

902

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ASABA JUDICIAL DIVISION
HOLDEN AT ASABA, DELTA STATE
ON MONDAY THE 14TH DAY OF JUNE, 2010
BEFORE THE HON. JUSTICE I.N. BUBA – JUDGE

SUIT NO: FHC/ASB/CS/231/2001

BETWEEN:

1. CHIEF ISAAC OSARO AGBARA
2. CHIEF VICTOR OBARI
3. CHIEF HUMPHERY OGITI
4. CHIEF F.N. OGOSU
5. CHIEF JOHN N. OGURU
6. HON. JOSEPH OGOSU
7. CHIEF G.O. NNAH
8. CHIEF GEORGE O. OSARO
9. CHIEF ADANTA OBELLE
10. MRS. LALEOKA EJII

(For themselves and on behalf of the Ancient
"Onne eh Ejama" Stool in Council, Chiefs, Elders
Men, Women and Children of Ejama-Ebubu in Tai
Eleme Local Government Area of Rivers State).

.. .. PLAINTIFFS

AND

1. THE SHELL PETROLEUM DEVELOPMENT
COMPANY OF NIGERIA LIMITED
2. SHELL INTERNATIONAL PETROLEUM
COMPANY LIMITED
3. SHELL INTERNATIONAL EXPLORATION
AND PRODUCTION BV.

.. .. DEFENDANTS

JUDGMENT

This is a 2001 matter that has a chequered history. The Plaintiffs by their paragraphs 32 of the Amended Statement of Claim, jointly and severally claimed against the Defendants as follows:-



1.

SPECIAL DAMAGES:

The sum of N1,772,460,585.00 made up as follows:-

PARTICULARS

AGRICULTURE

Direct Value of Annually Renewable Crops/Amenities	44,591,350.00
Lost of Income	613,799,932.80
Injurious Affection	

FORESTRY	115,152,250.00
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NTFPS Non Timber Forestry Products

(Loss of Income) and	
NTFPS (Injurious Affection)	

FISHERIES

Fishing Gears	
Artisanal Fish (Income)	
Artisanal Fishing (Injurious Affection)	

HUNTING

Income	236,207,400.00
Animal Traps	4,950,000.00
Water Supply	80,000,000.00

HEALTH HAZARDS

Shock and Fear	100,000,000.00
Descreation of Shrines	1,800,000.00
SUB-TOTAL	N1,772,460,585.00



764

{
Allowing for interest for delayed
Payment for 5 years from 1996 at a modest
Mean Central Bank of Nigeria deregulated
Rate for that volume at 25% per annum
}

.. ~~N~~5,407,777,246.00

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2. Plaintiffs claim 25% of the said sum till the date of Judgment and thereafter 10% on the Judgment debt till payment.

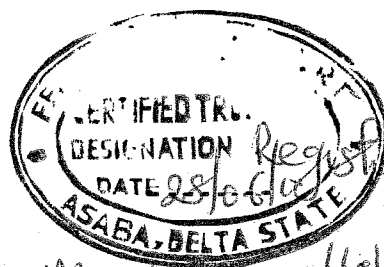
NOTE:

- (i) Injurious Affection: Means the loss for a 30 years period from 1996 accepted by the Polluter during which the effect shall remain.
- (ii) NTFPS – Means Non Timber Forestry Products.
- (iii) Agricultural: - Means Cash, food and other crops including Timber firewood and Tropical Medical herbs and Roots.

3. GENERAL DAMAGES

The Plaintiff also claim from the Defendants in Punitive General Damages the sum of N10 Billion Naira for General inconveniences, acid rain, pollution of underground water and hardship to the population who have been deprived of the right to self sustenance, education and good life.

4. An Order directing the Defendant to de-pollute and rehabilitate the dry land swamps to its pre-impact status.



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The Plaintiff's testified and called witnesses and tendered Exhibit P¹ – P¹⁰. The Defendants who were in Court, were called upon to enter their defence, but they walked away. Thereupon the Court called on the Plaintiffs Counsel Mr. L.E. Nwosu SAN to address the Court.

Learned Senior Counsel, submitted that, this is a simple case founded on Nuisance, arising from continuing damage, as a result of crude hydrocarbon oil Spillage, which admittedly occurred in from the Defendants Trans-Niger Oil Pipe line which traversed the Community of the Plaintiffs.

The Defendants, as oil producing companies and in the course of Transporting their oil, they constructed pipelines, to convey their crude oil out from oil well to Bonny Oil Terminal for export, it is in that process that the spillage complained against did occur. It is submitted and admitted that the life process now before the Court, are:-

1. The Amended Statement of Defence dated and filed 15/5/06.
2. Plaintiffs reply to the Amended Statement of Defence dated and filed on 23/5/06 and
3. Finally the Plaintiff Amended Statement of Claim made pursuant to enrolled Order of Court on 10/7/07 and filed on the 10/7/07.



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The Plaintiffs brought the action in a representative capacity and needed no leave, as the case is cited as having been brought in that capacity. The Court was referred to the cases of AFOLABI Vs. ADEKUNLE (1983)8 SC 9-8 @ 102.

OTAPO Vs. SUMONU (1987)2 NWLR (Pt. 58)587 @ 603.

It is argued that the Law is settled that, pleadings not supported by evidence go to no issue. Since the Defendants elected not to call evidence, all facts raised in their defence go to no issue .

On the other hand, their refusal to call evidence does not relieve the Plaintiff of the duty to prove their case. On the issue of statute of limitation, on the amended Statement of Defence, it is submitted that if this case was predicated on occurrence of nuisance in 1970, then the case would have been statute barred. The case is predicated upon continuing nuisance and that it is subsisting even till this day, therefore a right of action accrues every day. The question is, is the spill still there? The Plaintiffs have pleaded in Paragraphs 14, 16(a) (b) (c) and 17(b) of the Statement of Claim that the nuisance is there and continuing. That the Paragraphs 25 and 26 pleaded these facts.

Paragraphs 30(a), 31 last sentence and 32, said the Defendants failed to come and depoluate the area. The facts of these continuing Nuisance are supported by Exhibit P3, P8 the report of N. N. P. C. and Federal Ministry of



Works and Housing, workshop that carried out the study of the area, and Exhibit P5 which was carried out at the instance of the Defendants, is clear.

It is argued and submitted for the plaintiffs that, the most damaging report came as Exhibit P6, P7, P8, P9 and P10 being letters emanating from the Defendants, wherein their contractors mentioned that they are coming to depoluate the area.

It is submitted further that with these plethora of evidence and coupled with the Plaintiff ipsit dixit, the evidence of PW IV that, the Defendants bulldozers are digging oil. Therefore the action can not be said to be statute barred. The only other angle is, if they had denied damage after the 6 years period.

The damage claimed, as borne out by the values report Exhibit P2 was with effect from 1995 being the reporting date of the chartered valuer. This action was brought to the Court in the year 2001. Therefore the 6 year limit, required by the statute for tortuous liability has not been breached.

It is submitted that the next question for consideration, is whether the oil spillage went beyond the Plaintiffs right of way and got into the Plaintiffs land? It is argued that PW1 tendered Exhibit P1 delineating the area affected by the spill, which is 255.369 Hectares. One football field is one hectare.

It is contended for the Plaintiffs that the letters Exhibit P6, P7, P8 and P9 all accepted that 255 hectares were impacted and should be cleaned up.

FEDERAL HIGH COURT
CERTIFIED TRUE COPY
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ASABA, DELTA STATE
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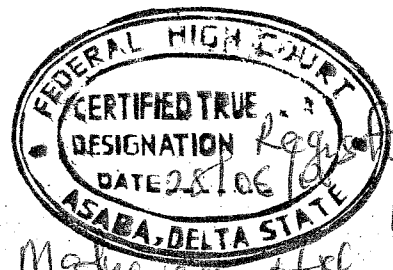
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That apart from that all the letters mentioned including Exhibit P1, admitted that spill occurred in 1970.

The suggestion it happened during the war cannot be correct. It is then asked, What is the effect of the spill having shown the extent of the impact? It is contended that Exhibit P4, described the area as unfit for human activity. Exhibit P5 the report commissioned by the Defendants themselves. Part II, of Exhibit P5 was referred to under executive summary, Exhibit P5, shows the effect clearly that the Defendant appointed scientist, made the recommendation as to the negative impact in that area.

It is submitted that Exhibit P3 was presented by Professor Obiozor Ayaloso Deputy Vice Chancellor, University of Port Harcourt, a professor of nutritional toxicology or Professor of poison, his evidence, an evidence of a teacher was referred to. The Court was called upon to note P3 of Exhibit P3 items 1, 2, 3 and 4 are instructive.

It is submitted finally that Exhibit P4, last paragraph under recovery of the area. The scientist recommend, it would take 30 years from 21st November, 2001, when the report was prepared. It is argued that, facts admitted need not be proved. The Court was referred Order 31 Rule 4. If the rules of this Court 2000 and the case of MOSHESHE GENERAL MERCHANT LIMITED Vs. NIGERIA STEEL



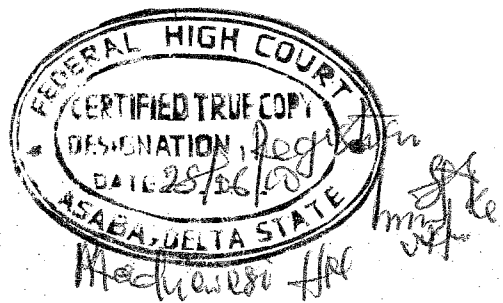
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(1987)2 NWLR Pt. 55 PAGE 110 @ 119 where Aniagolu JSC, said the Court can go straight to judgment. The Court was also referred to the case of NZERIBE Vs. DAVE ENGINEERING COMPANY LIMITED (1994)8 NWLR Pt. 361 PAGE 124 @ 137 PARAGRAPH B-C and at 139 Paragraph D.

It is contended that in this regard, the Plaintiffs called an expert professional valuer who testified on oath and gave a report which he testified on oath and gave a report which he certified as his professional expertise. The Court was referred to the case of B.E.O. OGIALE & 3 Ors Vs. SPDC (1997) 1NWLR (Pt. 480) @ Page 148 @ 165.

It is submitted and the Court was referred to the only expert in this case at Page 165 Para E & and @ 168 of the case of B.E.O. OGIALE VS. SPDC (SUPRA) that authorities show that where the only expert is called by the Defendant or the Plaintiff the Court can act on it. The Court was again referred to the cases of SEISMOGRAPH LIMITED SERVICES LTD. VS. ONOKPA (1972) 1 ALL NLR 345. and OBANOR VS. OBANOR (1976) 2SC 1 @ Page 5.

It is argued that the only issue that is left for the Court's consideration is whether the Plaintiffs are entitled to the damages claimed. It is submitted that a post spill damage is more like a post mortem. It is practicably impossible to make an assessment.



9/10

I read all the process filed in the instant suit. The evidence of the Plaintiffs' witnesses, that were not contested, Exhibits P1-P10 that were tendered and admitted. The position in the instant case is that, the oral and documentary evidence of the Plaintiff remain unchallenged, uncontroverted, and uncontradicted. The position of the law is, evidence that is not challenged that is capable of believe will be believed and acted upon. I have carefully read Exhibit P1-P10 in this case. Indeed Exhibits P6, P7, P8, P9 and P10 which are letters from the Defendants, provides as follows:-

EXHIBIT P6

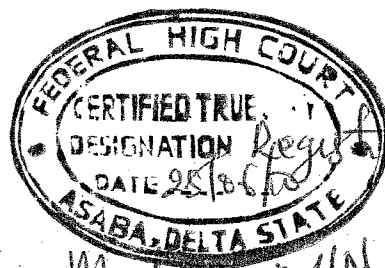
20th May, 1991.

*"His Royal Highness,
Chief G.D Osaro,
The Paramount Ruler,
Ejamah Community.*

Dear Sir,

LETTER OF INTRODUCTION

We refer to the pollution incident that occurred in your community early in the 1970s. The spilled crude oil was collected in some relief waste pits around the pollution site.



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We are sending a survey crew from International Hydrographic Company Limited to demarcate the boundaries of the relief waste pits for purposes of acquisition to enable us burn the crude oil.

Please give the survey crew all the necessary assistance.

Thank you for your co-operation.

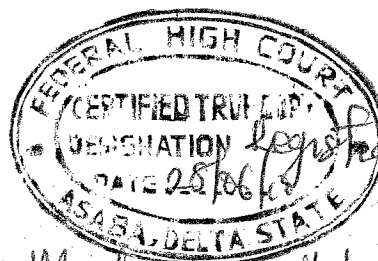
Yours Faithfully,
For: THE SHELL PETROLEUM DEVELOPMENT
COMPANY OF NIGERIA LIMITED

S.A LAWSON JACK
HEAD, PUBLIC & GOVERNMENT AFFAIRS"

EXHIBIT P7

"The Shell Petroleum
Development
Company of Nigeria Limited,
P.O. Box 263,
Port Harcourt, Rivers State.
Nigeria.
Tel +234 84 424000
Fax +234 84 439049
Internet: www.shellnigeria.co
m

Chief Isaac Osaro Agbara,
Emere Nkuma I of Eleme Kingdom,
One-eh-eta,
Ejamah Ebubu,
Eleme xi,
Rivers State.



9/2

15 August 2006

Dear Chief Isaac,

CLEAN-UP AND REMEDIATION OF BOMU – BONNY TNP SPILL SITE AT EJAMA EBUBU.

We wish to seek for your consent and cooperation for Shell Petroleum Development Company to commence clean up and remediation of the 1970 spill site at Ejama Ebubu along the Trans Niger Pipeline (TNP) in your kingdom.

In view of the complexity of the spill site, the clean up remediation shall be undertaken in about 3 phases. If your consent is obtained, we plan to commence the phase one clean up in August 2006 using competent contractors that are acceptable to you and your people.

We believe the clean up of this site and the Ochani stream can only benefit the present and future generations of your people. The work execution will provide opportunity for employment and the expansion of skills to the youths of your community. If you need further clarifications, please do not hesitate to contact us immediately.

I look forward for a favourable response from you soon.

Yours Sincerely

The Shell Petroleum Development Company of Nigeria Limited.

Drew Weir
Head Availability
Corporate Pipelines

Philip D. Shekwolo
Coordinator, Oil Spill Response
Clean Up & Remediation"

EXHIBIT P8

"The Shell Petroleum
Development



913
Company of Nigeria Limited,
P.O. Box 263,
Port Harcourt, Rivers State.
Nigeria.
Tel +234 84 424000
Fax +234 84 439049
Internet: www.shellnigeria.com

Chief Isaac Osaro Agbara,
Emere Nkuma I of Eleme Kingdom,
One-eh-eta,
Ejamah Ebubu,
Eleme xi,
Rivers State.

1st September 2006

Dear Chief Isaac,

RE – CLEAN-UP AND REMEDIATION OF BOMU – BONNY TNP SPILL SITE AT
EJAMA EBUBU.

We wish to thank you for your prompt reply to our letter dated 24 August 2006, and to express our profound gratitude for granting us consent to undertake clean-up and remediation of the entire impacted area.

We want to assure you that the entire 225 hectares of land and water alleged to be impacted by the spill will be thoroughly re-assessed jointly by your community and clean-up and remediation shall be carried out in all areas requiring corrective action.

We are keen to start this process immediately. I suggest we meet and discuss the strategy with you and the contractors next week on Tuesday 5 September, 2006 if that is acceptable to you.

Yours Sincerely

The Shell Petroleum Development Company of Nigeria Limited.



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Drew Weir
Head Availability
Corporate Pipelines

Philip D. Shekwolo
Coordinator, Oil Spill Response
Clean Up & Remediation"

EXHIBIT P9

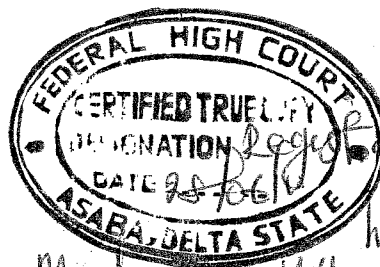
"The Shell Petroleum
Development
Company of Nigeria Limited,
P.O. Box 263,
Port Harcourt, Rivers State.
Nigeria.
Tel +234 84 424000
Fax +234 84 439049
Internet:www.shellnigeria.com

Chief Isaac Osaro Agbara,
Emere Nkuma I of Eleme Kingdom,
One-eh-eta,
Ejamah Ebubu,
Eleme xi,
Rivers State.

12th September, 2006

Dear Chief Isaac,

RE – CLEAN-UP AND REMEDIATION OF BOMU – BONNY TNP SPILL SITE AT
EJAMA EBUBU



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Further to our meeting on Tuesday 5 September 2006 in SPDC Port-Harcourt and another with your traditional council on Saturday 9th September 2006 in your Palace, we once more wish to express our profound gratitude for granting us consent to undertake clean-up and remediation of the entire impacted area.

As request by your council we wish to forward five names of the selected contractors for the execution of the work. We have decided on five contractors in order to ensure speedy execution of the project. The names are:-

1. Zenith energy Inter. Nig. Ltd.
2. Fam Nigeria Ltd.
3. Jessval Nig. Ltd.
4. Gomaro Nig. Ltd. And
5. Macdonald Environmental Inter. Nig. Ltd.

We wish to request your council to grant immediate access to the above contractors and SPDC for the re-assessment of the entire 225 hectares of land and water alleged to be impacted by the spill to enable them prepare adequate remediation plan for the project.

The scope of assessment will include but not limited to:-

- Delineation of impacted site.
- Classification of pollutants.
- Characterization of site (Geology and Hydrogeologic conditions)
- Rapid treatment analysis.

Yours Sincerely

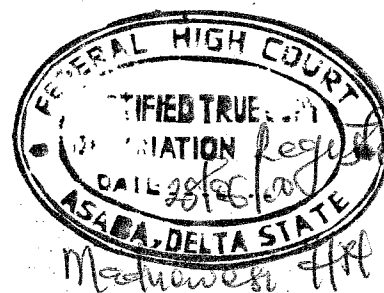
The Shell Petroleum Development Company of Nigeria Limited.

Wim Vranckx
Head Availability
Corporate Pipelines

Philip D. Shekwolo
Coordinator, Oil Spill Response
Clean Up & Remediation"

EXHIBIT P10

"THE SHELL PETROLEUM DEVELOPMENT COMPANY NIGERIA LIMITED
PORT HARCOURT



EJAMA EBUBU REMEDIATION PLAN NOVEMBER, 2006.

OUTLINE

1. *Background*
2. *Scope*
 - a. *Size*
 - b. *Photos*
 - c. *Characteristics*
3. *Method*
4. *Certification*
5. *Stakeholders Engagement*
 - a. *Community*
 - b. *NGO's*
 - c. *Government Agencies*
 - d. *Media*
6. *Schedule*
7. *Security*
8. *HSE*

Appendix: Remediation technique".

Indeed Exhibit P10 provided extensively the background, scope, method, certification, stakeholders Engagement etc. I have upon a calm assessment on the unchallenged evidence of the Plaintiff, the cases cited and relied upon, which I read, and come to one and only inevitable conclusion that, the case of the Plaintiffs' have merit and accordingly accept the evidence that is capable of



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believe. Indeed from the nature of the damages caused the amount of general damages claimed is not exaggerated.

The amount of special damages too have been proved. Indeed it was held in the case of OBIAGELI VS. SPDC (SUPRA)@ Page 165 that evidence of opinion of expert on scientific matters as in the instant case is admissible whenever the Court has to determine issues within that field.

I have no doubt whatsoever that the special damages has been proved; as the burden on the Plaintiff is a minimal proof. I also assess and award punitive general damages as claimed having found out that the damages claimed is not exaggerated.

Therefore, I enter judgment for the Plaintiffs against the Defendants in the following terms thus: Judgment be and is hereby entered for the Plaintiffs against the Defendants jointly and severally and I make the following Orders:-

The Defendants shall pay the Plaintiffs:-

1. SPECIAL DAMAGES IN

The sum of N1,772,460,585.00 made up as follows:-



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Hm/ke
28/6

Nwachukwu H/H

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PARTICULARS

AGRICULTURE

Direct Value of Annually Renewable Crops/Amenities

-	Lost of Income	-	-	-	44,591,350.00
-	Injurious Affection	-	-	-	613,799,932.00

FORESTRY	-	-	-	-	115,152,250.00
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-	NTFPS Non Timber Forestry Products (Loss of Income) and	-	-	-	
-	NTFPS (Injurious Affection)	-	-	-	

FISHERIES

-	Fishing Gears	-	-	-	
-	Artisanal Fishing (Income)	-	-	-	
-	Artisanal Fishing (Injurious Affection)	-	-	-	

HUNTING

-	Income	-	-	-	236,207,400.00
-	Animal Traps	-	-	-	4,950,000.00
-	Water Supply	-	-	-	80,000,000.00

HEALTH HAZARDS

-	Shock and Fear	-	-	-	100,000,000.00
-	Descreation of Shrines	-	-	-	1,800,000.00
-	Sub - Total	-	-	-	₦1,772,460,585.00

=====



Madhewewesi HH

Allowing for interest for delayed
Payment for 5 years from 1996 at a modest
Mean Central Bank of Nigeria deregulated
Rate for that volume at 25% per annum

.. **₦5,407,777,246.00**
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2. I also award the Plaintiffs Claim of 25% of the said sum till the date of Judgment and thereafter 10% of the Judgment debt till payment.

The burden of proof on the minimal haven been discharged by the Plaintiff.

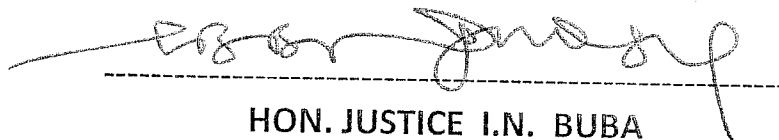
3. **GENERAL DAMAGES**

I also assess and award the Plaintiffs Claim against the Defendants in punitive terms of General Damages in the sum of N10,Billion Naira for General Inconveniences, acid rain, pollution of underground water and hardship to the population who have been deprived of the right to self sustenance, education and good life



- 9 922
4. An Order be and is hereby made directing the Defendant to de-pollute and rehabilitate the dry land and swamps to its pre-impact status.

This is the Judgment of the Court.



HON. JUSTICE I.N. BUBA

JUDGE

14/06/2010.

Judgment read and delivered in Open Court.

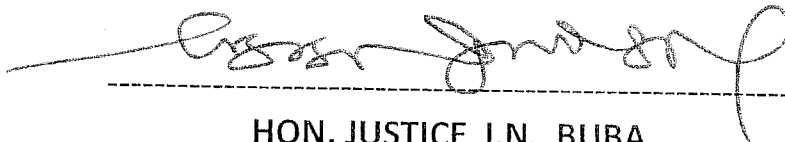
The 1st Defendant is represented in Court by Mr. Julius Ejikonye
Managing Counsel Dispute Resolution.

Mr. E. Asido for the Plaintiff.

Mr. O. Akani SAN for the Defendants with him are

M/S K. Obuh and A.E. Aperua Yusuf.

COURT: No Order as to costs.



HON. JUSTICE I.N. BUBA

JUDGE

14/06/2010.

