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**STATUTES OF LIMITATION DO NOT APPLY TO CUSTOMARY LAND LAW IN NIGERIA: A LEGAL REALITY OR A MYTH?**

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**Abstract**

**Keywords**

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**1. Introduction**

The thrust of limitation of action is that the litigation of a right or cause in courts of law or judicial tribunals is not in perpetuity. Generally, as it is acceptable that there must be an end to litigation[[1]](#footnote-2)1, so there must equally be an end to the judicial pursuance of a right, especially where it would be inequitable and unjust to insist on the legal realization of the right. Policy public has always required a timeline for litigation of legal rights in the court.

Rights of action, thus, do not exist *sine die*; they are limited by statute[[2]](#footnote-3)2, and in some given cases by customary law.[[3]](#footnote-4)3 Limitation of action, recognized in several jurisdictions is a principle of great antiquity.[[4]](#footnote-5)4 However, in Nigeria, there appears to be a conclusion that statutes of limitation do not apply to tenures held under native law and custom.[[5]](#footnote-6)5 Nevertheless, can statutes of limitation be pleaded to defeat a claim in land held purely under native law and custom? What is actually the present regime in limitation statutes respecting lands held under native law and custom? These are the questions this work considers in finding whether the assertion that statutes of limitation do not apply to customary land law in Nigeria is a legal reality or a myth. This work considers the assertion as a myth.

**2. Research Methodology**

This paper doctrinally examines the issue of land vested in government in transactions dealng with landed property. In doing this the main headings or keywords are explained first followed by an analysis of the research.

**2.1 Meaning of Terms**

**Statute of Limitation**

Statute of limitation is a law that proscribes the period within an action must be brought. It is an enactment of which the primary purpose is to set a time limit - a limitation period on the bringing of legal proceedings in respect of a right of action accruing to a person by virtue of the common law or some statute.[[6]](#footnote-7)6 In *Savannah Bank v Pan Atlantic*[[7]](#footnote-8)7, Oputa, JSC remarked that,

If a statute allows a certain period of time for bringing litigation or for commencing proceedings, it is known as a Statute of Limitation. That 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. A plaintiff may have a cause of action but he 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 had elapsed.[[8]](#footnote-9)8

Statute of limitation has also been defined as a law ‘which provides that no court shall entertain proceedings for the enforcement of certain right if such proceedings were set on foot after the lapse of a definite period of time, reckoned as a rule from the date of the violation of the right.’[[9]](#footnote-10)9 Statutes of limitation are laws that fix certain periods within which actions must be brought or proceedings taken.[[10]](#footnote-11)10

Thus, a statute of limitation is a positive act of parliament compared to the concept of limitation of action.While a statute of limitation is a law that fixes certain periods within which actions must be brought or proceedings taken, limitation of action, which necessarily encompasses statute of limitation, has a broader extension. Limitation of action is not only tied to time as prescribed by statute of limitation, but must necessarily relate to previous acts of a party, the previous decisions of courts, and several other factors which make it inequitable or unconscionable to allow the claimant to activate the jurisdiction of the court in a particular case. Considered this way, limitation of action must be strictly distinguished from statute of limitation, because whereas the latter is tied to time, the former, which is more comprehensive is not necessarily tied to time.

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It is possible to establish the laches or acquiescence of a party in an interval of days, weeks or months, and defeat his action thereby, irrespective of the fact that the time prescribed by the applicable limitation statute is in abundance. A party intending to defeat an action by brandishing this plea may therefore resort to any of the ripe methods or he could rely on the two, where possible. This is because an action to recover land, that is defensible by the defence of statute of limitation may as well reveal that the claimant can be charged with or visited with laches and acquiescence.[[11]](#footnote-12)12

Therefore, it suffices to conclude that limitation of action refers to rules of law founded in statute, equity or custom that prescribes certain periods within which actions must be brought or proceedings taken. Statute of limitation, on the other hand, is founded solely on an enactment of the legislature.

**2.2Customary Law**

Customary law consists of the customs of a community[[12]](#footnote-13)13, and a custom is a rule which, in a particular district, has, from long usage, obtained the force of law.[[13]](#footnote-14)14 Customary law has been described as “any system of law, not being the common law and not being a law enacted by any competent legislature in Nigeria, but which is enforceable and binding within Nigeria as between the parties subject to its swag.[[14]](#footnote-15)15

On the meaning and characteristics of customary law, Kolajo[[15]](#footnote-16)16 wrote,

Customary law may be conveniently defined as those rules of conduct which the persons living in a particular locality have come to recognise as governing them in their relationships between one another and between themselves and things. It is also defined as ancient rules of law binding on a particular community and which rules do change with the times and rapid development of social and economic conditions. Though customary law consists of ancient rules of law, such rules of law must still be existing and binding on the particular community to which they apply. Thus the native law which the courts enforce must be existing native law and customs, not of that of bygone days. The ancient rules or rules of by-gone days which are no longer enforced or enforceable are rather part of legal history than native law and custom. Customary law must be in current usage and that is why it has been described a mirror of accepted usage. [[16]](#footnote-17)17

Custom or customary law is a matter of fact to be pleaded and proved by evidence unless judicially noticed.[[17]](#footnote-18)18 The Evidence Act 2011 permits a custom to be adopted as part of the law governing a particular set of circumstances.[[18]](#footnote-19)19 Customary law or custom has been held to part of our jurisprudence.[[19]](#footnote-20)20

**3.1 The Law of Limitation Respecting Lands Held Under Native and Custom**

The important question to ask is, “what is the present regime in limitation statutes with respect to lands held under natives law and custom?” there is a long held view[[20]](#footnote-21)21 that statutes of limitation do not apply to customary land law.[[21]](#footnote-22)22 This proposition has its foundation in section 68(1) of the Limitation Law of Lagos State.[[22]](#footnote-23)23

Section 68(1) of the Limitation law of Lagos provides thus:

Subject to the provisions of subsection (2) of this section, this law shall not apply to actions in respect of any matter which, immediately before the commencement of this law, was regulated of by customary.

No doubt, the above Law Limitation, and a fortiori the application of section 68(1), is limited to Lagos State, or any other state of the Federation that has a similar provision in its statute(s). Lagos State house of Assembly cannot legislate for the Federation or any State of the Federation, except for Lagos State.[[23]](#footnote-24)24 In the spirit of federalism, the different States of the Federation have enacted their own limitation law[[24]](#footnote-25)25 to determine the expiry of time for filing actions in their State courts.

It appears that the provisions of section 68(1) of the Limitation Law of Lagos State are peculiar to the State.[[25]](#footnote-26)26 Also section 68(1) of the Limitation Law of Lagos State cannot be expressed in more than what it provides.[[26]](#footnote-27)27

The history of the proposition that statutes of limitation do not apply to tenures held under customary law dates back to the case of *Agboola V. Abimbola*.[[27]](#footnote-28)28 The facts of this case were that the appellant made an application before the Registrar of Titles for the registration of a certain property as his freehold property. The application was rejected by the Registrar of Titles, on the ground that a similar application had been made by another person, in respect of the same property. Agboola appealed the Registrar’s decision to the High Court, and the appeal was dismissed. Consequently, Agboola lodged a further appeal to the Supreme Court.[[28]](#footnote-29)29

One issue, which stemmed from the decision of the Registrar of Titles was whether the English Statutes of Limitations 1833 and 1834 applied to tenures held under native law and custom. The Supreme Court held that,

Be that as it may, the Registrar held in this case that the English Statutes of Limitations 1833 and 1834 applied so as to bar the interest of the Oloto Chieftaincy family in the land.

The reason he gave for this was that as far back as the year 1913 Kanyinde, an Egba refugee had assumed a form of possession over the land which was obviously adverse to that of the Oloto’s. With respect, this is not a correct exposition of the legal situation. Assuming and this fact was not proved and was in fact later jettisoned that Kanyinde was an Egba refugee at the time that he purported to sell the land, he had no more than an interest under native law and custom. We do not consider that any authorities are now needed to show the inapplicability of Statutes of Limitations to such tenures. It is therefore not possible to support the use made herein by the Registrar of Titles of the Statutes of Limitations 1833 and 1834.[[29]](#footnote-30)30 (Emphasis added)

The above pronouncement of the Supreme Court unfortunately was not based on any earlier authority or established customary rule.[[30]](#footnote-31)31Necessarily, the *Agboola’s* authority ought to be taken to mean that, the English Statutes of Limitation 1833 and 1834, though statutes of general application, should not apply to customary land tenures in the then Lagos State, since the English statutes were not ordinarily intended to govern customary land matters of the locals**.**

Thus, subsequent Supreme Court decisions that followed *Agboola’s* case relied on a particular statutory provision to hold that, by reason of that statutory provision, the statute of limitation under consideration did not apply to tenures held under native law and customary. In *Ogunlade V. Adeleye*[[31]](#footnote-32)32,the Supreme Court relied on the Limitation Law of Western Nigeria 1959. The apex Court held:

This Court as stated earlier in its consideration of section 4(4) of the Limitation Act (sic) cannot close its eyes to the clear and unequivocal provisions of section 1(2) of that Law. In view of that provision which excludes matters such as the one presently on appeal from the operation of the Limitation Law (supra) the appeal of the appellant must fail, and it is hereby so ordered.[[32]](#footnote-33)33

Recently, in *Majekodunmi V. Abina*,[[33]](#footnote-34)34 Uwaifo JSC identified section 68(1) of the Limitation Law of Lagos State as the basis for the statement that the said statute of limitation does not apply to customary land tenures. His Lordship said:

It is to be noted that in Lagos, the Limitation Law does not apply to land which is subject to customary law: see section 68(1) of the Limitation Law.[[34]](#footnote-35)35

Therefore, the sweeping statement that, “the position of the law is that Statutes of Limitation are not applicable to tenures held under native law and custom,” in *Ogunlana v. Dada*[[35]](#footnote-36)36 by Rhodes-Vivour, JCA (as he then was), with the greatest respect to His Lordship, is not the correct position of the law. The sweeping statement of His Lordship simply amounts to imposing the interpretation given to section 68(1) of the Limitation Law of Lagos State to other States of the Federation, irrespective of what their Limitation Law provides. Thus, to accept such interpretation would be vesting Lagos State with powers to make laws for other State or to give to the Courtlegislative powers.[[36]](#footnote-37)37 Limit of section 68(1) of the Limitation Law of Lagos State Section 68(1) of the Limitation Law of Lagos State appears not to outrightly make the law inapplicable to customary matters in all cases. It has limits in its application. For emphasis, Section 68(1) of the Limitation Law of State provides thus:

Subject to the provisions of subsection (2) of this section, this Law shall not apply to actions in respect of any matter which, immediately before the commencement of this Law, was regulated of by customary law.

The words of section 68(1) are clear and unambiguous, and must be interpreted in their ordinary sense to mean what they are. From the language of section 68(1) of the Law, it is evident that any customary matter that became regulated by customary law after the enactment of the Law, the Limitation Law will certainly apply. Hence any tenure held under native law and custom after the enactment of the Limitation Law leave the Limitation Law automatically regulates the time within which to commence proceedings in court.

**4. Limitation Statutes without Limit on Matters of Application**

It has been noted that recent decisions of the Supreme Court on the proposition that, Statutes of Limitation do not apply to customary land were based on extant provision of law.[[37]](#footnote-38)38 So, where there is no provision in a Limitation Law or any other statute proscribing the applicability of the Limitation Law to customary land, it will be wrong to hold that Statutes of Limitation are inapplicable to customary land. There are Limitation Statutes which do not limit their application to land matters. The Limitation Law of Rivers State[[38]](#footnote-39)39 and the Limitation Law of Abia State[[39]](#footnote-40)40 are a handy reference. Section 1of the Limitation Law of Rivers State provides that;

No action shall be brought by any person to recover any land after the expiration of 10 years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims.

Section 3 of the Limitation Law of Abia State is *ipsisima verbis* of section 1 of the Limitation Law of Rivers. Evidently, section 1 of the Limitation Law of Rivers and section 3 of the Limitation Law of Abia State do not distinguish between land held under native law and custom, more appropriately referred to as customary right of occupancy,[[40]](#footnote-41)41 or otherwise.[[41]](#footnote-42)42

Significantly, section 1 and section 3 of the Limitation Law of Rivers State and Limitation Law of Abia State, respectively, is the clear intention of the legislature in the two States, to allow the Limitation Law regulate all actions relating to land, whether founded on customary law or otherwise. Consequently, to argue otherwise would amount to denying the clear intention of the lawmaker.[[42]](#footnote-43)43 In Worlu JP V. Owhonda JP,[[43]](#footnote-44)44Charles-Granville, J, a Judge of the High Court of Rivers State considered section 1of the Limitation Law of Rivers State, and rightly stated thus:

The second issue for determination is whether the statute of limitation is applicable to land under native law and custom.

The appropriate and relevant law in this regard is S. 1 of the Limitation Law, Rivers State, Edict 1988 No. 71, Chapter 80, which provides that no action shall be brought by any person to recover any land after the expiration of 10 years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims to that person. I agree with Mr. Jerry Amadi that there is nothing in this law which differentiates between lands held under Native Law and those held otherwise. It applies in all cases of land holding.

Learned Counsel for the Claimants/ Respondents referred to the ‘Apani Customary Land Law of the Rumuigbo – Ikwerre’ people to which he contended the Limitation Law does not apply. I have earlier held that facts in relation to this custom as applying to the land in dispute was not pleaded by the Claimants/Respondents, and so they cannot take advantage of it.

**5.Conclusion**

Commendably, His Lordship understood the rule of law that the role of the Judge is to declare the law, not to give law. The duty of the Judge is to espouse the law, not to expand it. In *Okumagba v Egbe*[[44]](#footnote-45)45, Bairamian, JSC, remarked as follows:

In this Court the respondent’s learned counsel began by supporting the High Court judgment, but conceded, rightly and properly, that the regulation did not cover such a case as the one in hand. We allowed the appeal, and said we would give reasons later, which we shall do now.

It may be unfortunate that the draftsman used the words ‘another candidate,’ but they are the words which the legislature enacted, and admittedly in view of those words the regulation contemplates the case of a lie that a candidate had withdrawn his name being published to help a *different* candidate to win, but does not cover the trick played by the appellant of lying that a candidate to **win-a** trick which the learned Chief Magistrate says the draftsman could not foresee. Feeling that the appellant deserved to be punished, the Chief Magistrate replaced the words ‘another candidate’ by the words any candidate and thus enabled himself to punish the appellant. In effect he amended the regulation; but amendment is the function of the legislature, and the courts cannot fill a gap which comes to light by altering the words of a regulation to make it read in the way they think it should have been enacted. As Lord Bacon said in his essay on Judicature, the office of a judge is  *jus dicere,* not *jus dare* to state the law, not to give law-and the courts below should not have gone in for ‘judicial legislation’.

The learned Chief Magistrate invoked the argument from absurdity for the course he took. That should be used with great caution, for what may seem absurd to one may not seem absurd to another, and with respect we cannot look on the plain sense of the regulation as absurd merely because it does not cover the facts of the present case. It may be deficient, but it cannot on that account be branded as absurd, and the argument from absurdity was misapplied to bend the regulation to a sense it could not bear and the decisions of the courts below had to be set aside.[[45]](#footnote-46)46

**REFERENCES**

The old maxim of law is interest *republicae* *at* *sit finis litium*, meaning, the interests of the State require that a period should be put to litigation.

2 *Chartered Brains Ltd. v Intercity Bank Plc* (2009) 15 NWLR (Pt. 1165) 445

3 For example, the principle of *hauzi* or *prescription.* See *Ori v Usman* (2001) 14 NWLR (Pt. 734) 756; *Babandija v Kaga* (2005) 3 FWLR (Pt. 271) 383

4 See Jerry Amadi, *Limitation of Action Statutory & Equitable Principles,* vol. 1 Pearl Publishers, Port Harcourt, 2011, 4-10

5 See *Ogunlana v. Dada* (2010) 1 NWLR (Pt. 1176) 534, at p. 559, para H where Rhodes-Vivour, JCA (as he then was) recently made a sweeping statement thus: The position of the law is that Statutes of Limitation are not applicable to tenures held under native and custom.” See also *Agboola v Abimbola* (1969) 6 NSCC 263; *Majekodunmi v Abina* (2002) FWLR (Pt. 100) 1253; *Ogunlade v Adeleye* (1992) 23 (Pt. III) 196; *Enyi v Chezu* (Unreported) Appeal No. IHC/26/2008 delivered on 24/06/2008 by W.A. Chechey, J.

6 J. F. Josling, Period of Limitation 4th ed. (1973), Oyez Publishing Limited, London, p.7

7 (1987) 1 NWLR (Pt. 49) 212

8 at p. 259, paras C-D

9 per Mohammud, JSC in *Texaco Panama Incorporation V. S.P.D.C.* (2002) FWLR (Pt. 96) 579, at p. 611, para F

10 See *Atolagbe V. Awuni* (1997) 9 NWLR (Pt. 522) 536, at p. 590, para G, per Ogundare JSC

12 Ibid, pp. 3 and 4

13 A. A. Kolajo, Customary Law in NigeriaThrough the Cases (2000), Spectrum Books Limited, Ibadan, p. 1

14 Section 258(1), Evidence Act, 2011

15 per Elias, CJN, in *Zaidan V. Mohssen* (1973) 8 NSCC 516, at p. 525, lines 20-25; see also *Lewis V. Bankole* (1909) 1 NLR 81

16 A.A. Kolajo, op. cit

17 Ibid, at p. 1

18 Husseni V. Mohammed (2015) 3 NWLR (Pt. 1445) 100 at 132, para F; see also *Kayili* V*. Yilbuk* (2015) 7 NWLR (Pt. 1457) 26; Lipede V. Sonekan (1995) 1 NWLR (Pt. 374) 668

19 See section 16(1) of the Evidence, 2011

20 Agidigbi V. Agidigbi (1992) 2 NWLR (Pt. 221) 98; Finnih V. Imade (1992) 1 NWLR (pt. 219) 511

21 which was first noted in Agboola’s case (supra). This appears to be a case in which no statute, and in fact no particular earlier authority, was referred to as the basis of the proposition

22 per Rhodes-Vivour, JCA (as he then was) in Ogunlana V. Dada (supra). See footnote 5

23 Cap. 118, Laws of Lagos State of Nigeria, 1994

24 See sections 6 and 7 of the Constitution of the Federation Republic of Nigeria 1999 (as amended). Nigeria, operates a federal system of government by which each State House of Assembly makes law for the given State, and such laws only have effects within the States geographical territory; see also A.G. Federation V. A.G., Lagos State (2013) 16 NWLR (Pt. 1380) 249

25 For example, Limitation Law, Cap. 80, the Laws of Rivers State of Nigeria, 1999; Limitation, Cap. 114, the Laws of Abia State of Nigeria, 2005

26 See, for example, the Limitation laws of Abia State and Rivers State which have no such provisions

27 The words of section 68(1) of the Limitation Law of Lagos State are clear, and therefore need not be expressed in more than what they are. In Atuleye V. Ash**ama** (1987) 1 NWLR (Pt. 49) 267 at p. 278, para C, Karibi-Whyte, JSC stated, “In construing the provisions… the provision means.” See also Fawehinmi V. I.G.P. (2000) 7 NWLR (Pt. 665) 481 at p. 520, para D, per Oguntade, JCA (as he then was)

28 (supra)

29 It must be noted that at the time the High Court of Lagos State decided Agboola’s appeal, there was no Court of Appeal of Nigeria as it presently exists as an intermediate court. So appeals from the decisions of the High Court lay straight to the Supreme Court

30 (supra) at pp. 266-267, lines 50-5, per Coker, Ag. CJN

31 A custom is a fact until same is provide in evidence

32 (Supra)

33 at pp. 204-205, lines 50-5, per Omo, JSC

34 (Supra)

35 at p. 1358, Para C

36 (supra) at p. 559, para G

37 J. Amadi, op. cit, pp.762-763

38 See Ogunlade V. Adelege (supra); Majekodunmi v. Abina (supre)

39 Cap. 80, Laws of Rivers State of Nigeria, 1999

40 Cap. 114, Laws of Abia State of Nigeria, 2005

41 See section 51 of the Land Use Act, Cap.L5, Laws of the Federation of Nigeria, 2004

42 The other mode of land-holding in Nigeria is the statutory right of occupancy grantable by the Governor of a State. See sections 27 and 51 of the Land use Act.

43The golden rule in ascertaining the lawmaker’s intention is to give the words used in an enactment their ordinary natural meaning, particularly when the words used are clear and unambiguous as the words of section 1 and section 3 of the Limitation Law of Rivers State and Abia State, respectively; see *Abegunde v O.S.H.A* (2015) 8 NWLR (Pt. 1461) 318 at 353, para E

44 Unreported Suit No. PHC/727/2001

45 (1965) 1 ANLR 64

46 at pp. 66-67

1. [↑](#footnote-ref-2)
2. [↑](#footnote-ref-3)
3. [↑](#footnote-ref-4)
4. [↑](#footnote-ref-5)
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