



**THE COVID-19 PANDEMIC  
AND LEGAL UNDERPINNINGS OF  
THE APPLICABILITY OF  
STATUTES OF LIMITATION**

## Introduction

It is a universal truism that no matter how beautifully-drafted a piece of legislation is, or the wide considerations and consultations which occasioned such legislative exercise, it is humanly impossible for such piece of legislation to fully and deeply cover all foreseen and unforeseen circumstances, hence the need for a continuous review to meet with current trends. This also recognizes the limitations of the human mind.

The COVID-19 pandemic is one of such unforeseeable circumstances, as it continues to disrupt everyday life in Nigeria and around the world. The decimating curve effect of the pandemic continues to spike throughout the world and has effectively brought the entire nation and the world to a halt. It has disrupted all aspects of human activity across the world and no less so, in Nigeria. Businesses have been halted, national and global economies undermined, and day-to-day human activity completely disintegrated. Consequently, governments and business leaders have taken extraordinary responsive steps towards the curtailment of the ravaging scourge.

The President of the Federal Government of Nigeria on March 29, 2020, exercised applicable powers (under the Quarantine Act)<sup>1</sup>, to order the restriction of movement in Lagos and Ogun States, as well as in the Federal Capital Territory, and in this regard, consequently, issued the COVID-19 Regulations, 2020 (“Regulations”). Thus, the movement of persons has been totally restricted, except for the certain exemptions listed, for fourteen (14) days. Various State Governments have equally closed their borders and placed their States on lockdown. The State and Federal Court systems in Nigeria are not immune to this upheaval, as Courts have issued orders attempting to respond to the emergency. On March 23, 2020 by Circular No. NJC/CIR/HOC/11631, the Chief Justice of Nigeria (CJN), ordered that as a preventive step, all Heads of Courts, should suspend Court sittings for a period of two weeks at the first instance, except in matters that are urgent, essential or time-bound according to the extant laws. This directive was swiftly complied with by the Courts, nationwide; the circular along with its exceptions, were referred to in, and forms part of the exemptions of, the Regulations<sup>2</sup>. However, there are causes of action

<sup>1</sup>Sections 2, 3 and 4 of the Quarantine Act, Cap Q2 LFN, 2004

<sup>2</sup>Section 1 (7) Covid-19 Regulations, 2020 (made pursuant to The Quarantine Act, Cap Q2 LFN, 2004)

that may not fall strictly under the provided exceptions, and which, in the likely event that the lockdown and restrictions continue, would be adversely affected by the provisions of the various Statutes of Limitation, by the denial of right of access to justice. In this peculiar circumstance, the inability of a litigant to access the Court to ventilate its claims, would be due to the present supervening incapacity occasioned by the closure of the Courts, following the various Executive Orders of the Government.

This extraordinary occurrence however, is neither envisaged nor covered by the various Statutes of Limitation which are applicable in the various States across the country.

The Limitation Law of Lagos State<sup>3</sup>, as a case study, places a lid on the ability of a party to seek a remedy through a Court action, where such action is instituted after the expiration of the period prescribed by an enabling law for the institution of such action<sup>4</sup>, in respect of a subject-matter or cause of action.

A few examples of such existing limitations include:

- Actions founded on simple contract - 6 years from the date on which the cause of action accrued<sup>5</sup>.
- Actions founded on instruments under seal – 12 years from the date the cause of action accrued<sup>6</sup>.
- Actions against public officers –3 months after the act or default complained of<sup>7</sup>.

The rationale for the existence of a statute of limitation is that equity aids the vigilant, and not the indolent. Thus, a person who claims he has suffered a wrong, or who claims a right or remedy, is required by a limitation statute to file an action in Court within the time prescribed, and a failure to do so is fatal to such claim, as such action becomes statute-barred, and such person loses his right to institute an action in respect of such wrong or cause of action forever. To this end, the law provides that there shall be an end to stale demands<sup>8</sup>.

**A pertinent question for consideration in the present circumstance is, “should pandemics or any similar extraordinary phenomenon which significantly halts the basic functioning and daily activities of a society, particularly the Courts, be**



<sup>3</sup> Cap L84, Laws of Lagos State of Nigeria, 2015  
<sup>4</sup> Osun State Government v Dalami Nig. Ltd (2007) 9NWLR (Pt 1038)  
<sup>5</sup> Section 8 of the Limitation Law of Lagos State 2003 (supra)  
<sup>6</sup> Section 12 (1) Limitation Law of Lagos State (supra)  
<sup>7</sup> Section 2 (a) Public Officers Protection Act, Cap P41, Laws of the Federation of Nigeria, 2004.  
<sup>8</sup> Goodwill Company Ltd v. Calabar Cement Company Ltd [2009] LPELP - 8351; Oke v. Oke [2006], 17 NWLR (pt 1008) 224

exempted from the computation of time prescribed by a Statute, particularly where such event remains unabated for a significant length of time and inhibits public access to the Court system as well as the ability of the Court to perform its constitutional roles?

While exceptions to the application of limitation statutes exist, such as, where applicable, in instances of fraud, part payment or acknowledgment of debt, act of a public officer which is outside the scope of authority, legal incapacity, enforcement of fundamental human rights, ultra vires acts, abuse of office, or where a relevant law also prescribes an exception<sup>9</sup> under our extant laws, a pandemic, however, is not included in the exceptions.

In the light of the ongoing pandemic, which is on a scale that is quite unprecedented in the lifetime of any living human, it is suggested that the time for the computation of statutorily-prescribed periods in affected States, should be suspended or discountenanced for such periods during which access to the Court is severely obstructed by both the extraordinary circumstances and any consequential action of Government, such as a lockdown of the affected States.

In the case of *Sifax Nigeria Ltd & 4 Ors v. Migfo Nigeria Ltd*,<sup>10</sup> the Supreme Court applaudably held that where a Statute of Limitation prescribes a time frame within which a claimant must file an action in respect of his grievances, the relevant computation of time for the filing of such action by a Claimant will stop running from the moment an action is instituted in Court, even if same is commenced in a Court lacking the competent jurisdiction and subsequently struck out, as such Claimant could not be said to have slept on his rights.

Premised on the above judicial authority, it is our considered opinion that similarly, in the interest of justice, where due to an extraordinary, protracted event, such as the current pandemic, the right of access or the ability of the general public to approach the Courts for a ventilation and adjudication of claims is obstructed, the period of time for which such access is obstructed should be discountenanced in the computation of any statutorily-prescribed time.

To this end, recourse may also be made to the Mischief Rule, putting into consideration that limitation laws are promulgated to discourage indolence

and stale demands. However, in the extraordinary circumstances cited above, one could not be said to sleep on ones rights, when there is no conceivable, reasonable or available way of approaching the Courts while the extraordinary obstruction lasts. This recommendation is being made in the interest of justice, being the guiding light of the judicial system, as a strict adherence to existing statutes of limitations which are not of substantive rights, but are indisputable procedural requirements setting timelines of access to Courts,<sup>11</sup> will achieve the very opposite of the essence of justice and unfettered access to justice which is the ultimate goal of a judicial system.

Drawing the curtain, it has therefore become timely that post Covid-19, the various Houses of Assembly of the States should immediately initiate legislative processes towards the amendment of the applicable limitation laws to accommodate this quite bizarre situation occasioned by the instant pandemic or its likes of emergency, requiring a lockdown of human activities. Unlike the Rules of Courts which guide the management and conduct of cases in Court and which can be extended or waived by the Court in applicable situations, Statutes of Limitations have the rigid force of a 'condition precedent', which must first be complied with, to gain the subsequent benefits. This is particularly as it is quite settled that such statutorily-prescribed time cannot be extended by the Court, unless the relevant statute itself has made provision for an extension of time.<sup>12</sup>

It is further suggested that the limitation laws of the States should have a provision which expressly grants the authority to issue tolling orders to the executive governor, strictly for the purpose of suspending the application of the Limitation Law, particularly with respect to relevant provisions on the 'running of time', during such extraordinary times, as discussed above. A statutory tolling power allows the governor to temporarily suspend or modify any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state disaster emergency.

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<sup>11</sup> Akwa Ibom State House of Assembly & ors v. Ime Mbom (2018) LPELR-44788 (CA); (2018) JELR 38886 CA  
<sup>12</sup> Araka v. Ejeagwu (2000) 12 S.C. (Part I) 99; El Rufai v. Senate of the National Assembly & Ors (2014) LPELR-23115 (CA)