Is Justice Ever Truly Served? The Nigerian Judiciary and Oil Pollution and Environmental Cases in Nigeria

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Abstract

Over the years, there have been a plethora of cases instituted by disgruntled and aggrieved litigants against petroleum companies in Nigeria. The common thread of these suits relates to liability for pollution alongside consequential compensation, and the courts are called upon to adjudicate over such disputes. The gravamen of litigants is that when it comes to legal actions against oil companies in the country, justice is slow in coming, if it comes at all or that justice is for sale to the highest bidder. This paper takes an in-depth look at the decisions of the courts in numerous cases involving oil companies, delays within the justice system and also the reputation the judiciary has garnered whilst dispensing justice. It also deals with issues of the enforcement of judgments/rulings and the non-compliance with such judgments by government and powerful State actors. It culminates by proffering recommendations and solutions to ensure that justice is not truncated, and litigants are not left feeling powerless and cheated or robbed.

KEYWORDS: Oil and Gas Cases, Petroleum, the Judiciary, Pollution, Justice, Corruption, Nigeria.

1. Introduction

The judicial interpretation of legislation governing the oil industry and the legality of these laws as well as the actions of the oil companies operating in Nigeria have been of keen interest to industry watchers for many decades. Over the years, litigants have called on the courts in Nigeria to either grant reliefs in respect of aggrievements suffered due to actions of oil companies or to give an interpretation of the provisions of certain statutes with regards to their rights thereunder.

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For almost forty years, it appeared that the attitude of the courts leaned heavily in favour of the oil companies as many of the cases brought by individuals and communities were adjudged in favour of the oil companies. Furthermore, legal justice took so long that a good number of times, the individuals could not afford to pay for the services of a legal counsel and were forced to either discontinue the suit or settle the matter with the oil company for an amount of compensation that usually was originally unacceptable to them. The oil companies on the other hand have appeared to have bottomless reserves and access to the best counsels and legal experts in the business.

This work shall take an in-depth look at various cases which have been filed in Nigerian courts and analyse the manner in which the Nigerian judiciary has interpreted the laws governing the oil industry and decided on the legality or otherwise of the actions of the oil companies and the Nigerian government. It shall culminate in a look at the role of the Nigerian judiciary as an effective arm of government and whether it succeeds in its role as the true and impartial arbiter of justice in the country.

2. Cases Brought Against Oil Companies by Individuals and/or Communities in Nigeria

The is a raft of lawsuits filed in courts in Nigeria by numerous disgruntled parties regarding complaints relating to the oil and gas industry and these have resulted in the development of case law which shows how the judiciary interprets the statutory provisions governing the oil industry.

There are instances in which some courts have issued judgments which have been at variance with the judgements of other courts. In addition to this, courts have been known to dismiss cases on technicalities and appeared unwilling to invoke their powers of equity. In *J. Chinda & Ors v. Shell B.P. Petroleum Company of Nigeria Limited*,[1] the court acknowledged that the plaintiff had suffered damage to their property as a result of the defendant's flare set, but since the claim was brought under the head of nuisance, the court did not find in favour of the plaintiff as it was of the view that the Defendants could not

[1] (1974) 2 R.S.L.R. 1.

prove that the defendant had been negligent in the management and control of the flare set.[2]

In some instances when the courts entered judgment in favour of the aggrieved individuals and/or communities, the compensation awarded was paltry and the plaintiffs ended up feeling like losers anyway. In *R. Mon and B. Igara v. Shell B.P. Petroleum Company of Nigeria Limited*,[3] the plaintiffs brought an action claiming that the defendant caused damage to their fishpond. They asked the court for Two Hundred Thousand Naira compensation. The court acknowledged that the defendants were liable for the damage caused to the plaintiffs' pond, but only awarded the plaintiffs Two Hundred Naira. The fishpond was a source of livelihood for the plaintiffs and the amount awarded was measly. However, the quantum of compensation awarded may be justified by some on the ground that the defendant had paid compensation previously to the plaintiffs' community.

In practice, oil companies prefer to pay compensation to community heads who in turn will distribute the said compensation amongst those people who have suffered some form of damage due to the oil company's actions. While this is convenient for the oil companies, it does not always work to the benefit of the victims as they usually have to contend with corrupt leaders who end up embezzling the funds. Even in those situations where the compensation is not mismanaged, what each victim ends up with is a negligible sum which does little or nothing to restore the victims to their original status quo. Also, in reality, the victims have no say over the manner the compensation is paid, as once compensation is paid to the community via the leader, it usually has the effect of extinguishing what rights to damages such victims might have. Moreover, in instances of oil pollution which affects numerous people, oil companies have been known to refuse to deal with various individual cases stating that the village or community heads would be in a better position to distinguish between genuine and fake claims.

The courts have also been known to uphold the victim's claim but only award a sum exactly the same as the sum the oil company had previously offered the victim as compensation in a bid to settle the claim

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[2] O. Adewale, 'Judicial Attitude to Environmental Hazards in the Nigerian Oil Industry', in *The Petroleum Industry and the Nigerian Environment*, Proceedings of the 1985 Seminar, Department of Petroleum Resources (Environmental Planning and Protection Division).

[3] (1970-1972) 1 R.S.L.R. 71.

prior to it being brought to court. This happened in the case of *Godspower Nweke & Ors v. Nigerian Agip Oil Company Ltd.*[4]

The poor rates of success recorded by aggrieved communities and individuals who have braved the odds to institute their actions in court have had the effect of eroding the confidence of most victims in the justice system of the country. Some of them view the courts as cohorts of the oil companies and deem it a waste of time and resources to attempt to take on the oil companies in court, especially as they lack the financial wherewithal and clout that the oil companies readily wield.

In *Allar Irou v. Shell BP Petroleum Development Company*,[5] the plaintiff brought a suit against Shell BP praying the court (amongst other reliefs) for an injunction to stop the defendant from further carrying out the acts which was causing pollution to his land and fish pond. The judge decided not to grant the injunction sought, holding that the refusal was not expedient on socio-economic grounds.[6] The court stated that *"to grant the injunction would amount to asking the defendant to stop operating in the area… and cause the stoppage of a trade… mineral which is the main source of the country's revenue"*.[7] Thus, the judge placed more weight on the financial profits of the defendants business to the detriment of the plaintiff, his livelihood, other people who might have become affected by the pollution and ultimately to the detriment of the environment. Decisions like these served only to reinforce the beliefs of natives that the courts were certainly weighted in favour of the oil companies.[8]

Furthermore, aggrieved individuals who institute legal suits against oil companies have been known to have to contend with incessant and unreasonable delays which are a result of tactics employed by defendant oil companies. Going by some cases in the past years, Shell Petroleum Development Company Limited (Shell) has been known to adopt a system in which its counsels (in suits where it is a

[4] (1976) 10 SC. 101. The award was predicated on the defendant's claim that the plaintiffs had **agreed** to accept that sum before instituting the action.

[5] Unreported. Suit No. W/89/71 of the High Court holden in Warri, 26th of November 1973.

[6] T.O. Ilegbune, 'Environmental Regulation and Enforcement', in O.A. Osunbor, S. Simpson and O. Fagbohun (eds.) *Environmental Law and Policy*, (Lagos: Lagos Law Centre of the Lagos State University, 1998). Pg. 221.

[7] Emphasis supplied. M.T. Ladan, 'A Critical Appraisal of Judicial Attitude Towards Environmental Litigation and Access to Environmental Justice in Nigeria', [A Paper Presented at the 5th IUCN Academy Global Symposium] (Rio De Janeiro: 31st May – 6th June, 2007) at Pg. 33.

[8] Though it should be borne in mind that the decision in that case was made almost 40 years ago.

defendant) raise preliminary objections and bring interlocutory applications which often have the effect of delaying the hearing of the substantive suit.[9] Where the ruling in those preliminary objections and applications go against Shell, it often decides to appeal such rulings,[10] leading to a system where the case drags on possibly for years and often leaving the plaintiff frustrated and sometimes abandoning the whole suit. The case of *Shell Petroleum Dev. Co. Nig. Ltd & Anor v. X. M. Federal Limited & Anor.*,[11] is particularly instructive in this regard. This was a case initially filed in the Lagos Judicial Division of the Federal High Court on the 26th July 1995, Shell brought an application which was dismissed in June 1996. Shell brought another application in January 1997 which was also dismissed and it appealed this ruling to the Court of Appeal, which also dismissed it in 2003. A further appeal was made to the Supreme Court and the decision of the Supreme Court was delivered on the 14th of July 2006 (This was approximately 11 years after the substantive suit was originally instituted, yet, the substantive matter had not been heard/tried). The Supreme Court referred to Shell's appeal as "frivolous"[12] and stated, "it is very clear... that this is a very needless appeal."[13] The Court of Appeal had previously stated that "...the defendants are merely chasing shadows here rather than substance. They appear to be clinging to technicality at the expense of justice."[14]

This system is often a lengthy[15] and expensive one and many plaintiffs do not have the financial resources available to Shell. It has therefore proven effective for Shell in some instances as the suits are either discontinued[16] or abandoned.

In *Chief Peter Onyoh v. Shell Petroleum Development Company of Nigeria Limited*,[17] the plaintiffs brought an action against the defendant for fair and adequate compensation for the damages they had

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9 As was done in the case of *Shell Petroleum Dev.Co. Nig Ltd & Anor v X. M. Federal Limited & Anor.* [2006] 7 S.C (Pt II) 27; or [2006] 16 NWLR (Pt.1004) 189. See also *Gbemre v Shell Petroleum Development Company Nigeria Limited and Others* (2005) AHRLR 151. *Ikechukwu Opara v Shell Petroleum Development Company Nigeria Limited and Others* [2005] (Unreported) Suit No. FHC/PH/CS/518/05.

10 See *Shell Petroleum Dev.Co. Nig Ltd & Anor v X. M. Federal Limited & Anor* (Supra).

11 (Supra).

12 Per Ikechi Francis Ogbuagu, J.S.C.

13 Per Walter Samuel Nkanu Onnoghen, J.S.C.

14 (Per Oguntade, JCA (as he then was).

15 *Shell Petroleum Dev.Co. Nig Ltd & Anor v X. M. Federal Limited & Anor* (Supra).

16 E.g. *Ikechukwu Opara v Shell Petroleum Development Company Nigeria Limited and Others* [2005] Suit No. FHC/PH/CS/518/05.

17 (1982) 12 C.A. at Pg.144.

suffered as a result of oil and gas escaping from the defendant's pipeline and polluting the plaintiffs' lakes, ponds, economic trees, farmlands and causing the water used for drinking and agricultural purposes to be unsuitable for their purposes. The court of first instance dismissed the plaintiffs' suit stating that the plaintiffs had not proved the defendant was negligent.[18] The plaintiff appealed the decision. The appeal succeeded. The appellate court held that on a proper evaluation of the evidence that had been put before him, the trial judge "…should have held that there was oil spillage and that the oil had escaped from the defendant's location on to the plaintiff(s) property…. On the Rule in *Rylands v. Fletcher*, the plaintiff do not have to prove negligence…"[19]

In *Machine Umudje v. Shell British Petroleum Development Company of Nigeria Limited*,[20] the plaintiffs brought an action for "fair and reasonable compensation" in the sum of £50,000.00 (fifty thousand Pounds) for "injurious affection" to their farmland, fishing ponds and fishing lakes as a result of an oil pollution which had been caused from an oil pit under the control of the defendant. The claim seeking fair and reasonable compensation had been made in line with the provisions of **Paragraph 37** to the **First Schedule** of the then **Petroleum Act** which provided that, "The holder of an oil exploration licence, oil prospecting licence or oil mining lease shall, in addition to any liability for compensation to which he may be subject under any other provision of this Act, be liable to pay **fair and adequate compensation** for the disturbance of surface or other rights to any person who owns or is in lawful occupation of the licensed or leased lands."[21] In stating the plaintiffs' case, counsel to the plaintiff had laid reliance on the rule in *Rylands V. Fletcher*[22] as well as the provisions of **Regulation 25** of the **Petroleum (Drilling and Production) Regulations**,[23] which pertain to the adoption of practicable precautions by a petroleum licensee or lessee to prevent pollution. The trial judge awarded the plaintiffs the sum of £7,200.00 as fair and adequate compensation for the damage they had suffered. Of this amount, the sum of £400.00 was awarded for "injurious affection" to the plaintiff's farmland. An appeal was lodged against this

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18 The trial judge seemed to be of the view that the plaintiffs had to prove that the defendant had been negligent before their action could succeed.
19 Per Okagbue, J.C.A. at P.155
20 (1975) 9-11 S.C. 155.
21 Emphasis added.
22 (1868), L.R. 3 H.L. 330
23 No. 69 of 1969.

decision. When the matter eventually came before the Nigerian Supreme Court, the court was of the opinion that the suit fell under the rule in *Rylands v. Fletcher*[24] and it set aside the award of £400.00 which the trial court had made for "injurious affection" to the plaintiffs land stating that the phrase was a "most curious expression."[25] In addition, the Supreme Court stated that "a claim which asks for a 'fair and reasonable compensation' due to the plaintiffs for damages done to the plaintiffs is most inappropriate in an action for damages in tort." The court however still ruled that the plaintiff were entitled to compensation, though in a lesser sum than had been awarded by the trial court.

The decision of the Supreme Court in the *Machine Umudje* case may lead one to conclude that a victim may only bring his claim under a head of tort for his suit to be successful. It will never be known if the Supreme Court took this stance mainly on the pleadings and submissions of the plaintiffs' counsel who weighted their case in favour of the common law remedies whilst still applying for reliefs in statutory wordings. Nevertheless, it is a fact that **Paragraph 36** to the **First Schedule** of the erstwhile **Petroleum Act** conferred a right on any person whose rights had been disturbed as described, to fair and adequate compensation. Furthermore, Section 11(5)(a) of the **Oil Pipelines Act**,[26] states that "the holder of a license shall pay compensation to any person whose land or interest in land (whether or not it is land in respect of which the licence has been granted) is **injuriously affected** by the exercise of the rights conferred by the licence, for any such **injurious affection** not otherwise made good."[27] Thus, whether or not the expression is curious, it is one which was adopted by the trial judge from the statute books. In addition to this, the same Supreme Court barely a year after delivering its judgment in the *Machine Umudge* case, laid down the rules and principles in the case of *National Electric Power Authority (NEPA) V. Amusa*,[28] upon which a claim for compensation for "**injurious affection**" may be made. Thus, a thumbs up was given by the same Supreme Court to future and potential

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24 The court also considered the claims under the torts of negligence and nuisance.
25 (1975) 9-11 S.C. 155 at Pg. 175.
26 Chapter 338 Laws of the Federation of Nigeria 1990.
27 Emphasis added. See also Section 20(2)(a)-(e) which provides the circumstances and conditions a court shall take into consideration when making an award of compensation to an aggrieved person/party who has been adjudged to suffer damage(s) in accordance with the provisions of Section 11(5) of the Oil Pipelines Act.
28 (1976) 12 SC 99 at Pgs. 113-120.

plaintiffs who might want to bring an action claiming damages under the head of "injurious affection", that it was an actionable head recognised by the apex court in Nigeria. The decision of the Supreme Court in the *NEPA v. Amusa* case remains good law and is the guiding position and binding on lower courts regarding the award of damages regarding injurious affection suffered by a person.

It can be gleamed from the two cases of *Onyoh* and *Machine Umudge* that it is fairly easy for a judge/court to be misdirected as to legal issues as well as procedurally.

In *Oronto Douglas v Shell Petroleum Development Company Ltd & 5 Ors*,,[29] the plaintiff filed a suit at the Federal High Court, asking the court to compel the defendants to comply with with the provisions of the Environmental Impact Assessment Act. The court held that the plaintiff had no *locus standi* to institute the action since he had not shown evidence of any direct injury caused to him or failed to show that his right was affected or that he suffered injury over the generality of the people. The court stated as follows, "The action is frivolous and the plaintiff a busy body should not be allowed to bring the court into contempt and ridicule." The court refused to avert its mind to the justice of the case or the fact that the defendants had refused to adhere to and breached the provisions of a valid subsisting law.[30] Decisions like this have had the effect of deterring litigants from bringing actions against oil companies. On the other hand, in *Centre for Oil Pollution Watch v. NNPC*,[31] the Nigerian Supreme Court did away with the locus standi requirement for public interest litigation and allowed the plaintiff to successfully bring its claim which was based on pollution and the protection of the environment. The court ruled in the plaintiff's favour and elevated the right to a clean and healthy environment to a constitutional right, aligning it with the fundamental right to life protected under Section 33 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

With regards to compensation in oil pollution cases, 1995 was the initial year that saw a marked departure in what had hitherto been regarded as the insensitivity displayed by the courts to the plights of the victims. In the case of *Shell Petroleum Development Company of*

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[29] Unreported Suit No. FHC/2CS/573/93. Ruling was delivered on the 17th February 1997.

[30] Ayodele Morocco-Clarke, 'The Errant Child: Liability of Parent Companies for the Infractions of their Subsidiaries in Nigeria' (2023) *Law and Social Justice Review*, Vol.4 Issue 1, at 9.

[31] [2019] 5 NWLR (Pt. 1666) 518.

Nigeria Limited v. Farah,[32] a blow-out of the defendant's oil well caused extensive damage to the plaintiff's adjoining land. The plaintiff had prior to instituting the action in court received compensation from the defendant for the crops and economic trees which had been destroyed, but the defendant had not paid the plaintiff any compensation for the damage which was done to the land itself. The High Court awarded the plaintiffs a little more than 4.6 million Naira. This was unprecedented in Nigeria up to that time and although at the time, the sum awarded only amounted to roughly forty-five thousand Dollars, it was higher than any court had awarded as compensation before.

Shell appealed the court's decision in the Farah case. In what appeared at the time to be the dawn of a new era in pollution litigation, the Court of Appeal upheld the judgment of the High Court. Confirming in the process the principle guiding the award of damages for injury to land, the court stated –

That principle is to restore the person suffering the damnum as far as money can do that to the position he was before the damnum or would have been but for the damnum. Consistent with this, and as stated in Mayne and McGregor on Damages 12th Edition, Articles 739-749 p635-642, the measure of damages for injury affecting land is as follows:

1. Normal Measure - The normal measure of damages is the amount of diminution of the value of the land. This will be the cost of replacement or repair, or in the case of nuisance, the cost of abatement.
2. Consequential Losses - that is the loss of user profits.
3. Prospective Loss – Damages for prospective loss are in general recoverable. The rule is that damages for loss resulting from a single cause of action will include compensation not only for damage accruing between the time the cause of action arose and the time the action was commenced, but also for the future or prospective damages reasonably anticipated as a result of the defendant's wrong, whether such future damage is certain or contingent."[33]

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32 (1995) 3 N.W.L.R. Pt. 382 at pg. 148.

33 Per Edozie, J.C.A. at pgs. 192 and 193.

The court went further by making an award in respect of discomfort, illness etc. to the plaintiff, stating that beyond damages to the land, a nuisance may cause annoyance, inconvenience, discomfort or even illness to the plaintiff and recovery in respect of such principally non-pecuniary losses is allowable and may be regarded as part of the normal measure of damages.

At the time the Court of Appeal confirmed the decision in the *Farah* case in 1995, the decision was hailed as marking a new beginning in the attitude of the courts in cases involving damages caused by the activities of oil companies. It was hoped that the decision would have the effect of instilling some confidence in the judicial process. There was some anticipation that the decision in that case would have the effect of opening the floodgates of litigation regarding oil pollution claims. However, despite evidence of numerous oil spills within the years following the judgment (e.g. the Mobil oil spill off the Idoho production platform in 1998 which resulted in about forty thousand barrels of light crude oil being spilled), victims of oil pollution have often chosen to shun the litigation route and settle for out-of-court compensation. Many victims have indeed been denied any form of compensation by the oil companies on the ground that the pollution which had occurred was due to “sabotage”. This refusal to pay compensation sometimes takes place even though it can be proved that the pipelines which have burst and been responsible for the spillage of oil are several decades old and have been long due for an overhaul.[34] Furthermore, there have been incidents where oil companies have been accused of leaving burst pipelines to continue discharging oil into the environment without acting promptly to stop the leakage and effectively clean the up the spill.[35]

The decision in the case of *Shell Petroleum Development Company of Nigeria Limited V. Chief G.B. Tiebo VII*,[36] followed the Farah case. In this case, the plaintiff brought an action against the defendant seeking compensation in the sum of ₦64,146,000.00 for damages caused in January 1987, when the defendant’s pipelines

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34 A. Quarto, Third ‘World Traveller – “In a Land of Oil and Agony”’, *Earth Island Institute*, (Summer 2000) <http://www.thirdworldtraveler.com/Africa/Nigeria_Land_Oil_Agony.html> Accessed 28/03/2023.

35 An example is the situation that occurred in the Ebubu Ochani spill.

36 (1996) 4 N.W.L.R. (Part 445) at Pg. 657.

carrying oil from its Diebu Creek Flow Station caused a leakage of oil[37] into the environment causing extensive damage to economic trees and marine life. The leak was caused by a corrosion of the pipeline carrying the oil. Before the plaintiff instituted the action, the defendant had offered to pay compensation in the sum of ₦50,000.00, an offer which was turned down by the plaintiff as not reflective of a fair and adequate compensation for the damage that had been suffered. Ensuring that all likely loopholes were covered, the plaintiff in bringing their suit sued the defendant under the Rule in *Rylands V. Fletcher* as well as in negligence and the provisions of the Oil Pipelines Act, of which Section 11(5) states as follows –

The holder of a license shall pay compensation -

(a) to any person whose land or interest in land (whether or not it is land in respect of which the licence has been granted) is i(njuriously affected by the exercise of the rights conferred by the licence, for any such injurious affection not otherwise made good; and

(b) to any person suffering damage by reason of any neglect on the part of the holder or his agents, servants or workmen to protect, maintain, or repair any work, structure or thing executed under the licence, for any such damage not otherwise made good; and

(c) to any person suffering damage (other than on account of his own default or on account of the malicious act of a third person) as a consequence of the breakage or leakage from the pipeline or an ancillary installation, for any such damage not otherwise made good.

If the amount of such compensation is not agreed between any such person and the holder, it shall be fixed by a court in accordance with Part IV of this Act.

Section 20(2) goes further to provide that if a claim is made under subsection (5) of Section 11, the court shall award such compensation as it considers just having regard to -

(a) any damage done to any buildings, crops or profitable trees by the holder of the licence in the exercise of the rights conferred by the licence; and

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37 According to the plaintiff, there was a spill of about six hundred barrels of oil into the environment. This figure was contested by the defendant who claimed that there was only a spill of around forty barrels of oil.

(b) any disturbance caused by the holder in the exercise of such rights; and

(c) any damage suffered by any person by reason of any neglect on the part of the holder or his agents, servants or workmen to protect, **maintain or repair any work, structure or thing executed under the licence**; and

(d) any damage suffered by any person (other than as stated in such subsection (5) of this section) **as a consequence of any breakage of or leakage from the pipeline or an ancillary installation**[38]; and

(e) loss (if any) in value of the land or interests in land by reason of the exercise of the rights as aforesaid.

In this case,[39] the plaintiffs alleged that the defendant had been negligent in the transportation of its crude oil leading to the spill. The defendant vehemently denied this and gave evidence through one of its witnesses that the spillage had been as a result of a corrosion leak. Whilst maintaining that it was not negligent, as the spill had been purely an accident, the defendant also gave evidence that it had cleaned up the spilled oil as quickly as possible. In finding for the plaintiff, the trial judge stated that "…DW1 gave evidence that the spillage was caused by corrosion leak and that in my view, was the proximate cause of the damage complained of by the plaintiffs…. It was not the act of a reasonable man for the defendant to carry crude oil in a corroded pipeline as the evidence of DW1 showed. The plaintiffs are claiming damages for negligence and in my finding, they are entitled to it…."[40] The court awarded the plaintiff compensation in the total sum of ₦6,000,000.00 (Six Million Naira),[41] roughly a tenth of the compensation sought by the plaintiff. In addition to this, the court also ordered the defendants to pay the sum of ₦1,000,000.00 as costs. The

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38 Emphasis supplied.

39 i.e. *Shell Petroleum Development Company of Nigeria Limited v. Chief G.B. Tiebo VII* (1996) 4 N.W.L.R. (Part 445) at Pg. 657.

40 See the original case of *Chief G.B. Tiebo VII v. Shell Petroleum Development Company of Nigeria Limited* - Suit No. YHC/14/88 of 27th of February 1992 (Unreported), which was instituted by the plaintiff in the Rivers State High Court holden in Yenagoa (please note that due to the creation of more states, Yenagoa no longer falls within the boundaries of Rivers State, as it is now in Bayelsa State).

41 ₦400,000.00 was awarded as special damages while ₦5,600,000.00 was awarded as general damages.

defendant appealed against the decision and the Court of Appeal upheld the trial courts judgment and award.

The confirmation by the Court of Appeal in the Tiebo case came roughly a year after the Farah judgment showing the award of large compensation was not a fluke, and bringing to bear that a pattern was slowly emerging in which the courts were increasingly leaning towards holding oil companies responsible for pollution which occurs as a result of their activities.

3. The Nigerian Judiciary

3.1 Attitudes to Judicial Decisions in Cases Involving the Oil Industry in Nigeria

Section 6 of the Nigerian Constitution states that the judicial powers of the Federation[42] shall be vested in the courts.[43] Section 6(6)(b) of the Constitution states that the judicial powers of the courts "shall extend, to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person." Thus, courts have exercised these powers[44] in administering justice in cases brought before them.

The cases discussed in the preceding section above have shown the manner in which the courts have adjudicated over matters brought before them. However, it is a well-known fact that justice does not end or is not served at the point of the delivery of a judgement, but [save for declaratory judgements] when that judgement is actually enforced and its fruits recovered by the victorious litigant. An unenforceable judgement is a bad judgement and in Nigeria, judgements and orders made by courts are often ignored, not because they are incapable of being enforced,[45] but because the courts often lack the clout to follow up such orders and judgements[46] and also because there is no effective

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[42] i.e the Federal Republic of Nigeria.

[43] Section 6(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Reference in this section is to superior courts of record (which according to Sections 6(5) include *interalia*, the Supreme Court, the Court of Appeal, the Federal High Courts, the High Court of the Federal Capital Territory, Abuja and the State High Courts).

[44] These include powers granted by virtue of various statutes as well as the Rules of court.

[45] i.e. in any lawful or law abiding society.

[46] The Nigerian police which should be the ones who enforce court orders and judgements fail to do so and are regarded as an even more corrupt institution than the judiciary. According to the Human Rights Watch, "Extortion, embezzlement, and other corrupt practices by Nigeria's police undermine the fundamental human rights of Nigerians in two key ways. First, the most direct effect of police corruption on ordinary

independent mechanism or follow-up process to ensure that the court orders are obeyed.[47] In a speech delivered on the 20th of November 2010, Nigeria's Nobel Laureate, Professor Wole Soyinka stated that the years that have gone by since the end of the Abacha dictatorship in Nigeria have been marked by a "gradual descent to lawlessness."[48] He further stated that the "Law was bastardized. The judiciary was handled with contempt."[49] According to Soyinka, "the judiciary had become so relegated that former president Olusegun Obasanjo subverted the law when the Federal Government ignored the Supreme Court's ruling in the case brought by Lagos State on the issue of revenue allocation."[50] On the 7th of April 2011, it was reported that the then Akwa Ibom State governor (Godswill Akpabio) and the then Inspector General of Police (Mr. Hafiz Ringim) disobeyed a Federal High Court order.[51] The flagrant disregard towards the orders made by courts is one issue that has become well known in Nigeria, leaving the judiciary with the image of a toothless bulldog which is all bark and no bite. According to the former Secretary-General of the Nigerian Bar Association (NBA), Mr. Rafiu A. Lawal-Rabana, in an address –

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citizens stems from the myriad human rights abuses committed by police officers in the process of extorting money. These abuses range from arbitrary arrest and unlawful detention to threats and acts of violence, including physical and sexual assault, torture, and even extrajudicial killings.... Second, these criminal acts by the police, coupled with their failure to perform many of their most basic functions, severely undermine the rule of law in Nigeria. The police routinely extort money from victims to investigate a given criminal case, which leaves those who refuse or are unable to pay without access to justice." See Human Rights Watch, Everyone's in on the Game: Corruption and Human Rights Abuses by the Nigeria Police Force (Human Rights Watch: New York, 2010) at Pgs. 2 & 3. Also, Sahara Reporters, 'Nigeria: Corruption Fuelling Police Abuses' (17 August 2010) <http://www.hrw.org/news/2010/08/17/nigeria-corruption-fueling-police-abuses> Accessed 03/10/2023. Also, M. Ihonde, 'Corruption and the Nigerian Police' *The [Nigerian] Guardian Newspaper* (09 August 2006) <http://www.dawodu.com/ihonde1.htm> Accessed 03/10/2023.

[47] This again is an issue that deals with the enforcement of judgements and court orders and thus has to do with the enforcement arm of governments i.e. the police (as well as bailiffs).

[48] The Nigerian Punch Newspaper, 'Soyinka Decries Disregard for Rule Of Law' (23 November 2010) <http://www.punchng.com/Articl.aspx?theartic=Art20101123473956> Accessed 04/10/2023.

[49] Sahara Reporters, ''Reform Nigeria's Judiciary Or Else…" Says Soyinka, As He Receives A Lifetime Achievement Award' (22 November 2010) <http://saharareporters.com/news-page/%E2%80%9Creform-nigeria%E2%80%99s-judiciary-or-else%E2%80%A6%E2%80%9D-says-soyinka-he-receives-lifetime-achievement-award> Accessed 04/10/2023.

[50] The Nigerian Voice, 'Soyinka Blames Judiciary, Former Govts for Lawlessness' (23 November 2010) <http://www.thenigerianvoice.com/nvnews/39059/1/soyinka-blames-judiciary-former-govts-for-lawlessn.html> Accessed 04/10/2023. The revenue allocation case brought before the Supreme Court has to do with the revenue accrued to the Federal Republic of Nigeria, which predominantly is derived from oil. See further Sub-Chapter 3.3 above on the issue of resource control, derivation and revenue allocation.

[51] Although the order related to the release of a detained political candidate, it shows the impunity with which court orders are treated. Sahara Reporters, '"Reign of terror: Akpabio And IG Ringim Disobey Federal Court Order To Release Akpanudoedehe"', *Sahara Reporters* (07 April 2011) <http://saharareporters.com/news-page/reign-terror-akpabio-and-ig-ringim-disobey-federal-court-order-release-akpanudoedehe> Accessed 04/10/2023.

> *The re-occurring decimal since our return to democracy in Nigeria is the problem of the tendency of Government agencies to disobey Court Orders. This attitude accounts for their selective tendency as regards which court judgement to obey and the ones not to. It also accounts for the disregard for due process in certain activities of the government. However, one major area of concern for the NBA has been the disregard of court judgements by Government agencies. This trend threatens the integrity of the judiciary and the protection of individual rights in the country. The executive controls the police and it is the police that enforce court judgement in Nigeria. The dependence of the judiciary on the executive for the enforcement of judgement allows the executive a leeway to flout court rulings. The public and interest groups do not have a powerful and coordinated voice that can compel adherence to court rulings by the executive.*
>
> *Sadly, these gaps in the political system have been exploited by government in the last 7 years of our democracy. Requirements of due process are not adhered to and the courts are not in a position to enforce its [sic] judgement assuming such a case comes before the court. The complexities of Nigerian political environment have made it difficult to ensure the protection of rule of law.*
>
> *In the last seven years we have recorded a number of instances where the executive have disregarded court orders. From the local government to the Federal Government and its Agencies, the story has always been the same.*[52]

There has been a long catalogue of the Nigerian government[53] and its agencies, disobeying the orders and judgements of the Nigerian courts. These encompass "extra-judicial killings, arbitrary arrest, torture,

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52 R.A. Lawal-Rabana, 'The Nigerian Bar Association and the Protection of Rule of Law in Nigeria'http://www.google.co.uk/url?sa=t&source=web&cd=1&ved=0CCQQFjAA&url=http%3A%2F%2Fwww.ibanet.org%2FDocument%2FDefault.aspx%3FDocumentUid%3D36600e1c-9c7b-468a-a5e4-200948a446c2&ei=KoKXTs3XLMqVswb3l_mcBA&usg=AFQjCNG3pfHX9LDZC9wpciLQbHYI-I415w&sig2=fu7kHICE9KiYjbRF8aN8jw> Pgs. 1 and 2. Accessed 04/03/2023).

53 i.e. the legislative and particularly the executive arm of government.

and other human rights violations, actions which contravene the United Nations Universal Declaration of Human Rights, the African Charter on Human and People's Rights and the 1999 Constitution of the Federal Republic of Nigeria."[54] The recurring issue of the disobedience by the Nigerian government and government agencies of court orders and judgements and the contempt with which the judicial arm of government is treated caused such a furore that the Nigerian Bar Association decided to embark on a two day strike in 2006[55] which "crippled the courts throughout the country, demonstrating that the lawyers were one in their resolve to oppose what is clearly government's unacceptable contempt for the rule of law."[56]

In *Gbemre v Shell Petroleum Development Company Nig. Ltd & Ors*,, [57] the court delivered a judgement in which it ordered that all routine flaring of gas in Nigeria must stop. The oil company, the regulator and the Federal Government, which were all defendants in the suit ignored the judgement, and routine gas flaring continues in Nigeria to this day. After the Gbemre judgment, the weak political will of the Nigerian Government with regards to stopping routine flaring could be discerned from the statement of Mr. Emmanuel Agbegir who was a spokesman for the Nigerian Minister for Petroleum.[58] Speaking about the court order, he said, "Certain situations are just impossible. To immediately stop flaring would mean a complete shut down of oil production and I don't think that would be in Nigeria's interest."[59]

The disregard for and disobedience of court orders is not restricted to the government, as companies (which include oil companies) and occasionally, rich and powerful individuals are also known to flout court orders.[60] A case which shows that court orders can be treated with levity by non-government actors is the case of *Ijaw*

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[54] P. Nkanga, 'Making the Police Obey Court Judgements' (01 August 2010) <http://234next.com/csp/cms/sites/Next/News/Metro/Crime/5600316-146/story.csp> Accessed 04/10/2023.

[55] R.A. Lawal-Rabana, *ibid* at Pgs. 2 and 3. It was a two day boycott which took place on the 13th and 14th of March 2006. According to Lawal-Rabana, the boycott made it impossible for all courts to sit and "was a huge success in that it awakened the slumbering populace and effectively embarrassed the government." See Pg. 3.

[56] See All Africa.Com, 'Nigeria: The Lawyers' Court Boycott' (23 March 2006) <http://allafrica.com/stories/200603230195.html> Acccessed 04/10/2023).

[57] (2005) AHRLR 151.

[58] A. Morocco-Clarke, 'Holding operators in the Nigerian petroleum Industry to a Higher Environmental Standard' (2021) *Global Energy Law and Sustainability*, 2(2). 202 at 207. DOI: 10.3366/gels.2021.0056.

[59] Petroleum Africa, ibid.

[60] See the Shell cases in Section 2 above.

Aborigines of Bayelsa State v. Shell I,[61] wherein the Federal High Court holden in Port Harcourt on the 24th of February 2006, ordered Shell Petroleum Development Company to pay the sum of $1.5 billion to the Ijaw people in the Delta region of Nigeria. These people make up many communities which have been affected by pollution which has occurred as a result of the activities of Shell and the compensation was for the environmental degradation of their communities since 1956. Shell refused to pay and instead appealed the decision. It must be born in mind that the order that Shell pays the above stated damages was initially made by the Nigerian House of Representatives after Shell and the Ijaw community had submitted themselves for the settlement of the dispute before the House. Shell refused to abide by the decision of the House of Representatives and subsequently the Nigerian Senate after looking into the matter re-affirmed the decision that Shell should pay the $1.5 billion damages to the Ijaw people. Shell still refused to pay and the Ijaw feeling frustrated filed an action against Shell at the Federal High Court which also decided that Shell should pay the damages. Shell did not obey the judgement but decided to appeal and applied for a stay of execution of the judgement. In addressing this application, the court ordered Shell to pay the $1.5 billion to the Central Bank of Nigeria (which was a neutral party) until the determination of the appeal, but Shell still refused to obey the order of court.[62]

It is clear that within Nigeria, litigants face issues and problems relating to access to justice, delay in obtaining justice, and exorbitant costs to the attainment of justice, enforcement of judgements and compliance with the law and rulings/judgment of court.

3.2 The Perception of the Judiciary

In addition to the issue of the flagrant disregard of court orders and judgements, the Nigerian judiciary has over the years and increasingly in recent times been rocked by scandals relating to corruption.[63] It has become common for the Nigerian courts to be

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61 Unreported. Suit No. FHC/YNG/CS/3/05. Judgment delivered by Justice Okechukwu Okeke, Federal High Court Port Harcourt, Rivers State on 24 February 2006.

62 Morocco-Clarke, 'The Errant Child…', ibid at 10.

63 Sahara Reporters, '"*Reform Nigeria's Judiciary Or Else…" Says Soyinka, As He Receives A Lifetime Achievement Award*' (22 November 2010) <http://saharareporters.com/news-page/%E2%80%9Creform-nigeria%E2%80%99s-judiciary-or-else%E2%80%A6%E2%80%9D-says-soyinka-he-receives-lifetime-achievement-award> Accessed 04/10/2023.

referred to as giving "cash and carry judgements".[64] The perception of the Nigerian judiciary as inherently corrupt is one which goes back several years. It has been reported that "Allegations of corruption in the judiciary were so rife that, as far back as 2005, the then Chief Justice of Nigeria (CJN), Justice Mohammed Uwais, cautioned judges against corrupt practices. "These are not the best of times for the judiciary. The moral uprightness of members of the judiciary is being queried on a regular basis."[65]

Over the years, people have seen the Nigerian judiciary which had hitherto been the most reliable arm of government (especially in a nation which has been beset by many years of government under military rule) and regarded as the last bastion of the common man, beset by wide-spread corruption. It should be stated at this point that according to a report released in December 2009 by the Nigerian National Bureau of Statistics (NBS),[66] the Nigerian judiciary was one of the least corrupt institutions in Nigeria when viewing the "request" for the payment of a bribe by public officials.[67] However, the same report went on to provide that the Nigerian courts were the institutions in which the highest sums (in bribe) were paid.[68] The NBS survey found that 5% of interviewed business declared they should have filed a claim in courts in 2006, but they preferred not to do so.[69]

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64 I. Nnochiri, 'Corruption in the Judiciary: CJN, NBA to the Rescue?' *The Nigerian Vanguard Newspaper*, (29 September 2011) <http://www.vanguardngr.com/2011/09/corruption-in-judiciary-cjn-nba-to-the-rescue/> Accessed 04/10/2023. Also, The Sun Newspaper, 'Tackling Corruption in the Judiciary' (Editorial of 28 September 2011) <http://sunnewsonline.com/webpages/opinion/editorial/2011/sept/28/editorial-28-09-2011-001.html>Accessed 04/10/2023.

65 L. Obijiofor, 'Nigeria: Groping for Light in Corrupt Judiciary', *All Africa.Com* (27 September 2011) <http://allafrica.com/stories/201109270353.html> Accessed 04/10/2023.

66 This was a report on a business survey on crime and corruption conducted in conjunction with the Nigerian Economic and Financial Crimes Commission (EFCC) and with the support of funding from the European Union and the United Nations Office on Drugs and Crime (UNODC). See National Bureau of Statistics and Economic and Financial Crimes Commission, *NBS/EFCC Business Survey on Crime & Corruption and Awareness of EFCC in Nigeria, 2007: Summary Report* (December 2009) <http://www.nigerianstat.gov.ng/ext/latest_release/NBS_EFCC%20Survey.pdf> Accessed 04/10/2023.

67 See National Bureau of Statistics and Economic and Financial Crimes Commission, 'NBS/EFCC Business Survey on Crime & Corruption and Awareness of EFCC in Nigeria, 2007: Summary Report', at Pg. 3. Also, C. Onwualu, 'Judiciary is Nigeria's Least Corrupt Institution' *234 Next Newspaper* (09 July 2010).

68 National Bureau of Statistics and Economic and Financial Crimes Commission, *NBS/EFCC Business Survey on Crime & Corruption and Awareness of EFCC in Nigeria, 2007: Summary Report*, at Pg. 4.

69 ibid at Pg. 8.

According to the Nigerian Voice in a feature article –

> ...it is taken for granted that in a society buffeted by corruption such as ours, a courageous, independent, unbiased and financially autonomous judiciary is a most needed bulwark against the continued reign of the monster of corruption and graft in the country. An indispensable tool in any meaningful anti-graft war! Nigeria, sadly, has not been particularly fortunate in its drive to evolve a functional democratic governance since 1999, which could deliver the oft-mentioned but elusive dividends to the people, principally because of the unspeakable greed of its political class, and the attendant impunity accentuated by a seemingly compromised and disabled judiciary. The effects are everywhere for anyone to see.[70]

As might be expected, the widespread corruption within the judiciary and the very perception of the masses, businesses and even people and institutions abroad, have had the effect of eroding the confidence of the populace in the impartiality of the judiciary and the ability of the courts to fairly dispense justice.[71]

4. Recommendations

In light of:

(a) the delay to attaining justice suffered by litigants;
(b) the unpredictability and lopsidedness of judicial decisions;
(c) the fact that some judges have shown a lack of knowledge of some legislation; and
(d) the issue of corruption within the judiciary,

It is imperative that new pathways must be taken to buck the trend that the Nigerian judiciary is nothing but an incompetent and corrupt bulldog which is not fit for purpose and incapable of dispensing justice

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70 Emphasis supplied. The Nigerian Voice, 'Nigerian Judiciary as Temple of Corruption' (Feature Article, 26 July 2010) <http://www.thenigerianvoice.com/nvnewsp/31100/1/pagenum/nigerian-judiciary-as-temple-of-corruption.html#continue> Accessed 04/10/2023.

71 It goes without saying that these include potential litigants in oil pollution and environmental cases.

and providing succour to the downtrodden or the aggrieved within the country.

As a way forward, the following paths may be taken in a bid to restore the confidence in the judiciary by the masses:

(i) *Training and Continuous Legal Education of judges and Judicial Officers:* As can be seen from the Machine Umudje case covered above, there are instances when judges are either unaware of extant laws or might have forgotten relevant provisions of relevant laws when deciding cases before them. It is therefore imperative that judges periodically go through training and continuous legal education to keep them abreast of modern trends and legislation. Former governor of Delta State, Dr. Ifeanyi Okowa aptly stated that, "…judicial education and constant training of critical workers was imperative in enhancing the quality of justice delivery and performance of courts…"[72]

(ii) *Addressing Nigeria's Weak Political Will:* As has been shown in the preceding parts of this work, "[W]hen it comes to the strict enforcement of laws by regulators and the enforcement of and compliance with court orders/judgments, Nigeria's past record is unimpressive as strict adherence to laws/orders and the enforcement thereof is a lottery that is dependent on which influential or powerful interest is vested and at stake."[73]

If the judiciary is to be succeed in its role as the independent arbiter and dispenser of justice, the Nigerian State and government has to develop a strong political will and an unwavering respect for the rule of law. The government has to place more weight on respecting, enforcing and complying with the laid down laws, regulations and court judgments, instead of placing a premium on the pecuniary gains it stands to make from the petroleum industry to the detriment of the environment and its citizens/residents.

(iii) *Timely and Appropriate Prosecution of Corrupt Judicial Officers:* The reputation of the Nigerian Judiciary has taken a battering

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[72] Vanguard Newspaper, 'Regular training for judiciary workers imperative says Okowa' (29 June 2021) <https://www.vanguardngr.com/2021/06/regular-training-for-judiciary-workers-imperative-says-okowa/> Accessed 13/10/2023.

[73] A. Morocco-Clarke, 'In the Midst of So Much Injustice, Can There be a Seat for Energy Justice at the Nigerian Table?', (2023) *Journal of World Energy Law and Business*, 16(3). 251 at 265. <https://doi.org/10.1093/jwelb/jwad003> Accessed 13/10/2023.

over several years. In order to restore the confidence of the masses and indeed the international community in the judicial arm of government, it is necessary that any judicial officer found to have taken a bribe or to have engaged in corrupt practices must be brought to book and stripped of her/his elevated position as a officer in the temple of justice. Where there is a systemic and regular weeding out of corrupt judicial officers, others will be reluctant to follow in such ignoble steps and the public will be aware that justice in the country is no longer mainly available to the highest bidder or to litigants who can buy a judgment for the highest fee. Once the clean-up of the judiciary is achieved, confidence will be restored that the courts are the last bastion of the common man.

(iv) *Awarding Appropriate and True Costs for Frivolous Applications and Delaying Tactics:* Over the past decades, the Nigerian courts have often failed to award appropriate costs to failing parties in a suit. Costs in the past were often awarded as a symbolic gesture and never reflected the real financial expenses borne by the winning party in a suit. The courts have slowly increased the amounts they award as costs, but till date such sums do not often cover the actual expense incurred. It is necessary that the courts award appropriate costs especially for frivolous and time-wasting applications and law suits. These costs should reflect the financial input of the winning party and the length of time such frivolous applications/suits took. This will undoubtedly have the effect of causing litigants and their counsels to re-consider the exigency of filing an application or indeed a case.

(v) As a last resort, potential litigants affected by the actions of multinational petroleum companies and who do not have confidence in the Nigerian judiciary can, as a last resort, decide to institute their legal actions in the jurisdictions of the parent companies of such multinational companies operating in Nigeria. This has been done by some litigants, e.g. the case of *Okpabi & Ors. v. Royal Dutch Shell Plc & Anor*,[74] where the plaintiffs filed their lawsuit against the defendants in the United Kingdom.

[74] [2021] UKSC 3.

5. Conclusion

This work has traced a plethora of cases adjudicated by the Nigerian courts which dealt with various complaints instituted by individuals, communities, states and groups who felt aggrieved in one form or the other by the acts and/or omissions of oil companies operating in Nigeria or who have called into dispute the legality of the current ownership of Natural resources. The cases covered above show a steady – if slow – development of case law. However, as can also be seen above, there appears to be no uniformity in the decisions handed down by the courts. Furthermore, litigation is often lengthy and expensive for the litigants with no certainty as to what the outcome could be. Moreover, individuals and communities do not have access to the vast financial reserves that the oil companies have and the delaying tactics adopted by some counsel by filing numerous interlocutory applications in a suit, as happened in cases like *Gbemre v. Shell Petroleum Development Company of Nigeria Limited & Others*,[75] mean that justice can be very slow in coming, if it does come at all.[76] To cap all these is the fact of the disregard for court judgements and orders and the corruption within the Nigerian judiciary, which have resulted in a lack of confidence in the very judicial process which should ordinarily serve as a shelter (and provide succour) for those whose rights have been trampled upon.

The glaring problems shown in the regulation of the oil industry and the enforcement of laid down rules and legislation as well as the numerous difficulties encountered by litigants when trying to have access to justice via the law courts (as covered in this work) have led some litigants to try to seek redress through other means. There needs to be a paradigm shift if the judiciary is going to take its rightful place as the true and respected 3rd arm of government in Nigeria and the recommendations proffered above will be a good step in the right direction.

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[75] (Supra).

[76] And where justice does indeed finally come to the aggrieved parties, the legal maxim 'Justice delayed is justice denied' becomes applicable and it cannot be over-emphasised that (apart from individual losses or inconveniences) where the environment is negatively impacted by the actions or omissions of any party, it is always best to act in an expedited manner to mitigate whatever damage might be the resultant effect.