

SUPREME COURT OF NIGERIA
18TH MAY, 2001. SC. 75/1997
CORAM:- S. M. A. BELGORE, A. B. WALL, E. O. OGWUEGBU,
U. MOHAMMED, U. A. KALGO, JJSC.

ABEL ISALIAH & 2 ORS. PLAINTIFFS/RESPONDENT
(Representing Omuoda Community
of Aluu, Rivers State)

AND

THE SHELL PETROLEUM
DEVELOPMENT COMPANY OF DEFENDANT/APPELLANT
NIGERIA LIMITED

JURISDICTION - Cause of action - Which arose before the jurisdiction of the court is ousted - Any further hearing of the matter is null and void - Because any decision it makes amounts to nothing (H 5)

JURISDICTION - Issue of jurisdiction - When it can be raised - The issue of jurisdiction can be raised at any stage of any proceedings - Even in an appeal before the Supreme Court (H 1)

JURISDICTION - Issue of jurisdiction - When it should be considered - It is important to consider the issue of jurisdiction first - Because where a court exercises a jurisdiction it does not possess - Its decision amounts to a nullity (H 2)

JURISDICTION - What it means - And how it can be limited (H 6)

PETROLEUM LAW - Jurisdiction - Oil spillage - Spillage and Pollution which occurred in the course of repair of indented pipeline - Is a matter arising from - Mines and minerals including oil fields and oil mining - And falls within the exclusive jurisdiction of the Federal High Court - As provided under s. 230 (1) (a) of Decree No. 107 (H 4)

PETROLEUM LAW - *Mining operations - Construction and maintenance of an oil pipeline - By a holder of oil prospecting licence - Is an act pertaining to mining operations (H 3)*

FACTS

In the High Court of Rivers State, sitting at Isiokpo, the plaintiffs/respondents claimed from the defendant/appellant the sum of N22 million for the damage and loss caused to them by the appellant's oil exploration activities. In July, 1988 an old tree fell on the appellant's oil pipeline and indented it, thereby obstructing the free flow of crude oil. The oil pipeline was owned and controlled by the appellant and ran across the respondents swampland and surrounding farm lands. The appellant engaged the services of a contractor to repair the dented pipeline. In the cause of the repairs, crude oil freely spilled onto the respondents' swamp land. The spillage quickly spread over the respondents' communally owned "Miniaba" swampland and polluted the surrounding farmlands, streams and fishponds. The appellant denied the respondent's claim and maintained that only minor splash of oil and water were found on appellant's right of way which did not spread to respondents' agricultural land, swamps, stream, and fish pond.

At the end of the hearing the learned trial judge in a considered judgment entered judgment in favour of the respondents. The appellant unsuccessfully appealed to the Court of Appeal, Port Harcourt Division. The appellant has now appealed to the Supreme Court raising five issues while the respondents also raised five issues. Both the appellant and respondents raised the issue of jurisdiction, which became the main issue in the appeal.

ISSUE FOR DETERMINATION

Whether the court below was right in holding that the trial court had jurisdiction to try this case.

HELD (Unanimously allowing the appeal per lead judgment of **MOHAMMED JSC**)

Issue of jurisdiction - When it can be raised

1. The issue of jurisdiction can be raised at any stage of the proceedings even in an appeal in the Supreme Court and once an objection is raised it must be borne in mind that the challenge touches the competence and legality of the trial court to try the case. Ike V. Nzekwe (1975) 2 SC 1. (p. 1639 C)

Issue of jurisdiction - When it should be considered

2. It is important to consider the issue of jurisdiction first because where a court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to a nullity. Peenok Ltd. V. Hotel Presidential Ltd. (p. 1639 E)

Petroleum Law - Mining operations

3. The construction, operation and maintenance of an oil pipeline by a holder of oil prospecting licence is an act pertaining to mining operations. (p. 1641 D)

Petroleum Law - Jurisdiction

4. It is clear from the pleadings that the spillage and pollution occurred when the appellant was trying to repair the indented pipeline by cutting off the said section and installing a new section. I think it cannot be disputed if I say that installation of pipelines, producing, treating and transmitting of crude oil to the storage tanks is part of Petroleum Mining Operations. Therefore if an incident happens during the transmission of petroleum to the storage tanks it can be explained as having arisen from or connected with or pertaining to mines, and minerals, including oil fields, and oil mining. I therefore agree that the subject matter of the respondents' claim falls within the exclusive jurisdiction of the Federal High Court as is provided under section 230 (1)(a) of Constitution (Suspension and Modification) Decree No. 107. Similar opinions concerning claims pertaining to oil spillage have been held by the Court of Appeal in Barry and 2 Ors. V.

Obi A. Eric and 3 Ors. (1998) 8 N.W.L.R. (Pt. 562) 404 at 416 and The Shell Petroleum Development Company of Nigeria Limited V. Otelemaba Maxon and Ors. Maxon's case is not yet reported. It was decided on 29th January, 2001 by Port-Harcourt division of the Court of Appeal. (p. 1641

B D)

Jurisdiction - Cause of action

5. While it is correct that the cause of action arose before the promulga-
C tion of the Decree mentioned above, the trial of the action was in progress
when Decree 107 of 1993 was signed into law. From that moment when
the Decree was signed into Law the jurisdiction of the State High Court to
determine any matter connected with or pertaining to mining and minerals,
including oil fields, oil mining, geological surveys and natural gas has
D been ousted. Once the jurisdiction of a court to determine a matter has
been ousted any further hearing in the matter is indeed null and void be-
cause any decision it makes amounts to nothing. (p. 1642 B)

Jurisdiction - What it means

6. By jurisdiction is meant the authority which a court has to decide mat-
ters that are litigated before it, or to take cognisance of matters presented
in a formal way for its decision. The limits of this authority are imposed
F by the statute, charter or commission under which the court is constituted
and may be extended or restricted by similar means. If no restriction is
imposed, the jurisdiction is said to be unlimited. A limitation may be ei-
ther as to the kind and nature of the actions and matters of which the
particular court has cognizance or as to area over which the jurisdiction
G extends or it may pertain to both these characteristics – see Vol. 10
Halsbury's Laws of England 4th edition, paragraph 715, page 323. (p.
1642 D)

H NOTABLE POINTS OF INTEREST

MOHAMMED JSC

1. The practice of oil prospecting licence holders during mining operations

In establishing whether the construction and maintenance of an oil pipeline is part of mining operations, it is relevant to refer to the practice of the oil prospecting licence holders during mining operations. These have been described in the Petroleum Act 1960 and Oil Pipeline Act 1956. If petroleum is discovered through the approved mining operations arrangement B is made by the oil prospecting licence holder, which struck the oil, to evacuate the oil from the oil well to an oil terminal. This is done either through a pipeline or a tanker. The pipeline is constructed and maintained by the Oil Company which transport the oil from the oil-well to the oil terminal. C Thus the most important aspect of oil mining operation is the construction of oil pipeline for the evacuation of the crude oil to the oil terminal through an oil pipeline. The holder of an oil pipeline licence has been made responsible under the law to pay compensation to any person whose land or interest in land or who suffers any damage in connection with the operation D of the pipeline. (p. 1640 H)

OGWUEGBU JSC

2. *Decree No. 60 of 1991 ousted the jurisdiction conferred on the State E High Courts and Magistrate Courts under Oil Pipelines Act.*

I should also say that section 7(5) of Decree No. 60 of 1991 ousted the jurisdiction conferred on State High Courts and Magistrate Courts under sections 19 and 20 of Oil Pipelines Act Cap 338 Laws of the Federation F Nigeria, 1990. As a result, State High Courts and Magistrate Courts have no jurisdiction whatsoever in matters under section 7(1) and (2) of Decree No. 60 of 1991.

Having regard to the state of the law and the facts of this case, oil spillage G from the defendant's dented oil pipe line is a thing associated with, related to, arising from or ancillary to mines and minerals, including oil fields, oil mining, geological surveys and natural gas as provided in section 7(1) and (2) of Decree No. 60 of 1991. From the facts established, there is close affinity between oil spillage which is the cause of action and section 7(1)(p) H of the 1991 Decree. The words of section 7(1) of the aforesaid Decree are plain and unambiguous and I have no hesitation in giving them their natural and ordinary meaning in the context in which I find them. See Allen v.

Thorn Electrical Industries Ltd. (1967) 2 All E.R. 1137 at 1141. (p. 1649 G)

REPRESENTATION

- B A. N. Anyamene S.A.N., F. A. A. Chukuka and R. Ordu, with him, for the Appellant.
Eberechi Adele, for the Respondents.

CASES REFERRED TO

- C Adesina v. Kola (1993) 6 N.W.L.R. (part 298) 182 at 185
Ike v. Nzekwe (1975) 2 SC 1
Court of Appeal in Barry and 2 Ors. v. Obi A. Eric and 3 ors. (1998) 8 N.W.L.R. (Pt.562) 404 at 416
D Barclays Bank of Nigeria Limited v. Central Bank of Nigeria (1976) 6 S.C. 175;
Attorney-General of Lagos v. Dosunmu (1989) 3 NWLR (Pt.III) 552
Uwaifo v. Attorney-General of Bendel State (1982) 7 S.C. 124
E Din v. Attorney-General of the Federation (1986) 4 NWLR (Pt.87) 147, 171
Dennis Osadebay v. Attorney-General Bendel State (1991) 1 NWLR 1 (Pt.169) 524, 533, 534, 535
F Allen v. Thorn Electrical Industries Ltd. (1967) 2 ALL E.R. 1137 at 1141
Madukolu v. Nkemdilim (1962) 1 ALL N.L.R. (Pt.562) 404

STATUTES REFERRED TO:

- Petroleum Act, 1960
G Oil Pipeline Act, 1956
Constitution (Suspension and Modification) Decree No. 107 of 1993, s. 230 (1) (a)

H BOOK REFERRED TO:

Halsbury's Laws of England Vol.10, 4th Edition, Para. 715, p. 323

LEAD JUDGMENT BY MOHAMMED JSC

This is an appeal from the decision of the Court of Appeal Port Harcourt Division, in which it affirmed the judgment of the High Court, River State, sitting at Isiokpo. The plaintiffs, who are respondents in this appeal, claimed from the defendant (appellant in this appeal) for the following reliefs:-

“(a) The sum of N22 million being fair and reasonable compensation due and payable to the Plaintiffs by the Defendants for the permanent damage and loss to the Plaintiffs’ plant, marine and domestic life which was caused by the Defendant’s oil exploration activities whereby the Defendant’s oil pipes were caused by the Defendant to open up in 1988 and caused extensive oil spillage and pollution which said pollution has remained continuous at the Plaintiffs’ Miniabia” land and water forest swampland at Omuoda, Aluu, within the jurisdiction of the Honourable Court OR in the alternative.

(b) The sum of N22 million being damages for negligence committed by the Defendant through its servants or agents when they negligently allowed crude oil to spill and pollute extensively the Plaintiffs’ “Miniabia” land and swampland at Omuoda Aluu aforesaid OR in the alternative.

(c) The sum of N22 million being damages sustained by the Plaintiffs through the acts or omissions of the Defendant under the Rule in Rylands V. Fletcher.”

The facts of this case as given by the respondents is narrated as follows: In July, 1988 an old tree fell on the appellant’s oil pipeline and indented it, thereby obstructing the free flow of crude oil. The oil pipeline was owned and controlled by the appellant and ran across the respondents swampland and surrounding farmlands. The appellant engaged the services of a contractor to repair the dented pipeline. In the cause of the repairs, crude oil freely spilled onto the respondents’ swampland. The spillage quickly spread over the respondents’ communally owned “Miniabia” swampland and polluted the surrounding farmlands, streams and fishponds.

Pleadings were called and delivered. Evidence was given by both

sides and at the end of the hearing the learned trial judge in a considered judgment, awarded N22 million being the respondents' claim for the damage and loss caused to the respondents by the appellant's oil exploration activities.

B Dissatisfied with the decision of the High Court of the appellant appealed unsuccessfully to the Court of Appeal. The appellant has now come before the Supreme Court contesting the decision of the court below. The appellant identified the following issues for the determination of the appeal.

C *"(1) Was the court below right in holding that the trial court had jurisdiction to try the case?*

(2) Was the court below right in upholding the finding of the trial court that the appellant did not construct an oil trap before replacing the
D *dented portion of the pipeline?*

(3) Was the court below right in upholding the finding of the trial court that there was in fact a massive spillage of crude oil onto the respondents farmlands, swamps, streams and fish ponds from the
E *appellant's pipeline?*

(4) Were the damages confirmed by the court below a proper estimate of the losses suffered by the respondents if there was in fact pollution as alleged by them?

F *(5) Was the court below right in its decision that there was no misjoinder of parties and/or causes of action?"*

Although some issues which the respondents formulated are similar to those identified by the appellant I will reproduce the respondents' issues for ease of reference to them. The respondents formulated the
G following issues for the determination of the appeal.

"(1) Whether the Court below was right in holding that the trial court had jurisdiction to try this case.

(2) Whether the court below was right in affirming the finding of
H *the trial court invoking the presumption in section 149 (d) of the Evidence Act against the appellants for failure of the appellant to produce and tender in evidence the reports of the spillage produced by its own employees DW1 and DW2.*

(3) *Whether the court below was right in upholding the finding of the trial court that the appellant did not construct an “oil trap” before repairing its oil pipes.*

(4) *Whether the court below was right and justified in upholding the damages awarded by the trial court based on the unchallenged expert evidence of the respondents.*

(5) *Whether the court below was right in affirming the finding of the trial court that the respondents properly litigated this suit in a representative capacity and whether the appellant challenged the judgment of the trial court under the Rule in Rylands Vs. Fletcher”.*

The main issue in this appeal is whether the court below was right in holding that the trial court had jurisdiction to try this case. This issue was raised by both the appellant and the respondents at the court below. **The issue of jurisdiction can be raised at any stage of the proceedings even in an appeal in the Supreme Court and once an objection is raised it must be borne in mind that the challenge touches the competence and legality of the trial court to try the case. *Ike V. Nzekwe* (1975) 2 SC 1. It is important to consider the issue of jurisdiction first because where a court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to a nullity. *Peenok Ltd. V. Hotel Presidential Ltd.*** For the above reasons I will first consider the issue of jurisdiction because if it succeeds that decision will determine the fate of this appeal.

Mr. Anyamene SAN, arguing strongly on this issue, submitted that the appellant raised the issue of jurisdiction of the trial court in paragraphs 12 and 13 of its brief in the court below. The argument of the learned Senior Advocate is that by the provisions of Section 7(b), 7(3) and 7(5) of the Federal High Court (Amendment) Decree No. 60 of 1991 the jurisdiction of the State High Court has been ousted in claims pertaining to mines and minerals, including oil fields, oil mining, geological surveys and natural gas. Decree No. 60 of 1991 was suspended by Decree No. 16 of 1992. But in 1993 the Constitution (Suspension and modification) Decree No. 107 Section 230 (1) (9) of the Decree restored the jurisdiction of the Federal High Court pertaining to mines and minerals which was suspended by Decree No. 16 of 1992. Section 230 (1) (9) provides as follows:

B *“Notwithstanding anything to the contrary contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from (0) mines and minerals (including oil fields, mining, geological surveys and natural gas.”*

C The question which should be answered, in this appeal, is whether the facts of this case fall within the definition of matters connected with or pertaining to mines and minerals, including oil fields, oil mining geological surveys and natural gas. The State High Court would have no jurisdiction to adjudicate in the matter. The picture of what happened which led to the institution of this case has been given by the respondents in their Statement of Claim read:

D *“6. Sometimes about July 1986 an old trees from the swampland fell on the oil pipelines indenting or bending the said pipes. Apart from indenting or bending the said pipes, there was no other damage to the pipes by reason of the falling of the tree. However, the said indentation*
E *hindered the free flow of crude oil through the said pipes and it became necessary for the defendant to maintain the indented section of the pipeline by cutting off the said section and installing a new section.*

F *7. In the course of the said repairs, which was carried out by the Engineering Department of the defendant’s the defendant neglected to construct what technically is termed an oil trap. An oil trap is a device constructed in the soil which is supposed to trap crude oil in the course of such repairs so that crude oil will not spill and pollute the surrounding environment.*

G *8. Because of the defendant’s neglect to construct an oil tap, as they disconnected the damaged section of the said oil pipes for replacement, noxious crude oil commenced massive spillage onto the plaintiffs’ swampland. The defendant’s employees could not immediately control*
H *the spillage and crude oil continued to spill for several hours until they were able to fix the new section of the oil pipes”.*

In establishing whether the construction and maintenance of an oil pipeline is part of mining operations, it is relevant to refer to the practice of

the oil prospecting licence holders during mining operations. These have been described in the Petroleum Act 1960 and Oil Pipeline Act 1956. If petroleum is discovered through the approved mining operations arrangement is made by the oil prospecting licence holder, which struck the oil, to evacuate the oil from the oil well to an oil terminal. This is done either through a pipeline or a tanker. The pipeline is constructed and maintained by the Oil Company which transport the oil from the oil-well to the oil terminal. Thus the most important aspect of oil mining operation is the construction of oil pipeline for the evacuation of the crude oil to the oil terminal through an oil pipeline. The holder of an oil pipeline licence has been made responsible under the law to pay compensation to any person whose land or interest in land or who suffers any damage in connection with the operation of the pipeline.

For the foregoing reasons **the construction, operation and maintenance of an oil pipeline by a holder of oil prospecting licence is an act pertaining to mining operations.**

It is clear from the pleadings that the spillage and pollution occurred when the appellant was trying to repair the indented pipeline by cutting off the said section and installing a new section. I think it cannot be disputed if I say that installation of pipelines, producing, treating and transmitting of crude oil to the storage tanks is part of Petroleum Mining Operations. Therefore if an incident happens during the transmission of petroleum to the storage tanks it can be explained as having arisen from or connected with or pertaining to mines, and minerals, including oil fields, and oil mining. I therefore agree that the subject matter of the respondents' claim falls within the exclusive jurisdiction of the Federal High Court as is provided under section 230 (1)(a) of Constitution (Suspension and Modification) Decree No. 107. Similar opinions concerning claims pertaining to oil spillage have been held by the Court of Appeal in Barry and 2 Ors. V. Obi A. Eric and 3 Ors. (1998) 8 N.W.L.R. (Pt. 562) 404 at 416 and The Shell Petroleum Development Company of Nigeria Limited V. Otelemaba Maxon and Ors. Maxon's case is not yet reported. It was decided on 29th January, 2001 by Port-Harcourt division of the Court

of Appeal.

Learned counsel for the respondents argued that the ouster Decree could not affect the claim before the court for the simple reason that the cause of action arose before the Decrees were promulgated. He submitted that the Supreme Court had made several decisions that the law applicable to an action is the law existing when the cause of action arose. He referred to the case of Adesina V. Kola (1993) 6 N.W.L.R. (part 298) 182 at 185. **While it is correct that the cause of action arose before the promulgation of the Decree mentioned above, the trial of the action was in progress when Decree 107 of 1993 was signed into law. From that moment when the Decree was signed into Law the jurisdiction of the State High Court to determine any matter connected with or pertaining to mining and minerals, including oil fields, oil mining, geological surveys and natural gas has been ousted. Once the jurisdiction of a court to determine a matter has been ousted any further hearing in the matter is indeed null and void because any decision it makes amounts to nothing. By jurisdiction is meant the authority which a court has to decide matters that are litigated before it, or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted and may be extended or restricted by similar means. If no restriction is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance or as to area over which the jurisdiction extends or it may pertain to both these characteristics – see Vol. 10 Halsbury’s Laws of England 4th edition, paragraph 715, page 323.** There is no pending case where a court is incompetent to determine a matter. Any judgment delivered by a court in a matter which it has no jurisdiction to decide is of no consequence and is a nullity.

In the result, I agree that the State High Court has no jurisdiction to determine the suit filed by the respondents against the appellant. The first issue is therefore resolved in favour of the appellant. This issue has therefore determined this appeal. I do not have to consider other issues

because doing so will amount to an academic exercise.

The appeal is therefore allowed. The judgments of the Court of Appeal and the High Court are set aside. The claim of the respondents before the High Court is struck out. I award N10,000.00 costs in favour of the appellant, N500.00 in the High Court and N3,000.00 at the Court of Appeal. B

BELGORE JSC

Jurisdiction is very important in every suit in Court. Trial by a court without jurisdiction is a wasteful exercise as the trial will be a nullity. Decree 107 of 1993 clearly ousts jurisdiction of State High Courts from trying any matter pertaining to mining and minerals including oilfields, oil mining geological surveys and natural gas. D

Once jurisdiction of State High Court is ousted, as is the case in this matter, the State High Court assuming jurisdiction does so as an exercise either in moot or as an academic exercise but certainly in futility. (Barclays Bank of Nigeria Limited Vs. Central Bank of Nigeria (1976) 6 S.C. 175; Attorney General of Lagos V. Dosunmu (1989) 3 NWLR (Pt. III) 552; Uwaifo V. Attorney-General of Bendel State (1982) 7 S.C. 124; Din Vs. Attorney-General of the Federation (1986) 4 NWLR (Pt. 87) 147, 171). Dennis Osadebay Vs. Attorney-General Bendel State (1991) 1 NWLR 1 (Pt. 169) 524, 533, 534, 535. F

It is therefore obvious where the jurisdiction in this matter lies. Only Federal High Court has jurisdiction to hear matters pertaining to mines and minerals and all other operation attendant thereto. I therefore agree with my learned brother, Mohammed JSC, that this appeal has great merit. I also allow it and set aside the decision of Court of Appeal that upheld decision of trial State High Court. This is in line with decisions of the same Court of Appeal in Barry & 2 Ors. Vs. Eric & 3 Ors. (1998) 8 NWLR (Pt. 562) 404, 416; Shell Petroleum Development Company of Nigeria Vs. O. H Maxon and Ors. (decided on 29/1/2001). G

I also award the appellant N10,000.00 as costs in this Court, N3,000.00 in Court of Appeal and N500.00 in the trial Court. H

WALI JSC

I have read in advance the lead judgment of my learned brother Uthman Mohammed, JSC and I agree with it.

B From the pleadings and the relevant statutory laws cited and relied on, the State High Court lacked jurisdiction to entertain the case as it is a matter covered by the Petroleum Act 1960 and the Oil Pipeline Act 1956. By the Constitution [Suspension and Modification] Decree No. 107 of 1993, particularly Section 230 (1)(9) thereof jurisdiction in such matters C has been made exclusive to the Federal High Court. The same Division of the Court of Appeal i.e. Port-Harcourt Division in BARRY & 2 ORS. V. OBI A. ERIC & 3 ORS. [1998] 8 NWLR (Pt. 562) held that the State High Court lacks jurisdiction to entertain claims involving oil spillage.

D For the avoidance of doubt as regards the exclusive jurisdiction of the Federal High Court in matters pertaining to mines and minerals I quote hereunder the provision of Section 230(1)(9) of Decree No. 107 of 1993 and which specifically provides as follows:-

E *“Notwithstanding anything to the contrary contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or to Decree, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other F Court in civil causes and matters arising from mines and minerals including oil fields, mining, geological surveys and natural gas.”*

The proceedings before the River State High Court sitting at Isiokpo is hereby declared a nullity for want of jurisdiction. The case instituted before that court is hereby struck out. See UWAIFO V. A.G. OF BENDEL G STATE [1987] 7 SC. 124; [1983] 4 NCLR 1; DEN V. A.G. OF THE FEDERATION [1988] 4 NWLR (Pt. 87) 147; A.G. LAGOS STATE V. DOSUMU [1989] ALL NLR 504.

H It is for these and the more detailed reasons in the lead judgment that I also allow this appeal. I adopt the order of costs made in the lead judgment.

OGWUEGBU JSC

I have had the opportunity of reading in draft the judgment of my learned brother Mohammed, J.S.C. I agree with his reasoning that the appeal be allowed. I only wish to make my own contribution to the issue of jurisdiction canvassed in this appeal. B

The material facts of this case, briefly state, are as follows:-

The plaintiffs' case is that about July 1988, a tree fell on the defendant's pipeline carrying crude oil from the production head to the flow station. The tree dented the pipeline. The defendant employed a contractor to repair the pipeline. In the course of the repairs and in the attempt to replace the dented portion of the pipeline, noxious crude oil freely spilled and spread into the plaintiffs' dry land, swamps and streams called Miniaba causing pollution damage. The plaintiffs maintained that the defendant did not construct an "oil trap" to contain the spillage and no other precautions were taken by the defendant. As a result of the spillage all the uses to which they put the said land, swamps and streams were permanently terminated. D

The defendant's case is that the contractor who testified as D.W.3 was skilled. The representatives of both parties inspected the site of the alleged spillage soon after the replacement of the dented pipe, while the representative of the plaintiffs testified that massive spillage was found, the representative of the defendant testified that only minor splash of oil and water were found on defendant's right of way which did not spread to plaintiffs' agricultural land, swamps, stream and fish pond. The defendant further maintained that its flow line (pipe) was repaired by cutting off the dented section and replacing it with new pipe and that trenches were dug around the area of repairs to contain crude oil in accordance with its regular practice. E F G

Five issues are formulated in the defendant's brief for determination in the appeal and the first issue questions the jurisdiction of the trial State High Court to hear and determine the case. The issue of jurisdiction is also the first of the five questions identified in the respondents' brief for our determination. As I indicated earlier in this judgment, I will confine myself to the question of the jurisdiction of the High Court of Rivers State H

to try the case.

In order to determine whether the Rivers State High Court had jurisdiction to entertain the claim which the courts below answered in the affirmative, it will be necessary to consider the provisions of various enactments including the Constitution of the Federal Republic of Nigeria 1999 dealing with jurisdiction of the Federal High Court. They are the Federal High Court Act, Cap. 134 Laws of the Federation of Nigeria, 1990 which is the Principal Act. Decree No. 60 of 1991, Decree no. 16 of 1992, Statutory Instrument No. 9 of 1993, Decree No. 107 of 1993 and the Constitution of the Federal Republic of Nigeria, 1999.

Section 7(1) of Federal High Court Act set out its jurisdiction in civil causes and matters relating to the revenue of the Government of the Federation in which the said Government or any of its organs is suing or being sued on behalf of the Federal Government. The provisions of section 7(1) of the Act do not include such matters a mines and minerals, oil fields, oil mining or natural gas.

The Federal High Court (Amendment) Decree 1991 otherwise called Decree No. 60 of 1991 was enacted by the Federal Military Government. It substituted a new section 7 for section 7 of the principal Act. The new section 7 reads:

“7 – (1) The Court shall to the exclusion of any other court have original jurisdiction to try civil causes and matters connected with or pertaining to –

(p) mines and minerals, including oil fields, oil mining, geological surveys and natural gas.

(3) Where jurisdiction is conferred upon the Court under subsections (1) and (2) of this section, such jurisdiction shall be construed to include jurisdiction to hear and determine all issues relating to, arising from or ancillary to such subject matter.

5. Notwithstanding anything to the contrary contained in any other enactment or rule of law including the Constitution of the Federal Republic of Nigeria, any power conferred on a State High Court or any other court of similar jurisdiction to hear and determine any civil matter or proceedings shall not extend to any matter in respect of which

jurisdiction is conferred on the Court under provisions of this section.

6. Any decision made after the commencement of this section by any court of law in any purported exercise of any power under the Constitution of the Federal Republic of Nigeria or of any Federal or State law shall, as from the date of making of the decision be null and void...” B

Decree No. 60 of 1991 which commenced on 30th December, 1991 was amended by the Federal High Court (Amendment) Decree, 1992 otherwise called Decree No. 16 of 1992. Section 1(1)(b) provides as follows:

“1(1)(b) by substituting for the existing section 4 the following new section that is – C

“4. The Decree may be cited as the Federal High Court (Amendment) Decree 1992 and shall come into force on such a date as the President, Commander-in-Chief of the Armed Forces, after consultation with the Armed Forces Ruling Council, may by Order published in the Gazette specify.” D

2. Accordingly, any judgment or order of any court or tribunal delivered on or before the commencement of this Decree and made pursuant to the Federal High Court (Amendment) Decree, 1991 shall by virtue of this Decree be made null and void and of no effect whatsoever.” E

The Constitution (Suspension and Modification) Decree, 1993 (Decree No. 107 of 1993) in its First Schedule substituted a new subsection 1 of section 230 to section 230(1) of the 1979 Constitution thus: F

“230(1) Notwithstanding anything to the contrary contained in the Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to the exclusion to any other court in civil causes and matters arising from – G

(o) mines and minerals (including oil fields, mining, geological surveys and natural gas)”

This Decree came into force on 17th November, 1993 after the commencement date of Decree No. 16 of 1992. H

The Federal High Court (Amendment) Decree, 1992 (Decree No. 16 of 1992) suspended the operation of Decree No. 60 of 1991 and nullified

all judgments and orders of any court or tribunal delivered before the commencement of decree No. 16 1992 pursuant to Decree No. 60 of 1991. Decree No. 16 of 1992 came into force on 1st January, 1992. It suspended the operation of the jurisdiction conferred on Federal High Court by Decree
B No. 60 of 1991 until such a date as the President, Commander-in-Chief after consultation with the Armed Forces Ruling Council may by Order published in the Gazette specify.

The President exercised the powers conferred on him by section
C 1(a) of Decree No. 16 of 1992 and specified the commencement date of Decree No. 60 of 1991 as 26th August, 1993. This was brought about by Statutory Instrument No. 9 of 1993. In that case the Federal High Court (Amendment) Decree, 1991 came into operation on 26th August, 1993. It will be recalled that the 1991 amendment Act gave the Federal High Court
D exclusive jurisdiction in causes and matters connected with and pertaining to

“mines and minerals, including oil fields, oil mining, geological surveys and natural gas.”

E We should also not lose sight of subsections (3), (5) and (6) of the 1991 amendment Decree which have been set out above. By way of recapitulation, subsection (3) states that the jurisdiction conferred upon the Court under section 7((1) and (2) shall be construed to include jurisdiction
F to hear and determine all issues –

“relating to, arising from or ancillary to such subject matter.”

Subsection (5) of section 7 robbed the State High Courts of any jurisdiction conferred on it by any other enactment or even the Constitution on any matter similar to the jurisdiction conferred on the Federal High Court
G in section 7(1) and (2) of Decree No. 60 of 1991. Any purported exercise of jurisdiction by any other court under any law or the Constitution of the Federal Republic of Nigeria after 26th August, 1993 is rendered null and void (section 7(6)).

H Section 251(1)(n) of the Constitution of the Federal Republic of Nigeria, 1999, provides:

“251(1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be

conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court of civil causes and matters –

(n) mines and minerals (including oil fields, oil mining, geological surveys and natural gas)."

B

It came into force on 29th May, 1999.

The judgment of the High Court in this case was delivered on 11th March, 1994 after the coming into force of the Decree NO. 60 of 1991 and was caught by section 7(6) of Decree No. 60 of 1991. In my view, the enactments which apply to this case are the Federal High Court (Amendment) Decree No. 60 of 1991 and Decree No. 107 of 1993. They came into operation on 26th August, 1993 and 17th November, 1993 respectively. The other enactments set out above are for a better appreciation of the legislative history of the jurisdiction of the Federal High Court.

C

D

For the Federal High Court to have exclusive jurisdiction under section 7(1)(p) of the Federal High Court (Amendment) Decree, 1991, the cause or matter should be connected with or pertain to mines and minerals, including oil field, oil mining, geological surveys and natural gas and the jurisdiction shall be construed to include jurisdiction to hear and determine all issues relating to, arising from or ancillary to mines and minerals, oil field, oil mining et cetera.

E

The verb "connected" is defined in Black's Law Dictionary, 6th ed. as: "joined; united by junction, by an intervening substance or medium, by dependence or relation, or by order in series."

F

Whereas the verb "pertain" is defined in Longman's Dictionary of Contemporary English to mean "to belong or have connection with (something)".

G

I should also say that section 7(5) of Decree No. 60 of 1991 ousted the jurisdiction conferred on State High Courts and Magistrate Courts under sections 19 and 20 of Oil Pipelines Act Cap 338 Laws of the Federation of Nigeria, 1990. As a result, State High Courts and Magistrate Courts have no jurisdiction whatsoever in matters under section 7(1) and (2) of Decree No. 60 of 1991.

H

Having regard to the state of the law and the facts of this case, oil

I therefore entertain no doubt that by the provisions of Decree No. 60 of 1991, the Rivers State High Court lacked jurisdiction to hear and determine the suit giving rise to this appeal and the court below equally lacked jurisdiction to hear the appeal. See *Madukolu v. Nkemdilim* (1962) 1 All NLR (Pt. 562) 404 and *Bary & Ors. v. Eric & Ors.* (1988) 8 N.W.L.R. (Pt. 562) 404 C.A.

For the above reasons and the fuller reasons contained in the judgment of my learned brother Mohammed, J.S.C., I allow the appeal, set E aside the judgment of the court below and strike out the suit. The defendant is entitled to N10,000.00 costs against the plaintiffs/respondents.

F KALGO.JSC

I have read in draft the judgment just delivered by my learned brother Mohammed JSC and I agree with the reasoning and conclusions reached therein which I adopt as mine. I accordingly, allow the appeal, set G aside the decisions of the trial court and the Court of Appeal and abide by the consequential Orders made in the leading judgment including the order as to costs.

H