**IN THE HIGH COURT OF JUSTICE, DELTA STATE OF NIGERIA**

**IN THE UDU JUDICIAL DIVISION**

**HOLDEN AT OTOR-UDU**

**SUIT NO: ………………………**

**BETWEEN:**

**MR CHUKS AMORDI -------------------- CLAIMANT /RESPONDENT**

**AND**

**VANTAGE BANK NIGERIA PLC ------------------- DEFENDANT /APPLICANT**

***(Sued as Successors in interest***

***To the defunct Humis Bank)***

**NOTICE OF PRELIMINARY OBJECTION**

**BROUGHT PURSUANT TO ORDER 22, RULES 1, 2, & 3 OF THE HIGH COURT OF DELTA STATE (CIVIL PROCEDURE) RULES 2009, SECTION 18 OF THE LIMITATION LAW OF DELTA STATE AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT**

**TAKE NOTICE** that this Honourable Court shall be moved on the …… day of …… 2018 at the hour of 9 ‘O Clock in the forenoon or so soon thereafter as counsel may be heard on behalf of the Defendant/Applicant praying this Honourable court for the following;

1. **AN ORDER** of this Honourable Court dismissing this suit for lack of jurisdiction.

**AND FOR SUCH FURTHER OR OTHER ORDERS** as this Honourable Court may deem fit to make in the circumstances of this case

**TAKE FURTHER NOTICE** that the grounds of this objection are:

1. The Defendant as sued in this suit (Vantage Bank Plc) is a non-juristic person and therefore this action cannot be maintained in law.
2. By virtue of Section 18 of the Limitation Law of Delta State, the Claimant’s claim is statute barred having arisen on the 3rd of December 2012 (3/12/2012) and this Honourable Court lacks jurisdiction to entertain the claim.

**Dated this ………….. Day of ………………….. 2018**

**…………………………………………**

Defendant’s Counsel

Morbius Chambers

Delta State

Mobile: ………………

**FOR SERVICE ON;**

**ON THE CLAIMANT**

C/o His Counsel

Vincent & Co

**IN THE HIGH COURT OF JUSTICE, DELTA STATE OF NIGERIA**

**IN THE UDU JUDICIAL DIVISION**

**HOLDEN AT OTOR-UDU**

**SUIT NO: ………………….**

**BETWEEN:**

**MR CHUKS AMORDI -------------------- CLAIMANT /RESPONDENT**

**AND**

**VANTAGE BANK NIGERIA LTD ------------------- DEFENDANT /APPLICANT**

***(Sued as Successors in interest***

***To the defunct Humis Bank)***

**AFFIDAVIT IN SUPPORT OF NOTICE OF PRELIMINARY OBJECTION**

I, F. G., Male, Christian, Nigerian and Vantage Bank Nigeria Employee of Vantage Bank Plc, Delta State do hereby make Oath and state as follows;

1. That I am the Branch Manager of Delsu 11 Branch office of Vantage Bank Nigeria in Abraka, Delta State and by virtue of my position I am well conversant with the facts of this case.
2. That I have the authority and consent of the Defendant to depose to this affidavit in support of the notice of preliminary objection.
3. That the facts deposed herein are within my personal knowledge except where otherwise stated.
4. That there is no legal entity registered in Nigeria that is known as **‘Vantage Bank Nigeria Plc’** as sued in this suit and reflected on all the processes filed before this Honorable Court. The legal entity registered with the Corporate Affairs Commission (CAC) and licensed to carry out banking operations in Nigeria is **‘Vantage Bank Nigeria Ltd’**
5. That the Claimant’s grievance that has occasioned this suit is an alleged breach of banking contract between the parties which occurred in 2012.
6. That the alleged breach of contract as claimed by the Claimant in paragraph 10 of his statement happened on the 3rd of December 2012 where he allegedly received an alert from the defendant which read as follows; **‘’VANTAGE BANK NIGERIA T’ALERT: NG30,000.00 DEBIT ON 0012002400198 (PAYMENT VIA WEB 032/174000632613/ATM) AT 1:00AM, 03/12/2012. YOUR BALANCE IS NGN-6,941,231,803.03’’**
7. That the claimant as stated in paragraph 11 of his statement of claim in reliance on the transaction alert supposedly received from the defendant proceeded to demand for a withdrawal of Five Hundred Million Naira (N500,000.00) to enable him embark on the construction of hose and this withdrawal request was rejected by the defendant because there was no sufficient funds in the account to accommodate the sum.
8. That the Claimant since the 3rd of December 2012 did not institute any proceedings in any court for the purpose of claiming any legal remedy for his alleged breach of contract.
9. That this present action was instituted on the 30th of August 2018.
10. That I make this oath in good faith believing its contents to be true and in accordance with the Oaths Law currently in force.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Deponent**

Sworn to at the high court registry, Otor-Udu

This ………………… day of ……………………….. 2018

**BEFORE ME**

**COMMISSIONER FOR OATHS**

**IN THE HIGH COURT OF JUSTICE, DELTA STATE OF NIGERIA**

**IN THE UDU JUDICIAL DIVISION**

**HOLDEN AT OTOR-UDU**

**SUIT NO: OUCH/111/2018**

**BETWEEN:**

**MR CHUKS AMORDI ---------------------- CLAIMANT /RESPONDENT**

**AND**

**VANTAGE BANK NIGERIA PLC ------------------- DEFENDANT /APPLICANT**

***(Sued as Successors in interest***

***To the defunct oceanic Bank)***

**WRITTEN ADDRESS BY THE DEFENDANT/APPLICANT IN SUPPORT OF THE NOTICE OF PRELIMINARY OBJECTION**

1. **INTRODUCTION**
	1. The Claimant/Respondent by writ of summons dated 20th August 2018 sued the Defendant/Applicant seeking the following reliefs, to wit:
		1. *The sum of N7,635,354,983.33 (Seven Billion, six hundred and thirty five million, three hundred and fifty four thousand, nine hundred and eighty three Naira and thirty three kobo) being the money standing to the credit of the claimant as at 03/12/2012 in Account No: 2037002031 in the defendant’s Vantage Bank Nigeria Plc as at 3rd December 2012 and 10% interest and general damages for breach of the banking contract between the Claimant and the defendant and or for conversion of the balance sum in the account of the claimants.*
	2. In response to the said writ of Summons, the Defendant/Applicant has filed this Notice of Preliminary Objection challenging the competence of the suit and contends that this Honourable Court is divested of jurisdiction to entertain this suit.
2. **ISSUES FOR DETERMINATION**
	1. The Defendant/Applicant formulates the following issues for determination of this notice of preliminary objection and humbly urges this Honourable Court to determine this application on these points:
		1. Whether the Defendant as sued in this suit (Vantage Bank Nigeria Plc) is a juristic person in law?
		2. Whether the Claimant’s action is statute barred byvirtue of Section 18 of the Limitation law of Delta State and therefore unmaintainable?
3. **ARGUMENT**
	1. The issues distilled for determination above shall be argued seriatim.

**ISSUE ONE:**

***Whether the defendant as sued in this suit (Vantage Bank Nigeria Plc) is a juristic person in law?***

* 1. My Lord, it is submitted that the Defendant sued on the face of the writ of summons and all accompanying processes in this suit is **Vantage Bank Nigeria Plc**. The law is trite that only a juristic person can sue and be sued. It is therefore relevant to determine whether the Defendant in this suit - **Vantage Bank Nigeria Plc** is a juristic entity against whom this action may be maintained.
	2. The Applicant/Defendant in paragraph 4 of the affidavit in support of this motion, has stated that ‘Vantage Bank Nigeria Plc’ which is sued as Defendant herein is neither an artificial or natural person.
	3. Further to the above, it is respectfully submitted that it is the law that only a juristic person can sue or be sued. In cases of non-natural juristic persons as in this present action, their corporate name by which they have been registered is the only valid and legal name by which to institute the action. In affirming this recondite position of law, the Supreme Court in the case of **THE ADMINISTRATORS/EXECUTORS OF THE ESTATE OF GEN. SANI ABACHA (DECEASED) V. SAMUEL DAVID EKE-SPIFF & ORS ORS (2009) 7 NWLR (Pt 1139) 97 at 141** stated as follows;

*“it should also be noted that the name of a competent party to a suit must be the real name by which he is known in the case of a natural person and, its corporate name in the case of a non-natural legal personality”*

* 1. We respectfully submit that this failure to sue in the corporate name of the defendant is not in the realm of mere technicalities but goes to the root of this action. This is because where a non-juristic entity is sued, the consequence as stated by law is that the Court is divested of the requisite jurisdiction to entertain the suit. See; **MADUKOLU & ORS VS. NKEMDILIM (1962) ALL NLR 589, ABU V OGLI (1995) 8 NWLR (Pt 413) P 353 at 372, PEAT MARWICK, ANI OGUNDE & CO. V OKIKE (1995) 1 NWLR (Pt 169) P 71 at 72.**
	2. In this action, the defendant as sued – **‘Vantage Bank Nigeria Plc’** is not a juristic person and in the light of the foregoing, we submit with the greatest respect that this Honourable Court is divested of the jurisdiction to hear this suit.
	3. The claimants had on their shoulders the duty to conduct a search at the Corporate Affairs Commission (CAC) to ensure they were not suing a fictitious entity who is not known within the country as a juristic person under any guise. This they failed woefully to do and this failure is not such that could be glossed over as a mere technicality as it goes to the root of this suit.
	4. On the strength of the legal postulations canvassed above, we urge this Honourable Court to resolve issue one above in favour of the Defendant/Applicant.

**ISSUE TWO:**

4.0. ***Whether the Claimant’s action is statute barred*** ***by virtue of Section 18 of the Limitation Law of Delta State*** ***and therefore unmaintainable?***

4.1 My Lord, in canvassing arguments on this issue, the Applicant respectfully contends that this action is statute barred as it was not commenced within the 5 year statutory period as provided for by **Section 18 of the Limitation law of Delta State**. It is settled law that the issue of limitation of action is fundamental as it touches the jurisdiction of this Honorable court to entertain this action.

4.2 In clear support of the fundamental nature of this issue, it was stated in **NWAKA V H.O.S, EBONYI STATE (2008) 3 NWLR (Pt. 1073) 156 at 173 Paras D – E** as follows;

***‘It is the law that Limitation of action is a matter of jurisdiction*** *and any act or determination by any court without jurisdiction is null and void. It follows, in my view, therefore* ***that limitation of action being an issue that affects the jurisdiction of the court can be raised at any stage of the proceedings*** *…’ (Emphasis added)*

4.3 My Lord, the rationale behind the idea of statute of limitation which is an exception to the general rule that where there is a right, there is a remedy is that a person who allows his right to go stale cannot subsequently revive the said stale action to the detriment of the adverse party. In **YAKUBU V NITEL (2006) 9 NWLR (Pt. 985) 367 at 397-398, PARAS H-C,** the Court held that;

***As a general rule, where there is a right there is a remedy. But the exception to that general rule is in the case of statute of limitation or limitation law. In such type of law the legislature prescribes a period within which a person, who claims that his right has been tampered with or infringed upon, could bring an action in court for remedy.*** *Such law is normally promulgated based on public policy and to bring an end to litigation to avoid a litigant from going in deep seep to infinity and forget to seek redress on their infringed rights…****By such law therefore, a plaintiff who might otherwise have had a cause of action loses such right to enforce the cause of action or seek redress through judicial process, against the person he feels has infringed on his right, because of the time laid down by the law, for instituting such action has elapsed****.* (Emphasis Supplied)

4.4 My Lord, this position of the law has been restated in a host of judicial authorities and it is now trite law that where a statute of limitation prescribes a period within which an action should be brought, legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period. Therefore any action instituted after the expiration of the prescribed period is said to be statute-barred. See **ABOYEJI VS. LATEJU (2011) LPELR-3572 (CA); OGUNKO VS. SHELLE (2004) 6 NWLR (PT. 868) P. 17, JULIUS BE**R**GE**R **(NIG.) PLC V OMOGUI (2001) 15 NWLR (PT 736) P 401 SC, TONIMAS NIG. LTD V CHIGBU (2001) 15 NWLR (PT 736) P 259, TEXACO PANAMA INC. V SHELL P. D. C. N. LTD (2002) 5 NWLR (PT 759) 209 AT 241 – 242.**

4.7 The obvious question that begs to be answered in resolution of this issue is:

***What is the cause of action alleged in this suit and does it come under the purview of section 18 of the Limitation Law of Delta State?***

To answer this question, it is pertinent to first refer to **Section 18 of the Limitation Law of Delta State**, which provides as follows;

***No action founded on contract, tort o***r ***any other action not specifically provided for in Parts II and III of this law shall be brought after the expiration of five years from the date on which the cause of action accrued***

4.8 Therefore, any action founded on contract, tort or any action not specifically provided in Parts II and III of the Limitation Law MUST be brought before the expiration of five years from the date which the cause accrued.

4.9 Therefore to answer the question above judiciously, the cause of action must be identified as well as the period when the alleged cause of action arose. From the contents of the supporting affidavit to this notice of preliminary objection, the Applicant contends that a perusal of the originating processes indicate that the cause of action in this suit is an alleged breach of banking contract between the parties and a consequent conversion therefrom. This is stated clearly in paragraphs 5 of the affidavit in support of this motion where it was stated that the cause of action in this suit is an alleged breach of banking contract that supposedly arose on the 3rd of December 2012.

4.10 My Lord a glimpse of the Claimant’s statement of claim particularly at paragraph 12 reveals the cause of action in this suit. On this premise, it is respectfully submitted that the Claimant’s action being founded on contract is caught up by the express provision of Section 18 of the Limitation Law of Delta State.

Flowing from the above, and having established that the cause of action is based on contract and the tort of conversion, it becomes necessary to determine with exactitude the date on which the cause of action arose for the purpose of determining if the action is statute barred.

In the Supreme court case of **SAVANNAH BANK V PAN ATLANTIC SHIPPING & ANOR (1987) 1 NWLR (PT 49) SC 212 at 259,** the learned justices of the apex court stated in the following words;

*“Time will start to run when the cause of action arose****. It is therefore absolutely necessary when dealing with limitation statutes to determine the precise date upon which the cause of action arose.******Without this basic fact it will be impossible to compute the time.”***

4.11 Similarly in **EBOIGBE V N.N.P.C (1994) 5 NWLR (Pt 347) p 659 paras** **A-B**, the Supreme Court stated *inter alia* as follows;

‘The next question is when does time begin to run from the purposes of a statute of limitation? ***Time begins to run from the date that the cause of action accrues***, See **Sanda v Kukawa Local Government (1991) 2 NWLR (Pt 174) 379.** ***The cause of action, generally, accrues on the date on which the incident, giving rise to the cause of action, occurs*…** See also; **N.P.A v Lotus plastics (2005) 19 NWLR (Pt 959) SC 158 at 181 para E.**

4.12 In determining the date in which the incident giving rise to the cause of action occurred. As stated in paragraph 5 of the affidavit in support of this motion, the cause of action in this suit arose on the 3rd of December 2012.

4.13 In addition, a perusal of the statement of claim filed by the claimant evidently shows that the incident which gave rise to the Claimant’s cause of action happened on the **3rd of December 2012** when he allegedly received the transaction alert from the Defendant supposedly indicating he had a huge balance in his account yet his alleged attempt to withdraw N500,000,000 (Five Hundred Million Naira) from his account on the same day to purchase land for the building of his family house was allegedly turned down as pleaded in **Paragraph 12** of his Statement of Claim.

4.14 From a community reading of the facts pleaded in paragraphs 9 to 12 of the Statement of claim, all the alleged facts that would have entitled the Claimant to a right to sue for redress (though heavily denied by the defendant) had arisen on the **3rd of December 2012**. In other words the Claimant’s belief or supposition that he had sufficient balance in his account and the defendant’s dishonor of his withdrawal request happened on the same date being **3rd of December 2012** therefore birthing the cause of action in this suit.

4.15 My Lord to show without controversy the fundamental place of the date – **3rd of December 2012** in this suit, it is pertinent to point out that an exclusion of the date from the claimant’s case before this court removes the entire substratum of the action before this court.

4.16 Furthermore, Paragraph 16 (Sub-paragraphs i and ii) of the statement of claim makes this point too obvious as therein the Claimant avers as follows;

 *‘i the Claimant’s balance* ***as at 3-12-2012*** *stood at N6,941,231,803.03 with account number 2037002031*

 *Ii the defendant* ***has since 3-12-2012*** *prevented Claimant from having access to account no: 2037002031 and the balance sum there in’*

4.17 On this premise my Lord, we submit with respect therefore that the cause of action arose on the 3rd of December 2012.

4.18 Revisiting the law applicable to the facts in this case, by an exhaustive exposition, the Supreme Court has held in the case of **MILITARY ADMINISTRATOR OF EKITI STATE & ORS vs. ALADEYELU & ORS (2007) 14 NWLR (Pt. 1055) 619** that**:**

**'It is from either or both the writ of summons and statement of claim that one can ascertain the alleged date when the wrong in question is said to have occurred or been committed, thereby giving rise to the plaintiff's cause of action**. **When that ascertained date is compared with the date the writ of summons or originating process was filed in court, it can then be determined whether the action was instituted within the period allowed by law or outside it.** When it is found that the action was instituted within the period allowed by law, the action is said to be competent and the court has the jurisdiction to entertain same but where it is found to have been instituted outside the period allowed by law, the action is said to be statute barred and consequently, the court is without jurisdiction to entertain same.' Per Onnoghen JSC

4.19 Carrying out the comparison as required by the authority of **MILITARY ADMINISTRATOR OF EKITI STATE & ORS vs. ALADEYELU & ORS** (*Supra*) between the date when the wrong in question occurred being 3rd December 2012 and the date the writ of summons in this suit was filed being 30th of August 2018 would reveal that this action was commenced eight months after the expiration of the 5 year period provided by law and is therefore adversely affected by the express provision of Section 18 of the Limitation Law of Delta State.

4.20 On the basis of the foregoing, the consequence of the commencement of this action on the **30th of August 2018** (eight months after the 5 year period expressly stated in Section 18 of the Limitation law of Delta state) is that this action cannot be maintained in law and the appropriate order to be made is one dismissing this case. See **TEXACO PANAMA V SPDC (2000) 4 NWLR (Pt. 653) CA 480 at 492 Para C** where the Court stated as follows;

***‘the consequence of bringing a suit outside the period of limitation is the dismissal of the suit as the right to seek a relief remains dead for all time’***

4.21 This position of the law has been further affirmed by the Appellate Court in **YAKUBU V NITEL (supra) at Page 398 Paras D-G**

*Now, on the type of final order a court could make****, it has since been settled, that where a defendant raises a defence that a plaintiff’s action is statute barred whether in his statement of defence, preliminary objection or through a motion on notice or in any other way and the court sustains or upholds such defence, the proper order such court will make in that circumstance is that of dismissal of the plaintiff’s action and not merely striking it out****…****Dismissal of this case is therefore the proper order to be made in the circumstances of this case since it cannot be re-litigated by the plaintiffs/appellants, having been instituted outside the period the claims could have been made.***(Emphasis Supplied).

Please see also **EBOIGBE V NNPC (1994) 5 NWL (PT 347) SC 649 AT 666 PARA A; EGBE V ADEFARASIN (1987) 1 NWLR (PT. 47) SC 1 AT 15, ETIM V IGP (2001) 11 NWLR (PT 724) CA 266 AT 285.**

**5.0 CONCLUSION**

5.1 My Lord, from the totality of the issues argued and canvassed above, we urge My Lord to dismiss this case on the premise of the arguments canvassed by the Defendant/Applicant.

* 1. This Honourable Court is therefore urged to hold that the defendant on record in this suit is not a juristic person known to law and therefore no action can be maintained against it.
	2. This Honourable Court is also urged to hold that by virtue of Section 18 of the Limitation Law of Delta State, the Claimant’s claim is statute barred having arisen on the 3rd of December 2012 (3/12/2012) whereas this action was filed on the 30th of August 2018.

**Dated this ……..day of December, 2018**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Defendant’s Counsel

**FOR SERVICE ON;**

**ON THE CLAIMANT**

C/o His Counsel