THE VALIDITY OF RETROSPECTIVE OPERATION OF THE AMCON (AMENDMENT) ACT, 2019 ON STATUTES OF LIMITATIONS: IN-DEPTH ANALYSIS

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Abstract

Laws are generally enacted to deal with problems in the society. This may be in the form of the creation of institutions to achieve some laid down goals. The Asset Management Corporation of Nigeria (AMCON) is a child of circumstances birthed by the National Assembly to handle numerous debt cases that arose in Nigeria sometime in 2008 and resulted in the financial distress of several financial institutions in Nigeria. The primary goal for the establishment of AMCON is to recover the debts owed to these financial institutions in order to inject life into the Nigerian financial market. The importance of this government policy led to the enactment of the AMCON Act 2010 and the successive amendments in 2015, 2019 and 2021. The three successive amendments were designed to cover loopholes in the parent 2010 Act. Of material concern to this paper is the AMCON (Amendment) Act 2019. The Act purposefully abolished statute of limitation and made its provisions to have retrospective effect. The effect of this is to obliterate already vested rights of citizens in relation to limitation statutes. The Act also fixed time frames for the hearing and determination of suits filed by the Corporation and appeals form such suits. The AMCON jurisprudence illustrates the relationships between legal doctrines and socio-economic necessities. This paper examines the force, validity and justice, amongst others, of this Amendment Act, the onerous interpretative challenges faced by courts, the self-inflicting aspects of the Act and offers recommendations for all the players involved in the project founded on the AMCON Acts.

Keywords: *Retrospective Operation, AMCON (Amendment) Act, 2019 and the Nigerian Statutes of Limitations*

The Rationale for the AMCON Acts

The Nigerian economy that is principally based on crude oil has always been susceptible to the vagaries and vulnerabilities of global oil diplomacy. Most oil moguls in Nigeria lean on bank loans to run their businesses. Sometime in 2008 the crash in oil price all over the world resulted in stupendous unserviced bank debts, which ran several banks aground, financially.[1] The Federal Government of Nigeria injected huge sums of money to rescue the affected banks from the effects of non-performing loans (NPLs). Some of the loans were dished out in compromising and fraudulent circumstances. Effective mechanisms were hardly put in place by the banks to recover the huge debts, just as the debtors and guarantors were not committed to repaying the loans.

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[1] Nnamdi Okwy Dimgba, JCA, *The Role of the Federal High Court in Renewed AMCON Debt Recovery Drive*, April 2025; Kunle Aina, ' A Critical Examination of the Asset Management Corporation of Nigeria Act and the Process of Securitisation of Eligible Bank Assets' in *A Journal of Contemporary Issues* (Publication of the Federal Ministry of Justice, 2015) 26.

Government policy was therefore inevitable. The Central Bank of Nigeria and the Federal Ministry of Finance championed the crusade that led to the passing of the AMCON Act of 2010. This was followed by the Amendment Acts of 2015, 2019 and 2021 during which time the policy that drives the Act had profoundly evolved. Among the decisive provisions of the ambitious Act of 2010 is section 35, with special interest in subsections (1), (2) and (4)(a). Section 35(1), (2) and (4)(a) provide that:

> (1) For the avoidance of doubt, after the Corporation has acquired an eligible bank asset and subject to any exclusion stated in the purchase agreement relating thereto, the Corporation shall be entitled to exercise all rights and powers in relation to the eligible bank asset and any security interest connected to the eligible bank asset.
> (2) The Corporation shall be entitled to the benefit of any right of set-off held by an eligible financial institution against any person whether under the credit facility relating to the eligible bank asset concerned or any other right of set-off and the Corporation shall be entitled to exercise such right, by directing the eligible financial institution to pay an amount equal to the benefit of the right of set-off to the Corporation to meet any obligation of that other person to the Corporation, whether actual or contingent.
> (4) Without prejudice to the generality of subsections (1) and (2) of this section, the Corporation may-
> (a) Take any action, including court action, that the eligible financial institution could have taken to protect, perfect or enforce any security, right, interest, obligation or liability

Interestingly, at the time the AMCON Act was birthed in 2010 and the Corporation set out to the field some of the debts contemplated under the Act had ran out of the length of the limitation time. Suits filed by AMCON pursuant to section 35 of the Act were contested as dead on arrival. Expectedly, the grimacing debtors responded by appealing to limitation statutes, and called on the courts seised of the matters to decline jurisdiction and dismissed the suits for being statute barred. A defence based on statute of limitation is such an unassailable defence that defies sentiments and morality.[2] The AMCON body and the bath water were in peril, and needed an urgent rescue mission.

This rescue operation came by way of the AMCON (Amendment) Acts of 2015, 2019 and 2021. In the case of the 2019 Act, the draftsman inserted into the principal section 35 a subsection (5). Section 35(5) of the AMCON Act (as amended) unequivocally excluded the application of statute of limitation with respect to matters instituted by the Corporation, together with other statutory assurances. The new subsection dictates that –

> Any statute of limitation of a State or Federal Capital Territory or any like statute or rule or practice directions of any court limiting the time within

[2] *Olateju v Commissioner for Lands and Housing, Kwara State* (2024) 17 NWLR (Pt. 1968) 473 SC; *Asaboro v. Pan Ocean Oil Corporation (Nig) Ltd* (2017) 7 NWLR (Pt. 1563) 42 SC.

> which an action may be commenced does not apply or operate to bar or invalidate any claim brought by the Corporation in respect of an eligible bank asset or brought to recover a debt or enforce any security or obligation of a guarantor or surety in connection with an eligible bank asset.

Although the exclusion of statute of limitation through the section 35(5) window came with relish for the Corporation, the slow dispensation of justice, characteristic of the Nigerian court system, emerged as another hurdle to surmount. The solution was the diversification of forum for AMCON-related matters. This project was effected by the AMCON (Amendment) Act 2021. Section 61 of the Principal Act was amended to include among the secular courts vested with jurisdiction to deal with AMCON matters, the Special Tribunal for Enforcement and Recovery of Eligible Loans.

Another issue of interest to this paper which the 2019 Amendment Act introduced to the AMCON jurisprudence is section 53(3), (5) and (6), which mandate a trial court to hear and determine a suit filed by the Corporation within 6 months, and any appeal to be determined within 60 days.

Ironically, whereas the AMCON (Amendment) Act 2019 set out to exclude the application of statute of limitation[3] from AMCON-related disputes, the same Act self-inflicted on the Corporation another form of limitation rule with respect to the duration of proceedings in court.[4] The Act can be thus described in the proverbial benevolence of delivering a gift with one hand and withdrawing it with the other hand. Section 53(3), (5) and (6) arguably have the same effect as section 285(6) and (7) of the 1999 Constitution (as amended).[5] The courts have construed section 285 (6) and (7) in a line of cases with the implication that after the expiration of the stipulated time frames the matter or appeal becomes academic, and the jurisdiction of the court seised of the matter evaporates.[6] This issue shall be elaborated on later.

Background to Statute of Limitation

The rules of limitation of action has been argued to have existed before the Hellenistic age, and possibly had been instrument of justice during the prehistoric times.[7] The principle formed part of the Mosaic Law. For instance, it was commanded that –

> And if a man sell a dwelling house in a walled city, then he may redeem it within a whole year after it is sold; within a full year may he redeem it. And if it be not redeemed within the space of the full year, then the house that is in the walled

[3] Section 35(5).
[4] Section 53(3).
[5] (First Alteration) Act 2010.
[6] *Apugo v Ohajuruka* (2024) 16 NWLR (Pt. 1965) 403 CA; *P.D.P. v Nya-Atok* (2024) 4 NWLR (Pt. 1929) 409 SC; Jerry Amadi, The Extent of the Justice in section 285(6) and (7) of the 1999 Constitution (as amended) on the Limitation of Time for Delivering of Judgments on Election Petitions and Appeals in Port Harcourt Law Journal, volume 4, Number 2, June 2012, published by Faculty of Law, Rivers State University of Science and Technology, Port Harcourt, Nigeria, 187-188.
[7] Jerry Amadi, *Limitation of Action (Statutory and Equitable Principles* (2011) Pearl Publishers, 4.

> city shall be established for ever to him that bought it throughout his generation: it shall not go out in the jubilee.[8]

Under Islamic jurisprudence it is called *hauzi*.[9] In early England, the question of limitation was essentially an issue of custom. A claimant was allowed to bring an action within the fifth generation of his lineage. With time the rules began to change from multiple generations to one generation. At the time when Parliament began to reduce most of the common law tenets into the statute book, the years became very minimal, but there was never a time when a uniform time frame was prescribed for all forms of claims.[10] In the preceding centuries Parliament enacted a number of limitation statutes[11] ranging from the Limitation Act 1623 to the current Limitation Act 1980, which had been amended a couple of times. In addition to these Acts that specially deal or dealt with the subject of limitation there are numerous English statutes that contained or contain limitation clauses.

The Limitation Act of 1623 and the Real Property Limitation Act of 1833 applied in Nigeria as part of the statutes of general application by virtue of section 32 of the Interpretation Act[12], until the local equivalent of these English statutes were enacted by the appropriate legislature. The subject of limitation has never been part of the enumerated items in either the exclusive or concurrent legislative lists of our constitutional framework. The subject is therefore presumed to be a matter within the imaginary residual legislative list. This justifies the existence today of the Limitation Laws of the various States in Nigeria.[13]

This does not imply that a competent legislature, such as the National Assembly, cannot insert a limitation clause in an Act, or enact a statute having the effect of a Limitation Law. Section 12(1) of the defunct Nigerian National Petroleum Corporation (N.N.P.C.) Act[14], which contains a limitation clause and the Public Officers Protection Act[15] which deals with the subject of limitation are pristine examples. The question, therefore, whether the National Assembly had the vires to import a limitation clause into the AMCON Act 2010 through the medium of section 35(5) of the AMCON (Amendment) Act 2019 is outside the realm of debate. The issue of debate is whether the National Assembly was right in wearing the provision with a retrospective garment with the effect of choking vested rights under existing limitation statutes. Before delving into this debate it may be invaluable to explore the legal effect of limitation statutes.

Legal Effect of Limitation Statutes

[8] Leviticus 25:29-30 (King James Version).
[9] *Baba v Seyo* (2025) 4 NWLR (Pt. 1981) 163 SC; *Kada v Yawa* (1998) 10 NWLR (Pt. 569) 196 SC.
[10] Theodore Plucknett, *A Concise History of the Common Law*, 680-681.
[11] Limitation Act 1623, Real Property Limitation Act 1833, Limitation Act 1939, Limitation Act 1954, Limitation Act 1975 and Limitation Act 1980.
[12] Cap. I23, LFN 2004.
[13] See for instance, Limitation Law, Cap. L84, Laws of Lagos State 2015; Limitation Law, Cap. 114, Laws of Abia State 2005; Limitation Law, Cap. 80, Laws of Rivers State 1999.
[14] *Eboigbe v N.N.P.C.* (1994) 5 NWLR (Pt. 347) 649 SC.
[15] *Okoronkwo v I.N.E.C.* (2025) 8 NWLR (Pt. 1991) 131 SC; *Uniport v. Nwuzor* (2024) 16 NWLR (Pt. 1965) 551 SC.

Statute of limitation refers to a law that bars claim after a specified time frame.[16] The time is usually calculated from when the cause of action accrued. The purpose of statute of this nature is to require litigants to diligently pursue their legal rights in circumstances that will not amount to surprise to the other party, when evidence to defend the claim has been lost, memories faded, and witnesses have disappeared. According to Mohammed, JSC -

> The law is clear that a statute of limitation is one which provides that no court shall entertain proceedings for the enforcement of certain rights if such proceedings were set on foot after the lapse of a definite period of time, reckoned as a rule from the date of the violation of the right.[17]

Limitation of action is broader in scope than statute of limitations, because whereas the latter is tied to a stipulated time regime, the other may relate to previous conduct of a party, previous decision of a court, and other related factors which make it inequitable or unconscionable to allow the claimant to maintain a given claim. Section 35(5) of the AMCON (Amendment) Act 2019 under review does not subject a claimant or plaintiff as the case may be to a time frame as other statutes of limitations, but excludes the application of statutes of limitations to AMCON claims contemplated under section 35 of the Act. In effect, the Corporation cannot appeal to section 35(5) if the cause of action is outside the scope of section 35 rights.

Section 35(5) is akin to order III of the Fundamental Rights (Enforcement Procedure) Rules 2009, that declares that 'An application for the enforcement of Fundamental Right shall not be affected by any Limitation Statute whatsoever.' But whereas the validity of the above provision has been valiantly criticised on the footing that a delegated legislation as the FREP Rules 2009 cannot sweep away statutes enacted by competent legislature[18], the propriety of section 35(5) of the AMCON (Amendment) Act 2019 cannot be questioned, because it is a creature of parliament, but, the question whether such a provision could obliterate already vested rights before it was enacted is one which is yet to be resolved.

Suffice to state at this juncture that the legal effect of statute of limitation is that the claimant or plaintiff as the case may be becomes disrobed of the right of action and judicial remedy. Put in other words, the legal effect of statute of limitation is that it extinguishes the right of action.[19] On the side of the court it robs the court of jurisdiction to entertain the matter. The time regime in limitation statutes are so sacred

[16] *Black's Law Dictionary* (11th edn., Garner, B.A. ed., 2019), USA, Thomson Reuters, at 1707.
[17] *Texaco Panama Inc. v Shell P.D.C.N. Ltd.* (2002) 5 NWLR (Pt. 759) 209 SC, at 241-242, paras H-A; see also *Ethiopian Airlines v Polaris Bank Ltd.* (2025) 6 NWLR (Pt. 1987) 451 SC; *Egbe v Adefarasin* (1987) 1 NWLR (Pt. 47) 1 SC, at 20-21, paras H-D, per Oputa, JSC; *Order of R.R. Telegraphers v Railway Express Agency*, 321 US 342, 348-349, 64 S Ct 582, 586 (1944).
[18] Jerry Amadi, *Limitation of Action (Statutory and Equitable Principles* (2011) Pearl Publishers, 1461-1471.
[19] *Ethiopian Airlines v Polaris Bank Ltd.* (2025) 6 NWLR (Pt. 1987) 451 SC; *Akingbola v Intercontinental Bank Plc* (2025) 5 NWLR (Pt. 1984) 343 SC; *Olateju v Commissioner for Lands and Housing, Kwara State* (2024) 17 NWLR (Pt. 1968) 473 SC.

that the court cannot extend time for taking out an action[20] as it could generally do in procedural matters.[21]

The courts appear to sing a common chorus that the rationale for statutes of limitation is framed in triangular compartment and it is:

i. that long dormant claims have more of cruelty than justice in them,
ii. that a defendant might have lost the evidence to disprove a stale claim, and
iii. that persons with good cause of action should pursue them with reasonable diligence.[22]

It is based on the above policy that the law snuffs life off every stale claim, so that a prospective defendant does not spend all his life in the fear of being impleaded by his adversary who may have threatened to do so, or who is expected to do so on the premise of an event that took place in the past.

Retrospective Limitation Statute

The words 'limitation statute' or 'statute of limitation' has been considerably explained to mean a law that bars a person from taking legal action owing to the passage of time. What is sought to be discussed here is the meaning of retrospective limitation statute. In English language the word 'retrospective' means thinking about or connected to something that happened in the past.[23] As a term of art the word 'retrospective' is used interchangeably with the word 'retroactive', in the sense that a statute becomes operative in the past, before it was conceived or enacted by the legislature. The learned editors of *Black's Law Dictionary*[24] defined retroactive law as a legislative act that looks backward or contemplates the past, affecting acts or facts that existed before the act came into effect.

There is a presumption of law that a statute when enacted should take effect from when it was enacted, and not to a time in the past. This presumption is cast in the maxim '*nova constitution futuris formam imponere debet, non praeteritis*', which means that unless there be clear words to the contrary, statutes do not apply to a past, but to a future, state of circumstances.[25] Under criminal jurisprudence retrospective legislation which provides penal sanction is unconstitutional.[26] This rule is entrenched in section 36(8) of the 1999 Constitution.

[20] *Egbodo v A.P.C.* (2024) 1 NWLR (Pt. 1920) 559 SC.
[21] Court of Appeal Rules 2021, order 6 rule 9(1); Federal High Court (Civil Procedure) Rules 2019, orders 48 rule 4 and 51 rule 1.
[22] *Olateju v Commissioner for Lands and Housing, Kwara State* (supra), at 506-507, paras G-B; *P.N. Uddoh Trading Co. Ltd. v Abere* (1996) 8 NWLR (Pt. 467) 479 CA, affirmed in (2001) 11 NWLR (Pt. 723) 114 SC; *Cave v Robinson Jarvis & Rolf* (2002) 2 All ER 641 HL, at [6]; *Halsbury's Laws of England* (4th edn.), Vol. 28, Butterworths, para 605.
[23] *Oxford Advanced Learner's Dictionary* (10th edn., Hornby A.S. ed., 2020), London, Oxford University Press, 1327; see also *The New Webster's Dictionary of the English Language* (International edn., Baltzell J.E. et al ed., 2004), USA, Lexicon Publications, 850.
[24] (11th edn., Garner, B.A. ed., 2019), USA, Thomson Reuters, at 1575.
[25] See per Alderson B in *Moon v Durden* 2 Ex 22, at 40.
[26] A regulation which raised the penalty for an existing offence retrospectively has been held to be valid, *D.P.P. v Lamb* (1941) 2 KB 89; cf *Wadsted v Baretto* (1994) 1 All ER 447 CA.

The presumption that statutes take effect prospectively, from when they are enacted, and not retrospectively to a period in the past has statutory, judicial and juridical supports. Section 2(2) of the Interpretation Act[27] provides in this regard that –

> (2) Where no other provision is made as to the time when a particular enactment is to come into force, it shall, subject to the following subsection, come into force -
>
> (a) in the case of an enactment contained in an Act of the National Assembly, on the day when the Act is passed;
>
> (b) in any other case, on the day when the enactment is made.

The courts are unanimous that there is a presumption that statutes when enacted by the legislature assume a prospective effect and should not deal with events of the past. In *Zubair v Kolawole*[28] Justice Kekere-Ekun, JSC (as he then was) reiterated that:

> It is apposite to reiterate here that the substantive law applicable to a cause or matter is the law in existence at the time the cause of action arose. Statutes are generally construed as operating only in cases or on facts which come into existence after the statutes were passed unless a retrospective effect is clearly intended.

Juristic opinions give credence to the presumption that statutes cannot *prima facie* be construed retrospectively. Cooley[29] while explaining the effect of retrospective statutes observed that –

> But legislation of this description is exceedingly liable to abuse; and it is a sound rule of construction to give a statute a prospective operation only, unless its terms show a legislative intent that it should have retrospective effect. And some of the States have deemed it important to forbid such laws altogether by their constitutions.[30]

None of the authorities, however, denied the existence of the power of the legislature to make legislation that expressly wear retrospective hues. The emphasis has been that the intention of retrospectivity

[27] Cap. I23, LFN 2004.
[28] (2019) 11 NWLR (Pt. 1682) 66 SC, at 99, paras B-C; see also *S.P.D.C.N. Ltd. v Anaro* (2015) 12 NWLR (Pt. 1472) 122 SC, at 187, paras C-E, per Kekere-Ekun, JSC (as he then was); *Ojokolobo v Alamu* (1987) 3 NWLR (Pt. 61) 377 SC; *Nigerian Nurses Association v A.G. Federation* (1981) 12 NSCC 441; *A.G. v Vernazza* (1960) 3 All ER 97 HL, at 100, paras E-G, per Lord Denning.
[29] Thomas M. Cooley, *A Treatise on the Constitutional Limitations which Rest upon the Legislative Power of the States of the American Union*, (1st edn., 1868), Boston, Little, Brown & Company, chapter XI, 370.
[30] See also *Maxwell on Interpretation of Statutes* (12th edn., P.St. J. Langan ed., 1969) London, Sweet & Maxwell, 215; E.A. Driedger, *Construction of Statutes* (3rd edn., 1985) Toronto, Butterworths, 186; *Strouds Judicial Dictionary of Words and Phrases* (7th edn., Daniel Greenberg ed, 2008) London, Sweet & Maxwell, Vol 3, 2406.

should not be one that is subject to conjecture, but one to be literally construed. As Obaseki, JSC admonished –

> In the area of construction, the primary concern of the courts is the ascertainment of the intention of the legislature or law makers. From this function, the court may not resile however ambiguous or difficult of application the words of the law or Act may be, the Court is bound to place some meaning upon them. If the language is clear and explicit, the court must give effect to it, for in that case, the words of the statute speak the intention of the legislature. Its function is jus dicere, not jus dare. The words of a statute must not be overruled by the judges.[31]

Power to make Retrospective Legislation

Where there is authority to make law, especially, from a constitutional point of view, only the constitution can limit the extent and parameters of the exercise of that power. The constitution itself has no retrospective effect[32], but it did not stipulate that other statutes cannot have such effect, apart from criminal statutes.[33] 'There is no doubt of the right of the legislature to make laws which reach back to change or modify the effect of prior transactions' argued Cooley, 'provided retrospective laws are not forbidden, *eo nomine*, by the State constitution, and provided further that no other objection exists than their retrospective character.'[34] It would appear that the condemnation for retrospective statutes has dwelt substantially on moral grounds than on legal justification. According to Aniagolu, JSC –

> Based upon the presumption that a legislature does not intend what is unjust, the Courts have always leaned against giving statutes a retrospective effect and usually regard them as applying to facts or matters which come into existence after the statutes were passed unless it is clearly shown that a retrospective effect was intended by the Legislature. This is a fundamental rule of English Law which Nigeria has adopted.[35]

As it relates to retrospective statutes, such as section 35(5) of the AMCON (Amendment) Act 2019, the regrettable and rueful effect is that such statutes obliterate rights that are already vested by limitation statutes. The consequence in law is comparable to compelling an aged man to the ring to fight in a vicious contest that he would have conveniently fought in his youthful days, when he was clad by Providence with strength, skill and other endowments that could draw triumph to his side. At old age he expectedly would have hanged his fighting paraphernalia, and have reserved for him waning and ailing health, insufficient to fight in the ring. But the morality that voices against retrospective

[31] *Ojokolobo v Alamu* (1987) 3 NWLR (Pt. 61) 377 SC, at 402, paras E-F; see also *Shaba v Kpotun* (2021) LPELR -54766(CA), at 29-30 where it was held that a limitation statute can apply retrospectively if the intention of the legislature can be distilled from the express words used in the provision in question.
[32] *Ojukwu v Obasanjo* (2004) 12 NWLR (Pt. 886) 169 SC, at 227-228, paras H-B.
[33] CFRN 1999, section 36(8).
[34] Note 29, 370.
[35] *Afolabi v Governor of Oyo State* (1985) 2 NWLR (Pt. 9) 734 SC, at 752, paras D-E.

legislation that relax limitation statutes also beckons against unjust enrichment, and here, with public policy, the law should not let the old man enjoy his loot only on the ground that his immoral act was undertaken in the past. So, as there is morality in condemning retrospective legislation that defeat the application of limitation statutes, there is equivalent morality in having such statutes in deserving cases. In any event, morality and legality are far from co-extensive, as Lord Atkin opined[36], and therefore, the question at all times ought to rest on the actual intention of the lawmaker, and not on the morality of the matter.

Afolabi v Governor of Oyo State[37] is reckoned as the *locus classicus* on the question of the validity or otherwise of retrospective legislation in Nigeria.[38] The Supreme Court adopted the views expressed in *Afolabi* in the later case of *Adesanoye v Adewole*.[39] Here, Justice Ogundare, JSC while reviewing the rules laid down in *Afolabi* reiterated:

In that case this court laid down the following principles as relating to retrospectivity of a statute:

1. If an enactment seeks to have retroactive effect in order to destroy accrued rights under another enactment which it has repealed, such enactment must either expressly or impliedly refer to such accrued rights or the earlier enactment which it has repealed.
2. The courts have always leaned against giving statutes retrospective effect and usually regard them as applying to facts or matters which come into existence after the statutes were passed.
3. The presumption is that a legislature does not intend what is unjust and thus the presumption against retrospectivity applies unless it is clearly shown that a retrospective effect was intended by the legislature.
4. Statutes which encroach on the rights of the subjects, whether in relation to persons or property are regarded as Penal Acts and are subject to a strict construction. Such statutes are therefore to be interpreted so as to respect such rights and any ambiguity in such statutes is usually resolved in favour of the freedom of the individual.
5. A statute does not retrospectively abrogate vested rights or take away proprietary rights without making provision for compensation.
6. Where there is ambiguity about the extent to which a statute has derogated from common law rights, the courts should resolve the issue in favour of maintaining common law rights unless they are clearly taken away.

[36] *Proprietary Articles Trade Association v A.G. Canada* (1930) All ER Rep 277 PC, at 283, paras C-E; (1930) AC 310, at 324.
[37] (1985) 2 NWLR (Pt. 9) 734 SC.
[38] Per Ogundare, JSC in *Adesanoye v Adewole* (2000) 9 NWLR (Pt. 671) 127 SC, at 167, para C; see also *Ojukwu v Obasanjo* (2004) 12 NWLR (Pt. 886) 169 SC, at 227-228, paras H-D.
[39] (2000) 9 NWLR (Pt. 671) 127

7. The well-established presumption is that the legislature does not intend to limit vested rights farther than clearly appears from the enactment.

8. Statutes are not to be held to act retrospectively to deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right, unless a clear intention to that effect was manifested.[40]

From the common thread that is discernible from the line of judicial authorities that dealt with retrospective legislation, there is nothing magical about a statute applying retrospectively, if public policy supports it, and if the draftsman has given the statute that character, perhaps to deal with an identifiable mischief that pervades in society. Plausibly, this is the spirit behind section 35(5) of the AMCON (Amendment) Act 2019. In *Jazztel plc v Revenue and Customs Commissioners*[41] the English Court of Appeal held that retrospective legislation was compatible with EU law, and that there was nothing wrong about retrospectively limiting the operation of any applicable limitation statute. It is a matter of common knowledge that procedural laws are in legion of cases retrospective, because they regulate proceedings that have begun before the coming into effect of the adjectival law in question. Lord Blackburn laid the point that 'Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be.'[42] There are authorities that decisions of courts conjure retrospective effect. As Lord Goff posited:

> The historical theory of judicial decision, though it may in the past have served its purpose, was indeed a fiction. But it does mean that, when the judges state what the law is, their decisions do, in the sense I have described, have a retrospective effect. That is, I believe, inevitable. It is inevitable in relation to the particular case before the court, in which the events must have occurred some time, perhaps some years, before the judge's decision is made. But it is also inevitable in relation to other cases in which the law as so stated will in future fall to be applied.[43]

It is submitted, and valiantly so, that if delegated instruments and decisions of courts could wield retrospective force, a conclusion ought to be drawn that the legislative department of government has arguably unreserved authority, subject to limits defined by the constitution, to enact legislation that have retrospective force. What remains is the question whether section 35(5) of the AMCON (Amendment) Act 2019 can be viewed as retrospective in nature, and whether it is valid in law in view of the legal rights that were in existence or vested before the Act was enacted. To that we now turn.

[40] At 167, paras C-H.
[41] (2022) Ch 403; (2022) EWCA Civ 232; (2022) 3 All ER 911 CA; *Fleming v Revenue and Customs Commissioners* (2008) 1 All ER 1061 HL; (2008) UKHL 2.
[42] *Gardner v Lucas* (1878) 3 App Cas 582 HL, at 603; approved by Ogundare, JSC in *Adesanoye v Adewole* (2000) 9 NWLR (Pt. 671) 127 SC, at 166, paras F-G; see also *R v Dharma* (1905) 2 KB 335.
[43] *Kleinwort Benson Ltd v Lincoln City Council* (1998) 4 All ER 513 HL, at 535, paras g-h.

Validity of Retrospective Operation of the AMCON Act on Limitation Statutes

The plethora of cases that dealt with the question of the retrospectivity of statutes rested the matter on the express terms used by the legislature in the statute in issue. This is because the elementary cardinal rule of interpretation is that words used in a statute should be given their ordinary meaning.[44] But in view of the presumption against retrospective legislation the retrospectivity of a statute should not rest on mere sentiment or conjecture. The language of the statute should literarily convey the intention of the draftsman. In the instant case, section 35(5) of the AMCON (Amendment) Act 2019 declares that,

> Any statute of limitation of a State or Federal Capital Territory or any like statute or rule or practice directions of any court limiting the time within which an action may be commenced does not apply or operate to bar or invalidate any claim brought by the Corporation in respect of an eligible bank asset or brought to recover a debt or enforce any security or obligation of a guarantor or surety in connection with an eligible bank asset.

It cannot be doubted that the above section excludes the application of limitation statutes on AMCON-related disputes where the cause of action is 'to recover or enforce any security or obligation of a guarantor or surety in connection with an eligible bank asset'. The Principal Act was enacted in 2010. The Amendment of 2019 like the 2015 and 2021 Amendments was ingeniously designed to fill the lacuna in the Principal Act by adding section 35(5). There is no express words used in section 35(5) denoting that the subsection shall operate to any time before 2019 when it was passed. So retrospectiveness cannot be awarded to the subsection by any generous or hospitable interpretation by the court, in want of express words in that regard, coupled with the presumption against the retrospective operation of a legislation.[45]

It must however, be borne in mind that there is an immutable rule of law that when an amendment is effected in a court process it relates back to the time when the amended process was filed.[46] There is no rule that this principle, called the relation back theory or doctrine, should not extend to statutes. There are authorities that the relation back theory cannot be applied in favour of an amended process against the provision of an applicable limitation statute[47], but the rule does not apply to statutes, where the language of the statute in question is clear that that is the intendment of the legislature.[48] It follows therefore that section 35(5) of the AMCON (Amendment) Act 2019 should take effect from 2010 when

[44] *Aribisala v AMCON (No.1)* [2025] 8 NWLR [Pt. 1991] 1 SC.
[45] *AMCON v Chief Engineers (Nig) Ltd* (2023) LPELR-61121(CA); *Zubair v Kolawole* (2019) 11 NWLR (Pt. 1682) 66 SC; *Ojokolobo v Alamu* (1987) 3 NWLR (Pt. 61) 377 SC; *Afolabi v Governor of Oyo State* (1985) 2 NWLR (Pt. 9) 734 SC.
[46] *Adebiyi v Adebiyi* (2024) 8 NWLR (Pt. 1939) 1 CA; *Odon v Barigha-Amange (No. 1)* [2010] 12 NWLR [Pt. 1207] 1 CA; *House of Representatives v S.P.D.C. (Nig) Ltd* (2010) 11 NWLR (Pt. 1205) 213 CA; *Ikeyi v Crown Realities Plc* (2010) 6 NWLR (Pt. 1189) 114 CA.
[47] *Ketteman v Hansel Properties Ltd* (1988) 1 All ER 38 HL, at 54, paras d-h, per Lord Brandon; *Barton v Wright Hassall LLP* (2018) 3 All ER 487; (2018) 1 WLR 1119; (2018) UKSC 12 SC; *Oceanbulk Shipping & Trading SA v TMT Asia Ltd* (2010) 4 All ER 1011; (2010) UKSC 44 SC; *Bradford & Bingley Plc v Rashid* (2006) 4 All ER 705; (2006) UKHL 37 HL; *Rush & Tompkins Ltd v Greater London Council* (1988) 3 All ER 737 HL; *Jones v Jones* (1970) 3 All ER 47 CA; *Weldon v Neal* (1887) 19 QBD 394 CA.
[48] *Aribisala v AMCON* (Supra).

the Principal Act was enacted, by reason of the relation back theory, because it is an amending statute, and not necessarily because the provisions named a date in the past as the commencement date. In *Ibraham v Barde*[49] Justice Uwais, CJN distilled that–

> With regard to the retrospective nature of statutes, the Legislature is competent to make retrospective legislation - See *Smith v. Callander*, (1901) A.C. 297 at p. 305. The retrospective nature of a statute may concern the whole provisions of the Statute, as where the commencement date so indicates; or may concern only a section of the statute - see *Lauri v. Renad*, (1892) 3 Ch. 402 at p. 421; *Pardo v. Bingham*, (1868-69) 4 L.R.Ch. App.735 at p.739 and *West v. Gwynne* (1911) 2 Ch. 1. Where a statute is passed for the purpose of supplying an obvious omission in a former statute, the subsequent statute has relation back to the time when the prior Act was passed - see p. 395 of *Craies on Statute Law*, 7th Edition. Where a statute is in its nature declaratory, the presumption against construing it retrospectively is inapplicable - See *A-G v. Theobald*, (1890) 24 Q.B.D. 557. If by necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation - *Lane v. Lane* (1896) P. 133.

Going back to the question whether the retrospective operation of the AMCON Act is valid, especially, in relations to limitation statutes, the plausible answer is that section 35(5) is a valid provision, and its retrospective character is borne by the purpose of the Act (as an amending Act) rather than the express words used in the subsection, because they point to no direction in terms of time. Having acquired its retrospective age from the Principal Act, it is logical to assume that there is a limit to which section 35(5) can relate back in point of time, and that is 2010, when the Principal Act to which the 2019 Amendment is appended took effect. There is need to highlight on this conclusion.

Extent to which the AMCON (Amendment) Act, 2019 can apply retrospectively

Literally speaking, the commencement date of the 2019 Amendment Act is 29th July, 2019. It cannot therefore take effect before that date. But because it is an amending statute it relates back to the time when the Principal Act became effective, going by the rule laid down in *Ibraham v Barde.*[50] The AMCON Act proclaimed to have commenced on 19th July 2010. There is nothing in the Principal Act or Amendment Act that suggests a date earlier than 2010. Thus, neither of the Acts can be construed retrospectively to a time earlier than 2010. It follows that a cause of action that had become statute barred before the enactment of the Act cannot be resurrected, because no such intention can be drawn for the Principal Act and the Amendment Acts. For a cause of action that accrued after 19th July 2010 it is submitted that section 35(5) of the 2019 Amendment Act will apply retrospectively to exclude

[49] (1996) 9 NWLR (Pt. 474) 513 SC, at 577, paras C-F.

[50] (Supra), at 577, paras D-E, per Uwais, CJN.

limitation statutes which otherwise would have rendered such cause of action statute barred. One of the factors that support this conclusion is the doctrine of covering the field, which is entrenched in section 4(5) of the 1999 Constitution.[51]

It is desirable here to review the decision of the Court of Appeal in *AMCON v Chief Engineers (Nig) Ltd*.[52] Here, the appellant commenced an action at the Federal High Court, Abuja against the respondents. The 1st respondent obtained a loan of ₦20, 000, 000.00 from Unity Bank Plc, an Eligible Financial Institution for the execution of a project awarded by ATM Investments (Nig) Ltd. ATM secured the loan with First Bank Guarantee. The appellant pleaded that it purchased the loan under the Loan Purchase and Limited Servicing Agreement executed on 6th April 2011, ten (10) years after the said purchase. The appellant claimed in the main for ₦28, 327, 153.77 representing the sum owed by the defendants to it as at 6th April, 2011 which indebtedness was purchased from Unity Bank Plc, an Eligible Financial Institution (EFI), and an Eligible Bank Asset (EBA); a Non-Performing Loan (NPL), which arose from a credit facility to the respondents. The matter went to trial. The respondents relied on, among other defences, the statute of limitation. The respondents contended that under section 8(1) of the Limitation Law of Lagos State, where the cause of action rose from the appellant was required to institute the action within 6 years. The trial court upheld the defence and dismissed the appellant's claim. The appellant therefore appealed to the Court of Appeal. The parties in their arguments referred to the AMCON Acts of 2010, 2019 and 2021, and in particular section 35(5) under consideration. The learned Justices of the Court of Appeal in a unanimous decision dismissed the appeal. In the leading judgment Williams-Dawodu, JCA submitted inter alia –

> The Court below held that the period of limitation for AMCON's purchased debts commenced running from the date of purchase of the debt and held correctly that the AMCON Act 2019 could not have a retrospective effect as it was not so expressly stated. The Court found the parties' ad idem on the fact that the Act mentioned or referred to as the AMCON Act applicable in the suit is the 2010 Act. The Court therefore found that if Eligible Bank Asset (EBA) was purchased on April 6, 2011, when the cause of action accrued to the Appellant, the action brought after six (6) years after the accrual of the cause of action cannot be sustained and is barred by statute.
>
> The argument that the right of action of the Appellant is in perpetuity in the instant case cannot stand. As found by the Court below and rightly, the applicable Law therein is the AMCON Act 2010, which does not include a perpetual right of action. In other words, it does not exclude the application of the Limitation Law of Lagos State; therefore, the latter was applied. And where it applies herein, six (6) years is the period of limitation for the right of action

[51] *N.I.W.A. v L.S.W.A.* (2024) 14 NWLR (Pt. 1959) 435 SC; *N.P.F. v Nigeria Police Commission* (2024) 2 NWLR (Pt. 1922) 231 SC; *N.N.P.C. v Alabi* (2023) 6 NWLR (Pt. 1879) 81 SC.
[52] (2023) LPELR-61121(CA).

> that accrued to the Appellant. In the AMCON Act 2010, looking through the whole gamut, one is unable to find a provision excluding the Limitation Laws or providing a right of action in perpetuity.

While the reasoning of the noble Justices are sound, it is humbly submitted that the decision of the Court is not correct. It is, in fact, doubtful if the counsel to the appellant properly marshalled the applicable law in his argument. The part of the judgment that 'the AMCON Act of 2010 …does not exclude the application of the Limitation Law of Lagos State clearly drew from part of counsel's argument that 'Section 35(5) of the AMCON Act has only four sections.' This means that section 35(5) of the AMCON (Amendment) Act 2019 that excludes the application of statute of limitation was not properly hammered at the Bar to give the Court of Appeal the vantage height to apply the appropriate law on the evidence on record. As Nweze, JSC alluded:

> It would thus seem obvious that the draftsperson of this section (section 294) had in mind the eloquent views of a distinguished American Jurist, Dillon, who observed in his Laws and Jurisprudence of England and America that:
>
> I feel reasonably assured of my judgment where I have heard counsel, and a very diminished faith where the case has not been orally argued, for mistakes/errors/fallacies and flaws elude us in spite of ourselves unless the case is pounded and hammered at the Bar.[53]

Had the learned counsel properly brought to the attention of the noble Justices the existence of section 35(5) and hammered the law appropriately the Justices may have come to a different conclusion. In view of the failure of counsel and the decision of the Court of Appeal which did not refer to section 35(5) the decision in *AMCON v Chief Engineers (Nig) Ltd*[54] may arguably be said to have been reached *per incuriam*, and therefore unsafe to follow in the *Young v Bristol Aeroplane Co. Ltd*[55]sense. The Supreme Court has fertile ground to set aside the decision of the Court of Appeal in *Chief Engineers'* case.

It is submitted that the case of *Bohalee (Nig) Ltd v AMCON*[56] should be preferred and nourished as the correct approach to section 35(5) of the AMCON (Amendment) Act 2019. The 1st respondent commenced the action at the Federal High Court claiming certain reliefs. The appellants raised the defence of limitation. The trial court rejected the argument and entered judgment in favour of the 1st respondent, whereupon the appellants appealed to the Court of Appeal. The learned Justices held that section 35(5) of the 2019 Amendment Act was applicable and that it excluded the application of the

[53] *Kalu v State* (2017) 14 NWLR (Pt. 1586) 522 SC, at 549, paras A-C.
[54] Supra.
[55] (1944) 2 All ER 293 CA, at 300, paras F-G, per Lord Greene, MR; *Odu v Fawehinmi* (2005) 15 NWLR (Pt. 949) 578 CA.
[56] Unreported decision of the Court of Appeal, Ibadan Division in Appeal No. CA/IB/329/2023, given on 04/06/2025.

Limitation Law of Oyo State relied on by the appellants. In the leading judgment, Nimpar, JCA submitted that,

> The AMCON Act is a Federal Legislation and therefore supersedes the state law. The Appellants' counsel did not take cognizance of the fact that the above provision of the AMCON Act is a specific law which specifically apply to AMCON matters whereas the LIMITATION LAW OF OYO STATE is a general law applicable to various causes of Action in the State and it is trite that general laws do not override laws on specific subject matters.[57]

It is submitted with respect that the Court of Appeal failed to address a point raised by the appellants' counsel that is germane to our subject of discuss. In the leading judgment Nimpar, JCA took into account that 'On the second point in issue raise by Counsel to the 1st-2nd Appellants that the Court is obligated to apply the AMCON Act of 2015 and not the AMCON Act of 2019'. The Court of Appeal, however, did not take any position whether the 2019 Act applied retrospectively, and therefore did not deal with that issue. We have canvassed argument in support that the 2019 Act has a retrospective effect[58], and we urge that subsequent courts take hint of this position.

Rationale for the Retrospective Application of the AMCON (Amendment) Act 2019

It is a matter of trite knowledge that loans collected from Nigerian banks which turned out to be non-performing loans and qualified as eligible bank asset purchasable by AMCON are funds invested by members of the public. The existence of the non-performing loans is largely undeniable because the transactions are documentary in nature, and documents do not lie.[59] The common experience is that defaulters hardly dispute the transactions when confronted with the loan agreements and other ancillary documents and correspondence. Their defences are chiefly based on technicalities, one of which is appeal to limitation statutes. In *Antonio Oil Co. Ltd v AMCON*[60], for instance, the respondent pleaded the loan agreement and other documents that evidence the debt of the appellant. Justice Abba Aji, JSC made the following observation:

> The facts as narrated in the lead judgment borders on an overdraft facility granted the appellant by the respondent. The trial court gave judgment in favour of the respondent to the tune of N61,255,923.79 as at 31/10/2009. This was upheld by the lower court, hence this appeal.

[57] At 15.
[58] *Ibraham v Barde* (1996) 9 NWLR (Pt. 474) 513 SC, at 577, paras C-F.
[59] *Ogundepo v Olumesan* (2011) 18 NWLR (Pt. 1278) 54 SC; *Consolidated Breweries Plc v Aisowieren* (2002) FWLR (Pt. 116) 959 CA; *A.G. Enugu State v Avop Plc* (1995) 6 NWLR (Pt. 399) 90 CA.
[60] (2024) 15 NWLR (Pt. 1961) 215 SC.

> In defence or counter claim to the respondent's claim, the appellant admitted in paragraph 19 of its indebtedness, amidst contention and refutation by the appellant. There is apparently no denial of indebtedness by the appellant but some shoddy defence. It is settled that once the defendant admits the indebtedness or receipt of the loan, the burden as to repayment or as to the reasons for non-payment, is on the defendant.[61]

The class of debts, that is, non-performing loans that fall under the corridor of the AMCON Acts are such that a court of equity will not allow the debtors to escape with their loots while relying on the instruments of law. It will be unjust for a debtor of this description to walk away with his loot, aided by the law. Otherwise, he would have used the law as an engine of fraud. In the last century the courts have developed the principle against unjust enrichment[62], and the principles of restitution[63] and tracing[64] to recover funds that in the past would have been lost by the strict adherence to the law. The justification for these restorative remedies is because it is unconscionable and inequitable for a debtor to rely on a defence of law to avoid his legal obligation, especially, where he had benefitted from the engagement that occasioned the debt.

In the leading case of *Kleinwort Benson Ltd v Lincoln City Council*[65] Lord Goff argued inter alia:

> … there exists a coherent law of restitution founded upon the principle of unjust enrichment, and second, within that body of law, recognition of the defence of change of position …
>
> This is because a blanket rule of non-recovery, irrespective of the justice of the case, cannot sensibly survive in a rubric of the law based on the principle of unjust enrichment; and because recognition of a defence of change of position demonstrates that this must be proved in fact if it is to justify retention, in whole or in part, of money which would otherwise be repayable on the ground that the payee was unjustly enriched by its receipt.[66]

Going by the socio-economic situation prevalent in Nigeria today statutes purposely designed to exclude the application of limitation statute may proliferate. Section 63 of the Nigeria Deposit Insurance

[61] At 251, paras A-D.
[62] *Skatteforvaltningen (Danish Customs and Tax Administration) v Solo Capital Partners LLP* (2024) 1 All ER 939 SC; (2023) UKSC 40, at [38], [41]; *British Telecommunications plc v Revenue and Customs Commissioners* (infra); *Barton v Morris* (2023) 2 All ER 701 SC; (2023) UKSC 3; *Tecnimont Arabia Ltd v National Westminster Bank plc* (2023) 1 All ER 57 QB.
[63] *British Telecommunications plc v Revenue and Customs Commissioners* (2024) 2 All ER 943 CA; *Tecnimont Arabia Ltd v National Westminster Bank plc* (supra).
[64] *Tecnimont Arabia Ltd v National Westminster Bank plc* (supra); *Agip (Africa) Ltd v Jackson* (1992) 4 All ER 451 CA.
[65] (1998) 4 All ER 513 HL.
[66] At 530, paras f, h-j; see also *British Telecommunications plc v Revenue and Customs Commissioners* (2024) 2 All ER 943 CA; *BDW Trading Ltd v URS Corporation Ltd* (2024) 1 All ER 118 CA; *Potter v Canada Square Operations Ltd* (2024) 1 All ER 843 CA; (2023) UKSC 41; *Test Claimants in the Franked Investment Income Group Litigation v Revenue and Customs Commissioners* (2021) 1 All ER 1001 SC; (2020) UKSC 47.

Corporation (N.D.I.C.) (Amendment) Act 2024[67] contains similar provision. For the benefit of the doubt section 63 enacts that –

> 63. The provisions of the Limitation Law of a State or the Limitation Act of the Federal Capital Territory shall not apply to any debt owed to a failing or a failed insured institution or to any civil action instituted by the Corporation against any person in respect of a failed or failing insured institution.

The case of *British Telecommunications plc v Revenue and Customs Commissioners*[68] may be of utility in discussing the relationship between statute of limitation and the principles of unjust enrichment and restitution. Here, Falk, LJ stated that

> [36] A useful starting point in determining whether unjust enrichment has occurred is to ask the questions posed by Lord Steyn in *Banque Financière de la Cité v Parc (Battersea) Ltd* [1998] 1 All ER 737 at 740, [1999] 1 AC 221 at 227, namely: (a) Has the defendant benefitted, in the sense of being enriched? (b) Was the enrichment at the claimant's expense? (c) Was the enrichment unjust? (d) Are there any defences? However, as Lord Reed explained in *Investment Trust Companies* at [41]─[43], these four question are no more than 'broad headings for ease of exposition', intended to ensure a structured approach to the analysis. That analysis must be carried out having regard to the purpose of the law of unjust enrichment, which is to correct 'normatively defective' transfers of value, meaning defective in a way recognised by the law of unjust enrichment, for example because of a failure of basis.

As Mellish, LJ observed in *Allen v Johnson*[69] that 'the whole of the rules of equity, and nine tenths of the rules of common law, have in fact been made by the Judges', it can be observed that the courts set the stage on when and how defences relating to limitation statutes could be curtailed in the overall interest of justice.[70] It cannot be doubted that the legislature has followed the guidance set by the courts. For instance, the rules against unjust enrichment, restitution and tracing have now been infused into our criminal jurisprudence. Sections 319 and 321 of the Administration of Criminal Justice Act 2015 clearly embody the rules against unjust enrichment and restitutionary justice. This is clearly the philosophy and policy behind the AMCON Acts. Section 35(5) of the AMCON (Amendment) Act 2019 is designed to

[67] There had previously been NDIC Acts of 1988, 2006, 2020 and 2023
[68] Supra.
[69] (1875) 1 Ch D 399 CA, at 405.
[70] For example on the ground of concealment of right, fraud, mistake, etc, see *Adekeye v Akin-Olugbade* (1987) 3 NWLR (Pt. 60) 214 SC; *Potter v Canada Square Operations Ltd* (2024) 1 All ER 843 CA; (2023) UKSC 41; *Test Claimants in the Franked Investment Income Group Litigation v Revenue and Customs Commissioners* (2021) 1 All ER 1001 SC; (2020) UKSC 47.

remove possible clog in the pursuit of this policy. It is submitted that the courts should give effect to the philosophy and policy that underlie the Acts.

Time Limit for Adjudication of AMCON-Related Actions

One of the innovations made by the AMCON (Amendment) Act 2019 is the setting of a time limit for the hearing and determination of suits instituted by the Corporation in course of its statutory duties. The applicable provisions are section 53(3) (5) and (6). While section 53(3) imposed a time limit of 6 months for a trial court to hear and determine a suit instituted by the Corporation pursuant to section 35 of the AMCON Act, subsection (5) and (6) impose on the Court of Appeal and the Supreme Court a period of 60 days to hear and determine an appeal in such matter. The use of the word 'shall' in these subsections clearly make the provision mandatory.[71]

Although there are instances where the word 'shall' have been construed as directory and not mandatory[72], the question is what is the appropriate construction to be given to the word as used in section 53(3) (5) and (6) of the AMCON (Amendment) Act, 2019. Dimbga[73] holds the seminal view that '…the failure of courts to conclude such matters within the stipulated time does not by itself oust the court of jurisdiction.' The possible challenge with this plausible opinion is that the AMCON Acts are statute with expropriatory effect, because they set out to abolish vested rights. It is well-settled that statutes of this nature are construed *fortissimo contra peferentes*, that is, interpreted strictly in favour of citizens against the government.[74]

There is no doubt that section 53(3), (5) and (6) of the AMCON (Amendment) Act 2019 have the same intendment as section 285 (6) and (7) of the 1999 Constitution (as amended).[75] The courts are in agreement that the latter provisions are mandatory with the effect that a matter becomes dead after the expiration of the statutory days.[76] It may not make logical sense to construe the equivalent provisions in the AMCON Amendment Act 2019 in a different light. The dead status of an election matter that fell over the statutory period was described by the Supreme Court in the leading case of *P.D.P. v C.P.C.*[77] In the opinion of Peter-Odili, JSC:

> In keeping with the principles above stated it is not the function of a court of law to sympathize with a party in the interpretation of a constitutional provision merely because, appellants acted timeously and due to no fault of theirs, there is an effluxion of time allotted for the hearing and final

[71] *Mohammed v N.D.I.C.* (2024) NWLR (Pt. 1957) 67 SC; *Augustine v I.N.E.C.* (2024) 10 NWLR (Pt. 1947) 409 SC; *Kennedy v I.N.E.C.* (2024) 10 NWLR (Pt. 1945) 109 SC.
[72] *F.R.N. v Nnajiofor* (2024) 10 NWLR (Pt. 1947) 443 SC; *Wellington v P.D.P.* (2023) 10 NWLR (Pt. 1893) 455 SC; *Aliyu v Namadi* (2023) 8 NWLR (Pt. 1885) 161 SC.
[73] Nnamdi Okwy Dimgba, JCA, *The Role of the Federal High Court in Renewed AMCON Debt Recovery Drive*, April 2025
[74] *N.U.P. v I.N.E.C.* (2021) 17 NWLR (Pt. 1805) 305 SC; *F.U.T., Minna v Olutayo* (2018) 7 NWLR (Pt. 1617) 176 SC.
[75] (First Alteration) Act 2010.
[76] *Apugo v Ohajuruka* (2024) 16 NWLR (Pt. 1965) 403 CA; *P.D.P. v Nya-Atok* (2024) 4 NWLR (Pt. 1929) 409 SC; *Nasko v Bello* (2024) 4 NWLR (Pt. 1928) SC; *Ugba v Suswam* (2014) 14 NWLR (Pt. 1427) 264 SC; *Oke v Miniko (No. 1)* [2014] 1 NWLR (Pt. 1388) 225 SC.
[77] (2011) 17 NWLR (Pt. 1277) 485 SC.

> determination of the appeal. Going along with Chief Gadzama is asking of this court is to enter into and possibly take over the functions of the legislature and so the only avenue in dealing with the appeals before us is to do what ought to be done within the context of this constitutional provision of section 285 and declare the appeals dead and they have been dead for more than 40 days and that is the reality on ground. Nothing can change that. [78]

In more gory words, Justice Ariwoola, JSC (as he then was) lamented that –

> … sixty (60) days prescribed by the Constitution for the hearing and disposal of an appeal against the decision of the court below, having expired or elapsed since 21st May, 2012, the appeal is dead and deserves to be neatly buried.[79]

The awful apprehension is that if AMCON matters are given the form of befitting burial the noble Justices of the Supreme Court proposed by a relative construction of section 53(3), (5) and (6) of the AMCON (Amendment) Act 2019 the intention of the draftsman that birthed the AMCON policy will be substantially defeated. It is submitted that, arguably, the biggest hurdle in the drive of the AMCON policy is section 53 (3), (5) and (6) of the 2019 Amendment. The provisions are too ambitious, and they appear to have overflavoured the AMCON broth. It is advisable to deal with the challenges posed by these provisions to the foundation of the AMCON empire than leave it to a fortuitous favourable judicial construction of the provisions by the accident of case law.

Dealing with the Clog in section 53(3), (5) and (6) of the AMCON (Amendment) Act 2019

Seldom, the intention of the legislature may not be conveyed via the words used by the draftsman. Where this is the case a legislative amendment may be inevitable. But the courts in deserving cases could straighten out or iron out creases in a statute[80] to give the statute a business sense. There are two broad ways in which the ruck in section 53(3) (5) and (6) of the AMCON (Amendment) Act 2019 may be overcome. The first is by a further amendment of the AMCON Act targeted at the ailing subsections under review. This can be realized by inserting a subsection (8) to section 53. It is proposed that the proposed subsection should read thus:

> (8) The time frame referred to in subsections (3), (5) and (6) of this section shall not be construed as vitiating the jurisdiction of the court in question in the event that the matter or appeal, as the case may be, is not heard and determined within the time specified in the said subsections.

[78] At 520-521, paras G-A.
[79] *Udenwa v Uzodinma* (2013) 5 NWLR (Pt. 1346) 94 SC, at 120, para A.
[80] *Seaford Court Estates Ltd v Asher* (1949) 2 All ER 155 CA, at 164, para H, per Denning, LJ (as he then was).

The other means by which the malady in subsections (3), (5) and (6) could be healed is by judicial declaration. This is simply by declaring that it is *ultra vires* the powers of the National Assembly to fix a time limit within which the courts shall perform their statutory duties. It is declarations of this nature that gave birth to the doctrine of judicial review which is now entrenched in our constitutional framework.[81] The famous American case of *Marbury v Madison*[82] is one of the forerunners of this doctrine. In that case the U.S. Supreme Court struck down an amendment made by Congress to the American Constitution, by which it conferred additional responsibility on the court. The striking down order was on the footing that Congress could not interfere with the exercise of judicial powers vested in the court.

The twin Supreme Court cases of *Unongo v Aku*[83] and *Kadiya v Lar*[84] could serve as the rail to deliver the project of striking down section 53(3), (5) and (6) in issue. The common point of law in the two appeals was the constitutionality or otherwise of sections 129(3) and 140(2) of the Electoral Act 1982. Both subsections imposed time limits on the courts to hear and determine election-related disputes. In both appeals the learned Justices of the Supreme Court were unanimous that the provisions were *ultra vires* the powers of the National Assembly. In *Kadiya v Lar*, in particular, Justice Irikefe, JSC argued that –

> In this matter, the Federal Court of Appeal lamented its helplessness or inability to send the case back to the court of trial for a hearing de novo after it had allowed the appellant's appeal. This helplessness derives from the express provisions of the Electoral Act, 1982 which stipulate the time within which an election petition must be heard in a court of law. This issue was dealt with by us earlier this morning in the case of *Paul Unongo vs. Aper Aku & Ors*.- SC.95/83. In this case sections 4(8), 33 (1) and 258 of the Constitution of Nigeria, 1979 were considered. Also considered were sections 129(3) and 140(2) of the Electoral Act, 1982. To the extent that the National Assembly had enacted a time limitation within which an election petition was to be disposed of in court, we held that the said provisions cited above were unconstitutional, null and void and of no effect whatsoever as being ultra vires the powers of the National Assembly. While the competence of the National Assembly under section 73 of the Constitution to legislate on matters appertaining to elections is undoubted, such power does not and cannot extend to include a power to impose a time limitation within which a court of law established under the Constitution must conclude the hearing of a case.

[81] CFRN 1999, section 4(8).
[82] (1803) 1 Craunch 137; see also *Lochner v New York* 198 US 45 (1905); *A.G. Ondo State v A.G. Federation* (2002) 9 NWLR (Pt. 772) 222 SC; *A.G. Bendel State v A.G. Federation* (1981) ANLR 85 SC; (1981) 10 SC 1.
[83] (1983) 14 NSCC 563.
[84] (1983) 14 NSCC 591.

> The doctrine of separation of powers is the bulwark or anchor on which the survival of this nation as a nation must depend. While each arm of Government must need respect the other arm in the interest of the smooth running of governmental machinery, such respect must never degenerate to the level of one arm being allowed to usurp or impinge on the exclusive domain of the other as spelt out in the Constitution.[85]

On his part Justice Uwais, JSC (as he then was) affirmed that the National Assembly exceeded statutory bounds. In his opinion in *Kadiya v Lar*:

> I would like to observe further that the National Assembly has power under section 73 of the Constitution to legislate in respect of election petitions but such power does not extend to prescribing or limiting the time within which the courts must hear and determine an election petition.[86]

While the problem in subsections (3), (5) and (6) of the AMCON (Amendment) Act 2019 could be dealt with in the two broad ways advocated above, it is proposed that adopting the judicial measure will be preferable to the legislative solution for the reasons that:

i) legislative solution will involve the full length of legislative procedure
ii) legislative solution will require ultimate executive assent
iii) legislative solution will require financial expense
iv) legislative solution will require a long time frame

Judicial solution may simply require filing an originating summons at the Federal High Court to challenge the constitutionality of section 53(3), (5) and (6) of the Amendment Act. In the alternative, the point could be canvassed whenever the opposite party relies on any of the applicable subsections to challenge the competence of the court. It could also be raised as a ground of appeal where a suit or an appeal has been struck out by the Federal High Court or Court of Appeal, as the case may be. It can be recalled that it was by this means that the Supreme Court struck down section 396(7) of the Administration of Criminal Justice Act 2015.[87]

Conclusion

The jurisprudential thought that law is a tool for social engineering, is a truism, and this is exemplified in the AMCON Acts of 2010, 2015, 2019 and 2021. The economic landscape of Nigeria has witnessed large scale corruption with the result that public funds are fraudulently misappropriated and converted to private pockets. This has adversely affected the psyche of investors, foreign and local, to invest in the banking industry and other allied industries in Nigeria. The situation is worsened by the fear that stolen funds cannot be recovered. In civilized societies citizens are not allowed to walk away with

[85] At 593, lines 15-35.
[86] At 599, line 1.
[87] *Udeogu v F.R.N.* (2022) 3 NWLR (Pt. 1816) 41 SC; *Nwosu v F.R.N.* (2021) LPELR-55079 (CA).

questionable wealth and unjustly enrich themselves to the detriment of the actual owners of the wealth. The principles against unjust enrichment, restitution and tracing are instruments of justice created by the courts to guide against legitimizing or institutionalizing corruption. The AMCON Acts are creations of the National Assembly designed to recover debts, some of which are legacy debts, which but for the creation of the Corporation may not be recoverable. This is no doubt a functional means to restore the confidence of investors in Nigeria, and to rescue financial institutions that have fallen into the abyss. Since the National Assembly has unequivocally expressed the policy of the Federal Government of Nigeria through the AMCON Acts the courts have the sacred responsibility to give judicial blessings to this policy by adopting progressive interpretative attitude that will launch the society into the path of progress and prosperity.