

# ASSESSMENT OF VITIATING FACTORS ON ENVIRONMENTAL LAW LITIGATION IN NIGERIA

**Awodezi, H.**

*Department of Arts and Humanities, School of General Studies,  
Delta State Polytechnic, Ozoro, Nigeria*

## **ABSTRACT**

*Environmental litigation serves in enforcing environmental laws for the sustainability of the environment and the welfare of the litigants who are grieved for the damages done to the environment or for injuries or loss suffered as a result of the act of the offender. It is quite regrettable that in Nigeria, environmental litigation is yet to gain recognition on its good role in the scheme of sustainable environment. Hitherto, as a result of human activities, there had been environmental hazards in the environment ranging from indiscriminate dumping of waste and poisonous substance, oil pollution, degradation, deforestation, and etcetera. Thus, environmental harm takes time to manifest in that, the act causing environmental hazard might have been committed today but the harm to the environment may not manifest immediately. It may even take a year or more to manifest. Proving such a damage or harm, if legal action is instituted immediately after the commission of the act, it becomes a problem. If litigation is delayed until the manifestation of the harm, then proving proximity of causation in order to be entitled to damages against the Defendant becomes a problem. On this premise, this paper identified some root causes of the difficulties faced by Plaintiffs in proving their cases and recommend use of environmental experts in dealing with such environmental cases. This was evaluated through the doctrinal research methodology on some identified factors such as ignorance, poverty and impediment on proving environmental hazards. In this connection, the difficulties often encountered by litigants will be mitigated.*

**KEYWORDS:** *Environmental Harm, Litigation, Offender, Plaintiff, Defendant.*

## **INTRODUCTION**

This issue of environmental litigation borders on the questions relating to *Locus Standi*, that is, who can sue and which court has jurisdiction or power to adjudicate on a particular matter at hand. By its hard stand against champerty and maintenance, the common law has for a very long time adopted a conservative position on who has power to sue for an alleged wrong. That person invariably is often the person directly injured or harmed by the act complained of and not some busy-body on the street<sup>1</sup>. Instituting legal action for damages or compensation for environmental harm usually falls prey to this common law position especially when the basis of action is founded on the common law.

Environmental litigation serves to enforce environmental law to the benefits of the environment. It is the means by which environmental law is brought to life, invested with teeth not only to bark but also to bite offenders. In advanced societies where environment enjoys more protection, this end has been attended to not merely by enacting codes of environmental protection laws but by enforcement of such laws through court litigation. The United States of America is an example of such a society with many considered roles of NGOs in environmental litigation. Unfortunately in Nigeria, environmental litigation is yet to assume its proper role in the scheme of environmental protection<sup>2</sup>. Certain vitiating factors such as impediment in proving environmental

---

<sup>1</sup> K U Adamu, *Environmental Protection Law and Practice* (Asaba Press Ltd., 2012) 212

---

<sup>2</sup> Ibid 211

### *Assessment of Vitiating Factors on Environmental Law Litigation in Nigeria*

hazards, lack of awareness of environmental hazards and poverty, have been identified as factors militating against environmental litigation. These factors are hereunder:

#### **IMPEDIMENT IN PROVING ENVIRONMENT HAZARDS**

Most times environmental problems resulting from pollution, indiscriminate dumping of hazardous substance, degradation, etcetera, do not manifest themselves in apparent and vivid terms like harm done to the human person. This is predicated on the premise that often, environmental harm takes time to manifest as it mutates over time.

In the same vein, an act causing environmental harm may be committed today but the harm or hazardous effects to the environment may not manifest immediately. It may even take a year or more to manifest. Most times the plaintiff or the aggrieved party may want to institute a legal action immediately in court to recover damages for negligence but on the contrary, proving such harm or damage becomes a problem. Moreover, if law suit is delayed until the manifestation of the harm or hazard, then proving proximity of causation so as to be entitled to damages against the defendant becomes a problem. On this basis, the plaintiff may fail in his reliefs sought from the court.

In this regard, a victim may therefore find it difficult to successfully claim under negligence if the effect of the hazard does not immediately manifest. Thus, if he awaits for them to become manifest, he may be caught by the negligence rule of the limitation Act<sup>3</sup> or the Nigerian National Petroleum Act<sup>4</sup> which provides that an action cannot be instituted either against the corporation or its officer 12 months after the commission or omission of the act complained of<sup>5</sup>. Plethora examples of cases in this regards were well encapsulated by Adamu K.U<sup>6</sup>. Thus in the case of George Thorsfall & Ors vs. Shell B.P. Development

Company<sup>7</sup>, the plaintiff claimed the sum of ₦100,000 for damages done to his building during the defendant petroleum's operations many years before. The trial judge held that in negligence, the cause of action accrued at the time of the negligence because it was then that the damage was caused even though its consequences may not be apparent then until later. The plea for damages could not succeed.

Needful to say, that the provisions of the Act could be argued to the effect that in as much as the Act is meant to regulate Nigerian National Petroleum Corporation (NNPC) as a body, it cannot operate to the benefit of NNPC subsidiaries such as its refineries, the latter being by the doctrine of corporate personality, separate and distinct persons from the former<sup>8</sup>. With regard to law suit on oil pollution damage to the soil, despite the fact that it may be apparent immediately, all consequences of it will not manifest till years later.

In *Seismograph Services Ltd vs. Onokpasa*<sup>9</sup>, the respondent as plaintiff found himself in such a situation that his school building developed cracks following the Defendant/Appellant's rock blasting activities near the school. The cracks became visible only after some weeks following the cessation of the Appellant's Seismic activities. On these facts, the court held that the Respondent had failed to link the crack on his building with the Appellant's activities, having regards to the effluxion of time between the blasting activities of the Appellant and the appearance of cracks on the Respondent's building.

The challenge of proving environmental harm is related to the problem of the technical rules of prosecuting a case in the law courts and the availing defenses in the rule in *Ryland v. Fletcher*.<sup>10</sup> Thus, in the case of *Amos v. Shell B.P. Nigeria Ltd*<sup>11</sup>, the plaintiffs lost their case because they sued on what was considered public nuisance without the

<sup>3</sup> CAP 88 Laws of the Federation of Nigeria (LFN)1990

<sup>4</sup> CAP 320 Laws of the Federation of Nigeria (LFN) 1990

<sup>5</sup> Section 12 (1) Nigerian National Petroleum Act Cap 320 (LFN) 1990

<sup>6</sup> (n1) 228-231

<sup>7</sup>(1974) 2 RSLR 126

<sup>8</sup> *Salomon v Salomon* (1897) AC 22; *Idi v Ya'U* (2001) 10 NWLR (Pt 72) 640

<sup>9</sup> (1972) 4 SC 123

<sup>10</sup> (1868) LR 3 HL 330

<sup>11</sup> (1974) 4 ECCLR 486

consent of the A.G. In *Chinda & Ors vs. Shell Petroleum Development Co. Ltd*<sup>12</sup>, the plaintiff in a representative capacity sued the Defendant Company for heat, noise and vibration resulting from the negligence, management and control of the flare set used during gas flaring operations. This resulted in a lot of damages to the plaintiffs' property. On the part of Representative capacity, the court held that the plaintiff action must fail because the plaintiffs could not prove that they had the mandate to sue in a representative capacity. On negligence, the court held that the plaintiff could not prove negligence on the part of the Defendants in the management and control of the flare set. From the above, it is crystal clear that technical cases requiring skill and technology to prove are often difficult especially those in the rural areas with limited knowledge. Plaintiffs usually find it difficult to prove that the practice like 'Good Oil Field Practice' was not adopted by the company defendant. The Defendant Company on the other hand, would have no difficulty in providing experts with in depth knowledge of petroleum technology to explain such technical terms and prove that they were not negligent<sup>13</sup>.

#### **LACK OF AWARENESS OF ENVIRONMENTAL HAZARDS**

Just as the saying goes; 'ignorance of the law is not an excuse', so it is with ignorance of environmental harm or hazard. The mere fact that one is not aware of the harmful effect of his polluted environment will have on him, does not exonerate him from being victim except adequate preventive measures are taken to ward off such harmful effect. Lack of awareness of environmental hazard is one of the major vitiating factors to environmental litigation in Nigeria.

Today, as a result of industrialization, the human environment is being polluted in diverse ways such as drinking water, consumable food

items etcetera. The effect is that, people eat polluted food or drink polluted water due to the fact that they are ignorant of its harmful effect on their health. Some typical Nigerians, speaking from the depth of their ignorance will say; "Disease does not kill African man", whereas so many death cases of people recorded, resulted from typical malaria or cholera due to bad water consumption.

The industries that discharged the industrial effluent go free and keep on discharging the effluent into water systems or air without any challenge. Ignorance of the harmful effect of environmental hazard has made a lot of victims both at individual and community level to keep silence without instituting legal action in court for damages. In some cases where litigations were initiated due to lack of proper knowledge of the harmful effect, proving their cases becomes a problem. When there is awareness, the victims have no option than to litigate. For instance, awareness of environmental harm to live, property and economy will trigger the institution of legal action in court.

Thus, in the case of *Shell Petroleum Development Co. Ltd vs. Tiebo*<sup>14</sup>, the Peremabiri Community sued shell claiming the sum of ₦64 million as compensation for environmental damage arising from the act of the Appellant in spilling oil into River Nun, which the community depended for their drinking water and fishing. In the same way, the Olomoro Community in Isoko in Delta State, sued shell claiming compensation for the impoverishment of their land as a result of oil exploration and production by the company. The complaint was that, Olomoro being agrarian community is predominantly made up of farmers and that the industrial activities of the company have rendered their farmlands infertile and diminished their produce<sup>15</sup>.

<sup>12</sup> (1974) 2 RSLR 101

<sup>13</sup> O Adewole, *Judicial Attitude to Environmental Hazards in the Nigeria Petroleum Industry; Proceedings of a Training Workshop on Environmental Law, Enforcement Issues and Methods* (1994) 34

<sup>14</sup> (1996) 4 NWLR (Pt 45) 445-657

<sup>15</sup> *Ogiale v Shell Petroleum Development Co. Ltd*, (1997) 1 NWLR (Pt 480) 148

## **POVERTY**

Poverty has been defined as the state of being poor<sup>16</sup>. It is a situation of not having enough money to cater for one's needs. One of the cut-crossing factors inhibiting environmental litigation in Nigeria is poverty. By necessary implications, poverty is a major factor militating against sustainable developmental efforts in Africa and many developing Countries. Hitherto, the nexus between poverty and environmental protections has been underestimated<sup>17</sup>. Due to poverty, victims of environmental harm cannot secure the services of an expert to prove their cases and protect the environment from further damage, loss of property or injury. Expert witnesses are difficult to retain, reason being that these experts are either employee in the Government parastatals or in the private sectors. The services of those in the Government cannot be retained by the victims because of the prohibitory legislation, Regulated and other Professions' Private Practice Prohibition Act<sup>18</sup>, which prohibits civil servants from private practice. Those experts available in the private sectors are usually too expensive for the ordinary man who is a victim of environmental harm.

For an expert witness to go to court, he must first carry out necessary scientific tests and processes on the affected environmental medium in order to get the result to be used as expert evidence in court. The cost of getting this done, together with his professional charges as an expert, will cost much which many victims cannot afford thereby discouraging them in environmental litigation.

## **CONCLUSION AND RECOMMENDATIONS**

Conclusively, on the whole, lack of environmental harm awareness, impediment in proving environmental hazard and poverty are factors inhibiting environmental litigation in Nigeria. The curative measures will therefore mean

that environmental litigants should try as much as necessary to engage the services of environmental experts vast in the area of the subject matter of litigation. These vitiating factors have contributed more to the misfortunes of the victims in the cases dealt with above. The possibility of losing a suit to the powerful companies or agents of environmental degradation is often a great challenge to the victims of environmental harm. The would-be plaintiff is, therefore, reluctant in litigating for the fear of losing out to the wealthy defendant company.

Since ignorance is one of the major drawbacks in the achievement of any splendid objective, victims of environmental harm, should first and foremost find out the requirements of the law in proving their cases. This is because legal technicalities are more peculiar to environmental cases than litigation in other fields.

The doctrine of '*Res Ipsa Loquitur*' which is interpreted to mean; the facts speak for themselves, should be applied in all cases of environmental harm. In this regard, judicial technicalities involving technical proof of harm by ignorant poor victims of environmental harm should be discouraged.

## **BIBLIOGRAPHY STATUTES**

- Limitation Act Cap 88 Laws of the Federation of Nigeria 1990
- Regulated and other Professions' Private Practice Prohibition Act Cap 390 Laws of the Federation of Nigeria 1990
- The Nigerian National Petroleum Act Cap 320 Laws of the Federation of Nigeria 1990

## **BOOKS**

Adamu K U, *Environmental Protection Law and Practice*, (Asaba Press Ltd., 2012).

Adewole O, *Judicial Attitude to Environmental Hazards in the Nigeria Petroleum Industry; Proceedings of a Training Workshop on Environmental Law Enforcement, Issues and Methods* (1994).

Omokaye G O *Environmental Law and Practice in Nigeria* (University of Lagos Press, 2004).

<sup>16</sup> Joanna Turnbull et al, *Oxford Advanced Learner's Dictionary of Current English* (Oxford University Press, 2010) 1146

<sup>17</sup> G O Omokaye, *Environmental Law and Practice in Nigeria* (University of Lagos Press, 2004) 24

<sup>18</sup> Cap 390 Laws of the Federation of Nigeria, 1990

*Awodezi, H*

**CASES**

Amos v Shell B P Nigeria Ltd. (1974) 4 ECSLR 486.

Chinda & Ors v Shell Petroleum Development Co Ltd.  
(1974) 2 RSLR 101.

George Thorsfall & Ors v Shell B P Development  
Company (1974) 2 RSLR 126.

Idi v. Ya'U (2001) 10 NWLR (Pt72) 640.

Ogiale v. Shell Petroleum Development Co Ltd. (1997) 1  
NWLR (Pt 480) 148.

Rylands v. Fletcher (1868) 3 LR HL 330.

Salomon v Salomon (1897) AC 22.

Seismograh Services Ltd v Onokpasa (1972) 4 SC 123.

Shell Petroleum Development Co Ltd v Tiebo (1996) 4  
NWLR (Pt 45) 445-657

**ENCYCLOPEDIA**

Turnbull J et al, *Oxford Advanced Learner's Dictionary  
of Current English* (Oxford University Press,  
2010) 1146.