**THE SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LIMITED.**

**V.**

**CHIEF MARK EJEBU & ANOR.**

IN THE COURT OF APPEAL OF NIGERIA

THE 8TH DAY OF JULY, 2010

CA/PH/239M/2002

**LEX (2010) - CA/PH/239M/2002**

OTHER CITATIONS

2PLR/2010/65 (CA)

(2010) LPELR-5025(CA)

**BEFORE THEIR LORDSHIPS**

SULEIMAN GALADIMA (OFR), JCA

TIJJANI ABDULLAHI, JCA

EJEMBI EKO, JCA

**BETWEEN**

THE SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LIMITED - Appellant(s)

AND

1. CHIEF MARK EJEBU

2. CHIEF ISAIAH PRIKAKI

For themselves and as representing Inesei Community of Gbaratorou - Respondent(s)

**ORIGINATING COURT(S)**

BAYELSA STATE HIGH COURT (Kate Abiri, J., Presiding)

**REPRESENTATION**

S. LANIYAN with R.I. OMOFUMA and W.R. PRATT - For Appellant

AND

NA For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

TRANSPORT AND INFRASTRUCTURE LAW: - Road construction and provision of social infrastructure by big oil in host communities – Damage to key environmental and natural resources – Blockage of lake – How treated

TORT AND PERSONAL INJURY:- Where there has been an admission of liability during negotiation and all that remains is fulfillment of the agreement – Whether an exception on the ground that it cannot be just and equitable that the action would be barred after the statutory period of limitation giving rise to the action if the defendant were to resile from the agreement during negotiation

TORT AND PERSONAL INJURY:- Cause of action based on the tort of negligence – Where limitation is alleged to apply ousting jurisdiction to hear case – How determined – Whether generally negotiation by parties does not prevent or stop the period of limitation stipulated by statute from running

ENVIRONMENTAL AND NATURAL RESOURCE LAW:- Claim representing general and special damages for the blockade of AKANAFA LAKE by a road construction project of a major oil multinational - Sand-filling and complete blockage of a natural lake resulting in excessive flooding on one side of community and dryness in the other – Access road constructed at the request, and to the satisfaction, of the claimant community as part of its policy of providing infrastructure to assist host communities – Offer of out of court settlement – Whether admission of guilt

ENVIRONMENTAL AND NATURAL RESOURCE LAW: - The plea of limitation – When deemed not to avail the Defendant

DEBTOR AND CREDITOR:- Recovery of debt arising from contract which interest was statute barred - Whether an acknowledgement or promise to pay after limitation period must be very clear to raise any inference of acknowledgment or enforceable promise to pay the debt – Need for trial Judge not to confuse the right of the Plaintiff to enforce an acknowledgement by the defendant of a liability of action that had become statute barred with whether the acknowledgment has the effect of enlarging the limitation period - Whether the principle of acknowledgment or promise to pay debt does not extend the period of limitation – Whether the fact that the acknowledgment or promise to pay liability came upon negotiation, during or post negotiation does not extend the limitation period statutorily prescribed – Whether an acknowledgment or promise to pay liability that is statute barred creates or establishes a fresh contractual relationship

CHILDREN AND WOMEN LAW: *Women/Children and the Environment/Justice and Administration* - Damage to strategic environmental and natural resource of a community – Lake – Suit arising therefrom – Distillation of issues for determination vis a vis matters connected to children and women – Implication for claim for compensation

**PRACTICE AND PROCEDURE ISSUES**

ACTION- LIMITATION LAW - LIMITATION PERIOD: - Case of claim of interest founded on contract which interest was said to be statute barred – Whether an acknowledgement or promise to pay after limitation period must be very clear to raise any inference of acknowledgment or enforceable promise to pay the debt – Need for trial Judge not to confuse the right of the Plaintiff to enforce an acknowledgement by the defendant of a liability of action that had become statute barred with whether the acknowledgment has the effect of enlarging the limitation period - Whether the principle of acknowledgment or promise to pay debt does not extend the period of limitation

ACTION- LIMITATION LAW - LIMITATION PERIOD:- Whether general negotiation by the parties does not prevent or stop the period of limitation stipulated by a statute from running – “when in respect of a cause of action, the period of limitation begins to run, it is not broken, and it does not cease to run, merely because the parties engaged in negotiation. The rationales for this is that the parties cannot by conduct or consent add to, or subtract from, the contents of a statute”

APPEAL - FRESH ISSUE: - Fresh point or issues on jurisdiction – Whether can be raised for the first time in the appeal court – Whether court will not allow a party on appeal to raise any question not raised in the court of trial or grant leave to a party to argue new points or new grounds not canvassed in the lower courts except where the new points or law, grounds involve substantial, points of law, substantive or procedural which need to be allowed to prevent obvious miscarriage of justice

COURT - COMPETENCE OF COURT: - Where a court lacks competence to try a person or subject matter before it - Whether whatever decision it arrives at on such a person or subject matter is a nullity - Where the suit or appeal was not initiated by due process of court and upon fulfillment of any conditions precedent to the exercise of jurisdiction – Effect on the competence of the court to adjudicate in the suit or appeal

COURT - JURISDICTION: - When an objection is raised in respect of the competence of a suit or an appeal - Whether the jurisdiction of the court that entertained the suit becomes an issue and that the court has a fundamental, if not imperative, duty to resolve the issue before delving into the merits of the case

EVIDENCE - ESTOPPEL: - Whether a party is estopped by his failure to appeal against an adverse finding of fact - Effect of sections 150 and 151 of the Evidence Act thereto

**MAIN JUDGMENT**

EJEMBI EKO, J.C.A (DELIVERING THE LEADING JUDGMENT):

The Respondents were the plaintiffs at Bayelsa state High court (coram Kate Abiri, J) in the suit no. YHC/ 54/98: The claim of the Respondents as per their joint statement of claim is for the sum of N100m (one Hundred Million Naira) being and representing general and special damages for the blockade of AKANAFA LAKE by the Defendant's Deep Access Road, within the jurisdiction of the honourable court.

The writ of summons was taken out on 27th day of July, 1998.

The statement of claim avers, inter alia, that some time in 1991 the Defendant, now the Appellant, constructed its Gbaram Deep Field Access Road across Akanafa Lake and thereby sand-filled and completely blocked the Akanafa Lake and effectively prevented movement through the lake to the extent that while one side of the lake is flooded the other side is dried, thus causing permanent flood on one side of the swamps, lakes and ponds and total deprivation on the other side.

For this the Respondents claimed a total of N100,000.000.00 (one hundred Million Naira) with the following particulars: (sic):

A. Special Damages

i. Timber: 150 people earning N30,000.00 each per annum for 8 years =..... ........N36,000,00

ii. Fishing: 150 people earning N25,000.00 each per annum for 8 years =..........N 30,000.00

iii. Farming: 100 people earning N20,000.00 each per annum for 8 YEARS=......N16,000.00............N82,000.00

B. General Damages for Inconveniences=      N18,000.00

TOTAL = N100,000,000.00

Paragraphs 10, 11 and 12 of the statement of claim, very germane to the appeal, are as follows:

10. In 1996, after several appeal to the Defendant to deblockage the Lake the plaintiffs formerly (sic) wrote the Defendant complaining of this obstruction and the Defendant replied. The plaintiffs' letter of 27/3/96) through their claims agent and the Defendant's letter Ref. No. 24412245 dated 30/3/96 will be relied upon at this trial.

11. The Plaintiffs and the Defendant jointly investigated the Plaintiffs' claim. Defendant accepted liability and negotiation for quantum of damages was carried out on 5/3/98. Defendant was willing to pay only N100,000.00 for both claims. Defendant finally confirmed its unwillingness to pay higher amount by letter dated 25/5/98.

12. All efforts to persuade the Defendant to adequate compensation have failed and the plaintiffs have suffered damages.

The Defendant filed Statement of Defence through Dejo Laminkanra, Esq., of counsel. The Defendant did not deny constructing the access road in 1991. That fact was expressly admitted. The Defendant, the present Appellant denied any negligence in the construction of the access road and further pleaded limitation as a bar to the cause of action that allegedly arose in 1991.

Paragraphs 11 and 12 of the Statement of Defence aver -

11. The Defendant states that the cause of action (being claims for damages arising from the tort of negligence in the construction of the Gbaran Deed Access road) did not arise within the Limitation period as provided for by the relevant statute before the commencement of this action and is barred.

12. The defendant states that the Plaintiffs' cause of action accrued in 1991, while the writ was issued on 27 .07  98.

It is further averred, unreplied, in paragraph 6 of the statement of Defence that the Appellant constructed the access road at the request, and to the satisfaction, of the respondent community as part of its policy of providing infrastructure to assist host communities.

At the close of pleadings the special defence of limitation was set down for trial, at the instance of the Defendant, the present Appellant. The plaintiffs, now Respondents, exhibited in their Counter Affidavit the Defendant's letter dated 25th May 1998 in which they alleged "that the Defendant accepted liability - and -offered the sum of N100,000.00 as compensation for this claim".

Kate Abiri, J heard the parties on this issue of limitation and in the reserved Ruling delivered on 19th January, 2000 she held that the plea of limitation did not avail the Defendant. The application was dismissed in its entirety.

The learned trial Judge interpreted the Defendant's letter dated 25th May, 1998 (Exhibit A), viz-a-viz the provisions of section 16 of the Rivers state Limitation Law, No 7 of 1988 applicable in Bayelsa State, and held lnter alia that -

i. The cause of action in this suit occurred in 1991 (and) that in instant case time began to run in 1991.

ii. The action is also on the tort of negligence (and) the limitation period for action founded years by dint of section 16 of the Limitation Law 1988.

iii. Generally negotiation by parties does not prevent or stop the period of limitation stipulated by statute from running. This is subject to qualification that where there has been an admission of liability during negotiation and ail that remains is fulfillment of the agreement it cannot be just and equitable that the action would be barred after the statutory period of limitation giving rise to the action if the defendant were to resile from the agreement during negotiation. (Pages 30 - 31 of the Record)

iv. And that in "Exhibit 'A' Defendant admitted liability for the negligence and that the letter was not a mere offer for payment of N100,000.00 without an admission of liability. (Page 32 of Record)

Having come this far I will reproduce the contents of Exhibit .A, that the learned trial Judge found to contain an admission of liability for the negligence after the period of limitation. It is at page 16 of the Record. It is addressed to chief Isaiah Prikaki (2nd Respondent). The letter, Exhibit 'A', dated 25th May, 1998 reads –

RE: BLOCKEDE/OBSTRUCTION CAUSED TO AKANAFA LAKE AND TAMBO CREEK, CLAIM NO.244/2245 & 244/2314-

We refer to our negotiations with you on the above claim of 5th March, 1998 which unfortunately, deadlocked on your demand of N10,000,000.00 (Ten Million Naira) as against our offer of N 10,000.00 (Ten Thousand Naira). We wish to take this opportunity to confirm that our offer of N100,000.00 which we consider adequate, when viewed against the background of the alleged damage/inconvenience, is our final offer for the claim.

If you re-consider your position and would want to accept same, please feel free to contact the undersigned in our Industrial Area, Port Harcourt.

Yours faithfully,

For: THE SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LIMITED

(SIGD)  
V.M. OKWECHIME

HEAD, LAND ACQUISITION AND COMPENSATION EAST.

The Defendant, not satisfied with the Ruling delivered on 19th January 2000, lodged his appeal against the said ruling. The notice is at pages 34 - 36 of the Record. It was replaced by Amended Notice of Appeal, containing 5 grounds of appear, filed upon leave of this court granted on 23rd November, 2006. Three Issues formulated from the 5 grounds are, at page 4 of the Appellant's Brief -

1. whether, the trial court was justified in holding that the respondents' action constituted by suit No YHC/54/98 was not statute barred. (Grounds 1, 3 & 5).

2. whether on the state of the writ and pleadings, the lower court was correct when it herd, in the course of an interlocutory application, that the defendant had undoubtedly admitted liability for the plaintiffs' claims as endorsed on the writ and statement of claim. (Ground 2).

3. whether this suit was initiated by a valid writ of summons. (Ground 4).

This appeal was heard only, on application of the Appellant, on the Appellant's Brief filed on 9th June, 2003, but deemed filed and served on 23rd November, 2006. The Respondents, in spite of all the opportunities available to them, did not file Respondents' Brief. The three Issues; above reproduced, will be considered strictly on the Appellant's Brief settled by Dejo Lamikanra, Esq. of counsel for Appellants.

I intend to consider first the Issue of jurisdiction canvassed under Issue 3. It is a threshold issue. It is now universally accepted that when an objection is raised in respect of the competence of a suit or an appeal, the jurisdiction of the court that entertained the suit becomes an issue and that the court has a fundamental, if not imperative, duty to resolve the issue before delving into the merits of the case. See B.A.S.F. NIG. LTD v. FAITH ENTERPRISES LTD (2010) 41.1 NSCQR 381 at page 411 per Adekeye JSC. It is an established principle of Nigerian law that where a court lacks competence to try a person or subject matter before it, whatever decision it arrives at on such a person or subject matter is a nullity:

NIGERIAN ARMY v. AMINUN-KANO (2010) 41.1 NSCQR 76. If the suit or appeal was not initiated by due process of court and upon fulfillment of any conditions precedent to the exercise of jurisdiction, the competence of the court to adjudicate in the suit or appeal will be adversely affected: MADUKOLU v. NKEMDILIM (1962) 2 SCNLR 342.

Mr. Lamikanra did not raise at the trial the issue of the competence of Bayelsa State High Court to entertain the suit on the basis of the writ of summons issued by, or taken out of, the trial court on 27th July, 1998. He is raising it for the first time in this Court.

Leave was granted to the Appellant to raise the ground of appeal (No.4) from which this issue has formulated. In the Appellant's Brief counsel had sought leave to argue the point as a fresh issue. I agree with the learned counsel that the fresh point or issues on jurisdiction can be raised for the first time in the appeal court. The Supreme Court in SKENCONSULT (NIG) LIMITED v. UKEY SEKONDI (1981) 12 NSCC 1, in the dictum of Udoma JSC at page 8, has put the matter beyond doubt thus-

Before dealing with the various arguments of learned counsel, I would wish to dispose of the complaint of the learned counsel for the respondent that the points raised in argument before us were never raised by the appellants before the trial court and the court of Appeal. It is clear that this court will not allow a party on appeal to raise any question not raised in the court of trial or grant leave to a party to argue new points Or new grounds not canvassed in the lower courts except where the new points or law, grounds involve substantial, points of law, substantive or procedural which need to be allowed to prevent obvious miscarriage of justice. See K. AKPENE v. RHORHADJOR DOVUYOVBE & ANOR (1967) 1 ALL NLR 134 at 137; also see RE: COWBURN, EX PARTE FIRTH (1881 - 1885) ALL E.R. 987 at 991.

No doubt this statement of law has considerable antiquity. In CHIIEF ASANTE v. CHIEF TAWIA (1949) W.N.40 (also (1814 - 1973) PRIVY COUNCIL JUDGMENTS 432) it was held that it was never too late in the proceedings to raise a point of jurisdiction or competence of the trial court at the appeal court even though it was not raised in any of the three courts below or at the court of trial.

Their Lordships of the Board of the Privy Council could not assent to that view.

The report further states -

If it appeared to an appellate court that an order against which an appeal was brought had been made without jurisdiction, it could never be too late to admit and give effect to the plea that the order was a nullity.

Accordingly, I will, and I do hereby, grant leave for the plea of jurisdiction of the Bayelsa state High court in the suit, the subject matter of this appeal, to be argued.

The Appellant's contention under this issue is that the writ of summons, at page 1 of the Record, whereby the Appellant, as the Defendant, was - commanded - within eight days after service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action of at the suit of CHIEF MARK EJEBU & ANOR -  
and which writ was for service in Port Harcourt, Rivers State was a writ to be served in another state outside the jurisdiction of Bayelsa state High court, and that the writ of summons was illegal and a nullity in view of the provisions of section 99 of the Sheriffs and Civil Process Act, Cap 407 1990 LFN that provides –

99. The period specified in a writ of summons for service under this part as the period within which a defendant is required to answer before the court to the writ of summons shall not be less than thirty days after service of the writ has been effected, or if a longer period is prescribed by the rules of the court, within which the writ of summons is issued, not less than that longer period.

The writ of summons in this suit, issued on 27th July 1998 from Bayelsa State High Court sitting at Yenegoa for service in Port Harcourt, Rivers State is undoubtedly ultra vires section 99 of the Sheriffs and Civil Process Act. This was the situation in SKENCONSULT (NIG) LTD v. UKEY SEKONDI (supra). The writ, it was held there, was a nullity ab initio. In the words of Udoma JSC at page 9 of the report-

Where a writ of summons originates in one state for service in another state it is mandatory that there should be a period of at least 30 days between the date of service and the date that the defendant is required to appear in court.  
As the Supreme Court stated in MADUKOLU v. NKEMDILIM(supra), a court is competent inter alia when the case comes before it initiated by due process of law and upon fulfillment of any condition precedent to, the exercise of jurisdiction. Any defect in competence is fatal; for the proceedings are a nullity however well conducted and decided the defect is extrinsic to the adjudication.

I allow the appeal on this issue. The writ of summons on which the entire proceedings and the processes were founded was a nullity by dint of section 99 of the Sheriffs and Civil Process Act. Since the proceedings cannot rest on nothing, the proceedings founded on the void writ of summons the consequently a nullity as a result. As Lord Denning had stated in U.A.C. v MACFOY(1962) A.C. 152, one cannot place something upon nothing and expect it to stay: it will fall.

The point under Issue 1 is whether, the trial High court was justified in holding that the respondents' action was not statute barred by reason of the Defendant, Appellant's, letter, Exhibit 'A'. I had reproduced the contents of Exhibit 'A' earlier in this judgment.

It was submitted for the Appellant that it was incumbent on the learned trial Judge to determine when the cause of action arose because that is the benchmark for determining when the time starts to run. There is no difficulty or dispute over this. At pages 30 and 31 of the Record the learned trial Judge had found that "the cause of action in this suit occurred in 1991" and that, for purposes of determining whether the suit of the Plaintiffs was statute barred, "in the instant case time began to run in 1991". These are findings of fact that none of the parties has challenged an appeal.

The parties, particularly the Plaintiffs/Respondents, are estopped from asserting the contrary now. It is settled that a party is estopped by his failure to appeal against an adverse finding of fact. That is the effect of sections 150 and 151 of the Evidence Act. See JOE IGA & ORS v. CHIEF EZEKIEL AMAKIRI & ORS (1976) 11 SC at 12 - 13 and ABUBAKAR v. BEBEJI OIL & ALLIED PRODUCTS LTD & ORS (2007) 18 NWLR [Pt.1066] 319 at 381 G. It is therefore, now, a common ground, acceptable to the parties, in this appeal that the cause of action arose in 1991 when the Appellant constructed the access road and that time, for purposes of limitation, began to run from 1991.

Section 16 of the Rivers State Limitation Law No 7, 1988, applicable in Bayelsa State, is unambiguous in providing that no action founded on contract or tort shall be brought after the expiration of five years from the date on which the cause of action accrued. Therefore, if as found by the learned trial Judge, the cause of action occurred in 1991 and time began to run against the plaintiffs/Respondents; in or from 1991; it follows that the five years limitation period will run out in 1996. Prima facie, the cause of action vested in the plaintiffs/Respondents in 1991 before or by 1997, not to talk about 27th July summons was taken out.

The learned trial Judge rightly conceded at page 31 of the Record, in her Ruling, that it is settled law that generally negotiation by the parties does not prevent or stop the period of limitation stipulated by a statute: from running. The law on this, as stated by the Supreme Court in JOHN EBOIGBE v. NNPC (1994) 5 NWLR [pt.346] 649 at 660 per Adio JSC, is that when in respect of a cause of action, the period of limitation begins to run, it is not broken, and it does not cease to run, merely because the parties engaged in negotiation. The rationales for this is that the parties cannot by conduct or consent add to, or subtract from, the contents of a statute. Cases of waiver of a private right under a statute are different issues altogether.

The Appellant's quarrel under this Issue 1 is from the statement of the law in the ruling at page 31 of the Record to wit:

It is also settled law that generally negotiation by the party does not prevent or stop the period of limitation stipulated by a statute from running.

This however is subject to qualification that where there has been admission of liability during negotiation and all that remains is fulfillment of the agreement it can not be just and equitable that the action would be barred after the statutory period of limitation giving rise to the action if the defendant were to resile from the agreement during negotiation. See **NWADIARO v. SHELL PET. DEV. COY** (1990) 5 NWLR (Pt.150) page 322 at 338 - 339; SHELL PET. DEV. COY. V. FARAH (1995) 3 NWLR (Pt.382) page 148 at 156 ratio 4.

From the following it is pre-supposed that

1. There was an admission of liability upon negotiation

2. Which produced an agreement binding on the parties, and not a mere offer,

3. And it will be inequitable for a party to be allowed to resile from the agreement reached during negotiation

I have perused the letter Exhibit 'A' which the Plaintiffs/Respondents and the learned trial Judge relied on to say that the Appellant, as the defendant, admitted liability. I do not think that it is clear ex facie Exhibit 'A' that the parties reached an agreement during negotiations. There was no pleading, nor evidence, that the offer of N100,000.00 made by Appellant was accepted by the Plaintiffs/Respondents during the negotiations. The mere fact that the Plaintiffs/Respondents had sued the Appellant, after receipt of Exhibit 'A', for sums higher than the N100,000.00 offered by the Appellant is a clear evidence of the rejection of the offer in Exhibit 'A'.

In OLAOGUN ENT. LTD v. SAEBY JERNSTOBERI & ANOR (1992) 4 NWLR [pt.235] 361, a case of claim of interest founded on contract which interest was said to be statute barred, it was held that an acknowledgement or promise to pay after limitation period must be very clear to raise any inference of acknowledgment or enforceable promise to pay the debt.

The Plaintiffs/Respondents and the learned trial Judge seemed to have confused the right of the Plaintiff to enforce an acknowledgement by the defendant of a liability of action that had become statute barred with whether the acknowledgment has the effect of enlarging the limitation period. The principle of acknowledgment or promise to pay debt does not extend the period of limitation. The fact that the acknowledgment or promise to pay liability came upon negotiation, during or post negotiation does not extend the limitation period statutorily prescribed from the dictum of Coker JSC in THADANT v. NATIONAL BANK (1972) NSCC 28. Such an acknowledgment or promise to pay liability that is statute barred creates or establishes a fresh contractual relationship.

That is so because it is clear from the dictum of Karibi-whyte, JSC in ODUBEKO v. FOWLER (1993) 7 NWLR [pt.308] 637 at 668 that limitation statute extinguishes both the remedy and the right to maintain the action for the remedy. This view was further affirmed by the supreme court in AJIBONA v. KOLAWOLE (1996) 10 NWLR (Pt.476) 22.

The plaintiffs/Respondents, in the suit under appeal, were not enforcing against the Appellant the fresh contractual relationship if at all, that Exhibit 'A' allegedly created after the cause of action that accrued in or from 1991 had become statutorily barred by the operation of the Limitation Law 1988. Rather, it is the cause of action that arose, or accrued to them, in 1991, which by 1996 had become statute barred that they were enforcing in 1998, two years after the effluxion or expiration of the limitation period. Exhibit 'A', which the Plaintiff/Respondent relied on heavily as a talisman, was issued on 27th July, 1998.

The learned trial Judge seemed to have read out of context the dictum of Kolawale, JCA in NWADIARO v. SHELL PET. DEV. CO. LTD (1990) 5 NWLR [Pt.150] 322 to wit:

If there has been an admission of liability during negotiation and all that remains is fulfillment of the agreement it cannot be barred (if) after the statutory period of limitation giving rise to the action, the defendant were to resile from his agreement during the negotiation.

Here, the learned jurist is clearly referring to the fresh agreement the parties had struck during negotiations. The law is settled that agreements are meant to be honoured. All that Kolawole JCA is saying here, and which Edozie JCA cited with approval in SHELL PET. DEV. CO. LTD. v. UZOARO & ORS(1994) 9 NWLR [pt.366] 51 at 70, is that, on the principle of estoppels by conduct or agreement, a defendant who led the plaintiff to believe that his liability to the latter, though statutorily barred, would be paid or honoured is estopped from resiling from that undertaking. The dicta of these jurists in these two cases do not differ substantially from the law espoused in ODUBEKO v. FOWLER (supra) and AJIBONA v. KOLAWOLE (supra). In any case if the views expressed by Kolawole and Edozie JCA respectively in NWADIARO v. SPDC (supra) and SPDC v. UZOARO (supra), conflict with those expressed by the Supreme Court in ODUBEKO v. KOLAWOLE (supra) the statement of law by the Supreme court, on principle of judicial precedence, will prevail eventually.

What I am saying, in summary, is that the suit of the plaintiffs the present respondents, became statute barred by 1996 and that by dint of section 16 of the Limitation Law, 1988 it was not maintenable as at 27th July 1998 when the writ of summons in the suit was taken out. I hold this view inspite of Exhibit 'A', which is not a categorically binding agreement. Exhibit 'A' does not possess any potency to extend the limitation period of 5 years statutorily prescribed for the tort alleged. Even if Exhibit 'A' constituted an agreement or an admission it created or established a new contractual regime or relationship independent of the cause of action that arose, or accrued to the Plaintiffs, in 1991. This issue is hereby resolved in favour of the Appellant.

I have held under issue 1 that Exhibit 'A', does not *ex facie* constitute an admission of liability or does it contain any agreement reached during any preceding negotiations. It has an offer to which there was no acceptance in order to constitute an agreement. On these findings I do not think Issue 2 deserves any further consideration. Moreover, my resolution of Issues 3 and 1 in favour of the Appellant has completely removed any hope of viability of Issue 2 in favour of the Respondents.

The appeal has substance. It is hereby allowed. The suit no YHC/54/98 at the High Court of Bayelsa State sitting at Yenegoa shall be, and is hereby dismissed on the authority, *inter alia*, of OWNERS OF M.V. ARABELLA v. N.A.I.C (2008) 11 NWLR (Pt.1097):182 at 218 - 219. Parties shall bear their respective costs.

**SULEIMAN GALADIMA, J.C.A (OFR):**

I have had the privilege of reading in advance the lead judgment just delivered by my Brother EkO, JCA. I agree with him that this appeal has substance and ought to be allowed. It is accordingly allowed. I too, make no order as to costs.

**TIJJANI ABDULLAHI, J.C.A.:**

I have had the advantage of reading in draft the lead judgment of my learned brother, EKO, JCA just delivered. I entirely agree with His Lordship that the appeal is pregnant with a lot of merit and ought to be allowed.

Exhibit 'A' heavily relied by the learned trial judge in arriving at the verdict he dished out cannot be called in aid of the Respondents. This is so because Exhibit A was made and dated "28th May, 1998". It is instructive to note that the trial judge found as follows:

"In considering whether an action is statute barred, time begins to run when the cause of action arises. In the instant case time begun to run in 1991. It is settled law that generally negotiation by parties does not stop the period of limitation stipulated by a statute from running. (Under lining supplied for emphasis)."

I am of the view that this being the case, as of the time when exhibit 'A' was made, the time limited by statue for the commencement of an action for the tort of negligence had run out. The Respondents' action was already statute barred sometime in 1996, well before May, 28, 1998. Exhibit 'A' is therefore incapable of reviving a claim that the law foreclosed.

I am of the further view that Exhibit 'A' cannot therefore revive nor can it found a valid cause or right of action for a claim that in the eye of the law is dead.

For these reasons and the more detailed ones, contained in the lead judgment of His Lordship I too allow the appeal and abide by the no cost order contained therein.