

LIMITATION OF ACTION IN CASE OF WRONGFUL DISMISSAL FROM EMPLOYMENT

G.O. SODIPO AND CO.

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1. INTRODUCTION:

Wrongful dismissal from employment arises where an employer does not follow the right procedure to dismiss his employee or where such dismissal is adjudged to be illegal¹. It is often seen that actions for damages on the subject fail due to failure of the dismissed employees to take necessary measures to prevent unwarranted losses in court. Nobody wants to be a losing party at the end of any legal tussle. However, litigation does not always end in a win-win situation as any issue raised before a court of competent jurisdiction has to be decided one way or the other. And to become an issue to be resolved by a judge, the parties must have taken different positions on it. It is on this purview that the writer has chosen to throw light on this important topic, for an intending party to be abreast with the positions of the law when there is an alleged wrongful dismissal from employment. This will not only help a prospective claimant and the lawyers to make informed decisions, but also ensure that the judicial odyssey on the subject will not end in jeopardy or hampered in the long run.

This article will look at the limitation of action in cases of wrongful dismissal, how the jurisdiction of the court can be affected by wrongful dismissal, how an otherwise lawful dismissal may be affected by fair hearing, and also make recommendations for a successful prosecution of cases of wrongful dismissal.

2. LIMITATION OF ACTION AND JURISDICTION IN CASES OF WRONGFUL DISMISSAL:

Jurisdiction is the power of a court to hear and determine a case. This is one of the key areas in every legal system as it is the first issue to be determined by both a lawyer and the judge before the judge can go on with the case.

A good lawyer after being briefed by a client has the duty to first determine what he should do in the best interest of the client. In some cases, because of some factors including anger, the client may not know that keeping quiet in a particular

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¹ UBA Plc v. Mrs. Doreen Nkolika Oranuba (2013) LPELP-20692(CA)

circumstance is his best option. A lawyer must as a matter of duty consider every other dispute resolution method and advise his client on the best option before resolving with the consent of the client to head to the court.

Where litigation is the only option available in any case the lawyer has another duty to determine which court has the judicial competence to hear and determine the case. In some jurisdictions, the failure of a lawyer to first determine this issue and the subsequent loss of the case on the grounds of lack of jurisdiction may lead to a very serious case. According the Nigerian apex court in the celebrated case of **Madukolu & Ors V. Nkemdilim**² a court is competent to hear and determine a case where

- a. It is properly constituted with respect to the number and qualification of its members,
- b. The subject matter of the action is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction;
- c. The case is initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of the court's jurisdiction³.

Where all the conditions above are not met, and a court assumes jurisdiction, any decision reached by the court becomes a nullity, no matter how well and accurate it is and how beautifully presented⁴. Where a court lacks jurisdiction to entertain a claim, the proper order such a court should make is one striking out the matter.⁵ Thus, where the jurisdiction of a court over a suit is challenged, the court is entitled under section 6 of the Constitution of the Federal Republic of Nigeria to consider the claim before it in order to decide whether or not it has the jurisdiction to entertain the matter.⁶

In litigation, The issue of jurisdictional competence of a court can be raised at any stage of proceedings, even on the day of adoption of final written address, and in any court even in the Supreme Court for the first time.⁷

As we have seen above, before heading to court to institute any action especially for damages for wrongful dismissal, the lawyer must ensure that all the necessary conditions on the part of the plaintiff have been fulfilled. One of such conditions is ensuring that the action is brought within the period stipulated by law. Thus the law provides for time limit within which most categories of actions may be brought

² (1962) 2 N.S.C.C. 374 at page 375

³ See also *Egwumi v. State* [2013]13 NWLR (Pt. 1372) 525

⁴ *NNPC v. Tijani* (2006) LPELR-7698(CA)

⁵ See *Chief (Mrs) Olufunke Victoria Ehuwa V. Ondo State Independent Electoral Commission & Ors* (2006) LPELR-1056(SC)

⁶ See *Fregene v. Chevron (Nig.) Ltd.* [2013] 5 NWLR (Pt.1347) 237, 248

⁷ See *Usman Dan Fodio University v. Karius Thompson Organisations Ltd* [2001] 15 NWLR (Pt. 736) 305

before a court. The court will not exercise jurisdiction if an action for wrongful dismissal is filed outside the limitation period.

An action for wrongful dismissal from employment is an action for breach of contract of employment. Hence, any such action has to be filed within six years from the day the cause of action arose.⁸ A lawyer does not lose anything to advise the client that the matter cannot succeed in court as its commencement could be outside the limitation period. It is a lawyer's duty to the client.

3. WRONGFUL DISMISSAL AND FAIR HEARING

Wrongful dismissal from employment arises where an employer does not follow the right procedure to dismiss his employee or where such dismissal is adjudged to be illegal⁹. In any case, the onus is on the claimant employee to show by credible evidence how the alleged dismissal was wrongful. In the case of *Dim v. Enemu*¹⁰, the Supreme Court stated that even admission of the Claimant's pleadings by the Defendant is not enough to sustain the relief bordering on declaration of right.

Over the years, the courts have set out the test to adopt in determining whether an employee was wrongfully/unlawfully dismissed. In *Ndili v. Akinsumade*¹¹, the Court of Appeal stated as follows:

“The test of whether the dismissal of an employee is proper or unlawful is whether the procedure adopted in effecting the dismissal conforms to the conditions laid down in the terms of the employment of the aggrieved employee. To be unlawful, there must be proved that there is a departure from the prescribed procedure or that in applying the rule there is a violation of the rules of natural justice so as to render the formal compliance a travesty”

Thus, a claimant may challenge his dismissal as wrongful on the ground of failure by the defendant employer to observe due process and lack of fair hearing (which is one of the pillars the rules of natural justice).

The principles of fair hearing demands that the parties to a dispute be heard on the relevant issues by the court¹² or any other person making decisions that may affect them, a breach of fair hearing once sustained in a decision affects and clearly vitiates the whole decision and not just a part of it¹³. It is for this fundamental principle that

⁸ See S.8(1) (a) of the Limitation Law of Lagos State.

⁹ *UBA Plc v. Mrs. Doreen Nkolika Oranuba* (2013) LPELP-20692(CA)

¹⁰ [2009] 10 NWLR (Pt. 1149) SC 353

¹¹ [2000] 8 NWLR (Pt.668) 293

¹² See *Unical v. Akintunde* [2013] 3 NWLR (Pt. 1340) 1

¹³ See *Ovunwo v. Woko* [2011] 17 NWLR (Pt. 1277) 522

employers do set up disciplinary committees to investigate any allegation of misconduct and call the employee affected to clear himself¹⁴. In some corporate bodies, the disciplinary procedures are set out either in the Employee Handbook or in the contract of employment. It is advised that the procedure be strictly followed.

4. WHEN CAN AN ACTION FOR WRONGFUL DISMISSAL BECOME STATUTE BARRED?

A pertinent issue of law is determining when time starts counting in an action for wrongful dismissal, for the purpose of application of limitation law. The general assumption among litigants and some lawyers is that time starts counting from the day a letter of dismissal was issued to the dismissed employee. The position of the law on the other hand, is to the effect that the relevant date is the day the employee becomes aware of his dismissal. The action is based on a wrongful dismissal, and there cannot be any more relevant date to reckon with in the circumstance, except the day the claimant becomes aware of the alleged wrongful dismissal, which is the cause of action.

In the Canadian case of **Webster v. Alimore Trading & Manufacturing Co**¹⁵, the Ontario court held that the limitation period for an action for wrongful dismissal does not run from the date of actual dismissal but it is activated when the cause of action is discovered, that is the date the terminated employee knew or ought to have known that he was discharged without cause. The National Industrial Court of Nigeria also came to the same conclusion in **Leonard Oyinbo v. Guinness Nigeria Plc.**¹⁶

In some cases, a letter of dismissal may be made to take effect on a different date. In the circumstance, the relevant date is still the date the employee becomes aware of his dismissal, and this could be the day the employee received the letter of dismissal. Suffice it to say that an action for a wrongful dismissal is statute barred, if it is commenced after six years since the dismissed employee becomes aware of the alleged dismissal.

5. CONCLUSION:

The job in most cases of wrongful dismissal from employment is largely that of a lawyer. It is the lawyer's job first to determine whether a particular case should go to court or not while considering all other alternative dispute resolution methods and to advise his client appropriately. Where litigation is considered most appropriate, the lawyer still has the duty to determine which court has the jurisdiction to adjudicate over the subject matter and to ensure that the action is not commenced outside the limitation period prescribed by the law. The

¹⁴ UBA Plc v. Mrs. Doreen Nkolika Oranuba (2013) LPELP-20692(CA)

¹⁵ (2010) ONSC

¹⁶ Suit No. NICN/LA/639/2012 (unreported) The writer is in a team of lawyers in G.O. Sodipo & Co. that handle this case at the National Industrial

claimant's duty ranges from consulting a lawyer as soon as he becomes aware of an alleged wrongful dismissal to providing every necessary evidence to prove his case and making a competent witness available. It is advised that a wrongfully dismissed employee should also consult a lawyer at the earliest possible time even where attempts are being made by the parties to settle the matter through any other dispute resolution method before litigation. This is because limitation period does not stop running while parties engage in negotiation, and where negotiation does not result in a settlement or in an admission of liability, the time devoted to negotiation will not be excluded from the period which should be taken into consideration in determining whether an action is statute barred.¹⁷

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¹⁷ Frontera Petroleum Resources Inc. v. NDIC (2019) LPELR-4752 (CA); Eboigbe v. NNPC (1994) 5 NWLR (Pt. 347) 649