

SUPREME COURT OF NIGERIA
FRIDAY 15TH FEBRUARY, 2002. SC. 189/2000
CORAM:- A. B. WALI, E. O. OGWUEGBU,
U. MOHAMMED, A. I. KATSINA-ALU, U. A. KALGO, JJSC

TEXACO PANAMA INCORPORATION
(Owners of the Vessel “M. V. Star Tulsa”) APPELLANT
AND
SHELL PETROLEUM DEVELOPMENT
CORPORATION OF NIG LTD RESPONDENT

STATUTES - Oil Terminal Dues Act s. 1(1) - Intendment - The act is passed for levying and payment of terminal dues on ship evacuating oil - And it does not distinguish between public or private terminal (H1)

STATUTES - Oil Terminal Dues Act s. 3 - Application - Scope of - The section makes certain provisions of Ports Act applicable wholly or partly - To all oil terminals (H2)

STATUTES - Interpretation - Principle - Where words of a statute are clear and unambiguous - Court has duty to interpret same strictly - Without resorting to intrinsic or external aid (H3)

STATUTES - Interpretation - Golden rule - Where literal interpretation may result in ambiguity or injustice - Court may seek internal or external aid in its interpretation (H4)

STATUTES - Words & phrases - “Subject to the provisions of this Act” - Meaning - The phrase is expression of limitation which connotes - That later provision of an Act - Supersedes provision in the section concerned (H5)

STATUTES - Words & phrases - “Any oil terminal” - Meaning - Oil Terminal Dues Act s.3 - The phrase applies to oil terminals in Nigeria - And not to the whole world (H6)

PETROLEUM LAW - Bonny oil terminal - Establishment - The ter-

minal was established with approval of Federal Government - Pursuant to Petroleum Act ss.2 and 4 (H7)

STATUTES - Petroleum law - Oil Terminal Dues Act s.7 (2) - Intendment - The subsection is required in order to identify - Actual oil terminal concerned (H8)

STATUTES - Oil Terminal Dues Acts s. 3 - Incorporation of Ports Act - The section incorporates Part XIV of Ports Act - Dealing with legal proceedings (H9)

ACTIONS - Institution - Limitation - By s. 110 Ports Act - Appellant must file suit within 12 months next after default - And must give one month prior notice to respondent (H10)

STATUTES - Incorporation - Ports Act s. 110 (1) - Once provision of one statute is incorporated into another - Provisions so incorporated must apply mutatis mutandis - As a whole and not in part (H11)

ACTIONS - Limitation period - Denial of - Odubeko v. Fowler - Where plaintiff denies the limitation period - Defendant must prove his averment by evidence (H12)

PLEADINGS - Binding nature of - Plaintiff is bound by his plea of the actual date of damage - Hence there is no need for further proof thereof (H13)

APPEALS - Records of Appeal - Binding nature - Parties and courts are bound by such records - Which are presumed correct unless contrary is proved (H14)

APPEALS - Records of Appeal - Reference to - Correctness of - Appellate court is fully entitled to look at record of appeal - In consideration of any matter before it (H15)

FACTS

Plaintiff/appellant commenced this action at the Federal High Court Lagos, wherein it claimed the sum of \$5,780, 442.88 (Five

Million Seven Hundred and Eighty Thousand, Four Hundred and Forty Two Dollars Eighty Eight Cents) against defendant/respondent for negligence sustained by its oil tanker M.V. Star Tulsa when berthing at respondent's inshore oil terminal at Bonny. Pleadings were filed in court and settled between the parties. During the course of trial, respondent orally raised the issue of the absence of pre-trial notice and limitation of time in relation to the whole action.

The learned trial chief judge having observed that these are all issues of law touching on the jurisdiction of the court, granted the application to argue the points before proceeding to trial. Accordingly, counsel for both parties argued the points. In a considered ruling, the trial Chief Judge found that appellant's action was statute barred and he dismissed same. Dissatisfied, appellant appealed to the Court of Appeal, Lagos. The court dismissed the appeal. Aggrieved further, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

1. *"Whether the provisions of the Oil Terminal Dues Act apply to Oil Terminals other than those established, described, delimited, named and contemplated in the Act.*
2. *Whether the court was right to hold that action was barred by limitation of time without evidence on any single element of that plea.*
3. *Whether want of pre-Action notice to the Defendant was fatal to the action."*

HELD (Unanimously dismissing the appeal per **KALGO JSC**)

Oil Terminal Dues Act s. 1(1) - Intendment

1. This section explains fully the purpose for which the Act was passed. It is for the purpose of levying and payment of terminal dues on any ship evacuating oil at any oil terminal in any port in Nigeria in respect of services provided at that port. The Act makes no distinction between a public or private terminal provided that the terminal is used for the evacuation of oil and the relevant services are provided there, but this is subject to the provisions of the ODTA and the Ports Act. (Cap.

Oil Terminal Dues Act s. 3 - Application - Scope of

2. This section makes it clear that certain provisions of the Ports Act are applicable either in whole or in part to all oil terminals. These include certain immunities and limitations in that Act which ordinarily apply to the Nigerian Ports Authority. (p. 430 B)

STATUTES - Interpretation - Principle

3. I now come to the interpretation of Section 3 of the ODTA. It is now well settled that the cardinal principle of interpretation of statutes is that where the ordinary plain meaning of the words used in a statute are very clear and unambiguous, effect must be given to those words without resorting to any intrinsic or external aid. The duty of the court under those circumstances is to interpret the words strictly giving them their intended meaning and effect.

The most important provision in Section 3 above is that “the provisions of Ports Act specified in column 1 of the First schedule to the Act (ODTA) shall apply in relation to any oil terminal”. This provision is obviously very clear, unequivocal and unambiguous and simple to understand. And giving it its ordinary meaning in this case, which is the duty of the court as earlier mentioned, gives effect to the intention of the law makers.

I agree entirely with what my learned brother Iguh JSC stated above and I adopt it in the circumstances of this case. Section 3 of the ODTA clearly used the words “any oil terminal” and there is nothing in the section itself or in the whole Act intending to limit the clear meaning of the words in any sense. It is therefore the duty of this court to give the words their ordinary, clear and plain meaning without delving into judicial legislation. (pp. 431 B/432 B/434 B)

STATUTES - Interpretation - Golden rule

4. It is however true as submitted by learned counsel for the appellant, that where such literal interpretation may result in

any ambiguity or injustice, the court may seek internal aid from other parts of the statute itself or external aid from interpretation given to a provision which is in pari materia with the statute under construction. (p. 431 E)

Words & phrases - "Subject to the provisions of this act" - Meaning B
5. The opening words of this section read thus: "subject to the provisions of this Act". This phrase which appears in many statutes has been interpreted by this court in many cases to mean an expression of limitation which is "subject to", and shall govern, control and prevail over what follows in the section or subsection of the enactment. It means simply that some succeeding or later provisions of the Act, supersedes or controls the provisions in the section or subsection concerned. C
(p. 431 H) D

Words & phrases - "Any oil terminal" - Meaning
6. I shall start by saying straight away that no sovereign country like Nigeria can legislate for another sovereign country or any other sovereign country for that matter; so that any law made in Nigeria whether by the civilian or military government was made for Nigerians only and applies within the territory of Nigeria. This means that in this case, the use of the words "any oil terminal" in Section 3 of the ODTA applies to oil terminals in Nigeria and not the whole world and there cannot be any absurdity in interpreting the word "any" as being without limitation as was done by the lower courts. Also there is nothing in the ODTA to indicate that only those oil terminals which are enumerated in the subsidiary legislation to the Act are oil terminals recognized by the Act. If this was the intention of the law makers, the Act would have made such a provision. (p. 432 G) F

PETROLEUM LAW - Bonny oil terminal - Establishment H
7. The respondent has shown that the Bonny oil terminal was established with the approval of the Federal Government in pursuance of the provisions of Sections 2 and 4 of the Petroleum Act and it holds Oil Mining Lease 11 (OML 11). This has

not been disputed or challenged by the appellant. This means that the Bonny Oil Terminal was established in compliance with the provisions of Section 7 (1) (i) of the ODTA.
(p. 433 D)

B *Petroleum law - Oil Terminal Dues Act s.7 (2) - Intendment*
8. Subsection (2) of Section 7 talks about gazetting the oil terminal so established by an order of the Minister for Petroleum Resources. This requirement is not the specific duty of the oil terminal concerned but that of the Minister after subsection (1) (a) is complied with. Failure to do so does not in my respectful view affect the constitution or establishment of the oil terminal. It is merely required in order to identify the actual oil terminal concerned once established. Here again, if the requirement of subsection (2) of Section 7 was meant to affect the constitution of an oil terminal so established, the Act would have said so. It did not say so. I therefore find and hold that the Bonny Inshore Oil Terminal was established under the provisions of the ODTA. (p. 433 E)

E *Oil Terminal Dues Acts s. 3 - Incorporation of Ports Act*
9. The implication of my finding that Section 3, of the ODTA applies to bonny inshore Oil Terminal is that certain provisions of the Ports Act which apply to all oil terminals also “apply” to it. This is with a view to giving some protection to the oil terminals similar to those available to the Nigerian Ports Authority. This also means that Section 3 of the ODTA has by reference clearly incorporated the Ports Act. The first schedule of the ODTA sets out the relevant provisions of the Ports Act which apply by virtue of Section 3 of the ODTA. This clearly includes Part XIV of the Ports Act dealing with legal proceedings and the whole Part applied to the respondent, its servants or agents. (p. 434 H)

H *ACTIONS - Institution - Limitation*
10. Therefore to have a valid and competent suit against the respondent, the appellant must have:-
(a) Filed his action or suit within 12 months next after

the act, neglect or default complained of i.e. 12 months after the cause of action has arisen; and

(b) Given notice to the respondent in writing of at least one month of his intention to commence or institute the action or suit.

Section 110 (1) requires that an action such as in this case, must be filed within 12 months after the damage or negligence complained of if it is to be valid and competent. This is what is referred to as the period of limitation.

From the above, it is very clear that the action in this case was instituted three years after the damage or negligence complained of occurred. Section 110(1) of the Ports Act requires that this type of action must be filed in court within 12 months of the occurrence of the damage or negligence to be valid or competent but since it was filed three years after the damage or negligence complained of, the action is incompetent and must be struck out. I accordingly so find, and answer issue 2 in the affirmative. (pp. 435 G/436 D/438 G)

STATUTES - Incorporation - Ports Act s.110 (1)

11. In respect of subsection (1) of Section 110, I entirely agree with the learned counsel for the respondent when he said in his brief that "once the provision of one statute is incorporated into another, the provision of the statute so incorporated must be applied mutatis mutandis" as a whole and not in part. (p. 436 A)

ACTIONS - Limitation period - Denial of

12. I agree with Onu JSC in Odubeko v. Fowler (supra) that where as in this case a plaintiff specially denies the issues of the period of limitation, the defendant (in this case the respondent) in order to succeed, must prove his averment by evidence. (p. 437 E)

PLEADINGS - Binding nature of

13. But where as in this case, contrary to the case of Odubeko v. Fowler, the plaintiff (appellant) pleaded the actual date when the damage or negligence complained of first occurred, he is

bound by his pleadings. The effects of paragraphs 5, 7 and 8 of the Amended Statement of Claim set out above is to say that the appellant has admitted that the cause of action arose on the 27th of January, 1991. There is no need for further proof thereof. (p. 437 F)

B

Records of Appeal - Binding nature

14. Also regards as the actual time when the action was commenced or instituted, this is clearly disclosed on the record of appeal which was certified (page 10 of the recorded) as the correct record in this appeal. The parties and the court are bound by the contents of that record as it is presumed correct unless the contrary is proved. There is nothing to the contrary in this case. (p. 437 H)

D

Records of Appeal - Reference to - Correctness of

15. Further more an appeal court is fully and correctly entitled to look at or refer to the record of appeal before it in consideration of any matter before it. This is what this court held in the case of Funduk Engineering Ltd v. McArthur (1995)2 NMLR (pt. 392) 640 at 652. (p. 438 B)

E

NOTABLE POINTS OF INTEREST

F OGWUEGBU JSC

1. Various meanings of “Any”

In construing word “any” in section 3 of the Oil Terminal Dues Act, bearing in mind that the word “any” has diversity of meaning and can be employed to indicate “all”, “every” or “some”. The word is also a determiner, for examples.” We don’t accept just any student”, meaning that only very good students are accepted, “Any room will do” no matter which, where or what room” it can also mean an unlimited or unmeasured amount or number. (p. 443 G)

G

H MOHAMMED JSC

2. Statute of limitation - Intendment

The law is clear that a statute of limitation is one which provides that no court shall entertain proceedings for the enforcement of certain

rights if such proceedings were set on foot after the lapse of a definite period of time, reckoned as a rule from the date of the violation of the right. (p. 445 D)

REPRESENTATION

C. A. Candide-Johnson with F. A. Dally for the Appellant B
Prof. S. A. Adesanya, S. A. N. with W. Kasali and A. Adelodun for the Respondent

CASES REFERRED TO

Awolowo v. Shagari (1979) 6-9 SC 51 C
Mobil Oil Nig Ltd v. Fed. Board of Inland Revenue (1977) 3 SC 51
Tukur v. Governor of Gongola State (1989) 4 NWLR (Pt. 117) 517
Ibrahim v. J.S.C (1998) 14 NWLR 1
Odubeko v. Fowler (1993) 7 NWLR (Pt. 308) 637 D
Attah v. Nnacho (1965) NMLR 28
Ehigokwe v. Okadigbo (1973) 4 SC 113
Sommer v. F. H. A. (1992) 1 NWLR (Pt. 219) 548
Funduk Engineering Ltd. v. McArthur (1995) 2 NWLR (Pt. 392) 640 E
Nsirim v. Nsirim (1990) 3 NMLR 28 (Pt. 138) 285
Mandilas v. Karaberis Ltd (1969) NMLR 199
Ezenwosu v. Ngonadi (1992) 8 NWLR (Pt. 258) 139
Owena Bank (Nig.) Plc v. NSE Ltd (1997) 8 NWLR (Pt. 515) 1 F
A-G Bendel State v. A-G Federation (1981) 10 SC 1
Adejumo v. Governor of Lagos State (1972) 3 SC 45

STATUTES REFERRED TO

Oil Terminal Dues Act Cap. 339, LFN 1990, ss. 1(1), 3, 7(1), 7(2) G
Ports Act Cap. 35 LFN 1990, ss.110 (1) part XIV, 110(2)
Petroleum Act Cap 350 LFN 1990, ss. 2 & 4

LEAD JUDGEMENT BY KALGO JSC

On the 27th of January, 1994, the appellant as plaintiff, took H
out a writ of summons in the Federal High Court in Lagos, in which it claimed \$5,780,442.88. (Five million, seven hundred and eighty thousand for hundred and forty two dollars eight-eight cents) against the respondents for negligence sustained by its oil tanker M. V. Star

Tulsa when berthing at the respondent's Inshore Oil Terminal at Bonny.

Pleadings were filed in court and settled between the parties.

Thereafter the respondent orally raised the issue of the absence of pre-trial notice and limitation of time in relation to the whole action which were fully averred in paragraph 17 of the respondent's Amended Statement of Defence. The learned trial Chief Judge having observed that these are all issues of law touching on the jurisdiction of the court, quite correctly in my view, granted the application to argue the points before proceeding to trial.

On the 23rd of September, 1996, counsel for both parties addressed the trial court on the point and ruling was reserved. In a considered ruling delivered on 3rd June 1997, the trial Chief Judge (Belgore C. J) Found that the appellant's action was statute-barred and he dismissed it. The appellant appealed to the Court of Appeal and the appeal was also dismissed. He now appealed to this court on two grounds.

In this court both parties filed their respective briefs which they also exchanged. The learned counsel for the appellant raised three issues for the determination of this court in his brief. They are:-

1. *"Whether the provisions of the Oil Terminal Dues Act apply to Oil Terminals other than those established, described, delimited, named and contemplated in the Act.*

2. *Whether the court was right to hold that the action was barred by limitation of time without evidence on any single element of that plea.*

3. *Whether want of pre-Action notice to the Defendant was fatal to the action.*

For the respondent, only two issues were formulated and they read thus:

1. *"Whether the learned Justices of Appeal were right in holding that Oil Terminal Dues Act Cap. 339 Laws of the Federation; 1990 ed. applies to the Respondent.*

2. *Whether the Appellant's claim could be sustained in view of the Oil Terminal Dues Act?*

I have examined the grounds of appeal filed by the appellant in this court and I am satisfied that the three issues for determination formulated by the appellant in this appeal were properly distilled from those grounds. I shall consider for the purpose of this appeal.

It is significant to observe that this case did not go to trial but was determined by the trial court after hearing arguments of the learned counsel for the parties on issues of law relating thereto. The learned counsel for the appellant did not in this court or the Court of Appeal challenge the procedure adopted by the learned trial Chief Judge in dealing with the case and I shall say nothing about it in this judgment. I now proceed to consider the issues for determination set forth by the appellant in his brief. B

The first issue asked the question whether the provisions of the Oil Terminal Dues Act apply to Oil Terminals other than those described in the Act itself. C

It is common ground that the respondent is popularly called Bonny Inshore Terminal. It is no doubt a private Oil Terminal operated as a commercial venture by the respondent. Therefore in order to answer the question asked in this issue, it is absolutely necessary to examine the relevant provisions of the Oil Terminal Dues Act Cap. 339. Laws of the Federation of Nigeria 1990. If the answer to this question is in the affirmative, all reference to other relevant Acts or Laws e.g. the Ports Act or the Petroleum Resources Act, affecting Oil Terminals, is automatic. E

I will start by looking at Section 1 (1) of the Oil Terminals Dues Act (hereinafter referred to as “ODTA”) which states:-

“As from the date of commencement of this act, terminal dues may be levied, subject to the provisions of this Act and the Ports Act, on any ship evacuating oil at any oil terminal and in respect of any services or facilities provided under this Act”. (Underling mine) F

This section explains fully the purpose for which the Act was passed. It is for the purpose of levying and payment of terminal dues on any ship evacuating oil at any oil terminal in any port in Nigeria in respect of services provided at that port. The Act makes no distinction between a public or private terminal provided that the terminal is used for the evacuation of oil and the relevant services are provided there, but this is subject to the provisions of the ODTA and the Ports Act. (Cap. 35 of 1990 Laws of the Federation of Nigeria) G H

My next port of call here, is Section 3 of ODTA, which is very important in my respectful view not only in respect of this issue but also in the outcome of the whole case. Section 3 provides:-

“Subject to the provisions of this Act, the provisions of the Ports Act specified in column 1 of the First Schedule of this Act shall apply in relation to any oil terminal and to the extent mentioned in column 3 of the Schedule as they apply in relation to a port or any approaches thereto and as if reference in that Act to “a port or any approaches thereto” were reference to an ‘oil terminal or any area within which the terminal is situated’.” (Underlining mine)

This section makes it clear that certain provisions of the Ports Act are applicable either in whole or in part to all oil terminals. These include certain immunities and limitations in that Act which ordinarily apply to the Nigerian Ports Authority.

Learned counsel for the appellant strongly submitted both orally and in his brief, that the provisions of Section 3 of the ODTA set out above did not apply to the respondent which was a private “Inshore terminal” operating as a commercial venture. He submitted further that although the section speaks of “any oil terminal” it only applies to oil terminals created and operated by the Federal Government within the meaning of Section 7 of the ODTA and that the expression “any terminal” cannot be extended to include any oil terminal in the world. Learned counsel also pointed out that the Bonny Inshore Oil Terminal not having been listed as such in the ODTA or any subsidiary legislation and published pursuant to Section 7(2) of the ODTA, cannot take benefit of the immunities of the Nigeria Ports Authority since it was not established for the purposes and within the meaning of the ODTA, and the mere fact that the respondent operates as an oil terminal was insufficient to make it an oil terminal to which ODTA applies. Learned counsel finally submitted that both the trial court and the Court of Appeal were wrong in holding that the Bonny Inshore oil terminal was an oil terminal within the meaning of the ODTA, and that the construction or interpretation of section 3 of that which they made produced absurd results.

Professor Adesanya SAN for the respondent submitted orally in court and in his brief that the construction of the provisions of Section 3 of ODTA made by the lower courts was correct and that the Bonny Inshore oil terminal which carries out statutory duties like any other oil terminal in Nigeria comes within the provisions of Section 3 of that Act. Learned SAN pointed out that the Bonny Inshore

oil terminal was established with the approval of the Federal Government pursuant to sections 2 and 4 of the Petroleum Act (Cap 350 of the laws of Federation 1990) and holds Oil Mining Lease 11. Learned counsel then submitted that since the respondent is an oil terminal within the meaning of Section 3 of the ODTA and Section 3 incorporates the relevant provisions of the Ports Act, the respondent is fully and clearly entitled to the immunities and limitations under Section 110 of the Ports Act. B

I now come to the interpretation of Section 3 of the ODTA. It is now well settled that the cardinal principle of interpretation of statutes is that where the ordinary plain meaning of the words used in a statute are very clear and unambiguous, effect must be given to those words without resorting to any intrinsic or external aid. The duty of the court under those circumstances is to interpret the words strictly giving them their intended meaning and effect. See *Awolowo v Shagari* (1979) 6 - 9 SC 51; *Adejumo v. Governor of Lagos State* (1972) 3 SC 45; *Attorney-General of Bendel State v. Attorney-General of the Federation* (1981) 10 SC 1; *Owena Bank (Nig.) Plc v. NSE Ltd.* (1997) 8 NWLR (PT. 515) 1 AT 12. ***It is however true as submitted by learned counsel for the appellant, that where such literal interpretation may result in any ambiguity or injustice, the court may seek internal aid from other parts of the statute itself or external aid from interpretation given to a provision which is in pari materia with the statute under construction.*** He referred to *Mobil Oil Nigeria Limited v. Federal Board of Inland Revenue* (1977) 3 SC 51 at 74. C D E F

I have earlier in this judgment set out the provisions of section 3 of ODTA, but for closer scrutiny, let me repeat it here. Section 3 says:- G

“Subject to the provisions of this Act, the provisions of the Ports Act specified in column 1 of the First schedule of this Act, shall apply in relation to any oil terminal and to the extent mentioned in column 3 of the schedule as they apply in relation to a part or any approaches thereto and as if reference in the Act to “a port or any approaches thereto” were reference to “oil terminal or any area within which the terminal is situated.” (Underling mine) H

The opening words of this section read thus: “subject

to the provisions of this Act". This phrase which appears in many statutes has been interpreted by this court in many cases to mean an expression of limitation which is "subject to", and shall govern, control and prevail over what follows in the section or subsection of the enactment. It means simply that same succeeding or later provisions of the Act, supersedes or controls the provisions in the section or subsection concerned.
 See Tukur v. Governor of Gongola State (1989) 4 NWLR (pt. 117) 517; Ezenwosu v. Ngonadi (1992) 8 NWLR (Pt. 258) 139.

The most important provision in Section 3 above is that "the provisions of Ports Act specified in column 1 of the First schedule to the Act (ODTA) shall apply in relation to any oil terminal". This provision is obviously very clear, unequivocal and unambiguous and simple to understand. And giving it its ordinary meaning in this case, which is the duty of the court as earlier mentioned, gives effect to the intention of the law makers. I have also observed that neither Section 3 nor other sections of the ODTA makes any provisions creating a distinction between a public or private oil terminal. They appear to be treated as one for the purpose of the ODTA. Learned counsel for the appellant submitted that it was absurd to interpret "*any oil terminal*" without any restriction as it may be applicable to any oil terminal in the world, and similarly it was wrong to treat the Bonny Inshore Oil Terminal with other offshore oil terminals in Nigeria because according to him, while the former was a private commercial concern run by the respondent, the latter were established and run by the Federal Government. He further submitted that the respondent's oil terminal was not set up in compliance with Section 7(2) of the ODTA and should not therefore enjoy any benefits under the ODTA.

I shall start by saying straight away that no sovereign country like Nigeria can legislate for another sovereign country or any other sovereign country for that matter; so that any law made in Nigeria whether by the civilian or military government was made for Nigerians only and applies within the territory of Nigeria. This means that in this case, the use of the words "any oil terminal" in Section 3 of the ODTA applies to oil terminals in Nigeria and not the whole world and there cannot be any absurdity in interpreting the word "any" as being

without limitation as was done by the lower courts. Also there is nothing in the ODTA to indicate that only those oil terminals which are enumerated in the subsidiary legislation to the Act are oil terminals recognized by the Act. If this was the intention of the law makers, the Act would have made such a provision. B

Section 7(1) (a) of ODTA provides:-

“As from the date of publication of this Act, an oil terminal -

(a) shall not be installed by any person, except -

(i) by or under the authority of a licence or lease granted under the Mineral Act, and C

(ii) Subject to the express approval in writing of the Minister of Petroleum Resources, and any subsequent operation of such terminal by any person shall be in compliance with the requirements of this Act and such conditions as may be prescribed”. D

The respondent has shown that the Bonny oil terminal was established with the approval of the Federal Government in pursuance of the provisions of Sections 2 and 4 of the Petroleum Act and it holds Oil Mining Lease 11 (OML 11). This has not been disputed or challenged by the appellant. This means that the Bonny Oil Terminal was established in compliance with the provisions of Section 7 (1) (i) of the ODTA. E

Subsection (2) of Section 7 talks about gazetting the oil terminal so established by an order of the Minister for Petroleum Resources. This requirement is not the specific duty of the oil terminal concerned but that of the Minister after subsection (1) (a) is complied with. Failure to do so does not in my respectful view, affect the constitution or establishment of the oil terminal. It is merely required in order to identify the actual oil terminal concerned once established. Here again, if the requirement of subsection (2) of Section 7 was meant to affect the constitution of an oil terminal so established, the Act would have said so. It did not say so. I therefore find and hold that the Bonny Inshore Oil Terminal was established under the provisions of the ODTA. F G H

I now come to the use of the words “*any oil terminal*” in Section 3 of the ODTA. The word “*any*” is not restrictive or limited in its application. It includes all things to which it relates or of the thing

mentioned. In the case of Ibrahim v. J.S.C (1998) 14 NWLR 1 at page 36, Iguh JSC in construing the words “any person” in Section 2 (a) of the Public Officers Protection Law said:-

“The law makers, if they had intended the words “any person” in the Public Officers Protection law to mean “any person” in a limited sense should have clearly so stated in the legislation. This it did not do, and I do not conceive that it is the duty of this court, or indeed any court of law to go in for judicial legislation by limiting the clear and plain meaning of the words employed in the law in issue.”

I agree entirely with what my learned brother Iguh JSC stated above and I adopt it in the circumstances of this case. Section 3 of the ODTA clearly used the words “any oil terminal” and there is nothing in the section itself or in the whole Act intending to limit the clear meaning of the words in any sense. It is therefore the duty of this court to give the words their ordinary, clear and plain meaning without delving into judicial legislation.

I therefore hold that the words “any oil terminal” in Section 3 of the ODTA excludes any limitation and must apply to a public or private, inshore or offshore oil terminal provided that the oil terminal was created or established under the provisions of the ODTA. There is therefore no need in this case to look for internal or external aid in the interpretation of the word “any” as there is no ambiguity, absurdity or injustice caused thereby. And although the words of Section 3 are made subject to the provision of the ODTA, I find no other provisions in that Act which seeks to limit, control or govern the provisions of the said Section 3. I have earlier found that the Bonny Oil Terminal was established pursuant to the provisions of the ODTA. I have therefore no doubt in my mind that the provisions of Section 3 of ODTA fully applied to it and I so find. Further more section 9 which provides that the ODTA “*applies to all natural persons, whether Nigerian Citizen or not, and whether resident in Nigeria or not, and to all corporation whether incorporated or carrying on business in Nigeria or not*” appears to me to be in conformity with the contents and spirit of Section 3 of that Act. On the whole therefore my answer to issue or question one as the appellant puts it, is in the affirmative.

I now come to consider question 2.

The implication of my finding that Section 3, of the

ODTA applies to bonny inshore Oil Terminal is that certain provisions of the Ports Act which apply to all oil terminals also “apply” to it. This is with a view to giving some protection to the oil terminals similar to those available to the Nigerian Ports Authority. This also means that Section 3 of the ODTA has by reference clearly incorporated the Ports Act. The first schedule of the ODTA sets out the relevant provisions of the Ports Act which apply by virtue of Section 3 of the ODTA. This clearly includes Part XIV of the Ports Act dealing with legal proceedings and the whole Part applied to the respondent, its servants or agents. Subsection (1) of Section 110 of the Ports Act Part XIV provides:-

“(1) When any suit is commenced against the Authority or any servant of the Authority for any act done in pursuance or execution, or intended execution of any Act or Law, or of any public duties or authority, or in respect of any alleged neglect or default in the execution of such Act law or duty or authority, such suit shall not lie or be instituted in any court unless it is commenced within 12 months next after the act, neglect, or default complained of, or in any case of a continuance of injury or damage, within twelve months next after the ceasing thereof.”

“(2) No suit shall be commenced against the Authority until one month at least after written notice of intention to commence the same shall have been served upon the authority by the intending plaintiff or his agent. Such notice shall state the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims.”

According to the provisions of Section 3 of the ODTA, reference to the “Authority” in the Ports Act, shall be construed as being reference to an “oil terminal”. **Therefore to have a valid and competent suit against the respondent, the appellant must have:-**

(a) Filed his action or suit within 12 months next after the act, neglect or default complained of i.e. 12 months after the cause of action has arisen; and

(b) given notice to the respondent in writing of at least one month of his intention to commence or institute the action or suit.

The submission of the learned counsel for the appellant on

these issues in his brief is that the provisions of Section 110 of the Ports Act must be strictly complied with and supported by evidence, and there was no such evidence in this case. ***In respect of subsection (1) of Section 110, I entirely agree with the learned counsel for the respondent when he said in his brief that “once the provision of one statute is incorporated into another, the provision of the statute so incorporated must be applied mutatis mutandis” as a whole and not in part.*** It is common ground therefore that as an oil terminal is subject to various laws, rules and regulations touching on mineral oils, crude oils and petroleum generally in its day to day activities it must be acting in pursuance or execution or intended execution of those laws, rules and regulations in the public interest. This is also very clear from the combined effect of paragraphs 5 and 7 of the Amended Statement of claim, and paragraph 17 of the Amended Statement of Defence that the damage or negligence complained of occurred on 27th January 1991 and the action commenced on 27th January, 1994. This is clearly a period of three years. ***Section 110 (1) requires that an action such as in this case, must be filed within 12 months after the damage or negligence complained of if it is to be valid and competent. This is what is referred to as the period of limitation.***

Learned counsel for the appellant contended very strongly that even though they own up what was contained in paragraphs 5, 7 and 8 of the Amended Statement of Claim, they did not admit the contents of paragraph 17 of the Amended Statement of Defence and in order to prove the contents thereof evidence must be called. He relied on many decided cases including the case of Odubeko v. Fowler (1993) 7 NWLR (pt. 308) 637 at 660.

Before going into the discussion on this issue, I consider it pertinent to set out paragraphs 5, 7 and 8 of the appellant’s Amended statement of claim, and paragraph 17 of the respondent’s Amended Statement of Defence. In the said paragraphs 5, 7 and 8 the appellant pleads:-

“5. At about 1440 hours on 27th January, 1991 the “STAR TULSA” commenced mooring operations at berth ‘A’ of the terminal prior to loading a cargo of crude oil”

“7. At about 1535 hours on 27th January, 1991, after the

vessel had been maneuvered into the mooring area, a leakage from her stern outer tube seal was noticed."

"8. The propeller was stopped and was later found to have suffered damage due to wire having become entangled around it."

In the Amended Statement of Defence, the respondent in paragraph 17 averred as follows:-

"The Defendant avers and will contend that the claim/action herein is statute barred and cannot be sustained in view of Sections 3, 7 (3), 8 and 9 of the Oil Terminal Dues Act and column 1 of the First Schedule of the said Act, Cap. 339 Laws of the Federation (1990 ed) and Part XIV and in particular Section 110 (1) and (2) of the Ports. Act, Cap 361 Laws of the Federation (1990 ed) because the alleged negligence occurred on the 27th January, 1991 and the originating processes were issued on the 27th January, 1994."

The appellant in his paragraph 1 of the reply to the Amended Statement of Defence made a general denial in a standard and recognized form now acceptable as sufficient traverse of the alleged facts. See *Mandilas v. Karaberis Ltd* (1969) NMLR 199, *Attah v. Nnacho* (1965) NMLR 28. Paragraph 1 reads:-

"The plaintiffs join issues with the Defendants on the allegations in their Statement of Defence dated June 1996 as if each allegation therein was reproduced herein and traversed seriatim".

I agree with Onu JSC in Odubeko v. Fowler (supra) that where as in this case a plaintiff specifically denies the issues of the period of limitation, the defendant (in this case the respondent) in order to succeed, must prove his averment by evidence. But where as in this case, contrary to the case of Odubeko v. Fowler case, the plaintiff (appellant) pleaded the actual date when the damage or negligence complained of first occurred, he is bound by his pleadings (*Oduka v. Kasumu* (1996) NMLR 28; *Ehigokwe v. Okadigbo* (1973) 4 SC 113; *Nsirim v. Nsirim* (1990) 3 NMLR 28 (pt. 138) 285. ***The effects of paragraphs 5, 7 and 8 of the Amended Statement of Claim set out above is to say that the appellant has admitted that the cause of action arose on the 27th of January, 1991. There is no need for further proof thereof.***

Also regards as the actual time when the action was commenced or instituted, this is clearly disclosed on the record

of appeal which was certified (page 10 of the recorded) as the correct record in this appeal. The parties and the court are bound by the contents of that record as it is presumed correct unless the contrary is proved. See Sommer v. F.H.A. (1992)1 NMLR (pt. 219) 548; **There is nothing to the contrary in this case. Further more an appeal court is fully and correctly entitled to look at or refer to the record of appeal before it in consideration of any matter before it. This is what this court held in the case of Funduk Engineering Ltd v. McArthur (1995)2 NMLR (pt. 392) 640 at 652.**

In this case pages 9 and 10 of the record appeal are the appellant's own documents and signed by them. It is the statement of claim headed "*Particulars of Claim*". It was signed by the appellant's counsel and dated 26th of January 1994. On page 10 of the record, there is the assessment of the fees paid by the appellant for service of the writ of summons and the receipt number and the date when the writ of summons was filed. There is also the stamp of the Federal High Court, Lagos, where the writ was issued and the date. The date of the receipt and the date on the stamp all showed the 27th of January, 1994. This was clearly the date when the action was commenced or instituted. The appellant cannot deny this as it is very clear on the certified true record of the trial court. Therefore, under these circumstances there cannot be any prejudice or miscarriage of justice or any injustice caused to the appellant, for accepting the date disclosed on the record of appeal in this case as proved commenced, without any further evidence. I now do so and find that the appellant commenced this action on the 27th of January, 1994, as disclosed on pages 9 and 10 of the record of appeal.

From the above, it is very clear that the action in this case was instituted three years after the damage or negligence complained of occurred. Section 110(1) of the Ports Act requires that this type of action must be filed in court within 12 months of the occurrence of the damage or negligence to be valid or competent but since it was filed three years after the damage or negligence complained of, the action is incompetent and must be struck out. I accordingly so find, and answer issue 2 in the affirmative.

In view of my findings on issue 2 above, I do not consider it

necessary to discuss issue 3 of the appellant. This is because if the action is incompetent and caught up by the court, and whether or not pre-trial notice under S. 110(2) of Ports Act was given by the appellant, the action cannot be revived.

Before completing this judgment, I would like to commend the learned counsel for the appellant for the extensive research he had apparently conducted in the preparation of his brief in this case. B

Finally, from all what I said above, I find no merit in this appeal. I dismiss it and affirm the decision of the Court of Appeal confirming that of the trial court. I award N10,000.00 costs to the respondents. C

WALI JSC

I have had the privilege of reading in advance a copy of the lead judgment of my brother Kalgo, JSC and I agree with his reasoning and conclusion for dismissing the appellant. D

I also hereby dismiss this appeal with N10,000.00 costs to the Respondents, adopting the reasons contained in the lead judgment.. E

OGWUEGBU JSC

This appeal is against the decision of the Court of Appeal, Lagos Division which dismissed the plaintiff/appellant's appeal against the ruling delivered on 3rd June, 1997 by the learned Chief Judge of the Federal High Court, Lagos. F

The plaintiff claimed the sum of US\$5,780,442.88 in negligence against the defendant/respondent for damages sustained by its oil tanker MV Star Tulsa when berthing at the respondent's Bonny Inshore Oil Terminal. The action was filed on 26th January, 1994. G

At the close of pleadings the defendant/respondent brought an application for dismissal of the plaintiff's claim on the grounds that they are not maintainable in law and are in any event statute barred by virtue of sections 3, 7(3), 8 and 9 of the Oil Terminal Dues Act, Cap. 339 Laws of the Federation of Nigeria, 1990 and section 110 of the Ports Act Cap. 361, Laws of the Federation of Nigeria, 1990. The defendant's objection was upheld and the action was dismissed. The H

plaintiff appealed to the Court of Appeal and his appeal was dismissed. There is now a further appeal in this court.

The crucial question for determination in this appeal is whether the action is one which the protection of sections 3 and 7 of the Oil Terminal Dues Act Cap. 339 Laws of the Federation of Nigeria, 1990 and section 110 of the Ports Act Cap. 361 Laws of the Federation of Nigeria, 1990 apply. These provisions of the law will now be examined. Section 3 provides:

“3. Subject to the provisions of this Act, the provisions of the Ports Act specified in column 1 of the First Schedule of this Act shall apply in relation to any oil terminal to the extent mentioned in column 3 of that Schedule as they apply in relation to a port or any approaches thereto, and as if reference in that Act to “a port or any approaches thereto” were references to an “oil terminal or any area within which the terminal is situated.”

Section 110(1) and (2) of the Ports Act provide:

“110. (1) When any suit is commenced against the Authority or any servant of the Authority for any act done in pursuance or execution, or intended execution of any Act or law, or of any public duties or authority, or in respect of any alleged neglect or default in the execution of such Act, law, duty or authority, such suit shall not lie or be instituted in any court unless it is commenced within 12 months after the act, neglect, or default complained of, or, in the case of a countenance of injury or damage, within twelve months next after the act, neglect, or default complained of, or, in the case of a countenance of injury or damage, within twelve months next after the ceasing thereof.

(2) No suit shall be commenced against the Authority until one month at least after written notice of intention to commence the same shall have been served upon the Authority by the intending plaintiff or his agent. Such notice shall state the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims.”

Section 7 of the Oil Terminal Dues provides:

“7. (1) *As from the date of publication of this Act, an oil terminal -*

(a) shall not be installed by any person, except -

(i) by or under the authority of a licence or lease granted

under the Mineral Act,

(ii) and subject to the express approval in writing of the Minister for Petroleum Resources, and any subsequent operation of such terminal by any person shall be in compliance with the requirements of this Act and such conditions may be prescribed.

(b) shall -

B

(i) if in operation on the date of publication of this Act, and

(ii) unless such person complies with such conditions as may be prescribed for the payment of dues and fees within such period (or any extension of that period) as the Minister may in his discretion determine, cease to be operated by that person until the said conditions have been duly complied with.

C

(2) For the purposes of this Act -

(a) every oil terminal; and

(b) the area within which the terminal is situated, shall be established geographically with precise co-ordinates by an order published in the Federal Gazette by the Minister for Petroleum Resources.

(3) In this section -

(a) "oil terminal" means oil-loading, pumping or booster station, or other installation (structure associated with a terminal including its storage facilities), other than a terminal situated within "a port or any approaches thereto" within the meaning of the Ports Act;

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(b) the reference to the area within which the terminal is situated includes a reference to -

(i) the area of territorial waters,

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(ii) the area of the superjacent waters of the continental shelf, and the space above or below an area within which the oil terminal is situated (including the sea-bed and sub-soil of submarine area) shall be part of the area, and sub-paragraphs (I) and (ii) of this paragraph shall be so constructed.

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(4) Any person who contravenes subsection (I) of this section shall be guilty of an offence and shall, on conviction, be liable to a fine of four thousand naira for each day on which the offence occurs."

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In paragraph 17 of its Further Amended Statement of Defence, the defendant averred as follows:

"The Defendant avers and will contend that the claim/action herein is statute-barred and cannot be sustained in view of sec-

tions 3, 7(3), 8 and 9 of the Oil Terminal Dues Act Column 1 of the First Schedule of the said Act, App. 339 Laws of the Federation of Nigeria (1990 ed.) and Part XIV and in particular Section 110(1) and (2) of the Ports Act, Cap. 361 Laws of the Federation (1990 ed.) because the alleged negligence occurred on the 27th January, 1991 and the originating processes were issued on the 27th January, 1994.....”

The learned trial Chief Judge allowed the above point of law to be argued before trial and in his ruling concluded as follows:

“It is clear to me that the Defendant being an Oil Terminal has the same legal immunity as Ports Authority and the action of the Plaintiff is statue-barred and hereby dismissed.”

The plaintiff appealed to the Court of Appeal against the ruling of the learned trial Chief Judge and his appeal was unsuccessful hence a further appeal to this court. Three questions were submitted for determination in the appellant’s brief and they are:

1. Whether the provisions of the Oil Terminal Dues Act apply to Oil Terminal other than those established, described, named and contemplated in the Act,

2. Assuming the limitation period applied, whether the court was right to hold that the action was bared by limitation of time without evidence on any single element of that plea, and

3. Assuming the limitation applied, whether want of Pre-Action notice to the defendant was fatal to the action.

I had earlier in this judgment stated that the main question in this appeal is whether the action is one which the provisions of section 3 of the Oil Terminal Dues Act and section 110 (1) and (2) of the Ports Act apply. The answer to this question will determine the answer to the subsidiary questions. Sections 3 of the Oil Terminal Dues Act Cap 339 Laws of the Federation of Nigeria made the provisions of the Ports Acts specified in column 1 of its First Schedule applicable to “any oil terminal” and to the extent mentioned in column 3 of that Schedule as they apply in relation to a port or any approaches thereto, as if reference in that Act to “a port or any approaches thereto” were references to an “oil terminal or any area within which the terminal is situated. The application of section 110 of the Ports to oil terminals is made subject to the provisions of Oil Terminal Dues Act.

It was submitted in the appellant’s brief that section 3 arose

in a specific context, that the Acts deals primarily with the collection of dues for the Federal Government from oil terminals operated by it, that is natural that these agencies should receive protection which the legislature had given to the Ports Authority which is also carrying statutory function and that this section is aimed at applying certain provisions of the Ports Act to oil terminals within the meaning of the Act. It was further submitted that the Act was referring to certain oil terminal regulated by the Oil Terminals Dues Act and not any terminal in the world. Section 11 of the Act was referred to as defining the expression “oil terminal” as having the meaning given in section 7 of the Act. B C

The respondent in its brief submitted that section 3 applies oil terminal and that the respondent’s Bonny Inshore Oil Terminal is an oil terminal within the definition of section 7(3) of the Act. It was further submitted that where the provision of a statute is clear, unambiguous and redolent, it must be given its ordinary and natural meaning and that the word ANY OIL TERMINAL in section 3 shows that the application is not limited to a particular oil terminal or to those oil terminals listed in the subsidiary legislation to the Oil Terminal Dues Act. D E

As to the meaning of the word “any” the authors of Black’s Law Dictionary 6th edition page 94 defined it as:

“Some, out of many an indefinite number. One indiscriminate of whatever kind or quantity. Federal Deposit Ins. Corporation V. C. C. A. Tenn 1311 F2 780, 782. ... Word “any” has a diversity of meaning and may be employed to indicate “all” or a “every” as well as “some” or “one” and its meaning a given statute depends upon the context and the subject matter of the statute.” F

In construing word “any” in section 3 of the Oil Terminal Dues Act, its generality should depend on the setting or context and the subject matter of the Act, bearing in mind that the word “any” has diversity of meaning and can be employed to indicate “all”, “every” or “some”. The word is also a determiner, for examples, “We don’t accept just any student”, meaning that only very good students are accepted, “Any room will do” no matter which, where or what room” it can also mean an unlimited or unmeasured amount or number. G H

The question arises as to the setting or context of the Act in which the word “any” is used. The court has to determine the inten-

tion as expressed by words used.

In section 11 of the Act, the words “oil terminal” has the meaning given to it in section 7 thereof and section 7(3) reproduced earlier in his judgment defined “*oil terminal*”. Section 7(1) and (2) of the Act placed restriction on the installation of oil terminals.

B I have set out the diverse meaning of the word “*any*” and in constructing the phrase “*any oil terminal*” in section 3, it must mean an oil terminal which complies with the provisions of the section 7 of the Act. In the circumstances, it is my view that for any oil terminal to claim the immunity from litigation given in section 110 (1) and (2) of the Ports Act, it must be an oil terminal within the provisions of section 7 of the Act.

I will once more reproduce the provisions of section 7(1) of the Oil Terminal Dues Act. It provides:

D “7(1) *As from the date of publication of this Act, an oil terminal -*

(a) shall not be installed by any person, except -

(i) by or under the authority if a licence or lease granted under the Mineral Act and

E *(ii) subject to the express approval in writing of the Minister for Petroleum Resources”*

F This Act has commencement date of 1st January, 1965. The Bonny Inshore Oil Terminal was established under the defendant’s Oil Mining Lease 11 issued in 1961 by the Minister of Petroleum Resources. It therefore enjoys the protection from litigation given by section 110(1) and (2) of the Ports Act.

G The plaintiff’s action was not commenced within 12 months next after the cause of action arose, which is 27th January, 1991 whereas the action was instituted on 27th January, 1994 (three years later). The plaintiff did not also serve on the respondent (defendant) the one month’s pre-action notice. The cumulative effect of non-compliance with section 110(1) and (2) of the Port Act is that the claim is statute barred.

H For the above reason, I entirely agree with the conclusion arrived at in the leading judgment of my learned brother Kalgo, JSC that the claim is caught by section 110 of the Ports Act. I also dismiss the action. The ruling of the learned trial Chief Judge which was affirmed by the court below is hereby re-affirmed by me. I endorse

the order to costs made in that leading judgment.

MOHAMMED JSC

I entirely agree with my learned brother, Kalgo, J.S.C., that this appeal is without merit and ought to be dismissed. I have had a preview of the judgment just read by my learned brother, in draft, and for the reasons ably given in that judgment I will also dismiss the appeal. B

From the facts it abundantly clear that the appellant's action was statute barred. A cause of action is statute barred if is brought beyond the period laid down by the statute within which such action must be filed in court. A Statement of Claim would give a date when the cause of action arose and the writ would show when the suit was filed in court. The law is clear that a statute of limitation is one which provides that no court shall entertain proceedings for the enforcement of certain rights if such proceeding were set on foot after the lapse of a definite period of time, reckoned as a rule from the date of the violation of the right. C

Section 3 of Oil Terminal Dues Act, 339 incorporates the provisions of Section 110(1) of Port Act, Cap. 361. Under Section 110(1) of Ports Act it has been provided as follows:- E

“(1) When any suit is commenced against the Authority or any servant of the Authority for any Act done, in pursuance or execution of any Act or law or of any public duties or authority or in respect of any alleged neglect or default in the execution of such Act, law, duty or authority such suit shall not lie or instituted in any court unless it is commenced within 12 months next after the act, neglect or default complained of, or, in the case of a continuance of injury or damage, within twelve months next after the ceasing thereof.” F

I agree entirely with the opinion of my learned brother, in the lead judgment, that the court below was right to hold that the appellant was caught up by the provisions of Oil Terminal Dues Act. As such, the appellant had to commence its action within twelve months after the act complained of.. This was not done and no court would entertain the claim of the appellant. H

For these reasons and fuller reasons given in the judgment of my learned brother Kalgo J.S.C., I dismiss this appeal and affirm the

decision of the court below. I abide the order made in the lead judgment on costs.

KATSINA-ALU JSC

B I have the advantage of reading in draft the judgment of my learned brother KALGO JSC, in this appeal. I agree entirely and for the reasons he has given, I too dismiss the appeal with N10,000.00 costs to the Respondent.

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