COMPUTATION OF LIMITATION PERIOD FOR COMMENCEMENT OF CHIEFTAINCY CASES IN NIGERIA: A REVIEW OF *ESUWOYE V BOSERE****

Abstract

Chieftaincy matters attract the attention of the Government and the governed with eager participation thereby resulting to protracted squabbles and litigation in most Nigerian communities. As a general rule, time starts to run for the computation of limitation period for commencing certain chieftaincy cases in Nigeria when the cause of action arises. The essence is to prevent revival of stale claims, which may lead to loss of evidence, erosion of memories, disappearance of witnesses, change in laws and social structure. This paper argues that the Supreme Court decision in *Esuwoye v Bosere* that the cause of action will not accrue merely upon a wrongful act or cause for complaints until there is a consequential damage, negates the rule that the law in force during the occurrence of vacancy regulates new appointment of a chief. This approach will defeat the purpose of regulating a chieftaincy by legislation which is to avert uncertainty, unnecessary communal unrest, and stability in the community. The paper concludes that the puzzling miscalculation of the three months limitation period adopted in *Esuwoye v Bosere* is a sad commentary on the legal jurisprudence of the apex court in Nigeria which should be avoided in future cases.

Keywords: Cause of Action; Chieftaincy Cases; Consequential Damage; Computation of Limitation Period.

1. Introduction

Chieftaincy institutions are relevant and enjoy tremendous influence within most communities and various governments in Nigeria.[1] The procedures for appointment of traditional rulers are usually governed by native law and customs or regulated by statutes commonly referred to as chieftaincy declarations or laws. Just like other human endeavours involving divergent interests, chieftaincy disputes may arise in form of the applicable law, its validity and interpretation;[2] recognition of ruling houses[3] and order of rotation;[4] identity of kingmakers or selectors; qualification of candidates; and any breach of the selection process or lack of due process among others.[5]

Any aggrieved person in respect of the above mentioned disputes can institute a suit in court within a prescribed period in accordance with the relevant limitation of action laws depending on the

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[1] Similar views have also been expressed in Ebere Nwaubani, "Chieftaincy among the Igbo: A guest on the centre stage",*The International Journal of African Historical Studies*, (1994), 27, No 2 available at <https://www.jstor.org/stable/221029?seq=1> 20 April 2023. But see Rotimi Ajayi, "Politics and Traditional Institutions in Nigeria: A historical Overview", *Trans African Journal of History*, (1992): 124-138 available at <https://www.jstor.org/stable/24520424> accessed 20 April 2023; Steven Afranie and Kwabena Boateng "An Anachronistic Institution within a Democratic Dispensation, the Case of a Traditional Political System in Ghana" *Ghana Journal of Development Studies* (2020)Vol. 17 (1): 25-47 available at <*https://www.ajol.info/index.php/gjds/article/view/195588/184717*>20 April 2023.

[2] (1995) 1 NWLR (Pt 374) 668; (1995) 1 SCNJ 184; *Mosojo v Oyetayo* [2003] FWLR (Pt 165) 545.

[3] [1994] 8 NWLR (Pt 364) 504.

[4] *Afolabi v Governor of Oyo State*, (1985) 2 NWLR (Pt. 9) 734 at 738.

[5] *The military Governor Ondo v Adewumi* (1988) All NLR 274; *Adigun v A-G of Oyo State* (1987) 1 NWLR (Pt. 53). 678; See also *Olagunyi v Oyeniran* [1996] 6 NWLR (Pt. 453) 127.

nature of the claim.[6] There is unanimity in the decisions of the courts to the effect that time will begin to run for the purpose of computing limitation period for commencing chieftaincy cases when the cause of action accrues, but there seems to be difficulty in ascertaining when exactly a cause of action accrued[7] as witnessed in *Esuwoye and others v Bosere and others*[8] under review.

This article critically reviews the Supreme Court decision in *Esuwoye* to ascertainwhen the cause of action actually accrued in that case in order to determine whether the court had jurisdiction to determine the counter claim on its merit and confirm the correctness or otherwise of the arithmetical calculation of three months limitation period adopted by the court.

To discharge this task, this article examines the nature and purpose of limitation period; discusses when a cause of action arises in chieftaincy cases; explains the nexus between the nature of disputes and when a cause of action accrues; ascertains what constitutes consequential damage; points out the glaring error in the calculation of the limitation period adopted in *Esuwoye* and recommends what should be the proper approach of the Court.

2. Esuwoye v Bosere[9]

Upon the demise of the last Olofa of Offa, the kingmakers called for nominations from the two ruling houses: Olugbense, the male ruling house, and Anilelerin the female ruling house to fill the vacancy in accordance with the existing chieftaincy declaration applicable to the stool. The deceased Olofa of Offa was from the female line of Anilelerin. The appellant in the appeal emerged as the candidate of Anilelerin Ruling House while the 2nd respondent was the candidate of Olugbense Ruling House. The appellant emerged as the winner of the contest and was presented to the 9th respondent, the Governor of Kwara State, for appointment as the new Olofa of Offa. He was so appointed and given a staff of office and crowned the Olofa of Offa. Following the coronation of the appellant, the 1st - 3rd respondents, as plaintiffs, instituted an action in the High Court of Kwara State, Offa, for themselves and on behalf of Olugbense Ruling House of Offa against the appellant and the 4th - 7th respondents who were the kingmakers of the stool of Olofa of Offa and the 8th and 9th respondents being the Attorney General and Governor of Kwara State, respectively. They sought a declaration that ascension to the stool of Olofa of Offa was rotational between Olugbense (Male) ruling house and Anilelerin (Female) ruling house of Offa and that Anilelerin ruling house having produced the late Olofa, it was then the turn of Olugbense ruling house in law and/or equity to produce the Olofa of Offa on the basis of rotation. They sought a further declaration that the consideration of candidates (2nd claimant and 5th defendant) from the two ruling houses of Olugbense and Anilelerin respectively at the same time by the kingmakers of Offa (1st – 4th defendants) and the acceptance/recommendation of the 5th defendant by the 1st - 4th defendants as Olofa of Offa to the 7th defendant was illogical, wrongful, unlawful, inequitable, unjust, invalid, null and void and of no effect whatsoever.

The plaintiffs predicated their claims on the chieftaincy declarations contained in the Kwara State of Nigeria Gazette, No. II Vol. 4 of 12th March 1970 and Legal Notices 3 and 4 of 1969, exhibit J, and that the process of selection of a candidate for the stool of Olofa of Offa by Anilelerin ruling house and Olugbense ruling house respectively was by rotation and not by competition between the two ruling houses. The 1st - 5th defendants in the suit, including the present appellant, counter-claimed

[6]*Sifax (Nig.) Ltd v Migfo (Nig.) Ltd.* (2018) 9 NWLR (Pt.1623) 138;Gabriel Nwodo, Time Freezes For Purposes of the Statute of Limitation When An Action Is Instituted: The Supreme Court's Decision In *Sifax V Migfo*, (2018) available at: <https://www.mondaq.com/nigeria/trials-appeals-compensation/686076/time-freezes-for-purposes-of-the-statute-of-limitation-when-an-action-is-instituted-the-supreme-court39s-decision-in-sifax-v-migfo>**20 April 2023**

[7]*City Engineering Nig Ltd v Federal Housing Authority* (1997) 9 NWLR (Part 520), 224; *FCMB v Nagogo*\(2016) LPELR-40211(CA).

[8]*Esuwoye v Bosere* (2017) 1 NWLR (Pt 1546) 256.

[9]*Ibid.*

against the 1st to 3rd respondents contending that the Olugbense ruling house had been disinherited and had gone into extinction going by the curse placed on them by their progenitor, Oba Olugbense.

One of the issues that arose for determination in the case was whether the counter-claim, which was essentially to invalidate Exhibit J, the chieftaincy declarations in operation at the time of the death of the last Olofa was statute barred. While the High Court was of the opinion that the counter-claim was statute barred, the Supreme Court was however of the view that the cause of action arose upon the death of the last Olofa, in 2010 and not in 1970, when the declaration was made. Onnoghen, J.S.C.[10] stated thus:

> I agree with the lower court that the cause of action of the cross respondents did not accrue in 1969/1970 when exhibit 'J' (Chieftaincy Declaration) was promulgated but in 2010 when both the cause of complaint and consequent/resultant damage became crystallized. I agree with the submission of learned senior counsel for the 5th cross respondent that though exhibit 'J' gave the cross respondents a cause for complaint when it was made in 1969/1970, that complaint remained in abeyance until the "consequent damage" which occurred in 2010 when the provisions of exhibit 'J' were invoked to fill the vacancy in issue. It has to be noted that there was no need for an action to challenge exhibit 'J' as it relates to the native law and custom of Offa people in relation to the stool of Olofa of Offa as at the time the said exhibit 'J' was made and up till 2010 when the Olofa of Offa died. I am of the strong view that it was only after the demise of the late Olofa of Offa in 2010 and the need to fill the vacancy thereby created that the procedure to be adopted in the filling of that vacancy became relevant and thereby the issue as to whether or not exhibit 'J', which is said to be the chieftaincy declaration in relation to the Olofa of Offa, is a true statement of the native law and custom of Offa people in relation to the stool of Olofa of Offa.

Thus, the Supreme Court held that a cause of action in a chieftaincy dispute will only accrue upon the death of a chief, when a stool becomes vacant and a need to fill up the vacant seat ensues and not when the chieftaincy declaration is made.

In an illogical calculation, the court also went on to hold that the counter claim was not statute barred, despite admitting that the cause of action arose in March 2010 and that the counter-claim was filed in July 2010. The Supreme Court came to a unanimous decision that the counter claim was not in breach of the three months period necessary for the statute of limitation to take effect. In the very words of the court but with emphasis, Onnoghen JSC posited:

> However, having agreed with the lower court that the cause of action accrued in 2010, it is easy to determine whether the counter claim is statute barred since what one needs to do is to look at when the cause of action accrued and the date of filing the action vis-a-vis the relevant statute of limitation, which in this case is said, by cross appellants, to be section 2 of the Public Officers Protection Law. I agree with the lower court that judging from the date exhibit "K" was made to the date the counter claim was instituted, the counter claim was not instituted outside the 3 months required/provided for in section 2 of the Public Officers Protection Law and consequently the action is not statute

[10]As he then was at 298-299 paras. F-B

barred - exhibit "K" was made on 22nd March, 2010 while the counter claim was filed on 12th July, 2010**.**

The court then concluded thatthe cause of action did not accrue in 1970 when there was a wrongful act or cause for complaints; but in 2010 when there was consequential damage. The court was of the opinion that consequential damage is constituted by the aggregate or bundle of facts which the law will recognize as giving the plaintiff a substantive right to make a claim for remedy or relief against the defendant. In which case, once a party can rightly bring an action, then a consequential damage has occurred.

For a proper appreciation of the issues arising from the decision in *Esuwoye*, it is necessary to ascertain when a cause of action arises and when it arose in *Esuwoye* under review. In other words, how does the distinction, which in this case is without a difference, drawn between wrongful act or cause for complaints and the consequential damage postponed when the cause of action accrued? To what extent can such delay in the accrual of cause of action fit the rationale for imposing the limitation period for the commencement of chieftaincy cases? What is the effect of the miscalculation on the three months limitation period on the fair and dispassionate resolution of the issues between the parties? What should be the proper approach of the court to serve as a guide for future cases?

3. Accrual of Cause of Action in Chieftaincy Cases

A plea that a claim is statute barred raises issue of jurisdiction. In *Ita v Archibong*,[11]thecourt held that "the question whether an action is instituted within the time laid down by the limitation law is an important pre-condition which must be met before a court can assume jurisdiction. It is thus an issue that goes to jurisdiction and it can be raised at any stage of the proceedings." Accordingly, a plea of statute bar calls for determination by reference to the originating processes and the pleadings and documents accompanying the originating processes for the clarification of issues as to whether the statute of limitation referred to is applicable to the claim, and to ascertain when the cause of action arose[12] for the purpose of calculating the limitation period.[13] Accordingly, the plea that a matter is statute barred must be raised in the defence of the defendant.[14]

It is the cause of action that determines the operation of statute of limitation. A cause of action is constituted by facts giving rise to a right of action, and the elements are constituted in the wrongful act and the consequential damage. It therefore follows that for period of limitation to be determined, it is crucial to know what the cause of action is, when it arose and when the action became statute barred. In *JFS Ind. Ltd v Brawal Line Ltd & Ors*,[15] the court laid down the process and principles regulating and guiding the determination of limitation period. The court posits that there are three stages to this, which are: (a) an examination of the relevant and applicable statute of limitation to discover the period stipulated therein; (b) the determination of the exact date the cause of action arose; which is deduced from the averments as contained in the statement of claim and the endorsements stipulated in the writ of summons or the originating summons or petition and the affidavit in support thereto and; (c) the court then makes a comparison of the date when the cause of action arose, the date the originating process was filed and the period of limitation imposed by law. If the suit was filed outside the time allowed by the statute, then the action is statute barred and must be dismissed accordingly.

[11][1990] 5 NWLR (Pt. 150) 332, per Akinta JCA (as he then was)

[12]*Egbe v Adefarasin & Anor* [1985] 1 NWLR (Pt. 3) 549.

[13]See *Adekoya v FHC* [2008] 11 NWLR (Pt. 1099) 539 at 556-557, per Tobi JSC in the lead judgement.

[14]See, *Agbai v Ukpabi* [2014] 16 NWLR (Pt. 1434) 524 at 539-540, paragraphs C-H, per Owoade JCA.

[15][2010] 18 NWLR (Pt. 1225] 495 at 534 paragraphs E-G, *per* Adekeye JSC in the lead judgement and at p. 544, paragraphs B-C, *per* Rhodes Vivours.

Two issues have made the application of this principle technical and vague; first is the issue of determining when the cause of action arose, and second is determining the exceptions to the doctrine. While it must be conceded that determining when the cause of action arose is primarily determined with reference to when the right to which a party proclaimed he is entitled to was breached and when the consequential damage occurred; this in itself is complicated, as the courts have not been certain on the principles adopted in approaching this issue in chieftaincy matters. On the other hand, exceptions to the doctrine are easily determined when they are contained in the law providing for the limitation; and become more subtle when they are determined by the presumptuous belief that the claimant was ignorant of the cause of action.

For example, in cases involving the Public Officers (Protection) Law, it has been recognised that the following exemptions are cognisable: cases of continuance of damage or injury;[16] where the officer acted outside the colour of his office, or outside his statutory or constitutional duty;[17] cases affecting recovery of land;[18] claims of works and labour done;[19] breach of contract.[20] For it to also apply, the officer must have acted in good faith.[21]It should be emphasised that where the injury or damage is continuous, the cause of action will not abate.[22]

Howbeit, time begins to run when there is in existence a person who can sue and another who can be sued and when all the facts have happened, which are material to be proved to enable the plaintiff to succeed.[23] Suffice to also state that in computing the time when statute of limitation begins to run, the day the cause of action arose as a rule is excluded and the day of filing the action is included.[24] The period of limitation begins to run from the date on which the cause of action accrued. It is immaterial that a party was absent from jurisdiction to entertain the claim or is illiterate, or ignorant of the law.[25]

The relevance of limitation periods to different matters requires different approach. To understand the determination of when a cause of action arises in chieftaincy matters, one must first appreciate the nature of chieftaincy disputes. Understanding the nature of chieftaincy matter connotes understanding the form and nature of law regulating that chieftaincy. A chieftaincy may be regulated by a law made by the House of Assembly of a State, a subsidiary legislation made by the executive, or simply by custom and practice of a people.

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[16]See, *Attorney-General of Rivers State v Attorney-General of Bayelsa State & Anor.* (2013) 3 NWLR (Pt. 1340) 123 at 148-149, paragraphs H-A, wherein Galadima JSC stated thus: "In cases of continuance of damage or injury, the Act permits actions to be brought on the cessation thereof outside three months. From the Amended Statement of Claim and as equally deposed to in his Counter-affidavit, the Plaintiff averred that he continues to be deprived of the allocation he is entitled to every month and the same has not ceased. I am of the respected view that in such a situation of continuance of damage or injury which has not ceased, the defence is not available to the 1st Defendant…."

[17]Id, at 149, paragraphs F-G: "The second exception to the application of the Act as a defence is that it does not cover a situation where the person relying on it acted outside the colour of his office or outside his statutory or constitutional duty as claimed by the Plaintiff in this suit."

[18]Id, at 150.

[19]*Ibid*.

[20]*Salako v L.E.D.B*. (1953) 20 NLR 169; *Nigerian Ports Authority v Construzioni General Farsura Cogefar Spa & Another* (1974) 1 All NLR, 463.

[21]*Inspector General of Police v Olatunji* 21 NLR 52.

[22]See, *INEC v Onowakpoko* [2018] 2 NWLR (Pt. 1602) 134 at 166-167, *per* Kekere-Ekun JSC at paragraphs E-F; *Gwede v INEC* [2014] 18 NWLR (Pt. 1438) 56 at 116-117, paragraphs H-B, *per* Galadima JSC.

[23]*Asaboro & Anor v Pan Ocean Oil Corporation (Nig) Ltd & Anor* (2017) LPELR-41558 (SC); *Jallco Ltd v Owoniboys Technical Services Ltd* [1995] 4 NWLR (Pt 391) 534; *Npa v Ajobi* (2006) LPELR-2029 (SC); *Fadare & Ors v Attorney General of Oyo State* [1982] 4 SC 1 at 25; *Mobil Oil (Nig) Plc v Malumfashi* [1995] 7 NWLR(Pt. 406) 246; *Adekoya v Federal Housing Authority* [2008] 11 NWLR(Pt 1099) 539.

[24]*Mkpedem v Udo* (2000) 9 NWLR (Pt 673) 631 at 644*; Aremo II v Adekanye* [2000] 2 NWLR (Pt 644) 257, [2000] 9 WLR (Pt 673) 631; *Adesule v Mayowa* [2011] 13 NWLR (Pt. 1263) 135.

[25]*Aremo II v Adekanye* ibid; *Akibu v Azeez* [2003] 5 NWLR (Pt 814) 643.

One must concede that the determination as to when a cause of action will arise when the chieftaincy is regulated by legislation will not be the same as when the cause of action will arise when there is no legislation regulating the chieftaincy. Essentially, where legislation or a subsidiary legislation exists, it provides for the rights to the chieftaincy, succession to the chieftaincy and applicable procedures. Accordingly, by operation of such laws, all rights cognisable and exercisable in respect of such chieftaincy are reduced to law and determines the ascension or appointment to that chieftaincy.[26]

Relying on *Ikine v Edjerode*,[27] Onnoghen JSC, defined cause of action to mean "all those things necessary to give a right of action whether they are to be done by the plaintiff or a third person: it means every fact which is material to be proved to entitle the plaintiff to succeed - every fact which the defendant would have a right to traverse." His Lordship went on to rely on *Onuekwusi v R.T.C.M.C*,[28] to assert that a cause of action consists of two elements viz (a) the wrongful act of the defendant and (b) the resultant/consequent damage. Despite this identification, the court failed to realize that the real basis upon which a cause of action would be said to crystallise is a proper understanding of the nature of dispute, or the real issue for resolution. In chieftaincy matters, the nature of dispute determines when the cause of action would arise and the reliefs available to the claimant.

The nature of dispute in chieftaincy matters would be determined by what regulates the chieftaincy, and the nature of complaint before the court. A claimant may bring an action to contest the legislation regulating a chieftaincy or to contest the appointment made under the legislation. Again, where no law regulates the chieftaincy; an appointment, election or installation into a chieftaincy can be contested.

In *Esuwoye*, the court rightly identified that the claim of the cross respondents in the counter claim has nothing to do with the authority or power of the then Military Government of Kwara State to make exhibit 'J'. According to the court, "The claim is simply saying that exhibit 'J' should be set aside as same does not represent the correct and true native law and custom of Offa people in relation to the stool of Olofa of Offa." This identification makes it plain that the quest to set aside the chieftaincy declaration, exhibit 'J' is what triggered the counter claim.

In *Military Administrator (Ekiti State) & Ors v Prince Benjamin Adeniyi Aladeyelu & Ors*, the Supreme Court was called upon to determine whether the cause of action arose upon the registration of the declaration or when the stool became vacant; the court came to the conclusion that cause of action will arise upon the registration of a chieftaincy declaration. Indeed, Onnoghen JSC who was part of the panel and incidentally the one who delivered the lead judgment in *Esuwoye* determined that cause of action arose in that case upon the registration of the chieftaincy declaration. One must appreciate that the relevance of this matter is that it entrenched the principle that where there is a registered chieftaincy law, the cause of action as to a complaint on the content arises immediately it is registered. This is more reasonable and logical because, in chieftaincy matters, the prevailing law applicable when the vacancy occurs is what is utilized in choosing the next occupant of the stool, and if a person who is aggrieved by the content of the declaration refused to contest it till the appointment is made, how can it be said that his right is still extant?

In *Esuwoye's case*, in determining that the cause of action arose upon the vacancy and not when the law was made, the court relied on the case of *Ikine v Edjerode*[29]in reaching a verdict that the action was not statute barred. Ironically, the foreign case relied upon in *Ikene's case* to reach this erroneous decision is quite distinguishable to what was applicable under both *Esuwoye* and *Ikine*. In

[26]*Ayoade v The Executive Governor of Osun State & Ors* CA/AK/41/2012 [2015] NGCA 16.
[27](2001) 12 SCNJ 1X4 at 198; (2001) 18 NWLR (Pt. 745) 446 at 471, paras. B-C.
[28](2011) 6 NWLR (Pt. 1243) 341 at 359 – 360.
[29]*Ikine v Edjerode* (2001) 12 SCNJ 1X4 at 198; (2001) 18 NWLR (Pt. 745) 446 at 471, paras. B-C.

Ikine, the Supreme Court erroneously followed the judgment of the Court of Appeal in that same case in relying on the case of *Turburville & Anor v West Ham Corporation.*[30]*In that case,* some assistant school teachers had their salaries adjusted during the 2nd World War. The teachers' salary claims were rejected by their employers; the court held that, time does not run until the rejection was communicated to them. Except for the penchant to rely unnecessarily on irrelevant foreign cases in determining glaringly crystal issues, there appears to be no justification for relying on this case in a case of limitation applicable to chieftaincy matters. Nevertheless, it was that decision that was relied on in *Ikine* to reach a verdict, albeit, erroneously, that despite that the Traditional Rulers and Chiefs Edict of 1979, of the Bendel State (Now Edo and Delta States) was promulgated in 1979, the plaintiffs could not have commenced any action until the appointment of the 1st appellant in April 1985. This reasoning would only be right if what was in context was the validity of an appointment under the Edict, or of the Edict itself, and not in respect of the content of the Edict.

Indeed, depending on the nature of dispute in a chieftaincy matter, there can be several causes of action and the means of crystallising differs. Where the chieftaincy is regulated by legislation or a registered declaration, at least three forms of causes of action are cognisable. First, the validity of the process of making the legislation or declaration can generate a cause of action. In such instances, limitation periods will hardly be applicable as there is in existence a universal right to question the validity of a statute or a subsidiary legislation.[31] In the second instance, a cause of action may arise as to the content of the chieftaincy declaration or legislation. In this second instance, the cause of action crystallises upon the registration of the declaration or the enactment of the law. This is because; it is the enactment or registration that creates the consequential damage complained about. Thirdly, cause of action may ensue where the complaint is that the appointment is not in accordance with the legislation regulating the chieftaincy. It is in this third scenario that the cause of action will crystallise upon the appointment of a new person to the chieftaincy.

Where a complaint as to the content of a chieftaincy declaration is not made within three months of its registration, the party cannot complain of the validity of the content any longer. It would appear that the confusion of the court was triggered by a misunderstanding as to the distinguishing factors as to the powers of the court to determine the validity of a statute, the court's duty to interpret the provisions of a law and the jurisdiction of the court to examine the propriety of the content of a statute.

4. Essence of Limitation Period

Limitation of Actions laws constitute a set of rules - including the classification of claims, the duration of limitation periods and the applicable principles of accrual among others that determine whether a claim is time-barred.[32] The essence is to eradicate the litigation of stale matters in which memories are lost and avoid the consequential mischief and injustice that may ensue.

The major thrust of limitation laws is to establish a period within which a party can bring an action in court in respect of a cause of action; and after which the claim will be statute barred.[33] Also referred to as period of proscription in civil law jurisdictions, it could be substantive or procedural.

[30] [1950] 2 KBD 208.

[31] *Eghe v Belgore* (2004) 33 WRN 146 at 162; *Ayoade v The Executive Governor of Osun State & Ors* CA/AK/41/2012) [2015] NGCA 16.

[32] See, e.g., *Bernson v Browning-Ferris Indus*., 7 Cal. 4th 926, 935, 873 P.2d 613,618, 30 Cal. Rplr. 2d 440,445 (1994); *Jolly v Eli Lilly & Co.,* 44 Cal. 3d 1103, 1111,751 P.2d 923, 928. 245 Cal. Rptr. 658, 662-63 (1988); Wyatt, 24 Cal. 3d at 787,598 P.2d at 53, 157 Cal. Rptr. at 400

[33] See Tyler T Ocho and Andrew Wistrich, "The Puzzling Purposes of Statutes of Limitation" (1997) available at <https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1107&context=facpubs> accessed 25 April 2023.

Like the equitable doctrine of *laches*, statute of limitation[34] is designed to prevent revival of claims that have been allowed to drowse until the loss of evidence, erosion of memories, disappearance of witnesses and change in laws and social structure.[35]

The rationale for statutes of limitation can be found in the following principles. First, a claimant who believes he has a good cause of action ought to pursue it within a reasonable time and with rational sense of diligence. Again, if cases are not instituted within a reasonable time, the defendant might have lost valuable evidence and witnesses who might have been necessary and instrumental in disproving the claimant's stale claim. Finally, the whole essence of litigation is to achieve justice, if long fusty claims are allowed to be revived, they might cause more injustice than justice, hence, it is in line with public policy to let such claims die.[36]

Articulating the basis for limitation periods, the court in the case of *Nwadiaro v Shell Petroleum*[37] cited with approval the *R.B. Policies atLlyod's v Butler*[38] to the effect that "long dormant claims have more cruelty than justice in them." In *Amede v Uba*,[39] the court stated that "the main purpose of the limitation period is to protect a defendant from injustice of having to face a stale claim." Also, in *Araka v Ejeagwu*,[40]the Supreme Court concludes that an action that is statute barred leaves the litigant with no judicial remedy, and acts as a consequential bar which removes the right of enforcement and the right to judicial relief.

What therefore a statute of limitation achieves is to make stale the claim and evidence of a claimant caught up by it; and whereas the claimant may have a cause of action, he lacks the right of action.[41] Once it is established that a matter is caught up by a statute of limitation, that party's right to litigation is summarily extinguished and all judicial or legal reliefs he might have been entitled to is interdicted; and since the court does not act in futility, such claims will be accordingly dismissed without considering the merit.[42]

The real purpose for imposing limitation periods in chieftaincy litigation is a matter of public policy. The regulation of chieftaincy by legislation is to avert uncertainty, unnecessary communal unrest, and ensuring stability in the community. Limitation periods are therefore necessary, in regulating actions to contest the making, provisions and appointments made under chieftaincy legislation and declarations, so as to avoid chaos and continuous appeal to the whims and caprices of those in authority rather than promoting the culture of obedience to existing laws and strict adherence to the rule of law.

In *Esuwoye*, the aggrieved party ought to have contested the content of the 1970 Edict within three months of its enactment when the facts leading to the making of the chieftaincy declaration were still fresh. At that time, interested members of the community who share similar or opposing views to the findings and recommendations of the Sawyer Commission[43]would still be able to give supporting or contradicting evidence. If that issue is resolved either way, before the occurrence of vacancy, the community would have been better for it because the right of the party would have been

[34]Introduced by Ordinance No.3 of 1863, the English Limitation Act of 1623 was made applicable to Nigeria until repealed by virtue of section 70 of the Limitation Act of 1966.

[35] Ocho and Wistrich (1997) n 33.

[36]*Ibid*.

[37][1990] 5 NWLR (Pt. 150) 322.

[38][1949] 2 All ER 226 (KBD); [1950] I KB 76 at 81-82.

[39][2008] NWLR (Pt 1090) 623 at 655, *per* Abba Aji JCA; *Ibekwe v I.S.E.M.B.* [2009] 5 NWLR (Pt 1134) 234; *Obeta v Okpe* [1969] 9 NWLR (Pt 473) 401 at 429.

[40][2000] 12 SC (Pt 1) 99; Daewoo Nigeria Ltd v Project Master (Nig) Ltd [2010] LPELR – 4010.

[41]See, Officer in Charge, Gombi Prisons, *Gombi & Ors v Gudu & Anor* [2010] 2 NWLR (Pt. 1177) 148 at 165, paragraphs D-F per Ndukwe-Anyanwu, JCA in the concurring opinion.

[42]See, *A-G Adamawa State v A-G Federation* [2014] 14 NWLR (Pt. 1428) 515 at 571, paragraphs C-D, per Ogunbiyi JSC.

[43] With was heavily relied upon by the Supreme Court to reach its decision.

ascertainable and that would have ensured smooth succession which is one of the purposes of imposing limitation period in the first place.

5. Calculation of Limitation Period

Several issues make the case of *Esuwoye* incomprehensible to the layman and a puzzle to the learned mind. One of such issues is the calculation of the period of limitation in that case. In the reasoning of his lordship Onnoghen JSC;[44] he states:

> I agree with the lower court that judging from the date exhibit "K" was made to the date the counter claim was instituted, the counter claim was not instituted outside the 3 months required/provided for in section 2 of the Public Officers Protection Law and consequently the action is not statute barred - exhibit "K" was made on 22 March, 2010 while the counter claim was filed on 12 July 2010.

The mathematical accuracy of this calculation defiles any known rules of arithmetic reckoning. It is not known that Nigeria ever operated any calendar that places the calculation of dates in any month beyond 31 days, neither was any reliance placed on any ancient calendar of Offa in operation when the curse by which the matter was settled by the Supreme Court was pronounced and by which three months was calculated. Utilising the common and simple rules of calculation, 22 of March 2010 to 12 of July 2010, excluding both days, would sum up to 111 days, which by any calculation would be more than three months by any known calendar.

Irked by this obvious error in calculation, the Respondents approached the court by a motion, urging the court to review its judgement. The Supreme Court castigated the party, and sent them back home to resolve the dispute; thereby abdicating its duty to ensure that justice is done to the parties according to law.

6. Proper Approach of the Court

It is certain that a chieftaincy stool is filled based on the law applicable at the time of the vacancy. The implication is that when a party thinks that the chieftaincy declaration has taken away his right the cause of action will arise then and not at a later time when an occupant of the stool dies or when a new appointment has been made. Also, some chieftaincy laws do not apply to a singular chieftaincy stool, could it then be imagined in such cases that cause of action will only arise when the said law is applicable to each of the said stools, even if and when the same law has been used in choosing other chieftaincies and with no visible controversy?

In *Esuwoye*, the complicacies are not easily solved by legal reasoning or logical analysis of the facts of the case. Conceding that the cause of action arose in 2010 as held by the court, and granted that the statute of limitation applies as asserted by the court; the position of the court that the case was not statute barred then becomes illogical as demonstrated above.

Perhaps the main reason why the court refused to appreciate the difference between where a complaint is as to the content of a declaration and when it is as to the appropriateness of an appointment under the legislation is the misunderstanding of what constitutes consequential damage. In chieftaincy matters, where the complaint is that the content of a registered declaration or legislation does not represent the native law and custom, the damage is complete upon registration. This is because, that law ultimately represents the basis of choosing a new chief. In such instances therefore, where a vacancy exists, the law that was in operation as at the time of the vacancy is applicable to that stool, eradicating every extraneous considerations outside that law.

[44]As he then was.

In Afolabi v Governor of Oyo state[45] where the court have to determine the applicable law to fill the vacant stool of Olobagun of Obagun, the Supreme Court held that it was the law in force when the late Olobagun of Obagun died that is the applicable law to govern the appointment of a new Olobagun as the vested right of the Kayode ruling house which had accrued under the existing law when the Oba died could not be taken away by a new law made after the vacancy. In *Mustapha v Governor of Lagos State*,[46] the Supreme Court also held that where a new chieftaincy declaration was made after the occurrence of the chieftaincy vacancy, the court has maintained that the applicable law is the law in existence at the time the cause of action arose and not the law in force at the time the jurisdiction of the court was invoked.

There are several other forms of rights of action which may be cognisable in chieftaincy disputes. For instance, there may be disputes as to whether a contestant belongs to the ruling house whose turn it was to produce a successor to the stool[47] and questions could arise as to whether a candidate was selected or nominated by persons authorised to do so under the relevant laws.[48] The complaints could be as to whether the selection procedure followed due process[49] or it could simply be an action by one of the parties requesting the court to interpret or construe some of the relevant provisions of the applicable law.[50] When a party disputes the validity of the legislation, on any ground, once the processes involved in the making of the legislation is complete, the cause of action is cognisable and complete. Although, the forms and nature of reliefs the court has power to grant in both instances differ. Whereas the right to question the validity of a legislation is universal and could lead to a setting aside of the legislation, the rights to a chieftaincy is personal and not universal in nature, hence, a person who feels his personal rights are infringed upon by the provisions of a chieftaincy legislation can approach the court for redress. This is however different from when the complaint is that an appointment was not made in accordance with the prevailing legislation, and in which case, the cause of action would arise upon the appointment so complained about.

In *Esuwoye*, the main ground for complaints was the making of the chieftaincy edict in 1970 and in that wise the cause of action accrued in 1970 because the promulgation of the edict already occasioned a consequential damage that gave rise to a right of action. Any delay in instituting an action to challenge the edict could be fatal as the existing law governed the vacancy that occurred in 2010 upon the death of the late Olofa. This was why it was possible for the kingmakers to entertain nominations from the two ruling houses of Olugbense (Male line) and Anilelerin (female line) because the chieftaincy edit in force didn't exclude the right of Olugbense Ruling House. An earlier decision of the Court of Appeal[51] that held that there was no provision for rotation but completion among the ruling houses was a proper construction of the 1970 chieftaincy edict. If the Supreme Court properly averted its mind to the fact that the new appointment was actually made in accordance with the 1970 chieftaincy edit, it might have saved itself of this embarrassing confusion and avoidable error while still upholding the appointment of the new Olofa. This point would have been more apparent had the kingmakers favoured the choice of the Olugbense Ruling House in that case the consequential damage would have been real than nearly apparent as the harm would already have been done against the Anilelerin Ruling House.

[45] *Afolabi v Governor of Oyo state* (1985) 2 NWLR (Pt. 9) 734 at 738.
[46] See *Prince Mustapha v Governor, Lagos State* (1987) 2 NWLR (Pt. 58) 539; *Uwaifo v Attorney-General of Bendel State* (1982) 7 SC 124; *Adeyeye v Ajiboye* (1987) 3 NWLR (Pt. 61) 432; *Alao v Akano* (1988) 1NWLR (Pt. 71) 431.
[47] *Taofeek Adesheinde Oyefolu & Ors v Abayomi Adeyansola Durosinmi*(2001) 10 SCM 111 1050.
[48]*Timothy Adeilo Adefulu & 12 Others V Bello Oyesile & 5 Others* (1989) 5 NWLR (Pt.122)377; (1989) All N.L.R 698; (1989) 12 S.C 43.
[49]*Adigun v A-G Oyo State* (1987) 1 NWLR (Pt. 53); *Olagunyi v Oyeniran* [1996] 6 NWLR (Pt. 453) 127.
[50]*Oredoyin v Arowolo*(1989) 4NWLR (Pt 114) 172.
[51] CA/IL/71/2012.

If the court had averted its mind to the rule in *Afolabi and Mustapha* as stated above, perhaps it would not have embarked on the wrong journey of making the dates of the death of the late Olofa or the date of the appointment of a new Olofa, the commencement date for computing the limitation period because the counter claim at issue never challenged the appointment of the new Olofa.

Even though the court has reaffirmed that it has no jurisdiction to make a chieftaincy declaration,[52] assuming the court had the jurisdiction to make a chieftaincy declaration after the death of the late Olofa and after the appointment of a new Olofa, such court-made chieftaincy declaration or law could at best be prospective and not retrospective as to affect the vested rights of Olugbense Ruling House to be considered for the stool.[53] Here lies the weakness of the effects of drawing a distinction between causes of complaint and consequential damage.

However, in cases where the chieftaincy is not regulated by laws, if the community involved has reduced the regulations into writing, it shall be enforceable between the parties, but where there is none, then upon the appointment or election of a new chief, the cause of action will arise, irrespective of other considerations.

While the court stated that the counter claim was instituted on 12 of July 2010, the rather rhetoric question the court left in the lips of a layman is how a reasonable man would be persuaded to align with the opinion that the period between 22 March and 12 July 2010 is not more than three months. No calendar is known whether in ancient times or in modern times by which this arithmetic jay-walking can be straightened. This motivated the aggrieved party to approach the same court again for a judicial elucidation of the basis of this rather glaring arithmetic innovation. However, rather than the law lords giving insight to it, it reiterated its earlier position in the substantive matter that the parties should go home and see to it how the Olugbense ruling house can re-ascend the throne. The proper approach would have been for the court to treat the miscalculation as an inadvertent error on the face of the record and consequently effect the correction as if it were a slip and thereby amend the consequential order in the interest of justice.

Ironically, the court itself appeared to have admitted that the real issues were not resolved when it advised the parties to return to the community and the state government to re-appraise any lingering issues. Unfortunately, one would have thought that the very provisions of the Edict the court erroneously voided was a resolution necessary in that case. If there could be any other, the court gave no insight to the needful to be done, or else, should the government waste money and time again, reaching the very position in the declaration the court voided without any legal basis?

As discussed, if the court in *Esowoye* had considered the rationale for imposing limitation period for commencement of chieftaincy cases, perhaps it would have reached a different conclusion. Instead of postponing when the cause action accrued, the proper approach would have been for the court to invoke the doctrine of repose which is aimed at allowing peace of mind, avoiding disrupting settled expectations, to reduce uncertainty about the future and to reduce the cost of measures designed to guard against the risk of untimely claims.[54]

Upon the making of the chieftaincy declaration in 1970, the parties had peace of mind and were certain that they were both qualified to ascend the throne after the demise of the late Olofa as they were indeed rightly given the opportunity to compete for the coveted office before the Supreme Court decision in *Esuwoye* disturbed the peace, love and harmony prevalent within the community. The resuscitation of the stale claim which has produce a perpetual injunction restraining the

[52] *Ajakaiye v Idehai* [1994] 8 NWLR (Pt 364) 504; *Ayoade v Military Governor of Ogun State* (1993) 8 NWLR (Pt 309) 111, 127-8; *Mafimisebi v Ehuwa*(2007) 2 NWLR (Pt 1018) 385 Per Onnoghen JSC; *JejeOladele v Oba Aromolaran II* (1996) 6 NWLR (Pt 453)180.

[53] Michael Custer *"*Presumption Against Interference With Vested Rights", *Alberta Law Review* (2018) 55:(4): 1090-1114, available at <https://www.albertalawreview.com/index.php/ALR/article/download/2486/2471/2631> accessed **20 April 2023**; *Afolabi v Governor of Oyo State*(1985) 2 NWLR (Pt. 9) 734 at 738; *Zubair v Kolawole* (2019) LPELR-46928(SC).

[54] Ocho and Wistrich (1997) n 33

Olugbense Ruling House from ascending the throne can certainly not be said to have finally resolved the matter, thereby defeating the purpose of assuming jurisdiction to resolve cases on the merit.

7. Conclusion

As chief custodians of culture and tradition, the appointment of recognized traditional rulers is usually regulated by native law and custom codified as chieftaincy declaration.[55] As convincingly corroborated throughout this paper, the primary reason for chieftaincy declarations is to avoid uncertainty in the customary law of the area[56] in order to ensure order and transparency in the process of selection of traditional rulers. To this end, the content of a chieftaincy declaration that is expected to govern a vacancy should be precise, definite and well known to all interested parties and relevant stakeholders before the vacancy occur. This will not only enable the court to interpret the rights of the parties under the existing chieftaincy declaration but it will forestall contending parties from insisting on varied versions of a succession order.

The ratio of *Esuwoye* threatens the sanctity of judicial precedence and at the very earliest opportunity the Supreme Court ought to depart from it in its entirety. Where a declaration has been validly made in respect of a recognized chieftaincy and registered, it represents the applicable customary law regulating the selection and appointment of a candidate to a vacant chieftaincy; and the provisions of such a registered declaration prevail until amended. Where a party has any grudge with the content, he ought to bring his action within three months of the making of the law and not thereafter.

Indeed, the Supreme Court itself has held that when the law vests a right on a citizen, a court of law will resolutely resist any attempt, and by whatever method, to deny the citizen the enjoyment of the right conferred by law.[57] The right to raise a defence of statute bar is expressly vested in a defendant when he thinks it is applicable. In *Esuwoye*, not only did the court agree that the limitation law is applicable; it also admitted that it operates to bar an action three months after the cause of action arose. How the court then came to the conclusion that a matter filed obviously over four months after the cause of action accrued is incomprehensible.

Even if one were to treat it as a judicial legislation, the only reason why the judiciary will take the risk of embarking on judicial legislation is perhaps to resolve a dispute before it. But in *Esuwoye*, the court admitted that it did not resolve the dispute when it held that:

> The customs and traditions of the people being dynamic is subject to changes depending on the practices of the people concerned at the particular time, it is hoped that in due course Offa people, particularly the ruling houses will see need and reason, to effect the necessary changes to enable Olugbense descendants ascend the stool once again. The parties are encouraged to talk things over and find a peaceful solution to the problemand the Kwara State Government accordingly.[58]

In *Ikine v Edjerode*,[59] the basis upon which the court arrived at the conclusion that the case was not statute barred and upon which the case of *Esuwoye* ironically found a prop was quite distinguishable

[55] Community constitutions usually refer to community constitution in Eastern Nigeria and Native Authority Modification of Native Law in Northern Nigeria.

[56] *Jeje Oladele and Ors v Oba Aromolaran II and Ors* (1996) 6 NWLR (Pt 453) 180.

55 *Longe v First Bank of Nigeria Plc* [2010] 6 NWLR (Pt. 1189) 1 SC (P. 35, paras. B-C) 54; See also, Belgore JSC (as he then was) in *Olufemi Fassein v Dr. Joshua P O Oyerinde* [1997] 54 LRCN 2629.

[58] Per Onnoghen JSC (as he then was) at P.324, paras A-E.

[59] *Ikine v Edjerode(*2001) 12 SCNJ 1X4 at 198; (2001) 18 NWLR (Pt. 745) 446 at 471, paras. B-C.

as stated earlier. Every court of law and justice denies relief to a claimant who unreasonably delays in asserting his claim.[60]

The date Olofa died or the date of the new appointment are immaterial to the accrual of cause of action for the purpose of computing the limitation period because the counter claim never challenged the appointment of the new Olofa. It was seeking a declaration to set aside the existing chieftaincy declaration which enactment was made since 1970 which was when the cause of action accrued. The court therefore could not have rightly exercised its jurisdiction in 2010 to entertain the matter because it was already statute barred. If the appointment had been challenged together with the chieftaincy declaration, then different dates of accrual of cause of action will apply. More importantly, the puzzling miscalculation of the three months limitation period adopted in *Esuwoye* is a sad commentary on the legal jurisprudence of the apex court which should be avoided in future cases in order to guarantee peace and community development.

8. Recommendations

1. The court should recognise cases in which the cause of action relates to the quest of voiding the content of a chieftaincy law or declaration; in such cases, cause of action arose upon the making of the law or the registration of the declaration. This is the proper rule of interpretation, as any other would work injustice in such cases, and makes chieftaincy laws
2. For the purpose of calculating limitation periods, the court should always endeavour to outline the arithmetic parameter for its calculation rather than a blanket statement of stating that a party is within time without stating arithmetically how the calculation is done. This would prevent such unnecessary and rather embarrassing situations as occurred in *Esuwoye case* where a period of about 111 days was reconciled as being less than three months.
3. On issues where vested rights have been settled by executive or legislature, who are the elected representatives of the people, the courts should be weary usurping the powers of the executive or the legislature in voiding such laws and laying down new rules through judge made laws, as this, in most cases, would not resolve the issues in controversy and glaringly demonstrated in *Esuwoye*.
4. As demonstrated by this article, the principle in *Esuwoye* is not only erroneous, it is bound to work injustice if followed as a precedent; accordingly, the principle as to accrual of cause of action and computation of time in chieftaincy matters contained therein ought to and should indeed by overruled at the earliest opportunity by the apex court.