



ARET & BRET Q&A SERIES ON THE APPLICATION OF LIMITATION LAWS TO EMPLOYMENT CONTRACTS IN NIGERIA

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This publication seeks to clarify certain issues relating to the application of limitation laws to employment contracts in Nigeria. It takes into account the very recent decisions of the Supreme Court of Nigeria which deal with the application of the Public Officers Protection Act (“POPA”) to employment contracts, on the one hand and the subsequent nullification of the POPA by the National Industrial Court of Nigeria (“NICN”), on the other hand. The publication also addresses the continued relevance and application of Supreme Court decisions on employment issues to cases pending before the NICN in light of the amendment to the Constitution of Nigeria by the Third Alteration Act 2010; the continuance of injury exception in employment matters and the requirement of pleading limitation laws, amongst others.

Question 1: What are the limitation laws that may be raised or pleaded before the National Industrial Court of Nigeria?

A defendant may raise or plead the following: 1) *The Limitation Act*: This is applicable to the Federal Capital Territory Abuja. 2) *State Actions Law or Limitation Law*: Various states have Actions Law or Limitation Law. For instance, we have the Lagos State Limitation Law; The Rivers State Limitation Law; Anambra State Actions Law etc.; 3) *The Public Officers Protection Act (“POPA”)*: This is an Act of the National Assembly that seeks to limit the period within which to bring an action against a public officer; 4) *Public Officers Protection Law*: Some states have Public Officers Protection Law that limit the time for commencing actions against public officers in the state; *Other Laws*: There are some statutes that limit the period to bring actions against certain agencies of the government. For instance, the Nigerian Postal Service Act (NIPOST Act) has a limitation period for actions against the Nigeria Postal Service. This is also the case with the Nigerian Port Authority Act, to mention just a few. It is worth noting that POPA can only be pleaded or raised by a public officer.¹ POPA cannot be raised or pleaded by persons who are not public officers. On the other hand, the Limitation Act or Law can be raised by any person where the Act or Law is in force. It is immaterial whether the person is a private employer or a public employer or officer.

¹ By law, public officer has been extended to include a public department, public bodies, statutory bodies etc. Please see *CBN v Ochife* (2025) 12 NWLR (Pt. 2000) 1



Question 2: Does the POPA apply to employment contracts?

The most recent decision of the Supreme Court of Nigeria is that POPA applies to employment contracts. This position, which was taken in *Okoronkwo v INEC* (2025) 8 NWLR (Pt. 1991) 131 decided on 7 February 2025, is in conflict with the earlier decisions of the Supreme Court in cases such as *Rector Kwara Poly v Adefila* (2024) 9 NWLR (Pt. 1944) 529 (SC) *Oluremi Obasanjo & Anor v Wuro Bogga Nigeria Ltd & Ors* (2023) 2 NWLR (Pt. 1868) (SC) and *Revenue Mobilisation, Allocation and Fiscal Commission & Ors v Ajibola Johnson & Ors* (2019) 2 NWLR (Pt. 1656) 270 (SC). Indeed, the Supreme Court has not been consistent on the issue.²

Question 3: Is the limitation provision of POPA still valid and enforceable in Nigeria having regard to the decision in *Ekwo v INEC*?

On 15 May 2025, the NICN in the case of *Ekwo v INEC*³ handed down a profound decision where the Court determined that POPA is unconstitutional and proceeded to strike down the provisions of POPA which require that public officers must be sued within 3 months of the cause of action. In coming to this conclusion, the NICN held that POPA was a “contrivance to hinder access to justice, ambiguous, absurd, discriminatory, unreasonable, unjustifiable, unfair, cruel, remote, unconscionable, creates inequality before the law without any operational necessity, and not in accord with international best practices, with regard to its discriminatory application to public officers-employees and also, other citizens, [and] is therefore, unconstitutional and void by virtue of SS.1(1)&(3), 17(1)(a), (c) & (e), 315(3)(c)-(d) & 254C-(1)(f)-(h)&(2) of the *Constitution*; Arts 8(1)&(3) of the *ILO C158*; Arts 1, 7, 10, 21(2) & 23(1) of the *UDHR* and; Arts 2,3,7&15 of the *ACHPR*” The court concluded that “the whole of the notorious and anachronistic *POPA*, a two-section statute, is hereby declared to be unfair labour practice and contrary to international best practices and accordingly, hereby struck down as unconstitutional.”

The implication of the above decision of the NICN is that the limitation of action provisions of POPA is no longer part of the corpus of Nigerian law and ceases to exist unless the decision is reversed on appeal. A case in point is the decision of the Court of Appeal in *Aro v Lagos Island LGC*⁴, where the Court observed that the Lagos State

² See for instance, *Abubakar Abdulrahman v NIPC* (2020) LPELR-55519 (SC); *Idachaba & Ors v University of Agriculture Makurdi & Ors* (2021) LPELR-53081 (SC); *Aba v Board of Directors, NIPOST* (2023) 5 NWLR (Pt. 1878) 475; *Anolam v FUTO & Ors* (2025) LPELR-80027 (SC)

³ Unreported decision in Suit No. NICN/EN/04/2024 *per* Honourable Justice O.O. Arowosegbe

⁴ (2002) 4 NWLR (Pt. 757) 385 Page 411



Local Government Law, 1980 had been nullified by a decision of Balogun J. of the High Court of Lagos State in an earlier case. In its decision on the legal status of the Lagos State Local Government Law, 1980 the Court held that a law “repealed” by a judicial decision has ceased to exist. The Court concluded that “the decision of *Balogun J, supra* has not been appealed against so it is still good law”.

The point therefore is that POPA has ceased to exist in Nigeria by virtue of the decision of Honourable Justice O.O. Arowosegbe in *Ekwo v INEC*. The broader implication is that POPA cannot be validly canvassed before any court in Nigeria today unless the decision in *Ekwo v INEC* is set aside on appeal. It is therefore surprising that POPA is still being referenced and applied post the invalidation or judicial “repeal” of the law in *Ekwo v INEC*.⁵

Question 4: What is the fate of the Public Officers Protection Laws (“POPL”) of various states in Nigeria since POPA has been struck down?

The timeline of 3 months stated in POPA for actions against public officers is the same in most POPLs. Indeed, in many states, the limitation provisions of POPL are often phrased in manner similar to POPA. The implication is that those laws are equally unconstitutional going by the sound and insightful reasoning in *Ekwo v INEC (supra)*. However, those laws must be specifically struck down as the decision in *Ekwo v INEC* concerns only POPA. It is the expectation that the various POPLs would be struck down in the same manner as the POPA. But this has not happened yet, as the authors are aware that in the recent case of *Adelabu Lukman v Attorney General of Osun State*,⁶ the NICN struck out a matter filed after 20 months by applying the Osun State Public Officers Protection Law.

Question 5: Since POPA has been declared unconstitutional, does it mean that employment contracts are not subject to limitation laws?

No. The unconstitutionality of POPA does not mean that the Limitation Act or the Limitation Law of a state is also unconstitutional. Put differently, the inapplicability of POPA to contract of service (because of its unconstitutionality) does not equate to a

⁵ See for instance, unreported decision in Suit No. NICN/LA/297/2023 *Musa v National Health Insurance Authority* delivered on 26 September 2025.

⁶ Suit No.: NICN/IB/56/2024: *Adelabu Lukman v Attorney General of Osun State* decided on 14 July 2025.



complete immunity from limitation defences. A person cannot be granted indefinite right of action in employment disputes as some recent NICN decisions seem to suggest.⁷ This will undermine legal certainty and public policy considerations that require that there should be an end to litigation. Indeed, a right of action cannot inure a person in perpetuity. The Limitation Act or the Limitation Law of a State applies to every form of employment relationship where it is in force. Public officers as well as private employers can rely on the Limitation Act or the Limitation Law of a State as the case may be. POPA was largely declared unconstitutional due to the shortness of the period (3 months) to bring an action. This is not so with the Limitation Act or Limitation Law/ Actions Law of states in Nigeria. Most of these laws provide a period of 5 or 6 years to enforce contracts, including contracts of employment. This period appears reasonable.

It must be noted, respectfully, that decisions to the effect that the Limitation Act or the Limitation Law of a state does not apply to employment contract – because of the earlier decision of the Supreme Court that POPA does not apply to employment contract – are anchored on faulty reasoning and need to be reviewed.

Question 6: Is an employment contract a simple contract so as to come under the Limitation Act or a state Limitation Law?

There are decisions of the NICN to the effect that employment contracts are not a simple contract. For instance, in the case of *Onwe v Union Bank of Nigeria PLC*⁸ decided on 30 October 2025, the NICN held that employment contracts are not simple contracts as there are several indices that characterise employment contract in Nigeria such as the application of the Labour Act and in some cases International Conventions, in addition to the letter of employment, employee handbook, and the Civil or Public Service Rules in the case of public employment. According to the NICN, “[n]o employment contract can be classified as a simple contract under any limitation of action law”. By this decision, employment contracts are not a simple contract and are beyond the reach of the limitation laws.

However, most limitation laws contain omnibus provision for matters not listed and most limitation laws do not qualify contract with the word “simple” in the relevant

⁷ Unreported judgment in Suit No: NICN/LA/443/2021: *Onwe v Union Bank of Nigeria Plc.*, per Hon. Justice (Dr) I.J. Essien, delivered on 30 October 2025.

⁸ Ibid



limitation provisions. For instance, section 16 of the Rivers State Limitation Law provides as follows:

“No action founded on contract, tort or any other action not specifically provided for in Parts I and II of this Law shall be brought after the expiration of five years from the date on which the cause of accrued” Emphasis supplied.”

Going by the above provision of the Rivers State Limitation Law, any contract (whether simple or otherwise) and matters not specifically provided for in the Law must be commenced within 5 years. So, beyond the argument of whether employment contracts are simple contracts, an important consideration is whether there is any limitation period applicable for matters not specifically provided for in the relevant limitation law. In such a case, that period will apply in the event that employment contracts are determined not to be simple contracts.

Question 7: Do employment claims come within the continuing damage or injury exception of limitation laws?

This would depend on the claim involved. Ordinarily, a continuing damage or injury is an exception to limitation laws. It refers to the persistence of the legal injury itself or the act which caused the damage. It does not cover the continuance of the injurious effects of a legal injury or the lingering effects of a completed act. However, it must be noted that the issue of continuance of damage or injury appears to have been stretched beyond the intended limit in labour and employment matters. For instance, in *Nwachukwu v Beloxxy Industries Ltd*,⁹ the NICN held that where an injury results in permanent disability then such permanent disability constitutes a continuing harm and comes under the continuance of injury exception of limitation law. In a dissimilar circumstance in *Jasper F. Abowei v Bayelsa State Government*,¹⁰ the NICN held that the claim for payment of entitlement means that “each failure to pay [the entitlement] yields to a fresh cause of action which brings [the claim] within the continuing damage or injury exception of the limitation laws”. In *Victor Tarilate & Ors. v Government of*

⁹ Suit No.: NICN/LA/30/2024: *Nwachukwu v Beloxxy Industries Ltd* per Hon. Justice S. A Yelwa delivered on 27 August 2025.

¹⁰ Suit No: NICN/YEN/06/2022 *Jasper F. Abowei v Bayelsa State Government* Per Hon. Justice Bashar A. Alkali delivered on 10 July 2025



*Bayelsa State & Ors*¹¹, the NICN equally held that “the unpaid entitlements constitute continuance of damage or injury”. These decisions – to the extent that they do not relate to pension – in our view, may have overstretched the continuance of injury exception.

Questions 8: Must limitation law be pleaded before it can be determined by the court?

In Nigeria, there is a misconception about the status of limitation law. It is generally seen as an issue of jurisdiction that goes to the root of any matter.¹² In other words, it need not be pleaded before it can be raised since an issue of jurisdiction can be raised at any time and in any matter. This misconception arises due to the fact that case law has not been able to properly distinguish an issue of jurisdiction and an issue that affect the exercise of jurisdiction. The former is statutory and constitutional and can be raised at any time and in any matter while the latter is regulated by the rules of court and cannot be raised in any manner or any time.¹³ Limitation law is an issue that borders on the exercise of jurisdiction of the court. In other words, a party seeking to raise the issue of limitation law must comply with the relevant rules of court. In this regard, Order 30 r.8 (1) & (2) of the National Industrial Court Rules 2017 provides that limitation law must be specifically pleaded. Raising the issue of limitation law without pleading it in the statement of defence amounts to *demurrer* which has been abolished by virtually all the Rules of Court in Nigeria. Therefore, the appropriate response to the question is that limitation law must be pleaded before it can be raised. The NICN has correctly applied this position in the cases of *Onwe v Union Bank of Nigeria Plc* and *Ekwo v INEC* referenced above.

Question 9: How relevant are Supreme Court decisions on employment issues since civil appeals arising from NICN decisions now end at the Court of Appeal?

By section 243(3) of the Constitution of Federal Republic of Nigeria 1999 (as amended),¹⁴ the Court of Appeal is the final or apex court in labour matters as far as the civil jurisdiction of the NICN is concerned. One incidence of the finality of the Court of Appeal is that its decisions on labour matters share the same status as Supreme Court decisions. Another incidence of the finality of the Court of Appeal

¹¹ Suit No: NICN/YEN/39/2022: *Victor Tarilate & Ors. v Government of Bayelsa State & Ors* per Honourable Justice P. I. Hamman delivered on 22 October 2025.

¹² See *Dawodu v Elebanjo* (2006) 15 NWLR (Pt 1001) 76 at 110

¹³ See Ochulor & Ozuo “Civil Jurisdiction of Courts in Nigeria (LexisNexis 2024) 16 – 35; 49 - 58

¹⁴ An amendment introduced by the Third Alteration of the Constitution of Nigeria.

relates to the power of the Court to overrule its previous decisions on labour matters. Although the Supreme Court is the only court that ordinarily enjoys the power to overrule its previous decisions in view of its finality, the Court of Appeal, by virtue of being the final court in labour matter has the power to overrule its previous decisions on labour matters as well as the power to depart from previous Supreme Court decisions on labour matter. This is “precisely so, as the Supreme Court will not be able to revisit such decisions”.¹⁵ The point, therefore, is that the NICN should look to the Court of Appeal only for guidance and not the Supreme Court as the Supreme Court no longer has jurisdiction over labour and employment matters arising from the civil jurisdiction of the NICN. This is particularly so as the Third Alteration of the Constitution of Nigeria introduced certain radical changes to the Nigerian labour jurisprudence which the Supreme Court may never pronounce upon as appeals on labour matter terminate at the Court of Appeal.

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This publication does not constitute a legal advice. For proper legal advice or inquiries on the issues raised in this article or other general enquiries relating to labour and employment law in Nigeria, please contact Aret & Bret LLP at ab@aret-bret.com.

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¹⁵ Ochulor & Ozuo “Civil Jurisdiction of Courts in Nigeria (LexisNexis 2024) 142



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