** which provides that "Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made... a fresh period of limitation shall be computed from the time when the acknowledgement was signed." This enactment explicitly states that the acknowledgement is to occur "before the expiration" of the limitation period, thus clarifying the invalidity of acknowledgements made after the expiration of that period. It is perhaps clearer to also state, as done in the Indian Limitation Act that the period of limitation runs afresh from the date of acknowledgement than to state as is in

¹⁴ Neil Andrews, *English Civil Procedure, Fundamentals of the New Civil Justice System*, OUP, Page 314, Paragraphs 3-4.

¹⁵ Chitty on Contracts, *Twenty-Eighth Edition*, Volume 1, 1999, Page 1435, Paragraph 29-096.

¹⁶ *S.P.D.C.N Ltd. v. Ejebu* (2011), 17 NWLR (Pt. 1276), Page 324

¹⁷ *Supra* Page 343, Paragraphs C-D

¹⁸ *Per Eko, J.C.A* pages. 20-21, paragraphs. E-D

the English and Nigerian limitation laws that the right accrues from the date of acknowledgement. This is because the effect of the right's accrual from a later date is that the limitation period runs afresh; a point which assists in further clarifying the practical operation and effect of an acknowledgement of debt.

In conclusion, it has been established that with the foundation of a cause of action and a right of action emerging therefrom, a plaintiff can institute an action in court (provided that other prerequisites such as his locus standi and the jurisdiction of the court to entertain his matter are present). While

the limitation laws curtail the exercise of a right of action after prescribed lengths of time, they also provide for the opportunity to renew such periods of time in cases of acknowledgement of debt. As previously stated, it is crucial to note that the renewal of a limitation period following the acknowledgement of a debt is only valid where the debt was acknowledged within the limitation period prescribed by law and not after it has elapsed. Thus, the objective of preventing the occurrence of stale claims is preserved by keeping the operation of an acknowledgement of debt within the confines of the limitation laws.