

# COVID-19 PANDEMIC, LOCKDOWN OF COURT REGISTRIES AND FILING OF SUITS: SHOULD THE LIMITATION LAWS BE SUSPENDED?

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Kolawole Mayomi, FCI Arb.



Matthais Dawodu



Olaniyi Fayomi

## COVID-19 PANDEMIC, LOCKDOWN OF COURT REGISTRIES AND FILING OF SUITS: SHOULD THE LIMITATION LAWS BE SUSPENDED?

### Introduction

It is no longer news that the COVID-19 pandemic has become the defining global health crisis of our time, and that Nigeria is now grappling with this unprecedented crisis. The Federal Government has imposed a strict lockdown on all public facilities in Lagos (the commercial centre), Ogun (a neighbouring state) and Abuja (the administrative capital). Most of the state governors have also issued lockdown directives in their domains or directed civil servants to stay at home. Effectively, most court registries in Nigeria are closed either because of lockdown or because the relevant staff have been directed to stay at home!

Given that the various civil procedure rules prescribe penalties for late filing of processes, heated arguments on non-culpability of counsel are bound to crop up whenever the Nigerian courts resume. More importantly, given the mandatory filing of hardcopy documents at the court registry and the manual process of assignment of cases to a Judge, a suit cannot be initiated in many Nigerian courts. In other words, a time bound cause of action whose last stop date falls within this period is likely to lapse, due to no fault of the parties.

### Statutes of limitation

Generally, a cause of action arises on a date when a breach occurs, or any steps taken by the defaulting party would warrant a person who is adversely affected to seek redress in court. Under Nigerian law, there are statutory time limits for instituting a civil action to ventilate the cause of action.<sup>1</sup> The courts have consistently held that if a party fails to file a claim within the prescribed period, the right to *enforce* this claim is forever lost.<sup>2</sup> Accordingly, statutes of limitation deviate from the general position that every wrong should have a remedy; as the law expects that an aggrieved person would take all necessary legal steps in a timeous manner.

The statute of limitation is inflexible in its application, and admits of few exceptions. A notable exception was recently carved out on public policy grounds by the Supreme Court of Nigeria in ***Sifax (Nig.) Ltd v. Migfo (Nig.) Ltd***,<sup>3</sup> that where the action is instituted in a court that lacks jurisdiction and is struck out for that reason, the time expended in the wrong court will be discountenanced for the purpose of computation of time under a statute of limitation.

### **COVID-19: Should time cease to run for the purposes of statutes of limitation?**

Paragraph 1(7) of the Regulations issued by President Muhammed Buhari directing the cessation of movements in Lagos State, Ogun State and Abuja does exempt court matters that are time bound. It reads:

*“Court matters that are urgent, essential or time bound according to our extant laws, are also exempted in line with the Chief Justice of Nigeria’s Circular No. NJC/CIR/HOC/11631 of 23<sup>rd</sup> March 2020. Such matters will be handled as the Chief Justice of Nigeria may from time to time direct”*

Regrettably, while the Chief Justice of Nigeria’s referenced circular directed all heads of courts in the Federal and State Judiciaries to suspend courts activities for an initial period of 2 weeks save for urgent or time-bound matters, it does not lay down any guideline for how this should be done. Till date, no head of court has expressly issued any practice direction to address this issue. It is noted that the Chief Justice of Lagos State issued a series of statements to direct that urgent criminal cases could be heard. This directive was, however, overtaken by the lockdown order which does not except passage for staff of court registries.

A close reading of Order 5 rules 2 & 7 and Order 8 rules 2, 3 & 4 of the High Court of Lagos State Civil Procedure Rules 2019 (mirrored in the civil procedure rules of the various courts) reveals that a suit can only be initiated by the physical filing of hardcopy processes at the court

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<sup>1</sup> See Limitation Act, Cap. 522, Laws of the Federation, 1990; Limitation Law, Cap L67, Laws of Lagos State, 2003; the Limitation Laws of the various states, and Nigerian case law as it relates to limitation of action.

<sup>2</sup> **Williams v. Williams** [2008] 10 NWLR (Pt. 1095) 364; **Aje Printing (Nig.) Ltd. v. Ekiti L.G.A** [2009] 7 NWLR (Pt. 1141) 512.

<sup>3</sup> (2018) 9 NWLR (Pt.1623) 138.

registry. Furthermore, the process of assignment of a casefile to a Judge is manual and paper based. Given the non-exemption for the passage of court registry staff on roads, the heads of court's inaction to provide electronic filing alternatives, and the closure of the court registries; the President's aspiration to save time bound cases is simply what it is: a mere aspiration.

### **The interest of justice demands a suspension of time**

There is no gainsaying that the courts exist to serve justice in the society. The reasoning in the **Sifax** case should, logically, extend to the instant situation where, for no fault of the litigants, their counsel is unable to file an action in court before the lapse of time due to the lockdown on movements and the closure of court registries on account of the Covid-19 crisis. Indeed, the argument is compelling that the computation of time in a statute of limitation should be suspended where the last date for commencing an action in court falls within the period of the covid-19 lockdown. To do otherwise will amount to grave injustice.

All affected courts ought, on public policy grounds, to suspend computation of time from 23<sup>rd</sup> March 2020 till the resumption of the courts, for the purpose of routine court processes i.e., filing of briefs, affidavits etc., and more importantly; to stop the lethal operation of limitation laws.

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Please note that this article is a general discussion of law and does not constitute legal advice. For further information on this article and area of law, please contact **Kolawole Mayomi, FCI Arb**, mobile (+234.810.725.1110) or email [kmayomi@spajibade.com](mailto:kmayomi@spajibade.com)

S. P.A. Ajibade & Co., Lagos (+234 1 472 9890), fax (+234 1 4605092)

[www.spajibade.com](http://www.spajibade.com)