The Courts and the Challenges of Adjudicating on Environmental Rights Actions in Nigeria

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***Abstract*:-Since the discovery of oil in commercial quantities in Oloibiri in 1957, the Niger Delta region of Nigeria has been facing serious environmental challenges which range from air and soil pollution. This state of environmental mishaps has grossly affected the people to the extent that the eco-system has largely become unfriendly and harsh to the people. The people have lost their hitherto traditional occupations of fishing and farming to the toxic nature of their waterways and soil. The people of the region lament their haplessness and agony to lack of infrastructural developments and placed the blames on both the government and the Multi-National Oil Companies who according to them have not done enough to ameliorate their worsening conditions. In the face of the ineffectiveness of the environmental laws, the people of the Niger-Delta see the courts as the last hope they can beckon at but their experiences with the courts are yet to meet their aspirations. Often times, they are challenged by jurisdictional choices in filing their environmental rights actions and the long period it takes in adjudicating some of their cases discourages their decision of approaching the courts, hence, sometimes resulting to self-help with far-fetched effects on oil exploration and production activities and revenue drives of the federal government. This paper therefore seeks to proffer a way out of these shambles in a way that streamline the best way out through which the courts can seamlessly serve to the optimum,the cause of oil exploration and production as well as the government revenue drive.**

***Keywords:* Environmental rights actions, Multi-National Oil Companies, Oil Exploration and Production**

I. INTRODUCTION

Oil was discovered in a commercial quantity in Oloibiri in 1957 and its production therefrom finally stopped in 1978 and the field was abandoned the same year after 20years of successful exploration.[1] The oil discovery quickly changed the economic fortune of Nigeria and in the 1980s, its foreign earnings from oil earnings accounted to 90%[2], and according to NNPC 1984, its estimated reserves extending beyond 20-30 years. This record still maintains its relevance till date, despite several efforts and promising measures over the years by successive administration to diversify the Nigerian economy, even in spite of the recent falls in the international pricing of crude oil.

Before the discovery of oil; the Niger-Delta environment was very pure and friendly. However, after discovery of oil and the commencement of their exploitation, the air is polluted, the soil has been endangered due to oil spillage and the water becomes contaminated and no more suitable for drinking which evidently led to wanton pollution of the environment and enormous organic disproportion which may end up constitute danger for mankind[3].

Life has become harsh and unbearable due to carelessness in the way the oil is exploited. Soil is being disrupted in its ecosystems and the air is grossly polluted. The inability of the people to exercise due diligence and their desperate bid to harness the endowed resources push them to engage in mindless disruption of the environment with far-fetched impacts on the life of the people.

The negative impacts include various ecological violence,[4] the agricultural sector is largely dependent on rainfall, the pollution that follows oil exploitation has damaged the environment so that chemical acids, air pollution and oil spills have vitiated the environment so much that there is a low agricultural output. Effectively, the anomalies lead to hike in food prices with attendant effect on the economy[5]. Fishing businesses in the oil producing communities is also affected by both air and water pollution as oil spillage have continued to pollute subversive and surface water thereby making it hazardous for living organisms. This practice of mindless exploration and unorganised abstraction of oil will bring about pollution of the environment and make life miserable to the people beyond what it was before oil was earlier discovered[6]. In many countries in Africa, there is massive fall in crop production compared to the consumption requirement. Hence,

[1]Ndubusi, A. and Asia, O. (2007). *Environmental Protection in Oil producing area of Niger Delta Basin, Niger Empirical assessment of Trends and People's Perception*. Environmental Research Journal, 11(4):18-26.

[2]Odeyemi, O. and Ogunseitan, O.A (1985). "*Petroleum Industry and its Pollution Potential in Nigeria. Oil & Petroleum Pollution*", Elsevier Applied Science Publishers Ltd, England, 2:

[3]Chijioke, Basil Onuoha, Ebong, ItoroBassey& Henry Ufomba University of Uyo (2018) 'The Impact of Oil Exploration and Environmental Degradation in the Niger Delta Region of Nigeria: A Study of Oil Producing Communities in AkwaIbom State' Global Journal of HUMAN-SOCIAL SCIENCE: F Political Science. Volume 18 Issue 3 Version 1.0.

[4]Watts, Michael. (2001) "Petro-Violence: Community, Extraction, and Political Ecology of a Mythic Commodity" in Violent Environments, edited by Nancy Lee Peluso and Michael Watts, Pp. 189-212. Ithaca: Cornell University Press.

[5]MUSAH Abdulwasi (2019), A Comparative Assessment of Legal Sanctions forEnvironmental Pollution in Oil Producing Areas of Nigeria and Other Selected Countries, University of Ibadan Postgraduate School, (PhD Thesis) Unpublished.

[6]Nwagbara, E. Abia, R. Inyang, F &Eleje, J. (2012). "Poverty, Environmental Degradation and Sustainable Development: A discourse". Global Journal of Human social science, sociology, economics and Political science

endangering marine life, and most times this gross destruction is great and the consequences are generally worse. In similar instance, loss of fertile land brings about low agricultural output. This further makes the people poorer. Even the animals and plants suffer this, hence the causes for strange illnesses and sudden deaths[7].

To avert this ugly development in the region, environmental laws were enacted with the sole aim of protecting the environment. Regrettably, the reverse is the case thus making such problems of ecological pollution unabated even in the face of theenvironmental laws. Having considerably suffered from the pollution, people from the region do individually or collectively institute environmental rights actions against the oil companies, these have also not worked out as they would wish. Hence, the people sometimes do take laws into their hands through violence and agitations in the Niger-Delta.[8]The agitations have gradually transformed from non-violent to violent[9] and culminated in the high losses occasioned by life and properties, most importantly, it has resulted into avoidable loss of gigantic amount in the proceeds of the Nigerian government[10]. It is on record that the pipelines were indiscriminately vandalized by the militias in protest of their living condition and this has denied the country a lot in its production output and by extension its revenue generation. Besides the loss of revenue, recorded land degradation occasioned by the spill from the vandalized pipelines is far-reaching and worrisome.

In the past four decades, more than 3000 people have been reported killed in pipeline linked bursts and similar accidents. Despite the wealth generated from their land, the Niger Delta people are reported to be living in squalor without tangible infrastructural facilities[11].

II. PROBLEM STATEMENT

In the face of the apparent failure of the environmental protection laws to meet the ecological yearnings of the people of the Niger-Delta region of Nigeria and the reported ineptitudes of the courts at healing the wounds of the people[12], the self-help agitations which have gradually transformed from non-violent to violent[13]has/is culminating in the high losses occasioned by life and properties, most importantly, the loss of revenue to the Nigerian government[14]. Since, through their agitations, pipelines were broadly vandalized by the militias in protest of their living condition, there is inevitably, a lot of declines in the production output and by extension the revenue generation to the government. Besides the loss of revenue, recorded land degradation occasioned by the spill from the vandalized pipelines is far-reaching and worrisome.

The spate of vandalism generated by the reactions of the Niger-Delta people continues to bring about high decrease in government revenues in Nigeria. In the first quarter of 2019, for example, the revenue decreased to 798.82 NGN Billion from 1121.55 NGN Billion in the fourth quarter of 2018. Government Revenues in Nigeria averaged 836.12 NGN Billion from 2010 until 2019, reaching an all-time high of 1121.55 NGN Billion in the fourth quarter of 2018 and a record low of 498.54 NGN Billion in the second quarter of 2015[15].

There has since the commencement of hostility at the Niger-Delta region a massive disruption in the activities of the oil companies owing to the repugnance of the people to their operation. Nigeria's oil production declined to an average of 1,388 million barrels per day (mbpd) in the first quarter of 2017, data obtained from the Organisation of Petroleum Exporting Countries, OPEC, showed. The reduction amounts to an approximately one percent reduction from the 1,401mbpd recorded in the quarter 4 of 2016. This decline placed Nigeria on the eighth position out of the 13 country members of OPEC in term of oil production[16]. Nigeria's decline was mainly due to infrastructure vandalism, which made it impossible for the country to meet its OPEC quota of 2 million barrels per day[17]. In the last three years, the spate of bombings of oil facilities in the Niger Delta had put the Nigerian economy in a very serious situation.This becomes worrisome as crude oil is the mainstay of the Nigerian economy with revenue generation therefrom account for about 70 per cent of Nigeria's revenue and 90 per cent of Nigeria's foreign exchange earnings[18].

After the completion of the Amnesty Programme of the federal government of Nigeria under President Umaru Musa Yar'Adua, the militants returned back to hostilities after the 2015 General Elections in Nigeria. The resumption of hostilities has further led to a drop in the crude oil output to 1.4 million. Also, the Trans Forcados, a major export terminal, which resumed operation in May 2016, was forced to shut down since November 2016 after militants bombed the subsea facility for the second time.Before the militant attacks, the Forcados stream accounted for between 200,000 and 240,000 barrels per day.But following the repeated attacks on the Forcados pipeline, companies that fed crude into the Forcados stream have been working around the long-term

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[7]ibid

[8]The Niger Delta region of Nigeria includes the states in the south-south regions of Nigeria where oil is produced and which is the focus of this paper.

[9] Ibid at 7

[10]MUSAH Abdulwasi (2019), A Comparative Assessment of Legal Sanctions forEnvironmental Pollution in Oil Producing Areas of Nigeria and Other Selected Countries, University of Ibadan Postgraduate School, (PhD Thesis) Unpublished.

[11] Ibid

[12]ibid

[13] Ibid at 7

[14]Ibid at 11.

[15]https://tradingeconomics.com/nigeria/government-revenues (Accessed on 30/08/19)

[16]https://www.vanguardngr.com/2017/06/nigerias-oil-production-declines-1388mbd-1q-2017/ (Accessed on 30/08/19)

[17] ibid

[18] ibid

pipeline outage, exporting oil via barges at the Warri refinery, but this has been limited to roughly 20,000 bpd[19].

Meanwhile, the then Group Managing Director, Nigerian National Petroleum Corporation (NNPC) MaikantiBaru[20], in an end-of-year statement explained that the average production from NPDC's operated assets alone grew from an average of 108,000 of oil per day (bod) in 2017 to 165,000bod in 2018, describing the feat as the strongest production growth within the Oil Industry in recent times.Crude Oil Production in Nigeria increased to 1948 BBL/D/1K in July from 1802 BBL/D/1K in June of 2019. Crude Oil Production in Nigeria averaged 1880.70 BBL/D/1K from 1973 until 2019, reaching an all-time high of 2475 BBL/D/1K in November of 2005 and a record low of 675 BBL/D/1K in February of 1983.

III. THE COURTS AND ENVIRONMENTAL RIGHT ACTIONS

The main reason why the people living in the oil producing areas of Nigeria decide to approach the courts when they suffer pollution is due to the laxnessin the enforcement of environmental laws. The experiences of the people with the courts too is nothing to write home about as it is being alleged that the country lacksan independent judicial institution and the lack of political will to enforce compliance of extant legal provisions. Under this heading, we shall beam a searchlight on the different challenges being confronted by victims of environmental pollution who have approached the courts in order to seek a redress. We shall at the end canvass for innovative measures in the legal justice system which would ensure that these challenges being faced are appreciably addressed. We shall do this through analyses and reviews of decided cases on environmental rights actions. How the courts interpreted the laws, the courts' attitudes to the shenanigans of the oil companies and how technicalities, rather than justice of the case played out in denying victims justice[21].

3.1The Rigors of Proving a Prima-facie case

In Nigeria, before a Plaintiff can exercise his right to sue in an environmental rights action bothering on negligence of the oil company, he has the burden of proving each of the essential elements[22] of a cause of action for negligence. The term burden of proof is used in determining the burden of going forward with evidence and it means that if the plaintiff does not, in the first instance, introduce evidence on each element which is sufficient to warrant a finding in his favor, he will lose his case at the hands of the court (by nonsuit, directed verdict, or the like)[23]. If the plaintiff has introduced sufficient evidence (before he rests his case) he has made out a prima-facie case. His burden of going forward is met and drops out of the case. Thus, the burden of going forward with evidence is applied always by the court, he must first and foremost show a sufficient interest, i.e. an interest which he peculiarly shares to himself and not a commonly shared interest with the other victims in the community where he belongs.[24] A case that aptly captures this is the case of ***Douglas V. S.P.D.C& 5 Ors***, where the plaintiff brought an action before the court seeking an adherence of Shell to the Environmental Assessment Act ("EIA Act") in the development of the LNG project at Bonny which was being carried out by the defendants. The court, in its ruling, decided that the plaintiff did not have *locus standi* to file the action as he did not show a*prima facie* evidence that his right was personally affected by the development of the project and he did not show any direct injury caused to him as a result of the project, or that he was indeed injured by the action of the defendants far and above the other people in the community where the project is to be executed[25].

Similar to this challenge of prima-facie is the cumbersomeness of the weight to proof a case which is placed on victim(s) of pollution who may not be financially buoyant enough to get the service of technical specialists and Senior Lawyers to prove their case on their behalf while the oil companies are able to afford the services of experts to defend themselves and reduce damage. In a case of negligence, for instance, the plaintiff who suffers from the defendant's negligence has the onerous duty to proof beyond all reasonable doubt to succeed in his case. The plaintiff who is an ordinary commoner may find it extremely hard to hire needed experts to prove his case, meanwhile, the defendants are always oil corporations who have the services of such experts at their beck and calls, hence, are easily in a position to frustrate the plaintiff's case and deny him the much-desired justice.[26]

3.2 Courts and jurisdiction over environmental cases

The question of which court has jurisdiction over environmental cases is another factor denying the victims of pollution access to justice. So many times, victims may inadvertently approach a wrong court in a bid to get justice but having spent too long in court, the question of jurisdiction may be raised and from decided cases, rather looking at the justice demands of the case, the courts strike out such suits and leave the victim without getting justice.

[19]https://www.vanguardngr.com/2017/06/nigerias-oil-production-declines-1388mbd-1q-2017/ (Accessed on 02/09/19)

[20]https://www.channelstv.com/2019/01/02/nigeria-recorded-9-growth-in-oil-production-in-2018-nnpc/ (Accessed on 02/09/19)

[21]MUSAH Abdulwasi (2019), A Comparative Assessment of Legal Sanctions forEnvironmental Pollution in Oil Producing Areas of Nigeria and Other Selected Countries, University of Ibadan Postgraduate School, (PhD Thesis) Unpublished.

[22]these essential elements are determined by the substantive law.

[23]Fleming James, Jnr. (1951) Virginia Law Review, Proof of the Breach in Negligence Cases (Including Res IpsaLoquitur) curled from and accessed on 05 September 2019. https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=4120&context=fss_papers

[24] Access to Environmental Justice in Nigeria (2016)

[25] Suit No. FHC/2CS/573/93. (unreported)

[26]Ibid

The 1999 Constitution, Federal Republic of Nigeria (as amended) confers jurisdiction on oil spillage cases on the Federal High Court. Thus, by virtue of Section 251 (1) (n) of the 1999 the Constitution, the exclusive jurisdiction to entertain claims pertaining to Mines and minerals, including oilfields, oil mining, geological surveys and natural gas rests on the Federal High Court. Consequently, some litigants ignorantly institute their cases in State High Courts with the resultant effect of being struck out for lack of jurisdiction. A court will only deal with cases referred to it. In dealing with such cases the court first assumes jurisdiction. Assumption of jurisdiction by the court entails the fulfilment of certain requirements.

In cases where the question of jurisdiction is raised at the Supreme Court, the apex court did not hesitate in striking a suit out for want of jurisdiction in acknowledgement of the inevitability of authority of the Court and the need to caution victims and prevent at an early stage of the proceedings in the case, the hardship they are likely to encounter where the court has no jurisdiction. It is therefore imperative on a victim of environmental right action to make sure his suit is instituted in the court with jurisdiction to hear his case. A victim who has his case struck out for lack of jurisdiction to file it may have to re-file it at the appropriate court so far it is still within the limitation period to file it, hence, his case is lost forever.

An environmental right action that best suits this jurisdictional debacle is the case of***Shell Petroleum Development Company (Nigeria) Ltd v. Abel Isaiah***[27],The cause of action in this case arose in 1988 when a massive tree fell on and busted the respondent/plaintiff's pipelines which ran over the plaintiffs' farmland. The oil that oozed out of the burst spread and ran across the plaintiffs' farmland and thereby destroying their crops and contaminating the fertility of their farmland. The oil pipeline was possessed and controlled by the appellant and ran transversely the respondent swamp land and neighboring farmlands. The appellant involved the services of an outworker to restore the broken pipeline. While trying to fix the pipeline, crude oil spontaneously leaked unto the Respondent's swampland. The spillage rapidly spread over the Respondent's jointly possessed 'Miniabia' swampland and poisoned the neighboring farmlands, streams and fish ponds. Hence, the plaintiffs instituted this case seeking for damages against the defendant.

After the parties closed their cases, the high court judge, in a well-thought-out ruling, awarded the sum of 22million Naira in damages being the Respondent's claim for the destruction and damage occasioned the Respondent by the Appellant's oil exploration activities. Shell was not satisfied with the High court's ruling, hence, it appealed to the court of appeal. The court of appeal refused shell's appeal after hearing the appeal.

Shell was not satisfied still and it appealed to the highest, Supreme Court. The Supreme Court sitting in its appellate authority was called upon to decide the following:

1. Whether the Court of Appeal's decision that the High Court had jurisdiction to hear the suit is right.
2. Whether the Court of Appeal's decision that the defendant was negligent in not constructing an oil trap was right.
3. Whether the Court of Appeal was right in affirming that the case was properly litigated in a representative capacity and whether the case is challenged under the rule in Rylands v. Fletcher.
4. Whether the Court of Appeal's decision that the oil spillage was in fact massive spillage of crude oil from the appellants pipeline.
5. Whether the damages confirmed by the High Court and affirmed by the Court of Appeal is a proper estimate of the losses suffered by the plaintiffs/respondents.
6. Whether the lower courts were right in upholding the damages awarded based on the unchallenged expert evidence of the respondents.

The court, in determining the issue of jurisdiction held that the construction and maintenance of an oil pipeline is part of mining operations and that it is the Federal High Court vested with the exclusive jurisdiction to entertain such matter. The decision and monetary awards of the lower court was therefore set aside for lack of jurisdiction.

3.3 Delay in adjudicating environmental cases

Frustration, delay and open display of contempt to courts' judgment by MNOCs is another factor discouraging victims of pollution from approaching the court to seek redress when their rights are trampled upon. A case that worth discussion here is the case of ***Iwherekancommunity vs Shell***. In the case, the plaintiff instituted the action against the defendant which is the operator of the joint venture business with the Nigerian National Petroleum Corporation (NNPC), which is an agent of the Nigerian administration. The defendant has been involved in oil exploration and production activities for many years in the plaintiff's community. The action of the plaintiff was seeking an end to gas flaring which had had severe negative effects on the plaintiff's community economic activities of farming and fishing.

The Court, in its judgment held as follows:

- That the defendant's continuous act of gas flaring is an infringement on the plaintiff's right to life and dignity of their persons. Hence, gas flaring by the defendant negates the plaintiff's rights based on the Federal Government Constitutions.
- That the defendant's continuous flaring of gas in the defendant's community contaminates and pollutes their environment as it causes greenhouse effect.

[27](2001) 5 S.C. (Pt. 11) 1.

- That the defendant's action as touching gas flaring exposes the plaintiff to numerous health challenges which results in untimely death of the people.
- That continuous gas flaring contaminates and also poisons the plaintiff's food and water and decreases their production and negatively impacts their food security.
- That continuous gas flaring by the defendant also leads to acid rain which was demonstrated by their corrugated roofs that are rusted by the structure of the rain that falls as a result of flaring.
- That the main causes of acid rain are emissions of sulphur dioxide and nitrogen oxides which add with atmospheric moisture to form sulphuric acid and nitric acid, respectively. Acid rain acidifies their lakes and streams and damages their plants.

Though the High Court in its judgment[28] had since 2003 ruled that gas flaring was unlawful as it is a violation of the fundamental rights to life and dignity[29] hence, should forthwith be stopped[30], it is important to note that till this day, neither the oil companies nor the government of Nigeria have obeyed the subsisting court ruling as gas flaring continues unabated with mere worthless fines.

Normally this case is a landmark judgment as it applies the issue of human rights to an environmental case in Nigeria for the first time even though that has been the trend in other jurisdictions. Shell, in its clever by a half posture tried to apply justice delay so as to run away from justice. And, since 2003, in order to frustrate the Nigerian judicial system, Shell has hidden under the guise of filing appeals, yet it continues to flare gas to the detriment of the plaintiff's community.[31]

Another case depicting how the rich MNOCs can frustrate litigation is the case of ***Four Fishermen V. Shell.*** The Plaintiffs instituted their case against the defendant subsequent to two separate oil spills which occurred from the defendant's facility between 2004 and 2008. The spills contaminated and poisoned many fishing communities in the oil producing areas of Ikot, Ada, and Udo areas of AkwaIbom state, Goi in Rivers state, and Oruma in Bayelsa state, Niger Delta region.

The Plaintiffs filed their action against Shell in the Netherlands. Their case was heard alongside the case of ***Milieudefensie vs. Royal-dutchShell.*** The crux of the plaintiffs' casewas a declaration that Shell was liable to the oil spillage and devastation of millponds which were the only means of survival for the plaintiffs[32]. The plaintiffs also requiredfrom the court, an order for a clean-up and reimbursement for damageto the millponds, returns lost from fishing and incomes, and also precautionaryprocedures to avert oil spillage from Shell's old and rotten channels which could cause leakages and by extension brings indescribable destruction to the farm crops and adjoining millponds.

The case which commenced in 2008 has witnessed series of legal gymnastic displayed by shell all to frustrate the plaintiffs' case. Shell has deployed delay strategies such as filing notices of preliminary objections on the court's jurisdiction as well as contending that since the alleged wrongs took place in Nigeria, it should not be brought to court outside the country but in Nigeria and that there is a difference between Shell in Nigeria and Shell in the Netherlands[33]. At the end of all these, the court, in the Hague held in December, 2015 in a well-considered ruling in an appeal against Shell that the Plaintiffs have the locus to institute the action against Shell and that Shell is answerable to the contention of the plaintiffs on human rights violation[34]. Up till now the substantive case has not been decided since 2004 and 2008 when the cause of action arose and eleven years since the commencement of the case in the court.

Another case depicting time wasting tactics by the MNOCs is the case of ***SPDC v. Tiebo& 4 ors[35].***This is a case arising from oil spillage which took place in 1972. It was continuously heard in the high court in 1985. Appeal was later filed therefrom by the Appellant, Shell and it was only heard in 1994 and ever since, no judgment has been given by the court of Appeal owing to multiple advocacy gimmicks employed by Shell to frustrate the Respondents since the losses suffered in 1972 due to the Appellants' inactions. The case of ***Isaiah Ogar V. Chevron*** is another instance of a frustrating delay. In the case, the plaintiff sought a relief of N100 million but after almost a decade and without an end in sight, the case had to be settled amicably between the parties on a worthless sum of twenty million naira. In the case of ***Ekeremor Zion v. Shell*** the high court, after over thirty years of legal battle decided a compensation of about Thirty Million Naira for the spillage that ruined local farmlands[36]. The action was commenced in 1995, in the then Bendel High Court in a combined lawsuit. The court gave its verdictin May, 1997 for the plaintiffs and awarded damages in their favour.

The Plaintiffs filed their separate actions seeking damages from defendant's Company for oil spillage on their farmlands which totally destroyed their farms and blocked their only means of survival. By an order of the High Court, the suits

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[28] See also Gbemrev. SPDCAHRLR 151, 2005

[29] In the judgment, the court granted the following reliefs:

i. Section 33 and 34 of the country's constitution alongside the African charter guarantees the right to life and human dignity and so the act to continuous flaring of gas negate the said rights to life and human dignity

ii. In furtherance to the first ruling, the defendants are forthwith restrained whether by themselves or their servants or officials restrained from embarking on flaring of gas perpetually.

[30] Gbemre v. SPDC ibid

[31] Ibid

[32] Court of the Hague Suit No. C/09/337050/HAZA09 – 1580

[33] www.dailymail.co.uk/wires/

[34] ibid

[35] SPDC v. HRH Chief GBA Tiebo VII and four others (1996) 4 NWLR (Part445), p657.

[36] Ibid

were consolidated on 21/3/85. At the end of the trial, high court in its 27th May, 1997's verdict held in support of the Plaintiffs' case and grantedthem damages. The defendant was not satisfied, hence, it appealed for a setting aside of the high court's judgment to the Benin court of Appeal[37]. After hearing the appeal and listening to the parties' argument, the court of appeal gave its judgment in May 2000 and dismissed the appellant's appeal thereby upholding the high court's verdict. The appellant was not satisfied still, hence, appealed to the highest court of the land, the Supreme Court. In the same vein, the supreme court, in a unanimous judgment of the court, dismissed the appellant's appeal and upheld the high court's judgment and awarded a cost of five hundred thousand naira to each of the respondents against the appellant[38].

3.4 Limitation of Action and Pre-Action Notice

Victims of environmental pollution do encounter the twin problem of limitation of action as well as the requirement for pre-action notice in instituting their environmental right actions. These two are condition precedent which often rather than enhancing the clamours of the victims to justice end up denying them access to justice on the alter of procedural non-compliance with them.

The courts had the opportunity to interpret the necessity for a pre-action notice in an environmental right action in the case of ***Mobil Producing (Nig.) Unlimited v. LASEPA, FEPA & ORS***[39], the Court of Appeal upheld the fatality of the failure on the part of the appellant to serve the statutory pre-action notice under ***Section 30(2) of the FEPA Act*** on the second respondent at the instance of one of the fourth set of defendants/respondents. On further appeal to the Supreme Court however, the apex court held that the service of a pre-action notice is at best a procedural requirement and not an issue of substantive law on which the right of the plaintiff depend. It held further that it is not an integral part of the process of initiating proceedings and that a party who has served a pre-action notice is not obliged to commence proceeding at all. The non-compliance does not therefore raise the question of jurisdiction which can be raised at any time which if resolved in favour of the defendant would render the entire proceedings a nullity. It does not abrogate the right of a plaintiff to approach the court or defeat its cause of action; it merely puts the jurisdiction of the court to hear a matter on hold pending compliance with the pre-condition. It is therefore a mere irregularity, which merely renders an action incompetent but does not totally affect the jurisdiction of the court. Consequently, the irregularity can be waived by a defendant who fails to raise it by motion or plead it in the statement of defense. The major aim of the mandatory section 29(2) or 30(2) provisions of the FEPA Act is not necessarily to enable the Agency prepare its case, but rather to see whether the matter could be settled out of court. Hence, the requirement of pre-action notice is not inconsistent with provisions of the Constitution of Nigeria[40].

As for the limitation of action which may render an action statute barred if not filed within the period stipulated by the statute. Victims of environmental pollution may find this a disturbing factor in their bid to accessing justice in Nigeria. Applying the statute of limitation may ordinarily be problematic in the sense that the occurrence of pollution is systemic and its occurrence metamorphoses from time to time, hence, a continuous activity. The real oil spillage may occur now while its effects continue to manifest for a very long period to come. In their characteristic defence approach, oil companies do insist and plead that time begins to run from the moment the oil spill occurred while they ignore the period on which its effects are manifest. The computation of time for the purpose of determining whether an action was statute barred or not came into the fore in the case of ***Gulf Oil Co. Ltd v Oluba.***[41] The fact of the case is interesting and enlightening to our quest for understanding when a cause of action can be said to have arisen in an environmental pollution case. The Appellant, an oil major,began oil exploration on the Respondents' land sometime in 1973 and the exploration continued until 1989. In the cause of this oil exploration, Respondent's swamps, channels and lakes were grossly affected and this resulted in loss of income from fishing and farming. The Respondents commenced action some sixteen years later in 1989. The Appellant filed a Notice of Preliminary Objection where it urged the court to dismiss the Respondent's action same having become statute barred. The Appellant premised its objection on the Limitation Law of Delta State which provided for six years of limitation from the date on which the cause of action ensued. The trial judge held that the cause of action was a continuing one and not statute-barred. On appeal, the Court of Appeal took a different view and held that the cause of action accrued with the cessation of the Appellants act, which resulted in the damage. It held further that the trial judge was wrong to look at the statement of defence to see whether it admitted that the cause of action was a continuing one. There might admittedly have been some weakness in the pleading of the Respondents' case by their counsel in the ***Gulf v. Oluba*** case. But even so, there was sufficient ground for the Court of Appeal taking the opposite view, and not abandoning such a vast quantity of land to permanent ecological ruin, when the appellant could have restored the land[42].

IV. OBJECTIVES OF THIS PAPER

1. Nigeria heavily depends on the huge revenues coming from crude oil production in the Niger Delta

[37]In court of appeal No. CA/8/255/97

[38] http://askthelawyeronline.com/version2/members/judgments/details.php?id=1874. Available as at 9/6/2016.

[39] (2002) 18 NWLR (Pt. 798) Pt. 1.

[40]Rufus AkpofurereMmadu, (2013) 'Judicial Attitude to Environmental Litigation and Access to Environmental Justice in Nigeria: Lessons from Kiobel', AfeBabalola University: Journal of Sustainable Development Law and Policy Vol. 2 Iss. 1 (2013), pp. 149-170

[41](2003) F.W.L.R (pt.145) 712

[42] Ibid at 41

region. To maintain its revenue targets, efforts must be made to ensure that necessary machineries are deployed towards discouraging agitations and violence uprising in the region.

2. To ensure that the Niger-Delta people are discouraged from taking laws into their hands, measure must be put in place for the ventilation of their grievances in an organized civil way.
3. To deal with the notable pitfalls in the present courts arrangement which does not guarantee the victims of environmental pollution access to justice.
4. To work out pragmatic modellings for our courts in term of procedures and organization for the purpose of availing victims of environmental pollution access to justice.

V. METHODOLOGY

1. Research and gathering of data from existing literature and enabling statutes on oil pollution in the Niger Delta
2. Data collation from courts' decided cases.

VI. CONCLUSION

Our discussion in this paper has shown how the victims of environmental pollution in Nigeria fail to get justice or at best the factors that deny them access to justice as regards their environmental right actions. The confusion in term of which court to institute their environmental case at; the heavy burden to proving a prima-facie case in the torts of negligence, the delay tactics often employed by the powerful oil majors and the limitation of action's conundrum. All these are militating factors against the victims of environmental pollution getting access to justice in Nigeria. If these technicalities are to be perfected, the Nigerian judiciary would have a broader role to play; specifically, in applying the law with more flexibility and in promoting a setting for judicial activism.

It has been confirmed that the reality of the country's socio-economic development requires a well-coordinated and proactive judicial system which administer justice without fear or favour and which migrate from the syndrome of business as usual and which sees the need for justice in all cases as panacea for the confidence of the citizenry which has long been eroded. Due to ongoing corruption, neglect and the evident failure of the political class in implementing sustainable environmental policies, the Nigerian judiciary is often looked upon, and rightly so, to prompt and foster effective environmental management, as well as to emphasize the importance of public participation in environmental conservation and management in Nigeria[43].

If the overall objectives of this paper are to be met, there is a need for a total overhauling of the environmental justice system. We, by way of recommendations call for a consideration of the following measures as impetuses to access to environmental justice delivery in Nigeria[44]:

1. Justice delay is justice deny; situations as shown from decided cases where a case lingers on for a vey long period of time is not in the interest of justice and the victim(s) of such environmental violations must have undergone a lot of psychological and emotional trauma before his/their case is finally determined. It is our view that this problem would headlong be addressed with the introduction of ***Environmental Courts*** into our constitutional court's development. The reason for this delay in adjudicating environmental cases are partly due to the congestion of the regular courts with variety of cases. Egypt, has an Environmental Court arrangement with exclusive jurisdiction over environmental matters. When this is introduced, the errors of which court to approach for an environmental action often made by litigants as well as the problem of delay in adjudicating cases must have been taken care of.
2. There is a need for our judges to imbibe activism especially when it comes to cases of environmental right actions. The *heavy burden of proof* required of the plaintiff/victim in the tort of negligence, most especially when it has to do with environmental rights action needs to be looked into so that a plaintiff victim in an environmental tort would be allowed to prove his case and the injury suffered by him only on *a nexus of causality*. This is the practice in Venezuela, under its Organic Law of the Environment. The oil companies are tactical and buoyant enough to seek the service of the best lawyers and necessary experts to jeopardize the case of a relatively poor environmental victim who may not have the financial wherewithal to get these highly sophisticated experts required in proving his negligence case prima-facie.

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