

**SUPREME COURT OF NIGERIA**  
FRIDAY 5TH APRIL, 2002. SC. 28/2001  
**CORAM:- M. L. UWAIS CJN, M. E OGUNDARE,**  
**A. B. WALI, I. L KUTIGI, E. O. OGWUEGBU,**  
**S. U. ONU, A. I. IGUH, JJSC**

ATTORNEY-GENERAL OF THE FEDERATION ..... PLAINTIFF  
&  
ATTORNEY-GENERAL OF ABIA STATE  
& 35 ORS ..... DEFENDANTS

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MARITIME LAW - Littoral States - Boundaries - Southern boundary of the eight States - Must be Southern boundaries of old Western and Eastern Regions - That is the sea (H1)

MARITIME LAW - Littoral States - Exclusive Economic Zone - Boundaries - Limit - Boundaries of the States do not extend to the zone - Or to continental shelf of Nigeria (H2)

PLEADINGS - Evidence - Adducing of - Failure of plaintiff to adduce affidavit evidence - Is not fatal to his case - As court is being called upon - To determine matter of law (H3)

MARITIME LAW - Littoral States - Territories - Extent - Seaward extent of territories of the States - Are the low water or seaward limit of their internal waters (H4)

LEGISLATIONS - Common law - Application - The law was received since 1863 - And was applied to Colony and protectorate of Nigeria - Via Supreme Court Ordinance of 1914 (H5)

LEGISLATIONS - Maritime - Territory of Nigeria - Territorial Waters Act Sea Fisheries Act & Exclusive Economic Zone Act - Have not extended Nigerian territory beyond its constitutional limit (H6)

MARITIME LAW - Seashore - Ownership of - Proof - Affidavit evidence of littoral States - Is insufficient to prove their ownership of the sea (H7)

CONSTITUTIONAL LAW - Constitution - Revenue allocation - Applicable law - Allocation of revenue Act Cap 16 - Is the applicable law - Provided that it is not inconsistent with 1999 Constitution (H8)

CONSTITUTIONAL LAW - Maritime - Littoral States - Computation of revenue - Basis - 1999 Constitution s. 162(2) - Low water mark of land surface of the States - Shall be used for the calculation (H9)

ACTIONS - Counter claim - Parties - Non joinder - Effect - Non joinder of all defendants in each counter-claim - Will not defeat the counter-claim (H10)

ACTIONS - Parties - Listing - Reason for - A person is included in action - So that he should be bound by result arising therefrom - And interested person who stands by - Is also bound by such result (H11)

CONSTITUTIONAL LAW - Constitution - Federation account - Revenue allocation - "Not less than 13%" - Meaning - The phrase is discretion given to lawmakers - Hence it is not for court to exercise same (H12)

CONSTITUTIONAL LAW - Constitution - Federation Account - Trusteeship - By s. 162 (1) 1999 Constitution - Federal Government is trustee - Who renders account to beneficiaries - When called upon to do so (H13)

CONSTITUTIONAL LAW - Constitution - Federation Account - External debts - Settlement of - Neither the Federal nor State Governments - Can charge its debts on the Account (H14)

ADMINISTRATIVE LAW - Primary education - Provision of - The function is left for State government - Local government only participates in provision and maintenance (H15)

SUPREME COURT - Jurisdiction - Declaratory relief - Grant of - The court cannot grant such relief - Where existence of legal right does not depend on such declaration - Or where same will serve no useful

purpose (H16)

CONSTITUTIONAL LAW - Constitution - Revenue Allocation - Derivation principle - By s. 162(2) 1999 Constitution - Defendants are not entitled to share - In revenue obtained from natural resources in continental shelf of Nigeria (H17)

CONSTITUTIONAL LAW - Revenue Allocation - Derivation principle - Commencement - The principle commenced on 29/05/1999 - Same date 1999 Constitution came into effect (H18)

ACTIONS - Claim - Failure to prove - Effect - Since 6<sup>th</sup> defendant failed to prove his entitlement to claim (b) - The same shall be struck out for vagueness (H19)

CONSTITUTIONAL LAW - Constitution - Revenue Allocation - Derivation principle - Proof - Since 6<sup>th</sup> defendant failed to prove his entitlement to natural gas revenue on 13% basis - His claim will be dismissed (H20)

ACTIONS - Counter-claim - Evidence - Failure to adduce - Effect - Since 8<sup>th</sup> defendant did not aver - That his request for account was refused by plaintiff - The claim shall be dismissed (H21)

### **FACTS**

Dispute arose between Federal Government of Nigeria and eight littoral States of the federation (i.e. Akwa-Ibom, Bayelsa, Cross-River, Delta, Lagos, Ogun, Ondo and Rivers States) as to the southern seaward boundary of each of these States. Federal Government contends that the southern seaward boundary of each of the affected States is the lower water mark of the land surface of such State or the seaward limit of inland waters within the State, as the case so requires. Federal Government, therefore, maintains that natural resources located within the Continental Shelf of Nigeria are not derivable from any State of the Federation.

The eight littoral States do not agree with these contentions. Each claims that its territory extends beyond the low-water mark onto the territorial water and even onto the continental shelf and the ex-

clusive economic zone. They maintain that natural resources derived from both onshore and offshore are derivable from their respective territory and in respect thereof each is entitled to “not less than 13 percent” allocation as provided in the proviso to subsection (2) of section 162 of the Constitution of Federal Republic of Nigeria 1999.

B In order to resolve this dispute, plaintiff (Federal Government of Nigeria) took out a writ of summons at Supreme Court (sitting in its original jurisdiction), praying for determination of the seaward boundary of a littoral State within Nigeria for the sake of calculating revenue allocation. The 36 States of the Federation were joined as defendants. Some of defendants counter-claimed against plaintiff.

### **ISSUES FOR DETERMINATION**

D “(i) *What is the procedure for making provision for the formula for distributing the amount standing to the credit of the Federation Account pursuant to section 162 of the Constitution.*

(ii) *As from what moment in time do the State Governments become entitled to receive their share of the amount standing to the credit of the Federal Account.*

E (iii) *Pending the arrival of the moment mentioned in Question (ii) what provision should be applied to the distribution of the amount mentioned in Question (ii)*

F (iv) *Whether there is any legal basis for the Supreme Court to make an order against the plaintiff for an account of moneys in the Federal Account.*

(v) *Whether it is competent for any Defendant to counter-claim for a relief which raises the same or substantially the same question or questions which arise in the Plaintiff’s action.*

G (vi) *Whether it is lawful for the Federal government to appropriate 1% of the amount in the Federation Account to the Federal Capital Territory.*

(vii) *Whether it is lawful to deduct moneys from the Federation Account to service or pay debts owed by the Federal Government.*

H (viii) *Whether it is lawful for moneys intended for Local governments or for purposes of primary education to be paid to any person or authority other than the State Government, and*

(ix) *Whether this court has jurisdiction to grant a declaration, which will serve no useful purpose.”*

**HELD** (Unanimously allowing plaintiff's claim in part and partly allowing counter-claims of 6<sup>th</sup> & 10<sup>th</sup> defendants per **OGUNDARE JSC**)

*MARITIME LAW - Littoral States - Boundaries*

**1. All the eight littoral Defendant States were carved out of the old Western, Mid-West and eastern Regions and constitute the coastal areas of those Regions. It goes without saying that the southern boundaries of all these littoral Defendant States must be the Southern boundaries of the Western and Eastern Regions as defined in LN 126 of 1954, that is, "The Sea". And this is co-terminous with the Southern boundary of Nigeria as defined in Section II of The Nigeria Protectorate Order in Council 1922 and of Lagos as defined in The Colony of Nigeria (Boundaries) Order in Council, 1913.** (p. 702 D)

*MARITIME LAW - Littoral States - Exclusive Economic Zone*

**2. If the boundary is with the sea, then by logical reasoning, the sea cannot be part of the territory of any of the old Regions. For this reason, therefore, I have no hesitation in rejecting the contentions of the eight littoral Defendant States that their boundaries extend to the exclusive economic zone or the continental shelf of Nigeria.** (p. 702 H)

*PLEADINGS - Evidence - Adducing of*

**3. In my humble view, and as I shall presently show, the seaward boundary of a littoral State as we are called upon to determine in this case, is a matter of law. What becomes factual, and on which evidence will be required to prove, is the actual location of that boundary. The latter situation is not the issue before us. That plaintiff has not adduced affidavit evidence in this case is not fatal to Plaintiff's cases. See: Pioneer Plastic Containers Ltd. v Commissioners of Customs and Excise (supra) where the Court in England (Chancery Division) held, rightly in my view, that where there are no issues of**

**fact on the pleadings, no evidence need be adduced.**

**By virtue of section 313, the provisions of sections 1(d)(i) and 4A(1) allocating 1 (one) per cent of the Federation Account to the Federal capital Territory are inconsistent with section 162(3) of the Constitution and are, therefore, void.**

<sup>B</sup> (pp. 703 E/730 G)

*MARITIME LAW - Littoral States - Territories - Extent*

<sup>C</sup> **4. As I have found earlier in this judgment, the southern boundaries of the littoral States of Nigeria are the sea. This makes them riparian owners. And as riparian owners the seaward extent of their land territory, at common law, is the low-water or the seaward limit of their internal waters. This is so, because at common law, the sea shore or foreshore (both mean the same thing) belongs to the Crown.** (p. 703 H)

*LEGISLATIONS - Common law - Application*

<sup>E</sup> **5. But some of the Defendants, particularly the 9<sup>th</sup> Defendant, has submitted that the common law is not applicable. With profound respect to learned counsel, I cannot accept this submission. Common law has been received law in this country since 1863 when it was applied to Lagos and 1914 when by the Supreme Court Ordinance of that year, it was applied to the Colony and Protectorate of Nigeria. In Charlie King Amachree v Daniel Kalio, 2 NLRL 108; John Holt's Case (Supra) and Chief Braide v. Chief Adoki, 10 NLR 15, to mention a few, common law was applied to resolve the issues arising in those cases. I do not think I need say more on this except to point out that the successor to the British Crown is the Government of the Federation of Nigeria.** (p. 706 C)

*LEGISLATIONS - Maritime - Territory of Nigeria*

<sup>H</sup> **6. The sum total of all I have been saying above is that none of the Territorial Waters Act, Sea Fisheries Act and Exclusive Economic Zone Act has extended the land territory of Nigeria beyond its constitutional limit, although the Acts give municipal effect to international treaties entered into by Nigeria by virtue of its membership, as a sovereign State, of the Comity**

**of Nations. These treaties confer sovereignty and other rights on Nigeria over certain areas of the sea (the Atlantic Ocean) adjacent to her coastline. (p. 711 F)**

*MARITIME LAW - Seashore - Ownership of - Proof*

**7. To the extent that the Littoral Defendant States seeks, by affidavit evidence, to prove that these areas of the sea belonged in the past to communities indigenous to these States, I hold that such evidence is nebulous. It falls far short of the nature and quality of the evidence required in a case like this where the claim of the indigenous community to ownership of the sea runs against the grain of statutory instruments (Orders in Council) and the common law and international law, too. It is not the case of the Littoral Defendant States that, like the original American States, the Crown made a grant of the off shore to them or their predecessors in title (that is, the Eastern and western Regions of Nigeria or the Colony and Protectorate of Southern Nigeria). The mere fact that oil rigs and/or wells located in the offshore areas (sic) Such naming, as well as provisions in the various Acts for registration, etc. to be in the states adjacent to these areas, is only an internal administrative arrangement made by the plaintiff. (p. 712 B)**

*CONSTITUTION - Revenue allocation - Applicable law*

**8. With profound respect to learned Senior Advocate, I cannot agree that Cap. 16 does not operate as existing law or that it applies as it is notwithstanding any inconsistency between it and the Constitution. The correct position, in my respectful view, is that Cap. 16 (as amended by Decree 106 of 1992) provides the formula to be used for the purpose of revenue allocation pending the time the National Assembly comes out with a new formula as directed by the Constitution. Cap 16 is, however, only applicable in so far as it is not inconsistent with the provisions of the 1999 Constitution. And where there is an inconsistency, the Act gives way. Cap 16 is, of course, an existing law as it answers neatly to the definition of that expression in section 315(4)(b) which provides:**

**“(4) In this section, the following expressions have the**

*meanings assigned to them respectively –*

*(b) ‘existing law’ means any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force or which having been passed or made before that date comes into force after that date”*

*I think the simple answer to Issues (1) (and this is the case of the counter-claiming Defendants) is that Cap 16 as amended by Decree 106 of 1992 provides, subject to the provisions of the Constitution, the formula applicable in the interim. This is what section 313 of the Constitution enjoins.*

*The Federal Capital Territory is not a State nor a local government in a State. It, therefore, cannot qualify for distribution of the Federation Account. Nor are the Area Councils in the Federal Capital Territory as they are not local governments “in a State” as provided in sub-section (3) above.*

*The result is that paragraph (d) of section 1 of Cap. 16 (as amended) is inconsistent with the provisions of the constitution and to that extent, section 1 is void.*

*As regard paragraph (d) (iv) of section 1 of Cap 16 (as amended) in so far as it provides for one per centum of the revenue accruing to the Federation Account derived from minerals, it is equally inconsistent with section 162(2) of the Constitution. The proviso to sub section (2) of section 162, for ease of reference, reads:*

*“Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen percent of the revenue accruing to the Federation Account directly from Natural resources.”*

*The Constitution provides for “not less than 13 per cent of the revenue accruing to the Federation Account directly from any natural resources” to be distributed on the principle of derivation. Cap. 16 says of “1 per cent of the revenue accruing to the Federation Account derived from minerals” is to be so distributed. These are undoubtedly inconsistent provisions. And by the provisions of section 1(3), 313 and 315(1), of the Constitution the provisions of section 1 of Cap. 16 that are inconsistent with the constitution must give way to the*



**Constitution.** (pp. 718 H/725 C)

*Maritime - Littoral States - Computation of revenue - Basis*

**9. With this conclusion, I hold and determine, that the seaward boundary of a littoral State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to section 162(2) of the Constitution of the Federal Republic of Nigeria 1999 is the low-water mark of the land surface thereof or (if the case so requires as in the Cross River State with an archipelago of islands) the seaward limits of inland waters within the State. And this shall be my judgment in respect of plaintiff's case.** (p. 719 F)

*ACTIONS - Counter claim - Parties - Non joinder - Effect*

**10. But this case is one with a difference. All parties that can be said to be necessary parties to each counter-claim are parties already before the Court in respect of plaintiff's claim. They were all served with the pleadings of the counter-claiming Defendants and cannot claim not to be aware of what is going on. I agree with Professor Osinbajo that the non-joinder of all the Defendants other than the counter-claiming Defendant in each counter-claim, will not, in the circumstances of this case, defeat each counter-claim.** (p. 722 F)

*Parties - Listing - Reason for*

**11. In *Green v Green* (supra), this Court held that the only reason which makes it necessary to make a person, a party to an action is that he should be bound by the result of the action and the question to be settled. A person whose interest is involved or is in issue in an action and who knowingly chose to stand-by and let other fight his battle for him is equally bound by the result in the same way as if he were a party.** (p. 722 H)

*Constitution - Federation account - Revenue allocation*

**12. This figure, as I shall show presently, is used by the**

**coun722ter claiming Defendants in computing their reliefs. We have not been hold the legal basis for this figure. There is no order by the President modifying Cap 16 that lays down this figure. Nor is there an enactment of the National Assembly pursuant to section 162(2) of the Constitution specifying**  
 B **that figure. Our attention was drawn to an item in an Appropriation Act where the figure 13% was used to compute expenditure. That of course is not the enactment envisaged in section 162(2). That figure, therefore, appears to be a rule of**  
 C **the thumb or a gentleman's agreement among the parties. In the absence of a legal basis for the figure 13 per cent, I cannot see how this Court can grant a relief, however meritorious, based on such a rule of the thumb.**

**The counter-claiming Defendants have argued that the**  
 D **figure 13 per cent is the barest minimum allowed by the Constitution and have urged us to use that figure in computing their reliefs. With profound respect to the learned Attorney-General and learned counsel who submitted to this effect, I regret I cannot accede to their request. By the use of the ex-**  
 E **pression "not less than 13 per cent", a discretion is given to the law maker as to the figure to be used. That discretion is not for the Court to exercise but for the President, as prescribed authority, when making a modifying order or the National Assembly when enacting a law pursuant to section**  
 F **162(2). (p. 727 H)**

*Constitution - Federation account - Trusteeship*

**13. By this provision, the Government of the Federation be-**  
 G **comes a trustee. It is the duty of the trustee to render account to the beneficiaries of the trust if, and when, called upon to do so.**

**To be entitled to an order for an account, however, the Plain-**  
 H **tiff must have first been requested to do so by the beneficiary and has refused, failed or neglected to do so. (p. 730 C)**

*Constitution - Federation Account - External debts Settlement of*

**14. Section 4 of Cap 161 is very clear; such external debts are charged upon and payable out of the general revenue and**

**assets of the Government of the Federation that incurred the indebtedness and not the Federation Account. And section 314 of the Constitution only reaffirms that position. It is for each Government, Federal or State, to pay its debt. Neither can constitutionally charge its debts on the Federation Account.** (p. 731 D)

*ADMINISTRATIVE LAW - Primary education - Provision of*  
**15. In so far as primary education is concerned, a local government council only participates with the State Government in its provision and maintenance. The function obviously remains with the State Government.** (p. 732 B)

*SUPREME COURT - Jurisdiction - Declaratory relief - Grant of*  
**16. The last issue – issue (ix) – raises the question of the jurisdiction of this Court to grant a declaratory relief. I think Chief Williams is right in his submission that runs thus:**

**“It is well settled that a court does not act in vain. Accordingly it will not make any declaration which does not settle or determine a dispute or controversy between the parties. Section 232(1) of the Constitution limits the original jurisdiction of this court to where the dispute involves ‘any question (whether of law or fact) on which the existence or extent of a legal right depends.’ Consequently this court has no unlimited jurisdiction to grant declaratory orders in cases where the existence or extent of a legal right does not depend in such declaration or where the declaration will serve no useful purpose.”** (p. 732 E)

*Constitution - Revenue Allocation - Derivation principle*  
**17. I have already concluded in this judgment that the southern boundary of each littoral State in the Federation is the low-water mark. That being so, the 6<sup>th</sup> Defendant, like all other littoral Defendants, is not entitled, under proviso to section 162(2) of the Constitution that provides for the principle of derivation, to a share in the revenue accruing to the Federation Account from natural resources derivable from the Continental Shelf of Nigeria.**

**Consequently claims (c) and (d) fail and are dismissed.**  
(p. 734 G)

*CONSTITUTIONAL LAW - Revenue Allocation - Derivation principle*  
**18. I do not think it is seriously contended by the Plaintiff that**  
B **section 162(2) did not come into effect on 29/5/99 when the**  
**Constitution itself came into effect. That being so, the deter-**  
**mination sought in claim (a) is granted.** (p. 736 A)

*ACTIONS - Claim - Failure to prove - Effect*  
C **19. It is with claim (b) that the 6<sup>th</sup> Defendant will encounter**  
**some difficulties. Section 4A of Cap. 16 (as amended) has**  
**been declared earlier in this judgment to be inconsistent with**  
**section 162 of the Constitution. It has equally been held by**  
D **me that the figure 13 per cent does not form a legal basis for**  
**calculating the amount due to any State on the principle of**  
**derivation. On what basis then would this Court make the or-**  
**der sought in claim (b)? It is for the 6<sup>th</sup> Defendant to prove his**  
**entitlement to the relief sought by him. I think he has failed to**  
E **do this in respect of claim (b); The order sought, on the fact**  
**now before us, is rather vague, indefinite and uncertain. The**  
**claim is, therefore, refused and it is struck out.** (p. 736 B)

*Constitution - Revenue Allocation - Derivation principle - Proof*  
F **20. The averments is paragraph 5 of the 6<sup>th</sup> Defendant's**  
**counter-claim, not having been specifically denied by the Plain-**  
**tiff, are deemed admitted by him. I have earlier said in this**  
**judgment that a natural gas is a natural resource. It follows**  
G **that as revenue accrued to the Federation Account from natu-**  
**ral gas derived from the territory of the 6<sup>th</sup> Defendant he is**  
**entitled to a share of that revenue under the principle of deri-**  
**vation in section 162(2) of the Constitution. But as the**  
**counter-claiming 6<sup>th</sup> Defendant has not shown to us the legal**  
H **basis or authority for the use of the figure 13 per cent in cal-**  
**culating his entitlement, claim (e) cannot be granted; it is struck**  
**out.**

**As claims (a) and (c) above are based on the much-touted 13%**  
**and in view of what I have said earlier in this judgment on lack**

**of legal authority for this figure, the two claims must fail; they are struck-out.** (p. 736 E)

*ACTIONS - Counter-claim - Evidence - Failure to adduce - Effect*  
**21. There is no averment nor evidence that the 8<sup>th</sup> Defendant requested from the plaintiff, and was refused, an account as required in claim (b). In the light of the denial of the Plaintiff in his defence to the counterclaim of the 8<sup>th</sup> Defendant one would expect some evidence from the latter. But none is forthcoming. The Claim, therefore, fails and it is dismissed.** (p. 738 C)

## NOTABLE POINTS OF INTEREST

### **UWAIS CJN**

**1. Averments in pleadings must be proved by evidence unless admitted by the opposing party**

It is trite that any party who desires judgment to be given in his favour as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist. In other words averments in pleadings must be proved by evidence, unless admitted by the opposing party. If a party fails to do so then the party has not discharged the burden of proof – see sections 135 to 140 of the Evidence Act, Cap. 112. There are of course some exceptions to this general rule which do not apply here. (p. 797 G)

### **KUTIGI JSC**

**2. The territory of a state is co-extensive with the totality of the Local Government Areas within its territory.**

In other words, the territory of a State is exactly co-extensive with the totality of the Local Government Areas within its territory. I say at once that I find no difficulty whatsoever in agreeing with this submission by the plaintiff. (p. 841 G)

### **IGUH JSC**

**3. Only the Federal Government can lawfully exercise governmental powers over the territorial waters of Nigeria**

The powers and authority of the Federal Government over the entire maritime belt or “territorial waters” of Nigeria are beyond dis-

pute. In my view, it is only the Federal Government, and it alone, that can lawfully exercise governmental powers over the maritime belt or the territorial waters of Nigeria thus ruling out littoral State in them after of governmental control or authority in or over the territorial waters of Nigeria. (p. 935 G)

B

**REPRESENTATION**

Chief F.R.A. Williams, S.A.N. with Alhaji Abdullahi Ibrahim. S.A.N., Mrs. T. A. A. Osinuga (Solicitor-General of the Federation), Prof. I. A. Ayua, Chief O. Kumuyi - D.D.C.L., Federal, Dr. M Gidado, T. E. Williams, B. A. Odugbesan - P.L.O. Federal, E.O. Omonowa P.L.O. Federal, F. Gambari-Mohammed (Mrs.) and O. Falade for the Plaintiff

D **ABIA STATE**

K. Awa Kalu, S.A.N., Attorney-General with Chief C.O Akpamgbo, S.A.N., Olisah Agbakoba, S.A.N., M.N. Oti (Miss), Solicitor-General, Chief Chris Uche, O.U. Kanu and John Ukpai S.S.C., for the 1<sup>st</sup> Defendant

E

**ADAMAWA STATE**

O. W. Dah, Attorney-General with M.A. Bello, Solicitor-General and Y.S. Ngbale - DCL for the 2<sup>nd</sup> Defendant

F

**AKWA IBOM STATE**

Effiong D. Bob - Attorney-General with Chief A. Ekong Bassey, SAN, Gloria Inyang (Mrs.), Ag. Solicitor-General, I. E. Ukanna, DDCL Goddy Umoh, Uko Udomu, Ime Inyang, Christopher Attah and G Anselem Eyo for the 3<sup>rd</sup> Defendant

**ANAMBRA STATE**

No appearance for the 4<sup>th</sup> Defendant

H **BAUCHI STATE**

H. D. Mohammed, DCL for the 5<sup>th</sup> Defendant

**BAYELSA STATE**

Hon. Talford Ongolo, Attorney-General with Chief T. J. Okpoko SAN,

M. E. W. Ziworitin, Solicitor-General, H. P. M. Apeli – Ag. D.C.L.,  
Femi Falana, Olatunde Ayeji, Sylvanus E. Abila and A. O Deworitshe  
for the 6<sup>th</sup> Defendant

**BENUE STATE**

Aondoaker Angweh, Attorney-General with S.C. Egede, Asst. D.C.L. **B**  
for the 7<sup>th</sup> Defendant

**BORNO STATE**

Alhaji Shettima Liberty, with Alhaji Moh. Kaloma Ali, Alhaji Inusa **C**  
Paiko, Mustapha Balama, Fatima Kwaku (Mrs.) and Moh. Monguno  
for the 8<sup>th</sup> Defendant

**CROSS RIVER STATE**

Nella Andem-Ewa (Mrs.) Attorney-General with Chief Victor Ndoma- **D**  
Egba, Dr. (Mrs.) V.J.O. Azinge, Lionel Garrick, SSC 1 and Nike  
Adegbayemu (Miss) for the 9<sup>th</sup> Defendant

**DELTA STATE**

Prof. A. A. Utuama, Attorney-General with D. C. Maido, Solicitor- **E**  
General, G. Owrihenyefa, DCL and A. Mudiaga Odje for the 10<sup>th</sup>  
Defendant

**EBONYI STATE**

O. U. Ogbonna - DCL for the 11<sup>th</sup> Defendant **F**

**EDO STATE**

B. O. Kalu (Mrs.) - Director Public Prosecution for the 12<sup>th</sup> Defendant **G**

**EKITI STATE**

Obafemi Adewale, Attorney-General, with Chief R. Makanjuola Esan,  
SAN, C. I. Akintayo - Solicitor-General, L. B. Ojo, D.C.L. and Olayinka  
Esan for the 13<sup>th</sup> Defendant **H**

**ENUGU STATE**

C. O. Eze - Asst. C.L.O. for the 14<sup>th</sup> Defendant

**GOMBE STATE**

Emmanuel Ishaku Latebo, D.C.L. with Robinson A. Labatak, DDCL  
for the 15<sup>th</sup> Defendant

IMO STATE

J. T. U. Nnodum, Attorney-General with C. P. Ogwuegbu Esq.,  
B I. C. Ibeawuchi S.C. and O. C. Olumba for the 16<sup>th</sup> Defendant

JIGAWA STATE

No appearance for the 17<sup>th</sup> Defendant

C  
KADUNA STATE

Alhaji M. S. Aminu, Attorney-General with G. B. Kore, D.C.L. and  
A. Isiaka S.C. for the 18<sup>th</sup> Defendant

D  
KANO STATE

Alhaji Balarabe M. Bello, Attorney-General with R. M. Aikawa, Solicitor-General and M. A. Ladan, S.C. for the 19<sup>th</sup> Defendant

KATSINA STATE

E Shema Shehu Ibrahim, Attorney-General with I. B. Gafai,  
D. P. P. for the 20<sup>th</sup> Defendant

KEBBI STATE

F A. I. Kangiwa, Attorney-General, with B. U. Likiti - D.C.L. for the  
21<sup>st</sup> Defendant

KOGI STATE

Abdullahi Haruna, Attorney-General, with O. S. A. Obayomi - D.L.D  
G for the 22<sup>nd</sup> Defendant

KWARA STATE

T. S. Ashaolu, Attorney-General, with Funsho D. Lawal (Mrs.)  
D.C.L. for the 23<sup>rd</sup> Defendant

H

LAGOS STATE

Prof. O. Osinbajo, Attorney-General, with Dr. O. Ajayi, S. A. N.,  
Mrs. O. Olayinka, Director (Comm. Law), Mr. L. Pedro, H.O.D., Civil  
Lit. A. Ipaye and O. Opasanya for the 24<sup>th</sup> Defendant



NASARAWA STATE

M. J. Agum - D.C.L. with Matthew Gbaje - S.C. for the 25<sup>th</sup> Defendant

NIGER STATE

B

N. U. Wali, D.C.L. with him M. O. Liadi for the 26<sup>th</sup> Defendant

OGUN STATE

Chief Oluseyi Oyebolu, Attorney-General, with A. A. Akinwande - D.C.L. for the 27<sup>th</sup> Defendant C

ONDO STATE

A.O. Adebuseye, D.C.L. with C. K. Akinrinsola D.D.C.L. for the 28<sup>th</sup> Defendant D

OSUN STATE

Dr. O. Adedeji, Attorney-General with O. Obisakin, S.C. for the 29<sup>th</sup> Defendant E

OYO STATE

M.O. Ishola, D.C.L. for the 30<sup>th</sup> Defendant

PLATEAU STATE

L. C. Fwangyil - Solicitor-General with F. B. Lotben (Mrs.) - D.C.L. for the 31<sup>st</sup> Defendant F

RIVERS STATE

A. R. Cookey-Gam (Mrs.) Attorney-General, with R.N. Godwins - G Asst. D.C.L. for the 32<sup>nd</sup> Defendant

SOKOTO STATE

A. A. Sanyinna, Attorney-General, with Lawal Abubakar D.C.L. and J. O. Wadae for the 33<sup>rd</sup> Defendant H

TARABA STATE

B. Y. Riki (Mrs.), Attorney-General, with J. D. Yakubu - D.C.L. for the 34<sup>th</sup> Defendant

YOBE STATE

A.M. Lawal, Attorney-General with S. Samanja - D.S.G., M. M. Saleh  
- D.C.L. and W. A. Ibrahim - D.P.P. for the 35<sup>th</sup> Defendant

B ZAMFARA STATE

A. B. Mahmud, Attorney-General with Tukur Galadima, S.C. for the  
36<sup>th</sup> Defendant

**CASES REFERRED TO**

- C A-G Fed v. A-G Abia & 35 Ors (2001) 11 NWLR 689  
Green v. Green (1987) 18 NSCC (Pt. 2) 1115  
A-G Bendel v. A-G Fed & Ors (1983) ANLR 208  
Afolayan v Ogunrinde (1990) 1 NWLR (Pt. 127) 369  
D Lordye v Ihyambe (2000) 15 NWLR (Pt. 692) 675  
Ayoke v Bello, (1992) 1 NWLR (Pt. 218) 380  
Okechukwu v Okafor (1961) 2 SCNLR 369  
Odonigi v Oyeleke (2001) 6 NWLR (Pt. 708) 12  
Tella v. Akere & Ors (1958) WRNLR 26  
E Lewis & Lewis v Durnford (1907) 24 TLR 64  
Otanioku v. Mustafa (1977) 11-12 SC 9  
Obulor v. Oboro (2001) 4 SCNJ 22  
Queen v. Keyn (1876) 2 Ex. D. 63  
Ifezue v. Mbadugba & Anor. (1984) 5 SC 79  
F Marbell v. Akwei (1952) 14 WACA 143

**STATUTES & RULES REFERRED TO**

- Allocation of Revenue (Federation Account) Act Cap 16 LFN 1960  
G Allocation of Revenue (Federation Account) (Amendment) Decree  
1992, No. 106 of 1992  
Constitution of the Federal Republic of Nigeria 1960, ss. 130-139  
Constitution of the Federal Republic of Nigeria 1963, s. 74  
Constitution of the Federal Republic of Nigeria 1979, s. 149  
H Constitution of the Federal Republic of Nigeria 1999, ss. 162(1)(2),  
232(1)  
Exclusive Economic Zone Act, Cap 110  
General Loan and Stock Act, Cap 161 LFN, ss. 3 & 4  
Lagos Local Government (Delimitation of the Town and Division into

Wards) Order in Council No. 34 of 1950

Nigeria Protectorate Order in Council 1922

Territorial Waters Act, Cap. 428

Sea Fisheries Act Cap. 404

Colony of Nigeria (Boundaries) Order in Council 1913

Federal High Court (Civil Procedure) Rules 2000, O. 12 r. 5 (1) **B**

### **BOOKS REFERRED TO**

Essays in African Law - A. Allott, p. 3

Nigerian Legal System - A. O. Obilade p. 69 **C**

The Sources of Nigerian Law - A. E. W. Park

Halsbury's Laws of England 4<sup>th</sup> Ed. Vol. 4(1) para. 921

Black's Law Dictionary 6<sup>th</sup> Ed

### **LEAD JUDGMENT BY OGUNDARE JSC** **D**

Section 162(1) of the Constitution of the Federal Republic of Nigeria 1999 (hereinafter is referred to as the Constitution or the 1999 Constitution) establishes the Federation Account into which shall be paid all revenues collected by the Government of the Federation, with a few exceptions not relevant to the case in hand. **E**

Sub section (2) of section 162 of the Constitution empowers the National Assembly to determine the formula for the distribution of funds in the Federation Account. Sub section (2) provides:

*"162(2) The President, upon the receipt of advice from the Revenue Mobilization Allocation and Fiscal Commission, shall, table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density.* **F**

*Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen percent of the revenue accruing to the Federation Account directly from Natural resources."* **G**

The proviso to the sub-section entrenches, with respect to natural resources, the principle of derivation in any formula the National Assembly may come up with. By this principle "*not less than thirteen per cent*" of the revenue accruing to the Federation Account **H**

directly from any natural resources shall be payable to a State of the Federation from which such natural resources shall be payable to a State of the Federation from which such natural resources are derived. For a State to qualify for this allocation of funds from the Federation Account, the natural resources must have come from within the boundaries of the State, that is, the resources must be located within that States.

There arose a dispute between the Federal Government, on the one hand, and the eight littoral States of Akwa-Ibom, Bayelsa, Cross-River, Delta, Lagos, Ogun, Ondo and Rivers States on the other hand as to the Southern (or seaward) boundary of each of these States. The Federal Government contends that the southern (or seaward) boundary of each of these States is the lower water mark of the land surface of such State or, the seaward limit of inland waters within the State, as the case so requires. The Federal Government, therefore, maintains that natural resources located within the Continental Shelf of Nigeria are not derivable from any state of the Federation. The eight littoral States do not agree with the Federal Government's contentions. Each claims that its territory extends beyond the low-water mark onto the territorial water and even onto the continental shelf and the exclusive economic zone. They maintain that natural resources derived from both onshore and offshore are derivable from their respective territory and in respect thereof each is entitled to the "*not less than 13 percent*" allocation as provided in the proviso to subsection (2) of section 162 of the Constitution.

In order to resolve this dispute, the Plaintiff took out a writ of summons praying for –

*"a determination of the seaward boundary of a littoral State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to the proviso to section 162 (2) of the Constitution of the Federal Republic of Nigeria, 1999".*

All the States in the Federation are joined as defendants in the action. The parties, except the 29<sup>th</sup> and 30<sup>th</sup> Defendants, that is, Osun and Oyo State, filed and exchanged their respective pleadings. Some of the Defendants raised counter-claims against the Plaintiff.

The pleadings of the Plaintiff and the eight littoral Defendant States reflect their respective viewpoints in the dispute. Some of the defendants raised in their pleadings, as number of objections such as their being no dispute, misjoinder, lack of jurisdiction etc. All these objections were taken at an earlier hearing and disposed of – see: Attorney General of the Federation v. Attorney-General of Abia State & 35 B Ors (2001) 11 NWLR 689.

Notwithstanding the decision of this Court rejecting the preliminary objections, the 3<sup>rd</sup> Defendant in the affidavit evidence in support of his case still maintains that he has no dispute with the Plaintiff. In paragraph 16 of the affidavit evidence of Ifioke Uleana, a legal practitioner and Acting Director of Civil Litigation in the Ministry of Justice, Uyo, Akwa Ibom State, the deponent testified thus:

*That the 3<sup>rd</sup> defendant has never had any dispute with the plaintiff regarding on-shore or off-shore derivation sine as our counsel has advised and I verily believe that questions has been settled by Decree No. 106 of 1992.”*

*In paragraphs 27 and 29, however the deponent deposed:*

*“27 That the Federal Government has been paying to defendant Akwa Ibom State the amount due to it on derivation but in paying, the Federal Government has unjustly withheld 40% of the 13% due and the plaintiff has held on to such amounts and has refused to pay despite repeated demands by the 3<sup>rd</sup> defendant.”*

*29 That the total amount due to Akwa Ibom State Government and wrongly withheld by the plaintiff is N15,006,418,955.28 covering the period indicating in paragraph 28 above and the plaintiff has not denied owing this amount.”*

If there was no dispute between him and the plaintiff, why the underpayment complained of by him. I stand by our earlier decision that on the pleadings of the parties in this case there is a serious dispute between the plaintiff and the littoral states as to the seaward limit of the latter's territories.

In a similar situation in United States v State of California 332 US 19, 24-25; 67 US Reporter 1658, 1661, the US Supreme Court, per Black J, had this to say

*“It is contended that the pleadings present no case or controversy under Article III, 2, of the Constitution. The contention rests in the first place on an argument that there is no case or controversy in*

*a legal sense, but only a difference of opinion between federal and state officials. It is true that there is a difference of opinion between federal state officers. But there is far more than that. The point of difference is as to who owns, or has paramount rights in and power over several thousand square miles of land under the ocean off the coast of California. The difference involves the conflicting claims of federal, and a superior right to take or authorize the taking of the vast quantities of oil and gas underneath that land, much of which has already been, and more of which is about to be, taken by or under authority of the state. Such concrete conflicts as these constitute a controversy in the classic legal sense, and are the very kind of differences which can only be settled by agreement, arbitration, force, or judicial action. The case principally relied upon by California, United States v State of West Virginia, 295 U.S. 463, 55 S.Ct. 789, 79 L.Ed. 1546, does not support its contention. For here there is a claim by the United States, admitted by California, that California has invaded the title or paramount right asserted by the United States to a large area of land and that California has converted to its own use oil which was extracted from that land. Cf. United States v. State of West Virginia, supra, 295, U.S. at page 471, 55 S. Ct at page 792, 79 L.Ed 1546. This alone would sufficiently establish the kind of concrete, actual conflict of which we have jurisdiction under Article III. The justiciability of this controversy rests therefore on conflicting claims of alleged invasions of interests in property and on conflicting claims of governmental powers to authorize its use."*

Here, the Federal government contends that natural resources derivable from Nigeria's territorial waters, continental shelf and exclusive economic zone are not derivable from any littoral State. The littoral States contend to the contrary; they claim those areas as part of their respective territories. Can it still reasonably be suggested that there is no concrete dispute between the parties as to entitle either side to invoke the original jurisdiction of this Court in section 232(1) of the 1999 Constitution to resolve same? I rather think not.

The Court had earlier ordered that parties willing to adduce evidence should do so by filing affidavit evidence. Only the 3<sup>rd</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 24<sup>th</sup> and 32<sup>nd</sup> Defendants did so; the others did not. Nor the Plaintiff either.

The parties (except, again, some of the Defendants) filed and

exchanged their briefs of arguments as well. At the hearing of the case, learned counsel proffered oral submissions. The defendants, who, however, failed to file briefs were not heard in oral arguments.

### PLAINTIFF'S CLAIM

The simple question that arises in this case is: what is the southern (or seaward) boundary of each of the eight littoral Defendant States of Akwa Ibom, Bayelsa, Cross-River, Delta, Lagos, Ogun, Ondo and Rivers? The answer to the question is not, however, as simple. One would need to wade through past constitutions, statutes statutory instruments, evidence, common law and international law to come to an answer. To get a clear picture, I will start by giving a brief political history of the Federal Republic of Nigeria.

#### Political History of Nigeria:

There is evidence before us in the affidavit evidence of Professor Ayodeji Oladimeji Olukoju, His Royal Highness Oba Adeyinka Oyekan of Lagos (both filed by the 24<sup>th</sup> Defendant, Lagos State) and His Royal Highness Edidem (Professor) Nta Elijah Henshaw VI, Obong of Calabar (filed by the 9<sup>th</sup> Defendant, Cross River State), from which a brief political history of Nigeria can be traced.

Until the advent of the British colonial rule in what is now known as the Federal Republic of Nigeria (Nigeria, for short), there existed at various times various sovereign states known as emirates, kingdoms and empires made up of ethnic groups in Nigeria. Each was independent of the other with its mode of government indigenous to it. At one time or another, these sovereign states were either making wars with each other making alliances, on equal terms. This position existed throughout the land now known as Nigeria. In the Niger-Delta area, for instance, there were the Okrikas, the Ijaws, the Kalabaris, the Efiks, the Ibibios, the Urhobos, the Itsekiris, etc. Indeed certain of these communities (e.g. Calabar) asserted exclusive rights over the narrow waters in their area. And because of the terrain of their area, they made use of the rivers and the sea for their economic advancement in fishing and trade-and in making wars too! The rivers and the sea were their only means of transportation. Trade then was not only among themselves but with foreign nations particularly the European nations who sailed to their shores for palm oil, kernel and slaves.

The area now known as Lagos was an amalgam of several

communities, such as Aworis and Eguns, to mention a few. All the coastal communities took advantage of the sea and the network of rivers and lagoons as their means of transportation in travelling far and wide along the coastline on trading expeditions, fishing and waging wars.

B The British colonial rule commenced with the cession of Lagos to the British monarch in 1861. By the Treaty of Cession entered into on 6<sup>th</sup> August 1861, King Dosunmu (otherwise spelt Docemo) of Lagos and his chiefs ceded to the British Crown the Port and Island of Lagos. For the full text of the treaty see *The Attorney-General v. C John Holt & Co. & Ors. and the Attorney-General v W.B. Melver & Co. & Ors.* 2 NLR 1 at pp. 4-5.

At about the same time some British firms had established trading ports around the Niger and subsequently extended their operations from the middle of the Niger valley into what is now known as Northern Nigeria. The companies later merged and formed a company known as the Royal Nigeria Company which was granted a charter by the British Monarch not only to trade but also to administer the area from the middle of the Niger valley to present day Northern Nigeria. On the revocation of the charter of the Royal Niger Company on 31 December 1899, the area under its sphere of administration was renamed protectorate of Northern Nigeria.

With effect from 1<sup>st</sup> January 1900, also the remaining part of the present day Nigeria that did not form part of the protectorate of Northern Nigeria was added to the Niger Coast protectorate which had earlier been established for the communities of the Niger Delta, to form the Protectorate of Southern Nigeria. It was the British colonial rule that provided the central authority that bound together all the erstwhile separates states, emirates, empires and kingdoms that were dotted all over the land now known as Nigeria.

The case of the *Attorney-General v John Holt & Co. & Ors* (supra) shows that the political history of Lagos was more chequered. By commission under the Great Seal dated 13<sup>th</sup> March 1862, the H ceded territories were formed into a separate Government with a Legislative and Executive Council under the title of the Settlement of Lagos. This arrangement lasted but only a short time, for by another Commission dated the 19<sup>th</sup> day of February 1866, Lagos became part of the Government of the West African Settlements, with a sepa-



rate Legislative Council but subject to the Governor-General-in-Chief at Sierra-Leone. By 24<sup>th</sup> July 1874 the Gold Coast and Lagos were separated from the other settlements and constituted into one Colony known as the Gold Coast Colony. On 13<sup>th</sup> January 1886, by Letter Patent, Lagos became a separate Colony. Twenty years later, by Letters Patent dated 28<sup>th</sup> February 1906, the Colony of Lagos, on 1<sup>st</sup> May 1906, was merged with the protectorate of Southern Nigeria to form the Colony and Protectorate of Southern Nigeria.

And on 1<sup>st</sup> January 1914, the Protectorate of Southern Nigeria to form the Colony and Protectorate of Nigeria. Thus emerged the country Nigeria which gained independence from British Colonial rule on 1<sup>st</sup> October 1960 and is today known as the Federal Republic of Nigeria.

#### Boundaries

It is interesting to know the boundaries of the country the British created in 1914. By The Nigeria Protectorate Order in Council, 1913 made at the Court at Windsor Castle on 22<sup>nd</sup> November 1913 but to take effect on 1<sup>st</sup> January 1914, the boundaries of the new country were defined. The boundaries of the protectorate of Nigeria were again reaffirmed in The Nigeria Protectorate Order in Council 1922 made on 21<sup>st</sup> November 1922 at the Court at Buckingham Palace. See Laws of Nigeria 1923 Vol 4 at page 366 et seq. In section II of the said Order in Council, the Protectorate of Nigeria was defined as –

*“the territories of Africa which are bounded on the South by the Atlantic Ocean, on the west, north and north-east by the line of the frontier between the British and French territories, and on the east by the territories known as the Cameroon.”*

By another Order in Council – the Colony of Nigeria (Boundaries) Order in Council, 1913 made the 22<sup>nd</sup> November 1913 the boundaries of the Colony of Nigeria (that is, Lagos) were also described with the Bight of Benin as the southern boundary. See also The Lagos Local Government (Delimitation of the Town and Division into Wards) Order in Council 1950 which put the southern boundary of Lagos as “*The Sea*”. That remains the boundaries of Nigeria, and of Lagos, to this date. The Southern boundary of Nigeria is the Atlantic Ocean, that is, the sea, the Bight of Benin is a long inward curve on the coast of the Atlantic Ocean.

By further constitutional changes – see: Nigeria (Constitution) Order in Council, No. 1172 of 1951 – Nigeria was divided into Northern, Western (including Lagos) and Eastern Regions. By L.N. 126 of 1954 titled The Northern Region, Western Region and Eastern Region (Definition of Boundaries) Proclamation, 1954, made pursuant to section 5(2)(a) of the said Nigeria (Constitution) Order in Council, 1951 the boundaries of the three Regions to which the Country had been dividend, were given in one proclamation. The boundaries of Western and eastern Regions were described in the Second and Third Schedules respectively, to the said Proclamation. Of relevance to this case are the southern boundaries of these two Regions which are given in each case as “*The Sea*”, which is the Atlantic Ocean.

Nigeria remained divided into three Regions up to and after independence in October 1960. In 1964, however, a fourth Region – the Midwest Region – was carved out of the Western Region. In May 1967, the Federal Military Government scrapped the regional arrangement and divided the country. ***All the eight littoral Defendant States were carved out of the old Western, Mid-West and eastern Regions and constitute the coastal areas of those Regions. It goes without saying that the southern boundaries of all these littoral Defendant States must be the Southern boundaries of the Western and Eastern Regions as defined in LN 126 of 1954, that is, “The Sea”. And this is co-terminous with the Southern boundary of Nigeria as defined in Section II of the Nigeria Protectorate Order in Council 1922 and of Lagos as defined in The Colony of Nigeria (Boundaries) Order in Council, 1913.***

This conclusion would have provided the answer to the simple question that calls for determination in this action. But the conclusion raises yet another question: what is the boundary mark between Western, Midwest and Eastern Regions (and indeed, Nigeria for that matter) on the one hand and the sea, on the other? The Orders in Council and proclamation are silent on this. And this is the next question I now have to resolve in this judgement. One thing however, is clear. ***If the boundary is with the sea, then by logical reasoning, the sea cannot be part of the territory of any of the old Regions. For this reason, therefore, I have no hesitation in re-***

**jecting the contentions of the eight littoral Defendant States that their boundaries extend to the exclusive economic zone or the continental shelf of Nigeria.** The position of the territorial waters of Nigeria, the continental shelf and the exclusive economic zone shall be considered later in this judgement.

Coming back to the new question posed by me in the paragraph above I must observe that the plaintiff led no evidence in this case. Some of the Defendants have argued that plaintiff's case ought to be dismissed on this ground alone. But Chief Williams, SAN learned leading counsel for the plaintiff has submitted that the issue before the Court is one of law that needs no evidence to resolve. He referred to the Court's earlier ruling on the preliminary objections of some of the Defendants and pointed out that the Court had then observed that the action was about the interpretation of the Constitution. In learned Senior Advocate's view the plaintiff does not need any evidence to interpret the Constitution and prove his case. He cited in support of his submission the English case of *Pioneer Plastics Contractors Ltd. v. Commissioners of Customs & Excise* (1967) Ch. 597. I think Chief Williams is right as the new question now under consideration can be resolved as a matter of law. Both Messrs. Akpamgbo, SAN and Okpoko, SAN learned counsel for the 1<sup>st</sup> and 6<sup>th</sup> Defendants respectively made oral submissions to the same effect. ***In my humble view, and as I shall presently show, the seaward boundary of a littoral State as we are called upon to determine in this case, is a matter of law. What becomes factual, and on which evidence will be required to prove, is the actual location of that boundary. The latter situation is not the issue before us.*** If, however, a Defendant State claims territory beyond the boundary as determined by law, such a Defendant will need to adduce evidence, such as Crown grant, to establish her case. ***That plaintiff has not adduced affidavit evidence in this case is not fatal to Plaintiff's cases. See: Pioneer Plastic Containers Ltd. v Commissioners of Customs and Excise (supra) where the Court in England (Chancery Division) held, rightly in my view, that where there are no issues of fact on the pleadings, no evidence need be adduced.***

What then is the position in law, as Chief Williams relies on law? ***As I have found earlier in this judgement, the southern***

**boundaries of the littoral States of Nigeria are the sea. This makes them riparian owners. And as riparian owners the seaward extent of their land territory, at common law, is the low-water or the seaward limit of their internal waters. This is so, because at common law, the sea shore or foreshore (both mean the same thing) belongs to the Crown.** See: Hales: De Jure Maris (Hargrave's Tracts, pp 12, 25 & 26) where it is written:

*"The shore is that ground that is between the ordinary high-water and low-water mark. Thus both prima facie and of common right belong to the King, both in the shore of the sea, and the shore of the arms of the sea"*

The learned author of Halsbury's Laws of England 4<sup>th</sup> edition has this to say in Vol. 4(1) paragraph 921:

*"Seashore or foreshore..... The boundary line between the seashore and the adjoining land is, in the absence of usage or evidence to the contrary, the line of the median high tide between the ordinary spring and cape tides."*

Again in Vol. 49(2), paragraph 1, the learned author explains further:

*"1. Meaning of 'high seas' and 'territorial waters'. At common law, 'high seas' includes the whole of the sea below low-water mark where great ships can go, except for such parts of the sea as are within the body of a country, for the realm of England only extends to the low-water mark, and all beyond is the high seas. In international law 'high seas' means all parts of the sea not included in the territorial sea and internal waters of any state."*

Writing in Volume 18, paragraph 1453, the learned author defines the land territory of a State as consisting of the land within its boundaries, including islands. This is *"within the exclusive jurisdiction of the territorial State."* In Paragraph 1454, he has the following on the internal waters of a territorial State:

*"1454. Internal waters. Internal or national waters are those areas of water, including parts of the sea, which are under the full sovereignty of the territorial state. They including inland waters, ports, anchorages and roadsteads, bays, gulfs and estuaries, sea separated by islands and all sea area which are to the landward side of the base lines from which the territorial sea is delimited. Internal waters differ from territorial waters in that there exists in territorial waters, but not*

*in internal waters, a right of innocent passage for foreign vessels. Foreign warships require permission to enter internal waters, and merchant vessels enter on conditions determined by the territorial state."*

Now, at international law the base line for measuring the breadth of the territorial sea is the low-water mark along the coast. See Article 3 of the Geneva Convention on the Territorial Sea and the Contiguous Zone, 1958 (binding on Nigeria) which provides: B

*"Except where otherwise provided in these articles, the normal base line for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal state."* C

See now Article 5 of the United Nations Convention on the Law of the sea, 1982.

In *R. v. Keyn* (1876) 2 Ex. D 63 at p. 67 Sir Phillimore declared: D

*"The county extends to low-water mark, where the "high seas" begin; between high and low-water mark, the Courts of oyer and terminer had jurisdiction when the tide was out, the Court of the admiral when the tide was in."*

*There appears to be no sufficient authority for saying that the high sea was ever considered to be within the realms, and notwithstanding what is said by Hale in his treatises de Jure Maris and Pleas of the Crown, there is a total absence of precedents since the reign of Edward III., if indeed any existed then, to support the doctrine that the realm of England extends beyond the limits of counties."* E

See also: *The Mecca* (1895) P 95 at p. 107 per Lindley LJ applied in *R v. Liverpool Justices, ex p Molyneux* (1972) 2 Q.B. 384; (1972) 2 All E.R. 471; *Att. Gen. of Southern Nigeria v. John Holts & Co. (Liverpool) Ltd. & Ors.* (1915) AC 599 (PC); 2 NLR 1 (Full Court). F

Chief Williams has referred us to a numbers of cases decided in other common law jurisdictions and has urged us to apply the principles enunciated in those cases to the present case. These cases are: *US v Louisiana* L. ed 1025; (USA), *Reference Re Ownership of Offshore Mineral Rights*, (1968) 65 DLR 2<sup>nd</sup>, 354 (Canada); *New South Wales & Ors. Commonwealth* (1975-6) 8 ALR 1 (Australia). H

The Littoral Defendant States, however, urged us not to fol-

low those cases as according to them, the facts and circumstances may not be the same. But the principles of the common law and international law pronounced in those cases are applicable equally here. I have already discussed the common law principles and their application to this case. I shall later in this judgement discuss in depth  
 B the international law relating to the matter on hand.

Thus, at common law, the boundary-mark between a riparian owner, such as the littoral States are in this case, and the sea is the low-water mark. See: *Bonser v. LA Macchia* (1969-70) 122 CLR  
 C 177; *Reference Ownership of Offshore Mineral Rights* (supra); *New South Wales & Ors. v. Commonwealth* (supra) (1975)-76) 135 CLR 337; *United States v Louisiana* (supra); 332 US 19; 67 US Reporter 1658; *R v. Keyn* (1876) 2 Ex D63 at p. 67.

***But some of the Defendants, particularly the 9<sup>th</sup> Defendant, has submitted that the common law is not applicable. With profound respect to learned counsel, I cannot accept this submission. Common law has been received law in this country since 1863 when it was applied to Lagos and 1914 when by the Supreme Court Ordinance of that year, it was  
 E applied to the Colony and Protectorate of Nigeria. In *Charlie King Amachree v Daniel Kalio*, 2 NLRL 108; *John Holt's Case* (Supra) and *Chief Braide v. Chief Adoki*, 10 NLR 15, to mention a few, common law was applied to resolve the issues arising in those cases. I do not think I need say more on this except to point out that the successor to the British Crown is  
 F the Government of the Federation of Nigeria.***

I think this is a convenient stage to consider the peculiar position of the 9<sup>th</sup> Defendant. It has been shown by affidavit evidence  
 G and annexure thereto that the Cross River State has a number of islands dotted on its internal waters and the sea. Her southern boundary, in the circumstance, will be the seaward limit of her internal waters.

With the conclusion I reach in the paragraph above I would  
 H have said I am done with Plaintiff's case. But that is not yet to be. For the Littoral Defendant States, in reliance on some sections of the constitution and the past history of revenue allocation in the country, appear to be saying that the Constitution supports their standpoint and that the Plaintiff had before admitted their ownership of the land

and sea beyond the low-water mark. How correct are these contentions?

Both in their written Briefs and in oral submissions, the Littoral Defendant State argue that by sections 2(2), 3(1) & (2) and First Schedule to the Constitution, Nigeria consists of the aggregate of the territories of all the 36 States of the Federation and the Federal Capital Territory and that, constitutionally, therefore, Nigeria cannot have any other territory outside this aggregate. It is argued that if the Plaintiff's contention is right it would mean that Nigeria's territory exceeds the constitutional limit set out in the Constitution. It is then submitted that it is the acceptance of their argument that these areas of the sea belong to the littoral State that will make the territory of Nigeria accord with the Constitution.

Chief Williams, in reply, contends that the seaward limit of Nigeria is the low-water mark but Nigeria in its sovereignty and by the custom of the international community exercises jurisdiction beyond that limit.

I think Chief Williams is right. I have shown earlier in this judgement that the Imperial Power that created the country Nigeria put as her southern boundary, the boundary-mark is the low-water mark. The low-water mark, therefore, forms the boundary of the land territory of, not only the eight littoral States of Nigeria, but of Nigeria as well. One may then ask the question: what gives validity to such legislation as the territorial Waters Act, Cap. 428, Exclusive Economic Zone Act, Cap 110 and Sea Fisheries Act, Cap. 404, Laws of the Federation of Nigeria 1990? Chief Williams has submitted that each of these enactments was validly made by the Federal Legislature "*pursuant to its power to make laws for the Federal Republic of Nigeria with respect to external affairs.*"

Again, there is force in the submission of learned Senior Advocate. Nigeria as a sovereign State is a member of the international community. The littoral Defendant States, not being sovereign, Nigeria from time to time enters into treaties – both bilateral and multi-lateral. The conduct of external affairs is on the exclusive legislative list. The power to conduct such affairs is, therefore, in the Government of the Federation to the exclusion of any other political component unit in the Federation.

Another truism we must accept is that Nigeria is a coastal or

maritime Nation – its southern boundary is the Atlantic Ocean. While it is recognized in customary international law that the sea is *res nullius* and it is, therefore, available for the enjoyment of all nations of the world, land-locked nations inclusive, it has come to be accepted that by the vulnerability of their proximity to the sea, maritime nations are entitled to some privileges not available others to protect their security. Down the ages, nations entered into bilateral agreements for the control of the use of the sea. Momentum towards this end gathered in the 18<sup>th</sup> and 19<sup>th</sup> Centuries. The notion of territorial waters whereby sovereignty is given to a maritime nation over a breadth of the sea adjacent to her coast, developed. An example of this is the bilateral treaty between the United States and Great Britain made in Washington on January 23, 1924, Article 1 of which reads:

*“The High Contracting Parties declare that it is their firm intention to uphold the principle that three marine miles extending from the coastline outwards and measured from low-water mark constitute the proper limits of territorial waters.”*

Contrary to the submission of learned Attorney-General of Cross-River State (9<sup>th</sup> Defendant), the Territorial Jurisdiction Act 1879 was enacted in the United Kingdom not with a view to overruling, by legislation, the Court’s decision in *R. v. Keyn* (supra), but to give effect to the growing notion of territorial waters and the exercise of criminal jurisdiction within them.

The rules of international law that have evolved over the centuries are now crystallized in the Geneva Convention on the Territorial Sea and the Contiguous Zone, 1958, Geneva Convention on the Continental Shelf, 1958 and the Geneva Convention on the High Seas, 1958, among others. All the 1958 Geneva Conventions relating to the Sea are now superseded by the 1982 United Nations Convention on the Law of the Sea.

The Geneva Conventions provide for limits of the territorial sea, the right of innocent passage through the territorial sea and the use of the high seas. Articles 1 and 2 of the Geneva Convention on the Territorial Sea and the Contiguous Zone, 1958 are relevant to the case on hand and I, therefore, quote them hereunder:

*“Article 1*

*1. The sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, de-*



scribed as the territorial sea.

2. This sovereignty is exercised subject to the provisions of these article as and to other rules of international law.

Article 2

The sovereignty of a coastal State extends to the air space over the territorial sea as well as to its bed and sub soil:” (italics are mine) B

The area of the sea beyond the territorial water is known in international law as the high seas. While the Convention on the Ter-ritorial Sea and the Contiguous Zone confer sovereignty on a coastal State over the territorial sea, Convention on the High Seas denies C sovereignty of such a nation. Articles 1 and 2 of the latter Conven-tion provide:

“Article 1

The term ‘high seas’ means all parts of the sea that are not D included in the territorial sea or in the internal waters of a State.

Article 2

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles E and by the other rules of international law. It comprises, inter alia, both for coastal and non-coastal States:

1. Freedom of navigation;
2. Freedom of fishing;
3. Freedom of lay submarine cables and pipelines;
4. Freedom to fly over the high seas.

These freedom, and other which are recognized by the gen-eral principles of international law, shall be exercised by all States with reasonable regard to the interest of other States in their exercise G of the freedom of the high seas.” (Italics are mine)

The exception to this rule, however, is the control given a coastal State in respect of an area of the high seas contiguous to the territo-rial sea. For Article 24 of the Convention on the Territorial Sea and the Contiguous Zone provides: H

“Article 24

1. In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to:

- (a) Prevent infringement of its customs, fiscal, immigration or

*sanitary regulations within its territory or territorial sea;*

*(a) Punish infringement of the above regulations committed within its territory or territorial sea.*

2. *The contiguous zone may not extend beyond twelve miles from the base line from which the breadth of the territorial sea is measured.*

3. *Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to be contrary, to extend its contiguous zone beyond the median line every point of which is equidistant from the nearest points on the base lines from which the breadth of the territorial seas of the two States is measured."*

The Convention on the High Seas further debunks the claims of the littoral Defendant States in this case to ownership of the land and sea far beyond the territorial sea. The convention on the Territorial Sea and the Contiguous Zone grants only limited sovereignty such States have over their land territory. That being so, therefore, the claim by the Plaintiff of sovereignty over the territorial sea of Nigeria and the Exclusive Economic Zone does not extend the land territory of Nigeria beyond what is provided for in section 2 and 3 of the Constitution. Nigeria on attainment of independence, ratified these Conventions and pursuant to its legislative powers under section 74 of the 1963 Constitution, the Federal Military Government enacted the Territorial Waters Act (Cap 428) and the Sea Fisheries Act (Cap 404) to give effect to the Convention on the Territorial Sea and the Contiguous Zone.

By the 1958 Convention the breadth of the territorial sea is a maximum of 3 miles. This has now been extended to 12 nautical miles by article 3 of the 1982 United National Convention on the Law of the Sea which superseded the Geneva Conventions of 1958. Article 33 extends the breadth of the contiguous zone from 12 miles to 24 nautical miles.

The 1982 United Nations Convention on the Law of the sea is a comprehensive treaty on the sea. It supersedes the 1958 Conventions. The new Convention covers a number of subjects relating to the Sea which are usually found in a number of separate Conventions and deals with such subjects as the territorial Sea and the Contiguous Zone, Straits used for International Navigation, Archipelagic

States, Exclusive Economic Zone, Continental Shelf, High Seas and the rights of nations thereto (including the right to fish on the high seas), Regime of Islands, Enclosed or Semi-enclosed Seas, Right of access of land-locked States to and from the Sea and freedom of transit, the Area, Protection and Preservation of the Marine Environment, Marine Scientific research, development and Transer of Marine Technology and, finally, Settlement of Disputes. B

The Exclusive Economic Zone is defined in Article 55 of the 1982 Convention as meaning –

*“... an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedom of other States are governed by the relevant provisions of this Convention.”* C

And by Article 57, the Zone “*shall not extend beyond 200 nautical miles from the base lines from which the breadth of the territorial sea is measured.*” The exclusive Economic Zone Act (Cap 116) was enacted in 1978 to give effect to the treaty that preceded the 1982 Convention on the subject and in compliance with the provisions of section 74 of the 1963 Constitution which provided: D E

*“74. Parliament may make laws for Nigeria or any part thereof with respect to matters not included in the Legislative Lists for the purpose of implementing any treaty, convention or agreement between the Federation and any other country or any arrangement with or decision of an international organization of which the Federation is a member.”* F

The proviso is unnecessary for our purpose.

***The sum total of all I have been saying above is that none of the Territorial Waters Act, Sea Fisheries Act and Exclusive Economic Cone Act has extended the land territory of Nigeria beyond its constitutional limit, although the Acts give municipal effect to international treaties entered into by Nigeria by virtue of its membership, as a sovereign State, of the Comity of Nations. These treaties confer sovereignty and other rights on Nigeria over certain areas of the sea (the Atlantic Ocean) adjacent to her coastline.*** As Barwick, CJ put it in *New South Wales & Ors. v. The Commonwealth* (1975-76) 135 CLR 337 at p. 363 – G H

*“The international concession was not that the territory of the nation, in a proprietary or physical sense, was enlarged to include the area of water in the territorial sea or the area of subjacent soil. Indeed, the very description ‘territorial waters’ emphasizes, in my opinion, that they are waters which wash the shores of the territory of the nation state, otherwise regarded as ending at the margin of the land.”*

***To the extent that the Littoral Defendant States seeks, by affidavit evidence, to prove that these areas of the sea belonged in the past to communities indigenous to these States, I hold that such evidence is nebulous. It falls far short of the nature and quality of the evidence required in a case like this where the claim of the indigenous community to ownership of the sea runs against the grain of statutory instruments (Orders in Council) and the common law and international law, too. It is not the case of the Littoral Defendant States that, like the original American States, the Crown made a grant of the off shore to them or their predecessors in title (that is, the Eastern and western Regions of Nigeria or the Colony and Protectorate of Southern Nigeria). The mere fact that oil rigs and/or wells located in the offshore areas. Such naming, as well as provisions in the various Acts for registration, etc. to be in the states adjacent to these areas, is only an internal administrative arrangement made by the plaintiff.***

Before I move on I need to correct a misconception that appears in the arguments of some of the Defendants. It is not correct, in my respectful view, that the Plaintiff is claiming for himself the revenue on natural resources derivable otherwise than from a State. The principle of derivation does not apply to the Government of the Federation. Rather, what the plaintiff appears to be saying is that whatever remains in the Federation Account after the application of the principle of derivation, is for distribution among the beneficiaries listed in subsection (3) of section 162 and in accordance with the formula approved by the National Assembly.

I now turn attention to the purported recognition, by the Plaintiff, of the ownership of the Defendant States to the area of the sea popularly known as the off shore. The said Defendant States rely on the revenue allocation provisions in previous Constitutions and De-

crees, particularly Allocation of Revenue (Federation Account, etc.) (Amendment) Decree 1992, No. 106 of 1992 which (hereinafter is referred to as Decree 106 of 1992) amended The Allocation of Revenue (Federation Account, Etc.) Act, Cap 16 Laws of the Federation of Nigeria 1990 and which expressly provided that –

*“... in the application of this provision, the dichotomy of on-shore and off-shore oil production and mineral oil and non mineral oil revenue is hereby abolished.”* B

All the Littoral Defendant States harped on this provision to assail Plaintiff’s claim which they see a reintroduction of that dichotomy. C

With the introduction of federalism in Nigeria, our constitutions made provisions for revenue allocation among the component units of the Federation. For instance, in the 1960 Constitution that ushered in independence, elaborate provisions were made in sections 130-139 for revenue allocation. Of particular importance to this case is section 134 which reads: D

*“134. (1) There shall be paid by the Federation to each Region a sum equal to fifty per cent of –*

*(a) the proceeds of any royalty received by the Federation in respect of any minerals extracted in that Region; and* E

*(b) any mining rents derived by the Federation during that year from within that Region.*

*(2) the Federation shall credit to the Distributable Pool Account a sum equal to thirty per cent of -*

*(a) the proceeds of any royalty received by the Federation in respect of minerals extracted in any Region; and* F

*(b) any mining rents derived by the Federation from within any Region.*

*(3) For the purpose of this section the proceeds of a royalty shall be the amount remaining from the receipts of that royalty after any refunds or other repayments relating to those receipts have been deducted therefore or allowed for.* G

*(4) Parliament may prescribe the periods in relation to which the proceeds of any royalty or mining rents shall be calculated for the purposes of this section.* H

*(5) In this section ‘minerals’ includes mineral oil*

*(6) For the purposes of this section the continental shelf of a region shall be deemed to be part of that Region.”* (Italics are mine)

Except for the percentage payable, sub section (1) appeared to be on all fours with the proviso to sub-section (2) of section 162 of the 1999 Constitution for both are based on the principle of derivation. There is, however, no provision in section 162 or anywhere else in the 1999 Constitution similar to sub-section (6) which made it possible for revenue derived from the continental shelf contiguous to a Region to be payable to that Region. But the sub-section did not make the continental shelf part of the Region but only deemed it to be part of the Region solely for the purpose of the section. Had there not been the insertion of sub-section (6), revenue derived from mining operations in the continental shelf would not have been payable at that time to the Region contiguous to the shelf. It is the absence in the 1999 Constitution of a provision similar to sub-section (6) of section 134 of the 1960 Constitution that has given rise to the dispute resulting in this case. I do not, however, see section 134(6) as estopping the Plaintiff from contending that the continental shelf is not part of the territory of as estopping the Plaintiff from contending that the continental shelf is not part of the territory of a State contiguous to it.

There was in the 1963 Constitution a provision, verbissima verbis with section 134; it was section 140. This section also contained sub-section (6) which allowed for the revenue derived from mining operations in the continental shelf to be paid to the Region contiguous to it. Thus there was no change in the shelf to be paid to the Region contiguous to it. Thus there was no change in the system of revenue allocation in the country between independence and the emergence of military rule in 1966.

Perhaps I may at this stage chip in a word or two on the continental shelf. Part VI of the 1982 U.N. Convention on the Law of the Sea deals with the Continental Shelf. Article 76 of the Convention defines a continental shelf thus:

*“1. The continental shelf of a coastal States comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the base lines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.”*

To fully understand the rights a coastal State has over its continental shelf and the limits of those rights, it is necessary to set out Articles 77 and 78 of the Convention which read:

*“Article 77*

*Rights of the coastal state over the continental shelf*

1. *The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.* B

2. *The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.* C

3. *The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.* D

4. *The natural resources referred to in this part consist of the mineral and other non-living resources of the sea-bed and subsoil together with living organism belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil.* E

*Article 78*

*Legal status of the super adjacent waters and air space and the rights and freedoms of other States*

1. *The rights of the coastal State over the continental shelf do not affect the legal status of the super adjacent waters or of the air space above those waters.* F

2. *The exercise of the rights of the coastal State over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedom of other States as provided for in this Convention.”* (Italics are mine) G

It can be seen from above that though a coastal State exercise certain sovereign rights over its continental shelf that does not make the shelf part of her land territory over which she has absolute and exclusive control; her sovereign right over the continental shelf is of a limited kind only. H

January 15, 1966 saw the end of constitutional government and the emergence of military rule. The constitutional provisions re-

lating to revenue allocation as respects minerals moved from 1971 forward and backward through some Decrees until we had the 1979 Constitution, section 149 of which made no provision for allocation of revenue based on derivation as in the Constitutions before it. The National Assembly, pursuant to section 149(2) of the said 1979 Constitution, enacted the Allocation of Revenue (Federation Account, etc) Act (hereinafter is referred to as Cap. 16). It is this Act that the Military Government amended in 1992 by Decree 106 of 1992. By the amendment, one per cent of the revenue accruing to the Federation Account derived from minerals was to be shared among the mineral producing States in proportion to the amount of mineral produced from each State, whether on-shore or off-shore. It is Cap. 16 (as amended by Decree 106 of 1992) that provided the formula in use for revenue allocation before the coming into force of the 1999 Constitution in May 1999. There is clear difference in the wording of section 149(2) of the 1979 Constitution and section 162(2) of the 1999 Constitution. While section 149(2) of 1979 Constitution made no provision for derivation principle in respect of revenue allocation as it related to revenue accruing from mineral operation, section 162(2) of the 1999 Constitution makes provisions for sharing of revenue accruing from natural resources on derivation basis. For ease of reference I set here below the said provisions:

*"149(2) Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the local Government councils in state on such terms and in such manner as may be prescribed by the National Assembly.*

*"162(2) The President, upon the receipt of advice from the Revenue Mobilization Allocation and Fiscal Commission, shall, table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density.*

*Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen percent of the revenue accruing to the Federation Account directly from Natural resources."*

Another provision which I need set out here is section 4A of



Cap 16 (as amended by Decree No. 106 of 1992). It reads:

*“4A(1) An amount equivalent to 1 per cent of the Federation Account shall be allocated to the Federal Capital Territory.*

*(2) An amount equivalent to 3 per cent of the Federation Account derived from mineral revenue shall be paid into a fund to be Administered by tile Oil Mineral Producing Areas Development Commission established by the Oil Mineral Producing Areas Development Commission Decree 1992 for the development of the mineral producing areas, in accordance with such directives as may be issued in that behalf, from time to time by the National Assembly, and the fund shall be distributed among the areas on the basis of need, subject to section 2 of the Oil Mineral Producing Areas Development Commission Decree.*

*(3) For the purposes of subsection (2) of this section and for the avoidance of any doubt, the distinction hitherto made between on-shore and off-shore oil mineral revenue for the purpose of revenue sharing and the administration of the Fund for the development of the oil mineral producing areas, is hereby abolished.*

*(4) An amount equivalent to 2 per cent of the Federation Account shall be paid into a fund to be administered by an Agency to set up for that purpose for the amelioration of general ecological problems in any part of Nigeria, in accordance with directives as may be issued from time to time by the National Assembly.*

*(5) An amount equivalent to 0.5 per cent of the Federation Account shall be allocated and paid into a Fund to be designated “Stabilization Fund”, which shall be administered by the Minister For Finance; the residue arising out of using mineral revenue, instead of the federation Account as the base for allocation to the Fund for the development of the mineral producing areas shall be added to this Fund.*

*(6) An amount equivalent to 1 percent of the Federation Account derived from mineral revenue shall be shared among the mineral producing States based on the amount of mineral produced from each state and in the application of this provision, the dichotomy of on-shore and off-shore oil production and mineral oil and non mineral oil revenue is hereby abolished.*

*(7) For the purpose of this Decree, and for the avoidance of any doubt, where any State of the Federation suffers absolute de-*

cline in its revenue arising from factors outside its control, as a result of the implementation of this Decree, the Stabilization Fund shall be used to initially augment the allocation to that State, in accordance with acceptable threshold, to be worked out by the National Revenue Mobilization Allocation, and Fiscal Commission at which re-  
 B course can be had to the Fund and for how long.”

The National Assembly has not enacted any law relating to revenue allocation as it is empowered to do by section 162(2) of the Constitution,. In order not to create a vacuum, the Constitution in  
 C section 313 provides:

“313 Pending any Act of the National Assembly for the provision of a system of revenue allocation between the Federation and the States, among local government councils in the States, the system of revenue allocation in existence for the financial year beginning from 1<sup>st</sup> January 1988 shall, subject to the provisions of this  
 D Constitution and from the date when this section comes into force, continue to apply:

The proviso to the section is unnecessary for our purpose; it is, therefore, omitted here. By this provision, Cap 16 (as amended  
 E by Decree No. 106 of 1992) is to continue to be used in so far as it is not inconsistent with the provisions of the Constitution.

Chief Williams has argued thus:

“In the result, until the authorities responsible are able to  
 F produce the Formula envisaged under Section 162 of the 1999 Constitution the provisions enacted in the Allocation of Revenue Federation Account etc) Act, Cap. 16 will continue to apply. It is to be observed that this will be so even where the provisions of Cap.16 are inconsistent with the provisions of Section 162. In short, Cap. 16  
 G does not operate as an ‘existing law’ under the provisions of Section 315 but rather by force of the transitional provisions of Section 313 cited above.

It only remains to be noted in this connection that the provision abolishing ‘on shore and offshore oil production’ dichotomy  
 H enacted in Section 4A(6) of Cap.16 as amended by Decree 106 of 1992 is, as explained herein, in force not as an existing but as a temporary enactment pending the coming into force of the Revenue Allocation Formula under Section 162.”

**With profound respect to learned Senior Advocate, I**

**cannot agree that Cap.16 does not operate as existing law or that it applies as it is notwithstanding any inconsistency between it and the Constitution. The correct position, in my respectful view, is that Cap. 16 (as amended by Decree 106 of 1992) provides the formula to be used for the purpose of revenue allocation pending the time the National Assembly comes out with a new formula as directed by the Constitution. Cap 16 is, however, only applicable in so far as it is not inconsistent with the provisions of the 1999 Constitution. And where there is an inconsistency, the Act gives way. Cap 16 is, of course, an existing law as it answers neatly to the definition of that expression in section 315(4)(b) which provides:**

**“(4) In this section, the following expressions have the meanings assigned to them respectively –**

**(b) ‘existing law’ means any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force or which having been passed or made before that date comes into force after that date”**

Given the zig-zag history of revenue allocation vis-à-vis the derivation principle since, at least, 1960 to date, it cannot be said that the Plaintiff at any time admitted that the area of the sea beyond the low-water mark belonged to the coastal Regions or States contiguous to it.

**With this conclusion, I hold and determine, that the seaward boundary of a littoral State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to section 162(2) of the Constitution of the Federal Republic of Nigeria 1999 is the low-water mark of the land surface thereof or (if the case so requires as in the Cross River State with an archipelago of islands) the seaward limits of inland waters within the State. And this shall be my judgment in respect of plaintiff’s case.**

#### THE COUNTER-CLAIMS

Having resolved the plaintiff’s claim I now turn to a consideration of the counter-claims of the 3<sup>rd</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 15<sup>th</sup>,

17<sup>th</sup>, 24<sup>th</sup>, 28<sup>th</sup>, 32<sup>nd</sup> and 33<sup>rd</sup> Defendants States. The 20<sup>th</sup> and 27<sup>th</sup> Defendants who also counter-claimed had, in the course of the proceedings, withdrawn their counterclaims.

The counterclaims of the 20<sup>th</sup> and 27<sup>th</sup> Defendants, having been withdrawn, are hereby struck out.

B The 15<sup>th</sup> Defendant in his statement of defence claims:

*“Whereupon the 15<sup>th</sup> defendant prays this honourable Court to determine that by the provision of section 162 (2) of the constitution of the federal Republic of Nigeria, all the 36 States in the country are entitled to 13% of revenue accruing directly to the Federation’s (sic) account from any natural resources.”*

The 17<sup>th</sup> Defendant in his own statement of defence, in paragraph 10 thereof claims:

D “10. WHEREOF the 17<sup>th</sup> defendant claims determination of this Honourable Court that:-

*“(a) The natural resources derived from any part of Nigeria are deemed to be derived from Nigeria and not from a particular area where the resources may be physically located.*

E *(b) The Federal Republic of Nigeria is a State and not a section thereof when interpreting the economic agenda prescribed by the constitution.*

F *(c) That by section 162(2), all States represented by the defendants in this suit are equally entitled to at least 13% of the revenue accruing to the Federation Account directly from any natural resources.*

*(d) That the rule of not less than thirteen percent enshrined in the Constitution under Section 162(2) shall be applied based on principle of equality and justice to embrace all the States forming the Federation.*

G Both Defendants each failed to file a written brief and, therefore, advanced no arguments in favour of their claims. In the circumstance I strike out the counter-claims of each of the two Defendants. In any event, both counterclaims are unsustainable having regard to the interpretation I have already placed on section 162(2) of the H Constitution.

I shall deal with the remaining counter-claims separately, but before doing so, I like to discuss generally some issues common to them all. Chief Williams, SAN for the Plaintiff has urged us to strike out all the counter-claims in that necessary parties are not joined in

each counter-claim. Learned Senior Advocate refers us to Order 5 rule 2 of the Federal High Court (Civil Procedure) Rules, 2000 which provides:

*“2. (1) Subject of sub-rule (2) of this rule, a defendant in any action who alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in the action in respect of any matter (whenever and however arising) may, instead of bringing a separation action, make a counter-claim in respect of claim to his defence.*

*(2) Sub-rule 1 of this rule shall apply in relations to a counter-claim as if the counter-claim were a separate action and as if the person making the counter-claim were a plaintiff and the person against whom it is made, a defendant.*

*(3) A counter-claim may be proceeded with notwithstanding that judgment is given for the plaintiff in his action, or that the action is stayed, discontinued or dismissed.”*

and submits that only a counter-claiming defendant and the Plaintiff are parties to the counter-claim. He argues further in his brief, thus:

*“No one else is a party to the counter-claim even in that person is a defendant to the substantive action. The rules of the Federal High Court make no provision for joining strangers to the action or existing co-defendants as parties to the counter-claim. It will be submitted hereafter that this being so, a counter-claiming Defendant can only counter-claim in respect of a relief which affects him alone. He cannot counter-claim where the relief claimed is one which so affected or is so likely to affect the interest of other parties, that the court ought not to entertain the claim for that relief behind the back of other persons who are not joined as parties to the action.*

*It is to be observed that sub-rule (2) of Order 5 rule 3 stipulates as follows:*

*‘(2) If it appears on the application of any party against whom a counter-claim is made, that the subject matter of the counter-claim ought for any reason to be disposed of by a separate action, the court may order it to be tried separately or make such other order as may be expedient.*

*The plaintiff respectfully submits that where this court is satisfied that any counter-claim is not duly constituted for the purpose of trying the relief claimed, it ought to strike it out or direct that the*

*counter-claim be tried separately so that all proper parties can be joined for the purpose of trial. The Plaintiff however submits that in the circumstances of this case, the proper order to make is to strike out the counter-claim concerned.”*

B He concludes by urging the court to strike out all the claims contained in the reliefs claimed by the counter-claiming defendants on the ground that all parties interested in or likely be affected by the said counter-claims have not been joined.

C Professor Osinbajo, learned Attorney-General of Lagos State, in his oral submissions urges us to overrule Chief Williams. The learned Attorney-General, relying on *Green v. Green* (1987) 18 NSCC (Pt. 2) p.1115 at 1122, submits that all necessary parties to the counter-claims are fully aware of them and choose to stand by; they will be bound by the result of the counter-claim.

D Order 12 rule 5(1) of the federal High Court (Civil Procedure) Rules 2000 (applicable to these proceedings) provides for joinder of interested parties. It reads:

E “5.(1) *If it appears to the court, at or before the hearing of a suit, that all the persons who may be entitled to or who claim some share or interest in the subject matter of the suit, or who may be likely to be affected by the result, have not been made parties, the Court may adjourn the hearing of the suit to a future day, to be fixed by the Court, and direct that such persons shall be made either plaintiffs or defendants in the suit, as the case may be.*”

F True enough, only the counter-claiming Defendant and the plaintiff are, in the strict sense, parties to each counter-claim see order 5 rule 2(2). ***But this case is one with a difference. All parties that can be said to be necessary parties to each counter-claim are parties already before the Court in respect of plaintiff’s claim. They were all served with the pleadings of the counter-claiming Defendants and cannot claim not to be aware of what is going on. I agree with Professor Osinbajo that the non-joinder of all the Defendants other than the counter-claiming Defendant in each counter-claim, will not, in the circumstances of this case, defeat each counter-claim. In *Green v Green* (supra), this Court held that the only reason which makes it necessary to make a person, a party to an action is that he should be bound by the result of the action and the***

**question to be settled. A person whose interest is involved or is in issue in an action and who knowingly chose to stand-by and let other fight his battle for him is equally bound by the result in the same way as if he were a party.** Oputa JSC who delivered the lead judgement in the case, observed at page 1122:

“Under our law one reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action. See *Amon v. Raphael Tuck & Sons Ltd. (1956) 1 Q.B.D. 357* at p. 380 per Devlin, J. Under our law also a person whose interest is involved, or is in issue in an action and who knowingly chose to stand by and let others fight his battle for him is equally bound by the result in the same ways as if he were a party: see *In Lart 1896 2 Ch. D. 788*; *Leeds v Amherst 16 L.J. Ch. 5*; *Esiaka v Obiasogwu 14 W.A.C.A. 178*; *Abuakwa v Adanse (1957) 3 All E.R. 559*. Now if Solomon M.D. Green knew of the plaintiff’s actions, as he was in this case bound to know, and yet was content to stand-by, he is bound by the result.”

And at page 1123, the learned Justice of the Supreme Court added:

“A distinction must be drawn between the desirability of making a person a party and the necessity of making him one. In *Settlement Corporation supra* it was held that joining a person as a part to proceedings did not arise merely because the relief sought in the cause or matter might affect someone who was not party in respect of his rights at common law or in equity. In *Peenok v. Hotel Presidential (1983) 4 N.C.L.R. 122* this Court per Idigbe, JSC and Obaseki, JSC drew the necessary distinction between what it is desirable to do and what it is necessary to do and came to the conclusion that although it was desirable to join the Rivers State Government whose Edicts Nos. 15 and 17 were under attack, it was not necessary to join them before the court could decide on the claims of the parties before it.”

In the case on hand, no doubt it is desirable to join all the States in the Federation as parties to each counter-claim. I do not however, think is necessary to join them for the Court can decided the issues raised in the counter-claims without any of the other States being joined. As they all are aware of the counter claim and chose to stand by, they will be bound by the result of each counter-claim.

In view of all that I have no hesitation in overruling the preliminary objection of Chief Williams to the counter-claims.

Chief Williams has also raised a number of legal issues which he invites the Court to decide first before going into the reliefs claimed in the count-claims. He relies an Order 25 rule 2(1) of the Federal  
B High Court (Civil procedure) Rules, 2000 in support. The rule reads:

“2.(1) A party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the Judge who tries the cause at or after the trial.

C (2) A point of law so raised may, by consent of the parties, or by order of the Court or a Judge in Chambers on the application of either party, but set down for hearing and disposed of at any time before the trial.

Rule 3 is also relevant and reads:

D “3. *If, in the opinion of the Court of a Judge in Chambers the decision of the point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counter-claim, or reply therein, the court or judge in Chambers may thereupon dismiss the action or make such other order therein as*  
E *may be just.*”

The legal issues are:

“(i) *What is the procedure for making provision for the formula for distributing the amount standing to the credit of the Federation Account pursuant to section 162 of the Constitution.*  
F

(ii) *As from what moment in time do the State Governments become entitled to receive their share of the amount standing to the credit of the Federal Account.*

(iii) *Pending the arrival of the moment mentioned in Question (ii) what provision should be applied to the distribution of the amount mentioned in Question (ii)*  
G

(iv) *Whether there is any legal basis for the Supreme Court to make an order against the plaintiff for an account of moneys in the Federal Account.*

H (v) *Whether it is competent for any Defendant to counter-claim for a relief which raises the same or substantially the same question or questions which arise in the Plaintiff’s action.*

(vi) *Whether it is lawful for the Federal government to appropriate 1% of the amount in the Federation Account to the Federal*



*Capital Territory.*

(vii) *Whether it is lawful to deduct moneys from the Federation Account to service or pay debts owed by the Federal Government.*

(viii) *Whether it is lawful for moneys intended for Local governments or for purposes of primary education to be paid to any person or authority other than the State Government, and*

(ix) *Whether this court has jurisdiction to grant a declaration, which will serve no useful purpose.”*

It is the submission of Chief Williams that subject to existing law in that behalf no formula is in force until an enactment of the National Assembly in that behalf. ***I think the simple answer to Issues (1) (and this is the case of the counter-claiming Defendants) is that Cap 16 as amended by Decree 106 of 1992 provides, subject to the provisions of the Constitution, the formula applicable in the interim. This is what section 313 of the Constitution enjoins.*** I have earlier, in this judgment rejected the further submissions of Chief Williams that Cap 16 (as amended) is to be applied as it is and that it is not an existing law. Cap 16 is an existing law within the meaning of the expression in section 315(4)(b) of the Constitution and it applies only in so far as it is not inconsistent with the provisions of the Constitution.

On issues (ii) and (iii), Chief Williams submits that “*until the enactment of the relevant Act of the National Assembly no formula enacted pursuant to section 162 of the 1999 Constitution is in force for distributing moneys into the Federation Account*”. Accordingly, learned counsel submits, all counter-claims based upon the assumption that such a formula exists are misconceived and untenable.

Perhaps this is the proper stage to examine Cap. 16. Section 1 (as amended) reads:

“1. *The amount standing to the credit of the Federation Account (as specified in subsection (1) of section 149 of Constitution of the Federal Republic of Nigeria) shall be distributed by the Federal government among the various governments in Nigeria and the Funds concerned on the following basis, that is to say –*

(a) *the Federal Government ... 48.5 per cent*

(b) *the State government ... 24. per cent*

(c) *Local government ... 20 per cent*

(d) *Special Funds ... .. 7.5 per cent*

(i) *Federal Capital Territory... 1 per cent of the Federation Account;*

(ii) *Development of the Mineral Producing areas... 3% of the revenue accruing to the Federation derived from minerals;*

B (iii) *General ecological problems... 2 per cent of the Federation account.*

(iv) *Derivation... 1 per cent of the revenue accruing to the Federation Account derived from minerals.*

C (v) *Stabilization Account... 0.5 per cent of the Federation Account, plus the revenue arising out of using mineral revenue, instead of the Federal Account as the base for allocation to the fund for the development of the mineral producing areas and derivation.”*

Now where in section 162 of the Constitution is provision made D for allocation of the fund in the Federal Account to all, or any, of the items under paragraph (d) above, except (d) (iv) on which I will say more presently. Sub-section (3) of section 162 provides for the beneficiaries among whom the Federation Account is to be distributed. The sub-section reads:

E (3) Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the local Government councils in each State, on such terms and in such manner as may be prescribed by the National Assembly.

F ***The Federal Capital Territory is not a State nor a local government in a State. It, therefore, cannot qualify for distribution of the Federation Account. Nor are the Area Councils in the Federal Capital Territory as they are not local governments “in a State” as provided in sub-section (3) above.***

G ***The result is that paragraph (d) of section 1 of Cap. 16 (as amended) is inconsistent with the provisions of the constitution and to that extent, section 1 is void.*** See also: A-G Bendel State v. A-G Federation & Ors. (1983) ANLR 208.

H ***As regard paragraph (d) (iv) of section 1 of Cap 16 (as amended) in so far as it provides for one per centum of the revenue accruing to the Federation Account derived from minerals, it is equally inconsistent with section 162(2) of the Constitution. The proviso to sub section (2) of section 162, for ease of reference, reads:***

***“Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen percent of the revenue accruing to the Federation Account directly from Natural resources.”***

***The Constitution provides for “not less than 13 per cent of the revenue accruing to the Federation Account directly from any natural resources” to be distributed on the principle of derivation. Cap. 16 says of “1 per cent of the revenue accruing to the Federation Account derived from minerals” is to be so distributed. These are undoubtedly inconsistent provisions. And by the provisions of section 1(3), 313 and 315(1), of the Constitution the provisions of section 1 of Cap. 16 that are inconsistent with the constitution must give way to the Constitution.***

Now, sub-section (2) of section 315 of the constitution provides for modification of an existing law to bring it into conformity with the Constitution. The subsection reads:

(2) the appropriate authority may at any time by order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution.

The word “*modification*” is defined in sub-section (4) of section 315 as including –

***“addition, alteration, omission or appeal.”***

See Att.-Gen. Ogun State v. Att.-Gen of the Federation (1982) 1-2 SC 13. And the appropriate authority in respect of Cap 16, a law of the Federation, is the president. Thus, the president has constitutional power, by order, to modify Cap 16 either by way of addition, alteration, omission or appeal, to bring it into conformity with the Constitution. This he has not done. At least, our attention has not been drawn to any order made by the President modifying Cap 16 to bring it into conformity with the 1999 Constitution.

It is generally agreed by all the parties that the figure 13 per cent is now being used in working out the principle of derivation in respect of crude oil derived from the littoral States. ***This figure, as I shall show presently, is used by the counter claiming Defendants in computing their reliefs. We have not been told the legal basis for this figure. There is no order by the President***

**modifying Cap 16 that lays down this figure. Nor is there an enactment of the National Assembly pursuant to section 162(2) of the Constitution specifying that figure. Our attention was drawn to an item in an Appropriation Act where the figure 13% was used to compute an expenditure. That of course**  
 B **is not the enactment envisaged in section 162(2). That figure, therefore, appears to be a rule of the thumb or a gentleman's agreement among the parties. In the absence of a legal basis for the figure 13 per cent, I cannot see how this Court can**  
 C **grant a relief, however meritorious, based on such a rule of the thumb.**

**The counter-claiming Defendants have argued that the figure 13 per cent is the barest minimum allowed by the Constitution and have urged us to use that figure in computing**  
 D **their reliefs. With profound respect to the learned Attorney-General and learned counsel who submitted to this effect, I regret I cannot accede to their request. By the use of the expression "not less than 13 per cent", a discretion is given to the law maker as to the figure to be used. That discretion is**  
 E **not for the Court to exercise but for the President, as prescribed authority, when making a modifying order or the National Assembly when enacting a law pursuant to section 162(2).** The power of the Court as regards and existing law is limited to what is provided in sub-section (3) of section 315 of the Constitution which reads:  
 F

**"(3) Nothing in this Constitution shall be construed as affecting the power of a court of law or any tribunal established by law to declare invalid any provisions of an existing law on the ground of**  
 G **inconsistency with the provision of any other law, that is to say -**

- (a) any other existing law;**
- (b) a Law of a House of Assembly;**
- (c) an Act of the National Assembly; or**
- (d) any provisions of this Constitution."**

H Another area of inconsistency between section 1(d)(iv) of Cap. 16 and section 162(2) of the Constitution relates to the revenue that is subject to the derivative principle. While Cap 16 talks of revenue accruing from minerals, section 162(2) speaks of revenue accruing from natural resources. What is the meaning of natural re-

sources? The expression is not defined in the constitution. It is defined in Black's Law Dictionary 6<sup>th</sup> edition as follows:

*"Any material in its native state which when extracted has economic value. Timberland, oil and gas wells, ore deposits, and other products of nature that have economic value. The cost of natural resources is subject to depletion. Often called 'wasting assets.'* B

*The term includes not only timber, gas, oil, coals, minerals, lakes and submerged lands, but also, features which supply a human need and contribute to the health, welfare, and benefit of a community, and are essential to the well-being thereof and proper enjoyment of property devoted to park and recreational purposes."* C

Oil, natural gas and coal come within this definition but not in my respectful view, ports, wharves, mangos, livestock, hide and skin, horns, grounds, beans, grains, pepper, cotton and gum Arabic. Mangoes, livestock etc are not natural resources but agricultural products, a term described in Black's Law Dictionary as meaning: D

*"Things which have a situs of their production upon the farm and which are brought into condition for uses of society by labour of those engaged in agricultural pursuits as contra-distinquished from manufacturing or other industrial pursuits. That which is the direct result of husbandry and the cultivation of the soil. The product in its natural unmanufactured conditions."* E

I now turn to issue (iv) in the issues Chief Williams has invited this Court to determine in relation to the counter-claims. It is Chief Williams' contentions that – F

1. There is no basis for the counter-claims for the Plaintiff to account for moneys which accrue to the Federation account because each State is represented on the Federation Account Allocation Committee by her Commissioner for Finance. The Committee was established pursuant to section 5(1) of Cap. 16 and its functions are (a) to ensure that allocations made to the states from the Federation Account are promptly and fully paid into the treasury of each State and (b) to report annually to the National Assembly in respect of (a); and G

2. Each State is represented on the Revenue Mobilization Allocation and Fiscal Commission and none of the State counter-claiming for account has alleged that the Commission has on request, failed or refused or neglected to supply her with a statement of account on request. H

I don't think Chief Williams is on a firm ground as regards (1) above. It is not the function of the Federation Account Allocation Committee to collect revenue for the Federation Account. That is the duty of the Government of the Federation, that is, the Plaintiff. For sub-section (1) of section 162 provides:

B “(1) *The Federation shall maintain a special account to be called “the Federation Account” into which shall be paid all revenues collected by the Government of the Federation, except the proceeds from the personal income Tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja.*”

C ***By this provision, the Government of the Federation becomes a trustee. It is the duty of the trustee to render account to the beneficiaries of the trust if, and when, called upon to do so. See: Att. Gen. Bendel State v. Att. Gen of the Federation & Ors (1983) ANLR 208. To be entitled to an order for an account, however, the Plaintiff must have first been requested to do so by the beneficiary and has refused, failed or neglected to do so.***

E On (v) Chief Williams submits that some of the counterclaims are unnecessary in as much as they raise issues the success or failure of which depends on whether the Plaintiff succeeds or fails. I agree with him and this will be taken into consideration when dealing with the counter-claims.

F Issue (vi) has already been dealt with. And in view of the conclusion I reached on the validity of section 1 (d) of Cap 16 (as amended), I overrule the submissions of Chief Williams on this issue.

G ***By virtue of section 313, the provisions of sections 1(d)(i) and 4A(1) allocating 1 (one) per cent of the Federation Account to the Federal capital Territory are inconsistent with section 162(3) of the Constitution and are, therefore, void.***

H I now turn to Issue (vii) which deals with the deduction from the Federation Account for settlement of Plaintiff's external debts. Some of the counterclaiming Defendants question the validity of such deductions Chief Williams has argued in favour of the validity of such deductions and refers, in support, to section 3 and 4 of the general loan and stock Act, Cap. 161 and section 314 of the Constitution.

How far is he right?

Sections 3 and 4 of Cap. 161 provide:

*“3. Whenever by any Act authority shall have been given, or shall hereafter be given, to raise any sum of money for the purpose mentioned in such Act, the President may, from time to time, as he or they may deem expedient, raise such sum either by debentures or by stock, or partly by debentures and partly by stock.”* B

*4. The principal moneys and interest represented by the debentures or stock issued under the provisions of this Act are hereby charged upon and shall be payable out of the general revenues and assets of the Government.”* C

And section 314 of the Constitution provides:

*“314. Any debt of the Federation or of a State which immediately before the date when this section comes into force was charged on the revenue and assets of the Federation or on the revenue and assets of a State shall, as from the date when this section comes into force, continue to be so charged.” (Italics are mine)* D

With respect to Chief Williams, his submission on this issue does not find favour with me. **Section 4 of Cap 161 is very clear; such external debts are charged upon and payable out of the general revenue and assets of the Government of the Federation that incurred the indebtedness and not the Federation Account. And section 314 of the Constitution only reaffirms that position. It is for each Government, Federal or State, to pay its debt. Neither can constitutional charge its debts on the Federation Account.** E F

On Issue (viii), Chief Williams has argued that payment of moneys representing the share of Local Governments in the Federal Account has to be made to those Governments in accordance with Cap. 16. He also argues that primary education is a local government function under the Constitution. G

I think, with respect, that the second limb of Chief Williams' submissions is misconceived. Second 7(5) of the Constitution provides: H

*“The functions to be conferred by law upon local government councils shall include those set out in the fourth Schedule to this Constitution.”*

Paragraph 2 of the Fourth Schedule reads in part:

“2. The function of a local government council shall include participation of each council in the Government of a state as respects the following matters –

(a) the provision and maintenance of primary, adult and vocational education;” (italics is mine for emphasis)

B ***In so far as primary education is concerned, a local government council only participates with the State Government in its provision and maintenance. The function obviously remains with the State Government.***

C I think the issue raised here has been disposed of by this Court in A-G Bendel State v A-G Federation & Ors (supra) where this Court held, per Uwais JSC as he then was, at p. 220:

D It seems to me therefore that once the Federation Account is divided amongst the three tiers of government, the State Govern-  
 D ments collectively become the absolute owners of the share that is allocated to them (i.e. 35 per cent). So that it would normally be their prerogative to exercise full control over the share. Consequently, it will not be appropriate for the Federal Government to administer the share without the authorization of State Governments. This ap-  
 E pears to be logical and in keeping with the fundamental principle of federalism on the autonomy of the constituent States.

I need not say more on this issue at this stage until I come to the counter-claim where it is specifically raised.

F ***The last issue – issue (ix) – raises the question of the jurisdiction of this Court to grant a declaratory relief. I think Chief Williams is right in his submission that runs thus:***

G ***“It is well settled that a court does not act in vain. Accordingly it will not make any declaration which does not settle or determine a dispute or controversy between the parties. Section 232(1) of the Constitution limits the original jurisdiction of this court to where the dispute involves ‘any question (whether of law or fact) on which the existence or extent of a legal right depends.’ Consequently this court has no unlimited***  
 H ***jurisdiction to grant declaratory orders in cases where the existence or extent of a legal right does not depend in such declaration or where the declaration will serve no useful purpose.”***

I shall bear this in mind when I come to consider the reliefs



for declarations raised in the counterclaims.

**COUNTERCLAIM OF 3RD DEFENDANT:**

The 3<sup>rd</sup> defendant counter-claims for the following reliefs:

*(1) A declaration that the 3<sup>rd</sup> defendant is by virtue of section 162 (2) of the Constitution of the Federal Republic of Nigeria 1999 entitled to receive a minimum of 13% of the entirety of the natural resources derived from any dichotomy as to on-shore and off-shore natural resources.*

*(2) An order compelling the plaintiff to pay the said balance of 40% of 13% due to the 3<sup>rd</sup> defendant from the 29<sup>th</sup> day of May, 1999 till date in respect of the natural resources derived from Akwa Ibom State.*

*(3) Payment of the sum of N15,006,418,955.28 being the sum due from the plaintiff to the 3<sup>rd</sup> defendant calculated as 13% of the revenue from natural resources derived from Akwa Ibom State for the Period June, 1999 to February, 2001."*

**Claim 1:**

In view of all I have said earlier in this judgement, and particularly the conclusion I reached on Plaintiffs claim, the declaration now sought cannot be granted. It is, therefore, refused and the claim is dismissed.

**Claim 2:**

This claim is based on the use of the figure 13% in calculating the amount due to the counter-claimant on the principle of derivation in the proviso to sub-section (2) of section 162 of the Constitution. There is no legal basis for the use of this figure. In the absence of any legislation by the National Assembly pursuant to section 162(2) of the Constitution which fixes a figure that is not less than 13 per cent (but which may be more than that figure) in calculating the amount due to a State affected by the principle of derivation in the proviso to the sub-section, it is for the President as the prescribed of derivation in the proviso to the sub-section, it is for the President as the prescribed authority, to modify Cap. 16 (as amended) to bring it in conformity with the provisions of the Constitution, particularly section 162 thereof. Unless and until either is down the 3<sup>rd</sup> Defendant cannot, as of legal right, lay claim to 13 per cent as a basis of working out the amount due it under the proviso to section 162(2). It is not in dispute that natural resources are located on his territory and that

revenue accrued, and still accrues, to the Federation Account from such resources. While it is not disputed that the 3<sup>rd</sup> Defendant is entitled to some share of that revenue, it is the actual entitlement that is in dispute. And this can only be resolved by knowing the actual figure to be used in calculating the entitlement.

B Claim 2, therefore, is refused.

Claims 3:

For the reason given above for refusing claim 2, claim 3 must equally be refused and it is hereby refused.

C Although claims 2 and 3 fail, in view of the fact that it is not disputed that 3<sup>rd</sup> Defendant is entitled to something which is yet to be legally determined, both claims are struck out and not dismissed.

#### COUNTERCLAIM OF 6TH DEFENDANT

The 6<sup>th</sup> Defendant counterclaims for the following reliefs:

D *“(a) Determination to the effect that, the Constitution of the Federal Republic of Nigeria 1999 having come into force on 29/5/99, the principle of derivation under the proviso to Section 162(2) of the Constitution came into operation on the same day – that is, to say, 29/5/99 and plaintiff is obliged to comply therewith from that*  
E *day.*

*“(b) An order that Plaintiff do pay over to Bayelsa State, the share due to the State under the proviso to section 162 92) of the Constitution as from 29/5/99 (which) has been wrongly withheld.*

F *(c) An order for Account by the plaintiff to pay the 6<sup>th</sup> Defendant all monies so far accrued from Bayelsa State to the Federation Account in respect of off-shore revenue.*

*(d) An order that the Plaintiff should pay the 6<sup>th</sup> Defendant 13% of all revenue so far accrued to the Federation Account from*  
G *Bayelsa State in respect of off-shore mineral oils in the State.*

*(e) An order that Plaintiff should pay to the 6<sup>th</sup> Defendant 13% of all the revenue that has accrued from natural Gas in Bayelsa State to the Federation Account.”*

H ***I have already concluded in this judgement that the southern boundary of each littoral State in the Federation is the low-water mark. That being so, the 6<sup>th</sup> Defendant, like all other littoral Defendants, is not entitled, under proviso to section 162(2) of the Constitution that provides for the principle of derivation, to a share in the revenue accruing to the Federa-***

**tion Account from natural resources derivable from the Continental Shelf of Nigeria.**

**Consequently claims (c) and (d) fail and are dismissed.**

Claims (a) and (b)

The 6<sup>th</sup> Defendant pleaded in paragraphs 3 and 5 of his counterclaim as hereunder: B

*“3. The Plaintiff and the President have dispute the commencement date of the principle of derivation established under the provision of Section 162(2) of the Constitution and have for that reason withheld payment due to Bayelsa State on the principle of derivation from 25/9/99 and have refused to make the said payment with effect from 29/5/99.”* C

*5. The 6<sup>th</sup> Defendant has also heavy Natural Gas deposits in her territory from which revenue has been accruing to the Federation Account, but the Plaintiff has not paid any thing to the 6<sup>th</sup> Defendant in that regard.”* D

The Plaintiff, in his defence to the counter-claim of this Defendant pleaded –

*“7 (ii) The counterclaims of the 6<sup>th</sup> Defendant (Bayelsa) ought to be dismissed because: -* E

*(a) the dispute between the Federal Government and the littoral State can only validly be determined by the Supreme Court;*

*(b) pending such determination, the persons or authorities responsible for making provision for the formula for the sharing of moneys accruing to the Federation Account cannot appropriately make any such provision, and in the meantime the persons and authorities aforementioned are bound to observe and apply the provisions of section 315 of the Constitution.* F

*(c) by the provisions of section 162 of the 1999 Constitution it is only the National Assembly (and it alone) that is authorized to prescribe the distribution of ‘any amount standing to the credit of the States in the Federal Account’:* G

*(d) accordingly, in the absence of any provision for the formula for the sharing of moneys accruing to the Federation Account made pursuant to Section 162 of the Constitution, the Supreme Court has no jurisdiction or power to make any order or give any direction with respect to any payment to this Defendant on account of what it claims it is entitled to receive from the Federation Account in accor-* H

*dance with the said section 162 of the constitution;”*

There is no specific denial by the Plaintiff of paragraphs 3 and 5 of the 6<sup>th</sup> Defendant’s counterclaim; the averments in these paragraphs must, therefore, be taken as admitted.

**I do not think it is seriously contended by the Plaintiff that section 162(2) did not come into effect on 29/5/99 when the Constitution itself came into effect. That being so, the determination sought in claim (a) is granted.**

**It is with claim (b) that the 6<sup>th</sup> Defendant will encounter some difficulties. Section 4A of Cap. 16 (as amended) has been declared earlier in this judgment to be inconsistent with section 162 of the Constitution. It has equally been held by me that the figure 13 per cent does not form a legal basis for calculating the amount due to any State on the principle of derivation. On what basis then would this Court make the order sought in claim (b)? It is for the 6<sup>th</sup> Defendant to prove his entitlement to the relief sought by him. I think he has failed to do this in respect of claim (b); The order sought, on the fact now before us, is rather vague, indefinite and uncertain. The claim is, therefore, refused and it is struck out.**

Claim (e)

**The averments in paragraph 5 of the 6<sup>th</sup> Defendant’s counter-claim, not having been specifically denied by the Plaintiff, are deemed admitted by him. I have earlier said in this judgement that a natural gas is a natural resource. It follows that as revenue accrued to the Federation Account from natural gas derived from the territory of the 6<sup>th</sup> Defendant he is entitled to a share of that revenue under the principle of derivation in section 162(2) of the Constitution. But as the counter-claiming 6<sup>th</sup> Defendant has not shown to us the legal basis or authority for the use of the figure 13 per cent in calculating his entitlement, claim (e) cannot be granted; it is struck out.**

**COUNTERCLAIM OF 8<sup>TH</sup> DEFENDANT**

The 8<sup>th</sup> Defendant pleaded in his counter-claim as hereunder:

*“2. The 8<sup>th</sup> Defendant avers that the Plaintiff has been generating revenue from the Natural Resources which are from the 8<sup>th</sup>*

*Defendant's State.*

3. The 8<sup>th</sup> Defendant states that the Natural Resources referred to in paragraph 2 of the Counter claim are : - Minerals and Agricultural products, namely: Precious Stones and Metals, Potash, Gypsum, Gold, Livestock, Fish, Hide and Skin, Horns, Groundnuts, Beans, Mangoes, Grains, pepper, cotton and Gum Arabic. B

4. The 8<sup>th</sup> Defendant states that the Plaintiff generates and/or derives revenue from these Natural Resources by charging export duties, levies, taxes and by issuing licenses for dealership, processing and mining of these Natural Resources C

5. That the 8<sup>th</sup> Defendant contends that the plaintiff failed and/or refused or pay the 8<sup>th</sup> defendant that 13% of the revenue derived from these Resources.

6. Whereof the 8<sup>th</sup> Defendant/Counter-claimant claims against the plaintiff the following: D

“(a) A declaration that the 8<sup>th</sup> Defendant/Counter-claimant is entitled to 13<sup>th</sup> of the total revenue accruing to the Federation Account directly from the Natural Resources mentioned above.

(b) To order the Plaintiff to give account of the revenue generated from these Natural Resources to the 8<sup>th</sup> Defendant/Counter-claimant. E

(c) To order the Plaintiff to pay the 8<sup>th</sup> Defendant/Counter-Claimant an amount equivalent to the 13% of the total Revenue derived from the Natural Resources from the 29<sup>th</sup> day of May, 1999 to date.” F

I have earlier in this judgement given the law dictionary meanings of the expressions “*natural resources*” and “*agricultural products*” and have held that livestock, fish hide, and skin, horns, groundnuts, beans, mangoes, grains, pepper, cotton and gum Arabic are not natural resources within the meaning and intendment of section 162(2) of the Constitution; they are, at best, agriculture and/or manufacturing products. That being so, section 162(2) will not apply to them. Precious stones and metals, potash (that is, potassium); gypsum and gold are clearly natural resources. H

The Plaintiff in defence to the 8<sup>th</sup> Defendant's counter-claim pleaded thus:

“7 (iii) The counter-claims of the 8<sup>th</sup> Defendant (Borno) ought to be dismissed because:

(a) of the reasons set out in sub-paragraphs (a)-(d) of paragraph (ii) above; and

(b) the Plaintiff has at no time denied the existence of the legal right of the Defendant to its financial entitlement in accordance with any provision made in pursuant to section 162 of the Constitution.

(c) accordingly there is no basis for the declaratory order claimed by the plaintiff. (sic Defendant)"

**As claims (a) and (c) above are based on the much-touted 13% and in view of what I have said earlier in this judgment on lack of legal authority for this figure, the two claims must fail; they are struck-out.**

**There is no averment or evidence that the 8<sup>th</sup> Defendant requested from the plaintiff, and was refused, an account as required in claim (b). In the light of the denial of the Plaintiff in his defence to the counterclaim of the 8<sup>th</sup> Defendant one would expect some evidence from the latter. But none is forthcoming. The Claim, therefore, fails and it is dismissed.**

#### COUNTER-CLAIM OF 9<sup>TH</sup> DEFENDANT

The counter-claim of this Defendant is more comprehensive than any of those hitherto considered. It is pleaded thus:

*"30 The 9<sup>th</sup> Defendant further avers that contrary to the provisions of the Constitution, the FGN deducts monies from the Federation Account before applying the derivation principle.*

#### PARTICULARS

*1. FGN has unconstitutionally created a 'Fist Charge' on the sums in the federation account for payment of capital investments of 'NNPC Priority Projects', payment in respect of Joint Venture Companies Cash call budgets, 'National Priority Project such as Aluminium Smelter Company operational cost contribution, Central Bank of Nigeria priority projects.*

*2. FGN has also charged the income in the Federation Account before deductions in accordance with the derivation principle, with the payment of Special Fund Account and the Excess Proceeds Accounts for oil revenue income that exceed the annual National Budget benchmark.*

*31. The 9<sup>th</sup> defendant further states that the Constitution does not provide for the retention by the Federation Government of*

*funds from the Federation Account beyond the percentage allocated to it by act of the National Assembly.*

32. *In the premises the 9<sup>th</sup> Defendant has not been paid its entitlement from being an oil-producing state in line with the proviso to Section 162(2) of the Constitution.*

**CLAIM FOR NATURAL RESOURCES.**

33. *The 9<sup>th</sup> Defendant maintains that for the purpose of Section 162 of the 1999 Constitution, natural resource mean any material in its native state which when exploited has economic value.*

*The 9<sup>th</sup> Defendant states that:*

1. *natural wharves developed into ports;*
2. *solid mineral like chipping, mud and limestone;*
3. *mineral oil and natural gas; and*
4. *seas and inland waters used for fishing*

*Are all natural resources within the contemplation of the 1999 Constitution Section 162(2), and the 9<sup>th</sup> Defendant is entitled to revenue therefore in spite of the provisions of the Piers Act, the Nigeria Ports Authority Act and the Sea Fisheries Act.*

34. *It is also contended by the 9<sup>th</sup> Defendant that Cross River is entitled to no less than 13% of all income derived from all natural resources stated above.*

35. *The 9<sup>th</sup> Defendant pleads alternatively that even if the FGN owns or has control over natural resources, that is so only as a trustee or custodian of the State from where such natural resources are derived and only such States are entitled to no less than 13% of all revenue exploited from such natural resources.*

**CLAIM FOR ACCOUNT**

36. *The 9<sup>th</sup> Defendant repeats the averments contained in paragraph 29-31 hereof and pleads in addition as follows:*

a. *The FGN has created a dichotomy between the on-shore and off-shore revenue from natural resources in computing amounts to be disbursed to States based on the principle of derivation*

b. *Since 23<sup>rd</sup> September, 1987, 9<sup>th</sup> defendant has been deprived of her total earnings on derivation.*

c. *The FGN has not taken the principle of derivation into account in respect of revenue derived from solid mineral and non mineral and natural resources like water ways, fishing, piers, wharves, dams and ports.*

*d. The FGN, without any basis in law makes a direct charge of 1% on the Federation Account for FCT Abuja.”*

37. WHEREOF the 9<sup>th</sup> Defendant counter-claims against Plaintiff as follows:

B *“(1) A declaration that the area beyond and adjacent to the Littoral State of Cross River State of Nigeria not exceeding 200 nautical miles from the base line from which the breadth of the territorial sea of the Nigerian State is measured form part of the Territory of the Cross River State of Nigeria*

C *(2) A declaration that all natural resources derived from the High Seas offshore Cross River State is derived from the territories of Cross River State and for which Cross River State is entitled to be paid at least 13% of the revenue derived therefore based on the principle of derivation.*

D *(3) A declaration that the 9<sup>th</sup> defendant is entitled to 13% of all income derived by the FGN from activities at the Calabar Port, the quarries, rivers and seas and abutting Cross River State.*

E *(4) An order directing the Accountant-General of the FGN, through the Plaintiff, to render an account of all monies received and disbursed from the Federation Account from 29<sup>th</sup> May, 1999 till the date of judgment.*

*Alternatively*

F *(5) An order compelling the Federal Government of Nigeria to render account of the proceeds of oil mineral products extracted from the oil wells lying east of longitude 8° 17'D in the Calabar/Cross River Estuary from 23<sup>rd</sup> September, 1987 till date of judgment.*

G *(6) An Order compelling the Federal Government of Nigeria to render account of all monies derived from any place in Nigeria (from 29<sup>th</sup> May 1999 till the date of judgement in this suit) which were not paid into the Federation Account or which were not made to form part of the distributable pool set up in the 1999 Constitution*

H *(7) An Order compelling the Federal Government of Nigeria to pay to Cross River State the sum total of the income rightly accruing to Cross River State pursuant to paragraphs 40(1), (2) and (6) above.”*

Plaintiff's defence is rather short and brusque. It reads:

*“7 (iv) The counter-claims of the 9<sup>th</sup> Defendant (Cross River) ought to be dismissed because:*



*(a) of the reasons set out in sub-paragraphs (a)-(d) of paragraph (ii) above; and*

*(b) there is no basis in law or in fact to support any of the reliefs sought for in the counterclaim.”*

I now turn to the reliefs:

Claims 1 & 2

B

In view of my findings on Plaintiff’s case, the declarations claimed must fail and are hereby dismissed.

Claim 3

As there is no legal authority for the use of the figure 13%, the declaration sought here must fail and it is dismissed. Furthermore, it is not shown to my satisfaction that “*all income derived by the FGN (Federal Government of Nigeria) from activities at the Calabar Port, the quarries, rivers and seas in (or) abutting Cross River State*” constitutes revenue accruing to the Federation Account from natural resources derived from Cross River State. No evidence is given of the location of these features.

C

Claims 4, 5, and 6

There is no averment in the pleadings of this defendant that the Plaintiff has been called upon to render account and has refused to do so. In the circumstance, there is no basis for the claims for account which are hereby struck out.

E

Claim 7

There is no paragraph 40 in the 9<sup>th</sup> Defendant’s pleading. I take it, however, that paragraph 38 is meant. In view of the dismissal of the declarations sought in paragraphs 38 (1) and (2) and the claim for account in claim (6), this claim too based on them must equally fail and it is dismissed by me.

F

COUNTERCLAIM OF 10<sup>TH</sup> DEFENDANT

G

In paragraph 20 of his pleading, the 10<sup>th</sup> Defendant claims as hereunder:

“20. By reason of the foregoing, the 10<sup>th</sup> Defendant has suffered hardship, loss and damages, wherefore it (sic) counter-claims from the Plaintiff as follows: -

H

“(a) A declaration that section 44(3) and the proviso to section 162 (2) of the 1999 Constitution do not recognize the so-called onshore/offshore dichotomy which has since been abolished by Act N. 106 of 1992 and presently being unconstitutionally employed by

*the Plaintiff in the course of determining the revenue allocation due to the 10<sup>th</sup> Defendant from the Federation Account.*

(b) An order directing the Plaintiff to pay the sum of N1 1,333,392,572.10 (eleven billion, three hundred and thirty-three million, three hundred and ninety-two thousand, five hundred and seventy-two naira ten kobo) being areas of the minimum 13% derivation under the proviso to section 162 (2) of the 1999 Constitution (commencing from 1<sup>st</sup> June, 1999 – 31<sup>st</sup> December, 1999) without any form of distinction between onshore and/or offshore revenue to the 10<sup>th</sup> Defendant/Counter-claimant.

(c) An Order directing the Plaintiff to pay the sum of N9,404,861,382.64 (nine billion, four hundred and four million, eight hundred and sixty-on thousand, three hundred and eighty-two naira, forty-six kobo) to the 10<sup>th</sup> Defendant being arrears of the minimum 13% derivation on off-shore revenue accruing directly from the 10<sup>th</sup> Defendant to the Federation Account between 30<sup>th</sup> January, 2000 – 28<sup>th</sup> February, 2002 or until judgment is delivered.

(d) Interest at the ruling bank rate 14% from 1/6/99 and 30/1/2000 until judgment; and thereafter, at any higher rate as the Supreme Court may order.

(e) A declaration that the first charge system being adopted by the Plaintiff whereby it deducts certain percentage of revenue from the Federation Account for debt servicing before paying the minimum 13% derivation to the oil producing States is unconstitutional, null and void.

(f) A declaration that the under-listed economic policies and/or practices of the Plaintiff are unconstitutional being in conflict with the 1999 Constitution. That is to say:

(i) Exclusion of natural gas as constituent of derivation for the purposes of the proviso to section 162 (2) of the 1999 Constitution.

(ii) Non payment of the shares of the 10<sup>th</sup> Defendant in respect of proceeds from capital against taxation and stamp duties.

(iii) Funding of the judiciary as a first line charge on the Federation Account.

(iv) Servicing of external debts via first line charge on the Federation Account.

(v) Funding of Joint Venture Contracts and Nigerian National

*Petroleum Corporation (NNPC) Priority projects as first line charge on the Federation Account.*

*(vi) Unilaterally allocating 1% of the revenue accruing to the Federation Account to the Federal Capital Territory*

*“(g) An order directing the plaintiff to account for and or return all monies in its custody directly attributable to the misapplication complained of herein to the Federation Account for disbursement in accordance with the 1999 Constitution from 29<sup>th</sup> May, 1999 to date.”*

*“(h) A perpetual injunction restraining the Plaintiff from further violating the provisions of Section 162 of the 1979 Constitution.”*

The defence of the Plaintiff is short. In paragraph 7(v) he pleaded thus: “7(v) *The counter-claims of the 10<sup>th</sup> Defendant (Delta) ought to be dismissed because:*

*(a) of the reasons set out in sub-paragraphs (a)-(d) of paragraph (ii) above;*

*(b) for the reasons aforesaid, there is no basis to sustain items (b), (c), (d) and (g) of the said counter-claims;”*

I notice that the Plaintiff is silent on Claims (e), (f) and (h). There is, however, no express submission to judgement on those claims.

The 10<sup>th</sup> Defendant proffered affidavit evidence in support of his claims.

In view of my earlier findings in this judgement, claims (a), (b) and (c) must fail and are hereby dismissed. Claim (d) for interest is predicated on claims (b) and (c) which now fail, it too fails and it is dismissed.

I have earlier in this judgement found that it is wrong for the plaintiff to charge his external debt on the Federation Account. In the light of this finding, the declaration sought in claim (e) will be granted in a modified form as proposed in claim (f). Claim (e) will accordingly be struck out.

Before I consider claim (f) I like to quickly dispose of claim (g). No specific sum of money is mentioned in this claim. The amount that is to be returned to the Federation Account is vague, uncertain and indefinite. I think it is futile making an order in such circumstance I will, however, not dismiss the claim but rather strike it out. It is

necessary for the counterclaiming Defendant to provide fuller details. Claim (g) is struck out.

I am now left with claims (f) and (h). I have earlier held that natural gas is a natural resource. Revenue from it must, therefore, be taken into account in the application of the principle of derivation in section 162(2) of the Constitution.

Section 163 of the Constitution provides:

*“163. Where under an Act of the National Assembly, tax or duty is imposed in respect of any of the matters specified in item D of Part II of the Second Schedule to this Constitution, the net proceeds of such tax or duty shall be distributed among the States on the basis of derivation and accordingly –*

*(a) where such tax or duty is collected by the Government of a State or other authority of the State, the net proceeds shall be treated as part of the Consolidated Revenue Fund of that State;*

*(b) where such tax or duty is collected by the Government of the Federation or other authority of the Federation, there shall be paid to each State at such times as the National Assembly may prescribe a sum equal to the proportion of the net proceeds of such tax or duty that are derived from that State.”*

Item D of Part II of the Second Schedule makes provisions for the imposition, by the National Assembly, of such tax or duty as the capital gains tax, incomes or profits of persons other than companies and stamp duties. By section 163, the net revenue collected from these taxes and duties is distributed among the States on the basis of derivation. It follows that what net revenue is collected from any State by the Government of the Federation is paid back to that State. There can be no justification for refusing to pay to the 10<sup>th</sup> Defendant his share of such revenue.

The funding of the judiciary is provided for in the Constitution. For subsections (1) (2) (4) and (7) of section 84 provide –

*“(1) There shall be paid to the holders of the offices mentioned in this section such remuneration, salaries and allowances as may be prescribed by the National Assembly, but not exceeding the amount as shall have been determined by the Revenue Mobilization Allocation and Fiscal commission.*

*(2) The remuneration, salaries and allowances payable to the holders of the offices so mentioned shall be a charge upon the*

*Consolidated Revenue Fund of the Federation*

(4) The offices aforesaid are the offices of President, Vice-President, Chief Justice of Nigeria, Justice of the Supreme Court, President of the Court of Appeal, Justice of the Court of Appeal, Chief Judge of the Federal High Court, Judge of the Federal High Court, Chief Judge and Judge of the High Court of the Federal Capital Territory, Abuja Chief Judge of a State, Judge of the High Court of a State, Grand Kadi and Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja, President and Judge of Customary Court of Appeal of the Federal Capital Territory, Abuja, Grand Kadi and Kadi of the Sharia Court of Appeal of a State, the Auditor-General for the Federation and the Chairmen and members of the following executive bodies, namely, the Code of Conduct Bureau, the Federal Civil Service Commission, the Independent National Electoral Commission, the National Judicial Service Committee of the Federal Capital Territory, Abuja, the Federal Character Commission, the Code of Conduct Tribunal, the National Population Commission, the Code of Conduct Tribunal, the National Population Commission, the Revenue Mobilization Allocation and Fiscal Commission, the Nigeria Police Council and the Police Service Commission.

*(7) the recurrent expenditure of judicial offices in the Federation (in addition to salaries and allowances of the judicial officers mentioned in subsection (4) of this section shall be a charge upon the Consolidated Revenue Fund of the Federation. (Italics are mine)*

It is clear from the above provisions that it is the Consolidated Revenue Fund of the Federation, and not the Federation Account, that is charged with the salaries and allowances of judicial officers and recurrent expenditure of judicial offices in the federation. The Consolidated Revenue Fund of the Federation is established under section 80 of the Constitution. The charge on the Federation Account is clearly inconsistent with section 84 of the Constitution and is, therefore, unconstitutional, notwithstanding the provisions of subsection 9 of section 192 which provides:

*“9 Any amount standing to the credit of the judiciary in the Federation Account shall be paid directly to the National Judicial Counsel for disbursement to the heads of courts established for the Federation and the States under section 6 of this Constitution”*

It may be that it was intended to give the judiciary a share of

the Federation Account but this has not been expressly or impliedly provided for. I have discussed earlier in this judgement the question of repayment of the debts of the Government of the Federation; the repayment is to be charged not on the Federation Account, but on the revenue and assets of the Government of the Federation. I have also discussed the constitutional validity of section 1(d) (i) of Cap. 16 (as amended) and found it to be inconsistent with section 162(2) of the Constitution. Funding of Joint Venture Contracts and the Nigeria National Petroleum Corporation NNPC Priority Projects cannot by any stretch of construction, come within section 162(3) of the Constitution which provides for the distribution of the Federation Account among the three tiers charges on the Federation Account are inconsistent with the Constitution and are, therefore, invalid.

Consequent upon all I have said above, I grant claim (f) and hereby declare that “the under-listed policies and/or practices of the plaintiff are unconstitutional, being in conflict with the 1999 Constitution, that is to say:

*(i) Exclusion of natural gas as constituent of derivation for the purposes of the proviso to section 162 (2) of the 1999 Constitution.*

*(ii) Non payment of the shares of the 10<sup>th</sup> Defendant in respect of proceeds from capital against taxation and stamp duties.*

*(iii) Funding of the judiciary as a first line charge on the Federation Account.*

*(iv) Servicing of external debts via first line charge on the Federation Account.*

*(v) Funding of Joint Venture Contracts and Nigerian National Petroleum Corporation (NNPC) Priority projects as first line charge on the Federation Account.*

*(vi) Unilaterally allocating 1% of the revenue accruing to the Federation Account to the Federal Capital Territory*

I also grant an injunction as claimed in claim (h) restraining the plaintiff from further violating the Constitution in the manner declared in claim (f) above.

#### COUNTER-CLAIM OF THE 24<sup>TH</sup> DEFENDANT:

By paragraph 53 of his statement of defence and counter-claim, the 24<sup>th</sup> Defendant counterclaims for -

*“(a) An interpretation of the provisions of Section 2 and 3 of*

*the Constitution in relation to the Territorial Waters, the Exclusive Economic Zone, and the Continental Shelf of Nigeria.*

*(b) Or alternatively, a declaration that all that areas now referred to as the Territorial Waters, Exclusive Economic Zone and Continental Shelf culturally and geographically form or are deemed to form part of the Littoral States immediately abutting the said area.* B

*(c) A declaration that the Territorial Waters, Exclusive Economic Zone and the Continental Shelf culturally and geographically form part of the Littoral States immediately abutting the said area.*

*(d) A further declaration that the Lagos State is entitled to 13% of whatever revenue is derived from the Territorial Waters abutting the coast of the Lagos State.* C

*(e) A declaration that Nigeria's claim to Territorial Waters, Exclusive Economic Zone and Continental Shelf arises only because of the unique positioning of the States bordering on the seas.* D

*(f) A declaration that the vesting of mining rights, powers and ownership of minerals in, upon or under the Territorial Waters, Exclusive Economic Zone up to the continental Shelf of Nigeria does not operate to divest ownership or deemed ownership of the said waters from the State.* E

*(g) A declaration that any waters which are not deemed or considered a part of any state within the Federation (which means any of the 36 States of Nigeria or the Federal Capital Territory) do not form or constitute a part of the Federal Republic of Nigeria.* F

*(h) A declaration that natural resources mean any material in its natural state which when exploited has economic value.*

*(i) A declaration that for the purposes of Section 162 (2) of the 1999 Constitution, the Federal Government of Nigeria is not entitled to allocation of any revenue on the basis of derivation, but rather Nigeria only States from which natural resources are derived.* G

*(j) The 24<sup>th</sup> Defendant/Counter-Claimant is entitled to the waters as owners, and if not as beneficial owner by virtue of historical usage, usufructuary rights, riparian rights, traditional history, access to the waters and suffers from pollution or environmental damage from such seas.* H

*(k) An order of this Honourable Court directing office of the Accountant General of the Federation, through the plaintiff to render an account of all monies received and disbursed from the Fed-*

eration account from 29 May 1999 till the date of instituting this action.

(l) A further order directing the payment of amount due to the 24<sup>th</sup> Defendant/Counter Claimant as its share (by virtue of the principle of derivation stipulated in Section 162 (2) of the 1999 Constitution) of the all revenue accruing from the state to the federation account.

(m) A further order directing the payment of 1% of the statutory allocation of the Federal Government to Lagos State as the former Federal Capital Territory for the maintenance of Federal infrastructure and installation within the State.”

Section 232(1) of the Constitution which given this Court original jurisdiction which is being exercised in this case, provides:

“232(1) The Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute between the Federation and a State or between States if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right.

Thus, to clothe the Court with jurisdiction the suit must not only be between “*The Federation and a State or between States*” but must also relate to a dispute involving any question (whether of law or fact) on which the existence or extent of a legal right depends. This Court will not involve itself in a mere academic exercise. With this background, I now examine the claims of the 24<sup>th</sup> Defendant.

Claims (a), (e), (f), (g) (h) and (i), do not raise any dispute between the counter-claiming Defendant and the plaintiff involving any question on which the existence or extent of a legal right depends. They are, therefore incompetent and are hereby, accordingly, struck out.

Claims (b) (c) (d) and (j) have already been covered during the consideration of plaintiff’s case. And in view of the findings made in that cases, claims (b), (c) (d) and (j) must fail and are, hereby, dismissed.

I have held earlier in this judgement that any beneficiary in the Federation Account under section 162(3) has a right to demand an account from the plaintiff who is the trustee of the Account. However, the Court will not order the Plaintiff or any of his agents to render an account unless and until the complaining beneficiary has



first asked for an account and was refused. There is no such averment in paragraph 52 of the 24<sup>th</sup> Defendant's pleadings.

Claim (1) is vague and uncertain. It has not been shown the basis on which the 24<sup>th</sup> Defendant's share is to be determined. The National Assembly has not enacted a formula as enjoined on it by section 162(2) of the Constitution. Nor has the President come out with an order modifying Cap. 16 (as amended) to bring it in line with the Constitution. Claim (1) is accordingly struck out. B

I agree with the Plaintiff that there is no basis in law for the claim (m). A claim is not just based on sentiments but on law. No constitutional nor statutory provision has been cited to us to support this claim. It is dismissed by me. C

#### COUNTER-CLAIM OF THE 28<sup>TH</sup> DEFENDANT

The 28<sup>th</sup> Defendant counter-claims as follows:

*“(1) A declaration that its Seaward boundary extends beyond its coastline and that natural resources derived offshore its coastline are derived from its State to which the provisions of Section 162(2) of the Constitution should apply.* D

*(2) An order directing the Plaintiff to calculate and pay over to the 28<sup>th</sup> Defendant 13% of revenue accruing to the Federation Account directly from natural resources derived from offshore locations adjacent to the 28<sup>th</sup> Defendant's coastline with effect from 29<sup>th</sup> of May 1999.* E

*(3) A declaration that the 28<sup>th</sup> Defendant is entitled with effect from 29<sup>th</sup> May 1999 to 13% of the revenue accruing to the Federation Account directly from the natural resources derived onshore within the State in accordance with the provisions of Section 162(2) of the Constitution of the Federal Republic of Nigeria.* F

*(4) An order directing the Plaintiff to pay over forthwith to the 29<sup>th</sup> Defendant 13% of all revenue that has accrued to the Federation Account directly from natural resources derived from onshore locations in its State from 29<sup>th</sup> May 1999 to 30<sup>th</sup> December, 1999’.* G

In the light of my earlier finding that the southern boundary of each littoral State is the low-water mark, claims (1) and (2) fail and are dismissed by me. H

Claims (3) and (4) are based on the magical figure 13% which I have held to have no legal basis for calculating the entitlement of any State under the proviso to section 162(2) of the Constitution.

These claims are accordingly struck out.

COUNTER-CLAIM OF THE 32<sup>ND</sup> DEFENDANT

Paragraph 14 of the 32<sup>nd</sup> Defendant's counter-claim reads:

"14. WHEREFOR the 32<sup>nd</sup> Defendant counter-claims against the Plaintiff as follows:

B        "a. A declaration that the principle of derivation provided for under section 162 (2) of the 1999 Constitution is applicable to 100% of the total revenue derived from any natural resources from any State of the Federation.

C        b. A declaration that the "on-shore" dichotomy applied by the Plaintiff to the derivation principle is not tenable under the 1999 Constitution and is therefore unconstitutional null and void.

D        c. A declaration that the 32<sup>nd</sup> Defendant is entitled to be paid 13% of all revenue accruing to the Federation Account from any natural resources particularly oil production/extraction from her territory with effect from 29<sup>th</sup> May 1999 and up to and the including 31<sup>st</sup> December, 1999.

E        d. A declaration that the boundary of the 32<sup>nd</sup> Defendant within the Federal Republic of Nigeria as a Coastal State comprises of its entire land mass, territorial waters, Continental Shelf and the Exclusive Economic Zone to which the 32<sup>nd</sup> Defendant is contiguous.

F        e. A declaration that the Plaintiff is neither entitled to allocation of any revenue from the Federation Account on the basis of derivation nor is she envisaged as a beneficiary under Section 162(2) of the 1999 Constitution.

G        f. An order compelling the Plaintiff to furnish the 32<sup>nd</sup> Defendant with a full Statement of Account of the total revenue accruals into the Federation Account derived from any natural resources from 29<sup>th</sup> May 1999 until the date of judgment in this suit.

g. A further order compelling the Plaintiff to furnish the 32<sup>nd</sup> Defendant with a Statement of the Allocation to each State of the Federation and the Plaintiff from the Federation Account with effect from 29<sup>th</sup> May 1999 up to the date of judgment.

H        h. An order directing the Plaintiff to pay to the 32<sup>nd</sup> Defendant all arrears of 13% of the 40<sup>th</sup> total "off-shore" production derivation accruals to which she is entitled from 29<sup>th</sup> May 1999 and continuing to date.

i. An order compelling the Plaintiff to pay to the 32<sup>nd</sup> Defen-

dant all arrears of 13% “on-shore” and “off-shore” oil revenue from 29<sup>th</sup> May 1999 to 31<sup>st</sup> December, 1999.

j. An order compelling the Plaintiff to pay to the 32<sup>nd</sup> Defendant 13% of all revenue accruing to the Federation Account from the wharves, and sea ports within Rivers State.”

k. An order compelling the plaintiff to pay to the 32<sup>nd</sup> Defendant 13% of all revenues accruing to the Federation Account from natural gas produced and extracted from Rivers State from 29<sup>th</sup> May 1999, and continuing up to the date of judgement.”

The plaintiff’s defence reads:

“(xi) The counter-claims of the 32<sup>nd</sup> Defendant (rivers) ought to fail because:

(a) of the reasons set forth under sub-paragraph (a)-(d) of paragraph (ii) above;

(b) there is no basis in law for item (a) of the said counter-claim.

(c) items (b), (d) and (e) of the said counterclaims raise the same or substantially the same questions as the plaintiff’s action in this suit and accordingly no useful purpose will be served prayed for by the defendant.

(d) it is premature for the Defendant to sue for the reliefs claimed in items (c), (h), (i), (j) and (k) when the National Assembly has not yet enacted the formula for sharing the amount standing to the credit of the Federation Account and

(e) there are no facts pleaded by the Defendant to support items (f) and (g) of the said counter-claim.”

The declaration sought in claim (A) is not a declaration of right; it raises no issue upon which the existence or extent of a legal right depends. It is accordingly struck out.

In view of my finding that the southern boundary of a littoral States is the low-water mark, claims (B) and (D) are dismissed.

Plaintiff has not claimed entitlement to any revenue from the Federation Account on the basis of derivation. Consequently, there is no dispute between the parties on this issue. Section 162(3) of the Constitution makes the Government of the Federation a beneficiary of the Federation Account. In the light of these observations, claim (E) fails and it is dismissed by me.

Claims (C), (H), (I), (J) and (K) are based on the magical

figure 13%. And in view of what I have said earlier in this judgement on this figure as not forming a legal basis for determining the amount due to any State from which any revenue accrues to the Federation Account from natural resources derived from the State, claims (C), (H), (I) and (K) are hereby struck out. For the avoidance of doubt, B however, I reiterate once again that natural gas is a natural resources and any revenue accruing from it qualifies for the application of the principle of derivation in favour of any state from which it is derived. I need also reiterate that, in my respectful view, wharves and sea C ports are not natural resources within the meaning and intendment of that expression in the proviso to section 162(2) of the constitution. It is not even proved that wharves and sea ports in Rivers State are located within the territory of the State. Claim (J) is dismissed.

As regards Claims (F) and (G), the 32<sup>nd</sup> Defendant has not D pleaded facts to the effect that he called upon the Plaintiff to render account and the latter failed, refused or neglected to do so. This is precondition to the claim by a beneficiary for account. Furthermore, the 32<sup>nd</sup> Defendant is represented on the Federation Account Allocation Committee established under section 5 of cap. 16. If the 32<sup>nd</sup> E Defendant wants the information that is being sought in claim (G) the Commissioner for Finance of his State is in a position to provide such information. Claims (F) and (G) are hereby struck out.

#### COUNTER-CLAIM OF THE 33<sup>RD</sup> DEFENDANT

F This Defendant, by paragraph 10 of his statement of defence, claims:

“(a) *The natural resources derived from any part of Nigeria (by whatever name called) are deemed to be derived from Nigeria and not from a particular spot/area where the resources may be physi-* G *cally situate.*

*(b) The natural resources located within the territorial waters of Nigeria and the Federal Capital Territory are deemed to be derived from the Federation of Nigeria and not from any area or part of Nigeria*

H *(c) The Federal Republic of Nigeria is a State and not a section thereof where interpreting the economic agenda and code prescribed by the constitution.*

*(d) By and under section 162(2), all Areas/Sections (States) represented by the defendants in this suit are all entitled in equally*

*shares only) at least 13% of the revenue accruing to the Federation Account directly from any natural resources.*

*(e) The 33<sup>rd</sup> defendant is entitled to payment in arrears monies equal to the sums paid to either Akwa-Ibom or Bayelsa or Cross Rivers or Delta or Edo or Ogun, Ondo and Rivers States since while the Plaintiff wrongly interpreted and applied Section 162(2) of the constitution of the Federal Republic of Nigeria.*

*(f) That the Federal Government of Nigeria should apologize to the Defendants, save those listed in sub paragraph (e) herein for the inequality and discrimination occasioned by the misapplication of the not less than thirteen percent rule enshrined in the Constitution-  
vide Section 162(2)."*

The Defendant's pleading was drafted in an unusual way; the claims are not stated to be raised by way of counterclaim. I shall however consider them for all they are worth.

Claims (a) and (b) raise issues that have been determined in Plaintiff's case. It is unnecessary to pronounce on them again.

Claims (c), (d) and (f) are mere statements and not legal claims; they are accordingly struck out.

As regards claim (c), it has not been shown by this Defendant that it is derived from his territory natural resources the revenue from which accrues to the Federation Account. Consequently, there is no legal basis for his claim (e) which is hereby dismissed by me.

#### THE SUMMARY

In summary, I adjudge as follows:

1. Plaintiff's case succeeds and I hereby determine and declare that the seaward boundary of a littoral State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to section 162(2) of the Constitution of the Federal Republic of Nigeria 1999, is the low-water mark of the land surface thereof or (if the case so requires as in the Cross-River States with an archipelago of islands) the seaward limits of inland waters within the State.

2. Claim 1 of 3<sup>rd</sup> Defendant's counterclaim is dismissed. But his claims 2 and 3 are struck out

3. The 6<sup>th</sup> Defendant succeeds in his claim (a) and, accordingly, I determine and declare that the Constitution of the Federal

Republic of Nigeria 1999 having come into force on 29/5/99, the principle of derivation under the proviso to section 162(2) of the Constitution came into operation on the same day – that is to say, 29/5/99 and Plaintiff is obliged to comply therewith from that date.

His claims (b) and (e) are, however, struck-out while his claims  
B (c) and (d) are dismissed.

4. Claims (a) and (c) of the 8<sup>th</sup> Defendant's counterclaim are struck out; claim (b) is dismissed.

5. The 9<sup>th</sup> Defendant fails on her claims 1,2,3, and 7 which  
C claims are hereby dismissed; claims 4,5, and 6 are however struck out.

6. Claims (a), (b), (c) and (d) of the 10<sup>th</sup> Defendant's counterclaim are hereby dismissed; claims (e) and (g) are, however, struck out.

D The 10<sup>th</sup> Defendant succeeds on his claims (f) and (h). It is hereby declared that the under-listed policies and/or practices of the plaintiff are unconstitutional, being in conflict with the 1999 Constitution, that is to say:

(i) *Exclusion of natural gas as constituent of derivation for*  
E *the purposes of the proviso to section 162 (2) of the 1999 Constitution.*

(ii) *Non payment of the shares of the 10<sup>th</sup> Defendant in respect of proceeds from capital against taxation and stamp duties.*

(iii) *Funding of the judiciary as a first line charge on the Fed-*  
F *eration Account.*

(iv) *Servicing of external debts via first line charge on the Federation Account.*

(v) *Funding of Joint Venture Contracts and Nigerian National*  
G *Petroleum Corporation (NNPC) Priority projects as first line charge on the Federation Account.*

(vi) *Unilaterally allocating 1% of the revenue accruing to the Federation Account to the Federal Capital Territory*

H I also grant an injunction restraining the Plaintiff from further violating the Constitution in the manner declared in claim (f) above

7. The Counter-claims of the 15<sup>th</sup> and 17<sup>th</sup> Defendants are struck out as they did not file any brief in support of their claims.

8. The Counter-claims of the 20<sup>th</sup> and 27<sup>th</sup> Defendants, having been withdrawn, are hereby struck out.

9. The 24<sup>th</sup> Defendant's claims (a), (e), (f), (g) (h) and (i) are incompetent and are accordingly, struck out. His claims (b) (c) (d) and (j) and (m) fail and are hereby dismissed. Claims (k) and (l) are, however, struck out.

10. The 28<sup>th</sup> Defendant fails on his claims (1) and (2) which claims are hereby dismissed. Claims (3) and (4) are, however, struck out. B

11. Claims (A) (C) (F) (G) (H) (I) and (K) of the 32<sup>nd</sup> Defendant's counter-claim are struck out. Claims (B), (D) (E) and (J) are dismissed.

12. The 33<sup>rd</sup> Defendant's claims (a) (b) (c) (d) and (f) are struck out; claim (e) is dismissed. C

I make no order as to costs.

In ending this judgement, I express appreciation to all learned counsel who filed briefs and proffered oral submissions for the tremendous assistance rendered to the Court and which has enabled us to arrive at what, we believe, to be a just and equitable resolution of the dispute raised in this case.

E

### UWAIS CJN

This suit is brought by the Attorney-General of the Federation, as plaintiff, against the Attorneys-General of all the thirty six States of the Federation Republic of Nigeria, as defendants. The action is pursuant to the provisions of section 232 subsection (1) of the Constitution of the Federal Republic of Nigeria, 1999; section 20 of the Supreme Court Act, Cap. 424 and Order 3 rules 2(2) and 3(a) of the Supreme Court Rules, 1985, as amended. F

*"A determination by this Honourable Court of the seaward boundary of a littoral State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to the proviso to section 162 (2) of the Constitution of the Federal Republic of Nigeria, 1999".* H

### PLEADINGS IN PLAINTIFF'S CASE

For a better understanding of the plaintiff's case, I consider it apposite to reproduce in full the plaintiff's Statement of Claim excluding the claim quoted above. This is the more so since no evi-

dence, whether oral or documentary, was adduced by the plaintiff. It reads thus:-

*“1. The Plaintiff is the Attorney General of the Federation and brings this action as the representative of the Government of the Federal Republic of Nigeria.*

*B 2. The 1<sup>st</sup> to the 36<sup>th</sup> Defendants are the Attorneys General of each of the 36 States which along with the Federal Capital Territory Abuja, comprise the Federal Republic of Nigeria. Each defendant is sued as the representative of the Government of each State.*

*C 3. Section 162 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (hereafter referred to as “the Constitution”) provides that the Federation shall maintain a special account to be called “the Federation Account” into which shall be paid all revenue subject to certain exceptions which are not material to this case collected by D the Federation.*

*4. Pursuant to the provisions of Section 162(2) of the Constitution and subject to certain conditions therein specified, the President of the Federal Republic of Nigeria is required to table before the National Assembly proposals for revenue allocation.*

*E 5. By a proviso to the aforementioned Section 162(2) of the Constitution, the principle of derivation must be reflected in any approved formula for revenue allocation.*

*F 6. The Plaintiff states that in the context of Section 162(2) of the Constitution the expression “principle of derivation” means the principle that revenue accruing to the Federation Account from any natural resources shall be deemed to have been derived from the State or territory where such resources are located.*

*G 7. The Plaintiff further states that the proviso to Section 162(2) of the Constitution requires that any approved formula for revenue allocation from the Federation Account shall reflect the fact that not less than 13% of revenue accruing to the said Federation Account from any natural resources are allocated to the Government of the State or territory where such resources are located.*

*H 8. By reason of the facts pleaded in paragraphs 5, 6 and 7 of this Statement of Claim, the Plaintiff states that for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from any State or territory pursuant to the proviso to Section 162 of the Constitution.*



(a) *The natural resources located within the boundaries of any State are deemed to be derived from that State.*

(b) *In the case of the littoral States comprised in the Federation Republic of Nigeria (i.e. the States of Akwa-Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers) the Seaward boundary of each of the said States is the low water mark of the land surface thereof or (if the case so requires) the seaward limits of inland waters within the State;*

(c) *The natural resources located within the territorial waters of Nigeria and the Federal Capital Territory are deemed to be derived from the Federation and not from any State;*

(d) *The natural resources located within the Exclusive Economic Zone and the Continental Shelf of Nigeria are subject to the provisions of any treaty or other written agreement between Nigeria and any neighbouring littoral foreign State, derived from the Federation and not from any State.*

9. *In further support of the averments in paragraph 8 of this Statement of Claim the Plaintiff will contend at the trial of this action that under the provisions contained in the Constitution it is only the Federal Government of Nigeria and not the Government of any of the States comprised in the Federal Republic of Nigeria that has power to:-*

(i) *exercise legislative, executive, or judicial powers over the entire area designed as the "territorial waters of Nigeria" pursuant to the provisions of the Territorial Waters Act, Cap 428, Laws of the Federation of Nigeria 1990, as amended.*

(ii) *exercise any of the sovereign rights exercisable by Nigeria over the entire area designated as the "Exclusive Economic Zone" pursuant to the provisions of the Exclusive Economic Zone Act, Cap. 110, Laws of the Federation of Nigeria, as amended.*

10. *The States of Akwa-Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers dispute the averment of the Federal Government of Nigeria as pleaded in paragraph 8 hereof and claim that natural resources located offshore ought to be treated or regarded as located within their respective States".*

All the defendants with the exception of the 4<sup>th</sup>, 29<sup>th</sup> and 30<sup>th</sup> have filed Statements of Defence. The 3<sup>rd</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 15<sup>th</sup>, 17<sup>th</sup>, 20<sup>th</sup>, 24<sup>th</sup>, 27<sup>th</sup>, 28<sup>th</sup>, 32<sup>nd</sup> and 33<sup>rd</sup> defendants have

variously pleaded counter-claims against the plaintiff. I will quote the counter claims when I come to deal with them later in this judgment.

In his Statement of Defence, the 1<sup>st</sup> Defendant admitted, in general, the plaintiff's averments in the Statement of Claim but specifically denies paragraphs 9 and 10 thereof. The following defendants have virtually admitted the plaintiff's claim by admitting in their respective Statements of Defence all the averments in the Statement of Claim, namely the 2<sup>nd</sup>, 18<sup>th</sup>, 19<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup>, 23<sup>rd</sup>, 26<sup>th</sup>, 27<sup>th</sup>, 31<sup>st</sup>, 34<sup>th</sup> and 36<sup>th</sup> Defendants.

The 3<sup>rd</sup> Defendant, expressly, admits paragraphs 2, 7 and 8 (a) and impliedly paragraph 1 of the Statement of Claim but denies paragraphs 8 (b) – (d), 9 and 10.

The 4<sup>th</sup> Defendant admits paragraphs 1 to 8 (a) but denies paragraphs (8) (b) to (d) and 9 of the Statement of Claim. He admits paragraph 10 thereof by inference since he has made no averment admitting or denying it.

The 5<sup>th</sup> Defendant admitted paragraphs 1 to 9 of the Statement of Claim and denied paragraph 10 only to the extent that the littoral States cannot claim that the natural resources located offshore ought to be treated as located within their States.

The 6<sup>th</sup> Defendant admits paragraphs 1 to 6 and 8 (a) of the Statement of Claim but specifically denies paragraphs 7, 8 (b) – (d), 9 and by inference paragraph 10.

The 7<sup>th</sup> Defendant admits categorically paragraphs 1 to 9 of the Statement of Claim and by implication paragraph 10 thereof.

The 8<sup>th</sup> Defendant admits paragraphs 1 to 8 of the Statement of Claim but does not State that he admits or denies paragraph 9 and 10 thereof.

The 9<sup>th</sup> Defendant admits paragraphs 1 to 8 (a) of the Statement of Claim and denies paragraphs 8 (b)-(d), 9 and 10.

The 10<sup>th</sup> Defendant in his Amended Statement of Defence, admits specifically paragraphs 1 to 7 and 8 (c) of the Statement of Claim and has not categorically denied paragraphs 8 (a), (b) and (d), 9 and 10 thereof.

The 11<sup>th</sup> Defendant admits paragraphs 1 to 5 and 8 (a) of the Statement of Claim and denies paragraphs 6, 7, 8 (b) – (d), 9 and 10 thereof.

The 12<sup>th</sup> Defendant admits paragraphs 1 to 8 (a) and (b), 9

(1) and 10 of the Statement of Claim. He has not specifically denied paragraphs 8 (c) and 9 (2) thereof.

The 13<sup>th</sup> Defendant admits paragraphs 1 to 8 (a) and (b) of the Statement of Claim but denies specifically paragraphs 8 (c) and (d), 9 and by inference paragraph 10 of the Statement of Claim.

The 14<sup>th</sup> Defendant admits paragraphs 1 to 8 (a) and denies paragraphs 8 (b) (c) and (d) 9 and 10 of the Statement of Claim. B

The 15<sup>th</sup> Defendant admits paragraph 1 to 4, 8 (d) and 9 of the Statement of Claim. He admits and denies at the same time paragraphs 5 and 7 and denies paragraphs 8 (a) and (d), 9 and 10 thereof. C

The 16<sup>th</sup> Defendant admits paragraphs 1 to 8 (a) of the Statement of Claim but denies paragraphs 8 (b) and (c).

The 17<sup>th</sup> Defendant admits paragraphs 1 to 4, 6 and 8 (c) and (d) of the Statement of Claim. She denies paragraphs 5, 7, 8 (a), (b) and 10 thereof. D

The 20<sup>th</sup> Defendant admits specifically paragraphs 1 to 5, 7, 8, 9 and by inference paragraph 10 of the Statement to Claim. He denies paragraph 6 thereof.

The 24<sup>th</sup> Defendant in his Amended Statement of Defence admits specifically paragraphs 1 – 7, 8 (a) (b), 9 (1) and by implication paragraph 10 of the Statement of Claim. E

The 25<sup>th</sup> Defendant admits paragraphs 1 to 9 and 10 but denies paragraph 10 of the Statement of Claim .

The 27<sup>th</sup> Defendant admits paragraphs 1 to 7 and 10 of the Statement of Claim but denies paragraphs 8 and 9 thereof. F

The 28<sup>th</sup> Defendant admits paragraphs 1 to 8 (a) of the Statement of Claim, denies paragraphs 8 (b) and (c) and neither admits nor denies paragraphs 8 (d), 9 and 10 thereof.

The 32<sup>nd</sup> Defendant in her Amended Statement of Defence G admits paragraphs 1 to 5 and 8 (a), 9 (i) of the Statement of Claim and denies paragraphs 4, 6, 7, 8, (b), (c) and (d), 9 (ii) and 10 thereof.

The 33<sup>rd</sup> Defendant admits paragraphs 1 to 4, 6, 8 (c), (d) and 9 of the Statement of Claim and denies paragraphs 5, 7, 8 (a), (b) and 10 thereof. H

The 35<sup>th</sup> Defendant admits paragraphs 1 to 3, 5 to 8 (c) (d) and 9 of the Statement of Claim and does not specifically deny or admit paragraphs 4 and 10 thereof.

## EVIDENCE IN SUPPORT OF PLEADINGS

As can be seen from the pleadings issues have in the main been joined in respect of the averments in paragraphs 8 (b) – (d) and 9 of the Statement of Claim. At the hearing of the case, no evidence was adduced by the plaintiff as Chief Williams, learned Senior Advocate, contends that the plaintiff needs not call evidence in support. He argues that paragraph 8 (b) of the Statement of Claim which calls for evidence has been admitted and in any case it is not in dispute that the seaward boundary of littoral States is the low water mark of the land surface of the States or the continental shelf. He cited, in support of the contention that the plaintiff needs not call evidence, the case of *Pioneer Plastic Containers Ltd. v. Commissioner of Customs and Excise* (1967) 1 Ch. 597 at pp. 600 and 607. He further submitted that the plaintiff's case is that the boundary of a littoral State is determined by law.

Mr. Akpamgbo, learned Senior Advocate, for the 1<sup>st</sup> defendant argues that since the parties have joined issue on the averments in paragraphs 8, 9 and 10 of the Statement of Claim, the plaintiff has the burden to adduce evidence to prove the facts alleged therein by virtue of the provisions of section 139 subsection (1) of the Evidence Act (sic section 140 subsection 91) of Cap. 112 of the Laws of Federal Republic of Nigeria, 1990).

Learned Senior Advocate for the 3<sup>rd</sup> defendant, Mr. Ekong Bassey, states that the 3<sup>rd</sup> defendant does not admit that there was a dispute on boundary between Akwa Ibom State and the Federation. He draws attention to paragraphs 10 of the Statement of Claim and 13 of the Amended Statement of Defence of the 3<sup>rd</sup> defendant.

The 3<sup>rd</sup> defendant adduces affidavit evidence in support of his defence to the Statement of Claim and counter-claim. The affidavit which was sworn to by Mr. Ifiok Ukanna, Acting Director of Civil Litigation, in the Ministry of Justice of Akwa Ibom State, exhibits pages 167 – 168 of the Report of the Political Bureau created in 1986 by the then Federal Military Government, making recommendation to the Federal Government on revenue generation, collection and allocation; the white paper containing the Federal Government's view on the recommendation and a letter dated 15<sup>th</sup> March, 2001, by the Accountant-General of Akwa Ibom State, Mrs. A. N. Ibanga, addressed to the 3<sup>rd</sup> defendant, showing details of unpaid derivation

revenue which accrued to Akwa Ibom State from June, 1999 to February, 2001 amounting to N15,006,418,955.28.

Mr. Okpoko, learned Senior Advocate, for the 6<sup>th</sup> defendant, associates himself with the argument of Mr. Ekong Bassey. He submits that the relief being sought by the plaintiff calls for determination of boundaries of States. In order to do so, the plaintiff must produce material evidence on which the Court can rely to determine the boundaries. He submits that the plaintiff has failed to prove the boundaries by factual evidence. However, he submitted that the boundaries could be established either by factual evidence or by law.

The 8<sup>th</sup> defendant files affidavit evidence in support of his Statement of Defence and counter-claim. The affidavit was sworn to by the Solicitor-General of Borno State, Alhaji Yakubu Bukar. Exhibited to the affidavit are copies of maps which are seven in number are – (1) Outline map of Northern and Southern Nigeria in 1907 showing inter alia seashore boundary; (2) Map of Rivers and Akwa Ibom States showing inter alia Local Governments and sea shore boundaries (3) Map of Bayelsa State showing inter alia Local Governments and sea shore boundaries; (4) Map of Cross River State inter alia showing Local Governments and sea shore boundaries; (5) Map of Ondo State showing inter alia Local Governments' and sea shore boundaries; (6) Map of Delta State showing inter alia Local Governments' and sea shore boundaries and (7) Map of Ogun State showing inter alia Local Governments and sea shore boundaries.

The 9<sup>th</sup> defendant adduces affidavit evidence deposed to by the Obong of Calabar, Edidem Professor Nta Elijah Henshaw VI, the Surveyor-General of Cross River State, Mr. Raphael Idiku Uche and the Accountant-General of Cross River State, Mrs. Eyamba Henshaw. Exhibited to the affidavit of the Obong are treaties entered between the Kings of Old Calabar and British traders as well as British Crown in the years 1856, 1860, 1862, 1874 and 1884. Exhibited to the affidavit of the Surveyor-General are two maps. The first map (Exhibit CRSSG 1) shows the Local Government Areas of Cross River State, three of which about the coast of Nigeria. The second map (Exhibit CRSSG 2) shows East and West Atanbong Island, and Ine Odiong which are beyond the landmass on the mainland of Cross River State, but form the integral parts of the coastal Local Government Areas. Also exhibited to the affidavit is a report (Exhibit CRSSG

3) by a firm of consultants called Terres-Aquatic Consultancy Services commissioned by the 9<sup>th</sup> defendant. The report is on “*Accretion and Erosion along the Cross-River, its Estuary and Tributaries and Adjoining Rivers*”.

B Again exhibited to the affidavit of the Accountant General of Cross River State are Summaries of State Production Statistics of the years 1997, 1998, 1999, 2000 and 2001 respectively showing barrels of oil produced per State for the purpose of revenue allocation to oil producing States.

C The 10<sup>th</sup> Defendant files an affidavit evidence sworn to by Mr. Gaban Emmanuel Okerhienyefa, a legal officer, in the Ministry of Justice of Delta State. The averments in the affidavit are meant to support paragraph 14 of his Statement of Defence.

D The 24<sup>th</sup> Defendant has filed four affidavit evidence deposed to by the Oba of Lagos, Oba Adeyinka Oyekan; Professor Ayodeji Oladimeji Olukuju, a professor of history; Mr. Olawole Edun, Commissioner for Finance of Lagos State, and Mr. Sakibu Adekunle Balogun, Surveyor-General of Lagos State. In his affidavit the Oba of Lagos inter alia deposed that on 6<sup>th</sup> August, 1862, Lagos was  
E ceded to the British Crown. That Lagos Island amongst other Local Government Areas in Lagos State, abuts the Atlantic Ocean, and the peoples of the areas exercised from time immemorial and continue to exercise maximum rights of use and ownership over the territorial  
F waters in particular and the off-shore waters in general.

Professor Olukoju, in his affidavit, lends support to the averment in the affidavit of the Oba of Lagos. He also deposed that Lagos Island was brought under British rule after the “*purported*” cession of the Island to the British Crown in 1861 and by 1863 other towns  
G and villages like Badagry, Palma and Lekki in the immediate vicinity of Lagos Island were annexed to the Colony of Lagos. He deposed that the Colony of Lagos was later merged with the Protectorate of Southern Nigeria in 1906 and in 1914, Northern Nigeria Protectorate was merged with the Colony and the Protectorate of Southern  
H Nigeria to form the Colony and Protectorate of Nigeria. That in 1922 Constitutional experiment for Nigeria commenced with Clifford Constitution. Other Constitutions also came into force thereafter and these led to the Constitutional Conference in London between 30<sup>th</sup> July to 22<sup>nd</sup> August, 1953 which led to the creation of the Nigerian Fed-

eration under the 1954 Constitution called the Lyttleton Constitution.

In his affidavit, the Surveyor-General of Lagos State deposed inter alia that Lagos State was created by States (Creation and Transitional Provisions) Decree, 1967 (now Act, Cap 413 of the Laws of the Federation of Nigeria, 1990). He stated that of the 24 Local Government Areas that now constitute Lagos State, under the 1999 Constitution, 12 about the coast of Nigeria; these are Apapa, Badagry, Epe, Eti-osa, Ibeju/Lekki, Ikorodu, Kosofe, Amuwo-Odofin Ojo, Somolu, Lagos Mainland and Lagos Island. That as a result of reclamation by both the Federal and Lagos State Governments and others in certain parts of the coastal Local Government Areas, there has been accretion to coastal Local Government Areas. These include Ogudu in the Ogudu foreshore of Kosofe Local Government Area; Tin Can Island and Apapa Wharf in Apapa Local Government Area; Lagos Marina in Lagos Island Local Government Area; Banana Island and Ikoyi Foreshore in Eti-osa Local Government Area; and Ebute Metta in Lagos Mainland Local Government Area.

The 32<sup>nd</sup> defendant adduces affidavit evidence. The affidavit is sworn to by the Assistant Director of Civil Litigation in the Ministry of Justice of Rivers State, Mr. Rufus N. Godwins. Most of the averments therein are in support of the defendant's counter-claim. Exhibited to the affidavit are the Statement on the distribution of the Federation Account in December, 1999 and March 2000 and computation of revenue due to oil producing States on the basis of 13% derivation for the months of June, 2000; June, 2001 and October 2001. Also exhibited is a letter dated 12<sup>th</sup> September 2001, from the Governor of Rivers State to the President of the Federal Republic of Nigeria. The letter shows that the President gave directive in April 2000 for the implementation of the 13% derivation formula under the 1999 Constitution and complains about the denial to apply the correct figure accruing to Rivers State. In addition the letter complains about the non-payment of the 13% revenue to the State as it concerns the production of natural gas. Exhibited also to the affidavit is a letter dated the 29<sup>th</sup> October, 2001 by the Minister of Finance addressed to the Group Managing Director of the Nigerian National Petroleum Corporation and endorsed inter alia to the Governor of Rivers State. The letter makes reference to the Governor's letter afore-

mentioned and directs the Group Managing Director “to redress any proven distortion that may be detrimental to the interest of the Rivers State” as the President had directed that appropriate action be taken accordingly.

Now, it is possible to prove the boundary of a State by relying on any law that defines such boundary. The plaintiff submits that his case is based on interpretation of law and that he does not need to call evidence to prove the averments in his Statement of Claim. He relies on the decision in the case of Pioneer Plastic Containers Ltd (supra) where it was stated at p. 601 as follows: -

“It seems to me that the question which the court has to decide in this action is partly one of fact. The interpretation of the Purchase Tax Act, 1963, is a matter of law pure and simple. The nature of the article, the plastic lid, with which the action is concerned and the uses for which it is designed and to which it can be put, are questions of fact. So far as those facts are relevant to the determination of the case, it is for the plaintiffs to plead the facts in their Statement of Claim and if, having pleaded them in the Statement of Claim, the defendants admit all those facts, then there is no issue between the parties on that part of the case which is concerned with matters of act. Where there is no issue to be decided there is no purpose to be served by admitting any evidence.”

If the plaintiff in this case is to rely on the interpretation of law, then it is not incumbent on him to adduce evidence to prove the averments in paragraphs 8(b) and 9 of his Statement of Claim. This accords with the provisions of sections 73 and 74 of the Evidence Act, Cap. 112. Section 73 thereof provides: -

“73. No fact of which the court must take judicial notice need be proved.”

The court is enjoined under section 74 thereof to inter alia take judicial notice of all laws, enactments and any subsidiary legislation made under such laws or enactments having the force of law now or before or hereafter to be in force in any part of Nigeria.

I therefore, hold that it is not necessary for the plaintiff to call witness or adduce affidavit evidence to prove his case if he intends to rely on the interpretation of law only.

#### ARGUMENTS IN PLAINTIFF’S CASE

The Court directed that all the parties in this case should present



their arguments in writing in the form of a brief of argument. This order has been complied with by some of the parties. However, eleven defendants have failed to do so. These include the 4<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 17<sup>th</sup>, 19<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup>, 29<sup>th</sup> and 30<sup>th</sup> defendants. By reason of their failure to file the briefs they forfeited the right to address the Court orally at the hearing of the case. B

Chief Williams, learned Senior Advocate, for the plaintiff contends in the brief of argument, which he filed on behalf of the plaintiff, as follows. The proviso to section 162 subsection 2 of the Constitution of the Federal Republic of Nigeria, 1999, requires that any approved formula for revenue allocation from the Federal fact that not less than 13% of revenue accruing to the Federation Account from any natural resources is allocated to the government of the State or territory where such natural resources are derived. Hence, it becomes necessary to ascertain the extent to which natural resources D located in each State of the Federation and in particular States on coastal land and adjoining sea or sea bed ought to be treated as being located in the littoral State that borders it. The contention is that the majority of the States as well as the Federal Government are of the opinion that none of the States can claim that natural resources E on coastal land outside the low water mark, or if the case so requires, the seaward limit of inland waters are located within its territory. On the other hand the littoral States take the opposite view. The question for determination therefore is: What is the seaward boundary of F a littoral State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to the proviso to section 162 (2) of the Constitution of the Federal Republic of Nigeria, 1999. G

It is canvassed that the starting point is consideration of the vital question as to the exact boundary of the area comprised in each of the littoral States. In other words what is the seaward limit of the territory of each of the States adjacent to or contiguous to the open sea? Reference is made to section 3 of the 1999 Constitution which H names all the 36 States in Nigeria in subsection (1) thereof and provides as follows in subsection (2) –

*“(2) Each State of Nigeria named in the first column of Part 1 of the First Schedule to this Constitution shall consist of the area shown*

*opposite thereto in the second column of that Schedule.”*

It is observed that in First Schedule to the Constitution, the area of each of the 36 States of the Federation is defined by reference to what is described in the Schedule as “*Local Government Areas*.” It is argued that no area of land or water which does not come within a “*Local Government Area*” can, under the Constitution, be treated as forming part of the territory of any of the 36 States in Nigeria. It is submitted that the territory of a State extends to all areas over which a Local Government Council, within that State, has power to administer and to make bye-laws. In other words the territory of a State is exactly co-extensive with the totality of the local government areas within its territory. Reference is made to section 4 of the Constitution which provides for legislative powers and it is contended that the extent of the territory of a State is reflected in the scope of the legislative powers conferred on States under the 1999 Constitution. This is to be contrasted with the express powers conferred on the National Assembly to make laws for the peace, order and good government with respect to “*External Affairs*” pursuant to item 26 of the Exclusive Legislative List in Part 1 of the Second Schedule to the Constitution. Consequently it is canvassed that only the National Assembly alone is competent to make laws for Nigeria in respect of matters outside the territory of the Federal Republic of Nigeria. Reference is made to the provisions of section 4 subsections (3) and (7) of the Constitution and attention is drawn to the clear implications of the subsections. It is then submitted that whilst the National Assembly is conferred with power to make laws for the peace, order and good government of the Federal Republic of Nigeria with respect to matters outside the territory thereof, it is not competent under the Constitution for the House of Assembly of a State to make laws having effect outside the territory of that State.

It is submitted that in exercise of its power to make laws with respect to “*External Affairs*” the following legislations were enacted by the Federal Legislature –

- (a) Territorial Waters Act, Cap. 428,
- (b) Sea Fisheries Act, Cap. 404, and
- (c) Exclusive Economic Zone Act, Cap. 116.

It is stated that by the provisions of section 1 subsection (1) of the Territorial Waters Act –

*“(1) The territorial waters of Nigeria shall for all purposes include every part of the open sea within thirty nautical miles of the coast of Nigeria (measured from low water mark) or of the seaward limits of inland waters.”*

and argued that the inference to be drawn from the provisions is that the territorial waters of the Federal Republic of Nigeria commence from the low water mark along the coast and the sea-ward limit of inland waters. That being so, it is contended that the territorial limit of a State adjacent or contiguous to the sea or coastal waters is the low water mark along the coast and the seaward limits of inland waters. This conclusion is said to be consistent with the rules of International Law under which the practice has been, though not universal, that territorial waters are drawn along the low water mark following the sinusitis of the coast. Reference is made to Oppenheim, International Law 8<sup>th</sup> Edition Vol. 1 p. 488 and American Jurisprudence, 2<sup>nd</sup> Edition, Volume 45 p. 502 paragraph 62 and Article 3 of the United Nations Convention on Law of the Sea, 1982 which provides:

*“Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from base lines determined in accordance with this convention.”*

Again, the definition in the Sea Fisheries Act Cap 404 of “*territorial waters*” in section 11 thereof is referred to. The words are said to have the same meaning as in section 1 of the Territorial Waters Act, Cap 428. Section 1 subsections (1) and (2) of the Sea Fisheries Act, Cap 404 are cited to show the authority and powers of the Federal Government over the entire maritime belt or territorial waters. It is submitted that the Sea Fisheries Act is consistent with the notion that it is the Federal Government, and it alone, that can lawfully exercise governmental powers over maritime belt or the territorial waters of Nigeria. The same submission is made with regard to the Economic Zone Act, with reference made to its long title which reads –

*“An Act to delimit the Exclusive Economic Zone of Nigeria being an area exceeding up to 200 nautical miles seawards from the coasts of Nigeria. Within this Zone, and subject to Universally recognised rights of other States (including land-locked States), Nigeria would exercise certain sovereign rights especially in relation to the conservation or exploitation of the natural resources (minerals, living species*

*etc.) of the seabed, its subsoil and super adjacent waters and the right to regulate by law the establishment of artificial structures and installations and marine scientific research, amongst other things.”*

The definition of “*territorial waters*” by the Interpretation Act Cap 192, which applies to the interpretation of the 1999 Constitution by virtue of section 318 subsection (2) thereof is referred to. It states –

“*territorial waters*” means any part of the open sea within twelve nautical miles of the coast of Nigeria (measured from low water mark) or of the seaward limits of inland waters.”

A number of foreign cases are cited in support of the plaintiff’s case. These are *United States v Louisiana*, L. ed. 1025; *Reference Re Ownership Offshore Mineral Rights*, Volume 65 DLR 2<sup>nd</sup>, 354, 1967; and *New South Wales & Ors. v Commonwealth*, 8 ALR (1975 – 6) 1 D at pp. 16, 23 lines 33 – 39 and 119 from line 50.

In reply some of the defendants argue in their briefs in support of the plaintiff’s case. I do not, therefore, deem it necessary to deal here with such arguments as they are not contentious to the plaintiff’s case.

In his brief the 1<sup>st</sup> defendant argues that the real issue for determination is whether the seaward boundary of a littoral State is a relevant material or necessary element or factor in the determination of who gets what out of the Federation Account. He canvasses that although the plaintiff deals with the problems relating to the seaward boundary of a littoral State, there is no connection or link or submission as to how this impacts on revenue sharing formula. It is submitted that the plaintiff has failed to call evidence in support of the averments in the Statement of Claim which have not been admitted by the 9<sup>th</sup> defendant. The cases of *United State of America v The State of California*, 381 U.S. 139; 85 S.Ct 1401 and *The U.S v Louisiana et al the Louisiana Boundary Case*, 394 U.S. 11; 89 S. Ct. 773 are referred to and it is submitted that the seaward boundaries of littoral States are indisputably determined factually. In that regard the low water mark and seaward limit of inland waters are questions of fact which must be proved by evidence. It is argued further that the authorities, which are cited by the plaintiff from common law jurisdiction are not in point and do not support the plaintiff’s case since provisions similar to those in section 162 (2) of the 1999 Constitu-

tion were not considered in *U.S.S v Louisiana*, L. Ed. 1025. It is contended that the judges in that case refrained from expressing opinion on the location of the coastline of each State which is what the plaintiff is requesting this Court to do. The same submission is repeated in respect of the Canadian case – *Reference Re Ownership Offshore Mineral Rights* (supra). It is then submitted that the legislature is more suited to determine such boundary than courts could ever hope to do. B

The 3<sup>rd</sup> defendant submits that this Court cannot determine the exact boundary of each of the littoral States unless the plaintiff adduces “*reliable, credible and compelling evidence*” to enable the Court to do so. This the plaintiff has failed to do, it is contended. It is argued that Section 162 (2) of the 1999 Constitution cannot be read to imply a determination of any maritime boundary. Furthermore section 3 subsection (1) of the 1999 Constitution has defined Nigeria in terms of 36 States, therefore, no area of land or water which does not come within one or the other State can under the Constitution be treated as forming part of the territory of Nigeria. It is contended that natural resources derived from territorial water cannot be deemed to have been derived by the Federation, as argued by the plaintiff, except such resources are derived from within the territory of Nigeria which consists of the aggregate of the 36 States and the Federal Capital Territory. If, for the sake of argument, the 36 States disappear, the Federation will stand dissolved. That by virtue of section 162 of the Constitution, all natural resources can only be derived from a part of Nigeria and such part must be a State of the Federation. A distinction must be drawn between ownership and control of natural resources and derivation. The right of ownership of all mineral resources in Nigeria and control is vested in the Federal Government as provided by section 44 subsection (3) of the Constitution. On the other hand natural resources are derived from States irrespective of whether they are extracted offshore. Accordingly natural resources like minerals, mineral oil or gas from territorial waters and continental shelf of Nigeria are derived from the coastal or littoral States of Nigeria. It is submitted that the cases cited by the plaintiff from the United States, Canada and Australia are irrelevant to the present case as none of them concerns the sharing of revenue between the Federation and States, nor did any of them answer the question as to whether re- C D E F G H

sources derived offshore were derived from the Federation or the contiguous coastal States. Furthermore there is no legislation in Nigeria limiting the rights of the coastal States as referred to in the cases from the United States cited. Reference is made to section 1 subsection (1) of the Offshore Oil Revenue (Registration of Grant) Act, Cap.

B 336 which provides: -

*“I (1) All registerable instruments relating to any lease, licence, permit or right issued or granted to any person in respect of the territorial waters and the continental shelf of Nigeria, notwithstanding anything to the contrary in any enactment, continue to be registerable in the States of the Federation, respectively which are contiguous to the said territorial waters and the continental shelf.”*

To show that there is a legal recognition of States contiguous to territorial waters and the continental shelf of Nigeria. An extract of D an article in Northern Ireland Legal Quarterly, Volume 27 No. 1 on who owns the territorial waters of Northern Ireland is quoted in support of the defendant’s argument. The defendant contends that the failure of the plaintiff to adduce evidence to support his averments in the Statement of Claim is fatal to his case since by the averments in E the 9<sup>th</sup> defendant’s Statement of Defence issued had been joined. The cases of Afolayan v Ogunrinde (1990) 1 NWLR, (part 127) 369; Lordye v Ihyambe (2000) 15 NWLR (part 692) 675; Ayoke v Bello, (1992) 1 NWLR (Part 218) 380; Okechukwu v Okafor, (1961) 2 SCNLR 369; Odonigi v Oyeleke, (2001) 6 NWLR (Part 708) 12; F Itauma v Akpe-Ime (2000) 12 NWLR (Part 680) 156 and many more are cited in support.

Reference is made to the provisions of the Allocation of Revenue (Federation Account etc) Act. Cap. 16 as well as the amend- G ment thereto by the Allocation of Revenue (Federation Account etc.) Act No. 106 of 1992. It is argued that the derivation principle in Section 162 (2) of the Constitution has no application to the Federation and that it is applicable to States only. It is then argued that the provisions of section 162 (2) and the proviso thereto are clear and H unambiguous, and, therefore, cannot be stretched to admit the determination of the seaward boundary of a littoral State or States.

The 6<sup>th</sup> defendant’s brief of argument points out issues which are not in dispute between the 6<sup>th</sup> defendant and the plaintiff. These are, the title to minerals and natural resources in view of the provi-

sions of sections 2 (2) and 3 (1) of the 1999 Constitution and the legislative powers of the Federation with respect to minerals and mineral resources. With regard to areas of dispute it is argued that a party seeking determination of a boundary may prove his case either by adducing evidence or relying on statute. Therefore, the exact seaward boundaries of the coastal or littoral States, if any, can be found only in the Constitution or in an enactment, made under the Constitution, which defines the boundaries of the coastal States. It is submitted that nothing stated in the plaintiff's brief establishes the boundary of any coastal States. Therefore, the failure of the plaintiff to establish that there is a Federal territory outside the 36 State is fatal to his case. The reference to "*Local Government Area*" in section 318 and Part 1 of the First Schedule to the Constitution by the plaintiff is not helpful since the provisions thereof do not prescribe the boundary of any Local Government or any State. It is contended that the enactments referred to by the plaintiff namely the Territorial Waters Act, the Sea Fisheries Act and the Exclusive Economic Zone Act and the Interpretation Act do not define or purport to define the boundaries of either the Federation or any State. Therefore, the plaintiff cannot rely on the enactments to prove the establishment of any boundary. Again none of the legislations, or even by their combined effect, establish that the low water mark or the seaward limit of inland waters is the boundary of any coastal State.

The defendant argues that the relief sought by the plaintiff cannot be granted by this Court because to do so will inter alia embark on making legislation instead of the adjudicatory function assigned to it by the Constitution. Furthermore a relief which contradicts or violates express provisions of the Constitution is one that no court will grant.

The 9<sup>th</sup> defendant contends in her brief of argument that the issues joined on the pleadings of the plaintiff and the defendant cannot be resolved without the plaintiff adducing evidence. It is stated that the determination of the extent of the territory or boundaries of Cross River State vis-à-vis the extent of Nigeria as a whole is germane to the resolution of the main issue in this case. It is submitted that contrary to the plaintiffs reliance on section 3 of the Constitution in showing the limits of the State, sections 2 (2), 3 (1) and (2) of the Constitution jointly establish the extend of the limits of the bound-

aries or territory of the Federation and the States. It is canvassed that “*territory*” referred to in section 2 of the Constitution contemplates and includes the offshore waters as a result of the provisions of section 44 (3) of the Constitution which vests certain property rights with respect to minerals and non-mineral resources found in the offshore waters of Nigeria. The defendant disagrees with the argument by the plaintiff that the boundaries of a State consist of Local Government Areas only over which bye-laws could be made by the Local Government or that littoral States do not extend to offshore waters because their power to legislate does not extend to the area of offshore waters. It is argued that neither the 1999 Constitution nor the common law provides that a state’s boundary is to be determined by areas over which Local Governments can make bye-laws. The Local Government (Basic Constitutional and Transitional Provisions) Decree No. 36 of 1998 now repealed, which established in Schedule 1 thereof, Local Government Areas and Area Councils of the Federal Republic of Nigeria, did not delimit the Local Government areas. Similarly, the 1999 Constitution has not done so in section 29 and Part II of the First Schedule thereof. It is finally argued that the offshore waters abutting Cross River State are appurtenant to the land of Cross River State and are only a part of Nigeria or enjoyable by Nigeria by virtue of the fact that the State is a constituent unit of the Federation.

The 10<sup>th</sup> defendant in his brief of argument argues that from both established authorities and the point of view of international law the plaintiff needs to adduce evidence by way of survey plans, geographical coordinates or base line duly registered with the Secretary-General of the United Nations, in order to show the seaward boundary of the littoral States or the boundary of low water mark or seaward limits of inland waters of the littoral States. The absence of such evidence has rendered the plaintiff’s case academic. It is submitted that the foreign authorities cited by the plaintiff are not helpful to his case as they are different from the present case – *Bendel State v The Federation*, (1982) 3 NCLR 1 at pp. 97 and 110 is cited in support.

The 24<sup>th</sup> defendant argues in his brief of argument that the extent of the territory or boundary of Lagos State vis-à-vis the extent of Nigeria as a whole is germane to the resolution of the main issue in this case. It is argued that the provisions of sections 2 (2) and 3 (1)



and (2) of the Constitution jointly establish the extent of the limits of boundaries or territory of the Federal Republic of Nigeria and the States. It is argued that the offshore waters cannot be claimed by the Federal Government since constitutionally the Federal Government does not have any territory other than the Federal Capital Territory, Abuja. It follows that the territory, limits and boundaries of Lagos State go beyond the landmass of the State and extend to the offshore waters abutting the State. The defendant contends that the 1960 and 1963 Constitutions of the Federal Republic of Nigeria specifically provided for revenue allocation and tied ownership of the offshore waters to the subject while the Constitutions of 1979 and 1999 introduced the practice of prescription of applicable revenue allocation formula to the National Assembly.

The defendant concedes that the Territorial Waters Act Cap. 428 establishes the extent of Nigeria's territorial waters as a matter of and in accordance with Nigeria's international obligations under international law. He, however, submits that the Act does not confer ownership of the offshore waters on the Federal Government as against the littoral States. Rather, it asserts Nigeria's sovereignty over the waters as a matter of public international law against other sovereign States. He argues that the littoral States and Lagos State have been enjoying exclusive rights over the offshore waters from time immemorial long before the formation of the Federation. It is submitted that all the foreign cases cited by the plaintiff are distinguishable and therefore do not apply to this case.

The 27<sup>th</sup> defendant argues in his brief that to say that the maritime belt along the coast of Nigeria belongs to neither the Federal Government nor any of the littoral States, as argued by the plaintiff with respect to the provisions of sections 2 and 3 of the 1999 Constitution, will lead to absurdity. He contends that the proper interpretation to be given to the sections is that the maritime belt belongs to the littoral States because, the rights which Nigeria enjoys under the United Nations Convention on the Law of the Sea, is derived from the existence of the coastal or littoral States. It is submitted that under the 1963 Constitution, section 140 subsection (6) thereof provided that the continental shelf of Western Region was deemed to be part of the Region of which the 27<sup>th</sup> defendant use to be a part. It is argued that the rights of the coastal States over and above those of the Federa-

tion and the land-locked States have been recognised by a number of Federal enactments such as the Offshore Oil Revenue (Registration of Grants) Act, Cap 336 (Section 1 (1); the Territorial Waters Act, Cap. 428 (Section 2 (1) and the Niger Delta Development Act, 2000 (Section 14). It is submitted that by virtue of the provisions of section 313 of the 1999 Constitution, the applicable law on revenue allocation is the Allocation of Revenue (Federation Account) Act, Cap 16, as amended by the Allocation of Revenue (Federation Account etc.) Act No 106 of 1992. This remains so because the proviso to section 162 (2) of the Constitution has not provided the formula to be followed in sharing the revenue between the mineral producing areas.

The 28<sup>th</sup> defendant submitted in his brief of argument that since Nigeria is defined under sections 2 and 3 of the 1999 Constitution by reference to States and the Federal Capital Territory, no land, territory, or water can be part of Nigeria unless it is part of a State or the Federal Capital Territory. For any land, territory or water to be part of a State, and since States are defined by reference to Local Government Areas, then the land, territory or water must be part of a Local Government Area before becoming part of Nigeria. It follows, therefore, that if land within the territorial waters cannot be part of any of the littoral States, such land cannot be part of Nigeria.

The foreign cases cited by the plaintiff are distinguishable from the present case. On the provisions of section 162 (2) of the Constitution it is submitted that the whole of section 162 is to be read in order to understand the impact of subsection (2) thereof. It is argued that all revenue in the Federation Account belong to the Federation as a whole, to be shared between the Federation, States and Local Governments on a formula to be prescribed by the National Assembly. That it is clear from the provisions of section 162 subsection (2) that the Federal Government is not entitled to 100% of the revenue derived from natural resources irrespective of where the natural resources are derived from. That at least 13% of the revenue attributable to natural resources must be allocated on the basis of derivation. Reference is made to the history of delineation of boundaries in Nigeria. In this regard, The Northern Region, Western Region and Eastern Region (Definition of Boundaries) Proclamation, 1954; Section 140 subsections (1) and (6) of the 1963 Constitution; section

134 subsections (1) and (6) of the 1960 Constitution; the Offshore Oil Revenue Act, No. 9 of 1971 and section 1 of the Offshore Oil Revenue (Registration of Grants) Act, Cap. 336 were mentioned.

The 32<sup>nd</sup> defendant contends in her brief of argument that the plaintiff's case should be dismissed since the case is unsubstantiated by evidence. It is pointed out that the defendant does not dispute or contest the plaintiff's sovereignty over the entire territory of the Federal Republic of Nigeria. Consequently, the ownership and control of the natural resources by the plaintiff throughout Nigeria is conceded. It is submitted that the plaintiff's observance of the provisions of section 162 of the Constitution with particular reference to the allocation of 13% of the revenue accruing to the Federation Account from natural resources derived from the Rivers State, does not derogate from the plaintiffs sovereignty over the natural resources. Section 44 subsection (3) of the Constitution is referred to in support of the contention and the case of Peoples Democratic Party v Independent National Electoral Commission, (1999) 11 NWLR (Part 626) 200 at p.241 is cited.

The defendant canvasses that there cannot be a boundary dispute between the plaintiff and the defendants in this case, as found earlier in a ruling of this Court in this case, having regard to the provisions of section 2 subsection (2) of the 1999 Constitution.

#### CONSIDERATION AND DETERMINATION

From the foregoing the point has severally been made that the failure of the plaintiff to adduce evidence in support of his averments in the Statement of Claim is fatal to his case. A number of cases have been cited in support of the submissions. Chief Williams has cited an English authority to show that the plaintiff needs not call evidence. It is clear from the provisions of sections 73 and 74 of the Evidence Act, Cap. 112 that it is not necessary for a party to adduce evidence in order to prove assertions where the facts to be proved are such that the court is enjoined to take judicial notice of. There is no doubt that the provisions of sections 73 and 74 constitute an exception to the rules on burden of proof contained in part VII of the Evidence Act. What remains to be seen is whether the plaintiff has succeeded in proving his case by relying on the provisions of the Constitution and the statutes referred to by Chief Williams. I do not, therefore, find substance in the submissions that since the plaintiff has been

adduced evidence, oral or by affidavit, his case has failed.

Some of the defendants as seen earlier have produced documentary evidence in support of their respective cases. If the plaintiff rests his case on points of law, one wonders what impact such evidence would have on the provisions of a statute or the Constitution.

B Be that as it may, as the law stands now section 3 subsection (1) of the 1999 Constitution provides that there shall be 36 States in Nigeria, and goes on to name the States. Subsection (2) thereof defines the areas of each State by providing thus:-

C “(2) *Every State of Nigeria named in the first column of Part I of the First Schedule to this Constitution shall consist of the area shown opposite thereto in the second column of that Schedule.*”

Let us take for example the first State – Abia State, in that regard, as a representative of the remaining States, contained in Part D 1 of the Schedule which provides as follows:-

“*State Local Government Areas Capital City*

*Abia Aba North, Aba South, Umuahia*

*Arochukwu, Bende, Ikwuano,*

*Isiala Ngwa South, Isiukwuato,*

E *Obi Ngwa, Ohafia, Osisioma Ngwa,*

*Ugwunagbo, Ukwa East, Ukwa West,*

*Umuahia North, Umuahia South,*

*Umu-Nneochi.”*

F Subsection (4) of the section 3 provides:-

“(3) *The Federal Capital Territory, Abuja shall be as defined in Part II of the First Schedule to this Constitution.*”

By contrast to the areas of the 36 States provided under Part 1 of the Schedule, Part II thereof states thus with regard to the Federal G Capital Territory:-

*‘The definition of the boundaries of the Federal Capital Territory, Abuja referred to under Chapters I and VIII of this Constitution is as follows –*

H *Starting from the village called Izom on 7°E Longitude and 9° 15’ Latitude, project a straight line westward to a point just north of Lehu on the Kemi River; then project a line along 6° 47<sup>1</sup>/<sub>2</sub>’ E southward passing close to the villages called Semasu, Zui and Bassa down to a place a little west of Abaji town; Thence project a line along parallel 8° 27<sup>1</sup>/<sub>2</sub>’ N Latitude to Ahinza village 7° 6’ E (on the Kanama*

*River); thence project a Straight line to Buga Village on 8° 30' N Latitude and 7° 20' E Longitude, thence draw a line northwards joining the villages of Odu, Karshi and Karu. From Karu the line shall proceed along the boundary between the Niger and Plateau States as far as Kawu; thence the line shall proceed along the boundary between Kaduna and Niger States up to a point just north of Bwari village; thence the line goes straight to Zuba village and thence straight to Izom.*"

The definition of the Federal Capital Territory is precise, certain and clear. It is undoubtedly possible for a surveyor to draw a map of the Federal capital Territory from such definition. However, the same cannot be said about the descriptions given by the Constitution in respect of Local Government Areas. It is doubtful if a surveyor possessed of those facts without more or further inquiry and investigation could draw an accurate map of any of the States.

Section 318 subsection (1) of the Constitution defines "*local government area*" thus:-

*"local government area" or "local government council" includes an area council"*.

This definition is not helpful to the exercise at hand as it adds no further information or assistance in determining the exact boundaries of the 36 States. By subsection (4) of section 318 of the Constitution of Interpretation Act Cap 192 shall apply for the purposes of interpreting the provisions of the 1999 Constitution. I have examined the provisions of the Interpretation Act but could not find any more information or provisions on the boundary of a State except the definition of "*territorial waters*" in section 18 subsection (1) thereof which reads –

*"territorial waters" means any part of the open sea within thirty nautical miles of the coast of Nigeria (measured from low water mark) or of the seaward limits of inland waters.*"

This definition has not answered the vital question in this case which is: what is the seaward boundary of a littoral State for the purpose of the proviso to section 162 subsection (2) of the Constitution? Chief Williams has tried to show this by inference or implication under the provisions of the Territorial Waters Act, the Sea Fisheries Act and the Exclusive Economic Zone Act, all of which have made reference to the territorial waters of Nigeria. However, with respect,

none of the legislations expressly defines the seaward boundary of the littoral States. This, in my opinion, cannot be inferred from the legislations. I, therefore, accept the submissions by the defendants and in particular that of the 6<sup>th</sup> defendant that the Acts have not determined the seaward boundaries of the littoral States.

B We have of course been referred by Chief Williams to a number of cases from other common law jurisdictions which respectively examine the situations of the United States, Canada and Australia when they were colonies under the British. Nigeria too share with them the experience of being a colony of Britain. It will therefore be  
C worth the while to examine Nigeria's colonial position with regard to its southern boundary which abuts the sea.

Historically, the British ruled their colonies by introducing English laws to the colonies. Most of the colonies in Africa including  
D Nigeria, were either conquered or ceded colonies or Protectorates and trust territories. English law was introduced in those colonies by express enactment. The legislation provided for the introduction and observance of English law. Such legislation were made by the Crown by Order-in-Council, acting by virtue of prerogative, or powers conferred by the British Settlements Act, 1887 (for settlements) and by  
E the Foreign Jurisdiction Act, 1890 for protectorates, protected states and trust territories, that is the former mandated territories, like the former Western Cameroon. In the alternative English law was introduced by the colonial legislature by means of local legislation – through  
F ordinances, proclamations, acts etc, by virtue of the powers granted to such legislature by the Crown. English law was introduced into West African Territories (Ghana and Nigeria) by this means. In this case the authority for the application of English law is to be found in  
G such enactments as the Supreme Court Ordinance of Nigeria and Court Ordinance of Gold Coast (now Ghana). The amount of law received was the “*common law, doctrines of equity and statutes of general application*” – See Essays in African Law, by A. Allott, page 3; Nigerian Legal System, by A. O. Obilade page 69 and The Sources of  
H Nigerian Law, by A. E. W. Park.

The reception of English law in Nigeria dates back to 1863 when Ordinance No. 3 of 1863 introduced English law into the Colony of Lagos. Evidence has been adduced by the 9<sup>th</sup> defendant which shows, in the affidavit sworn to by His Royal Highness the Obong of

Calabar, that Old Calabar was founded around the year 1400 along the coastline of present day Cross River State and the indigenous people were and still are Efiks and Efiats. That these people established themselves on the coast and became fishermen and traders and ultimately set up a sea-borne empire. That the influence of city state of Old Calabar and Efik influence spread far and wide covering and extending to present day Bakassi to the South, across the Cross River estuary to Tom Shoff Island to the West, and inland to present day Bakassi to the South, across the Cross River estuary to Tom Shoff Island to the West, and inland to present day Odukpani and Akampa Local Government Areas to the north and north-West. That the Efiks evolved into one of the pre-eminent trading peoples. That by the middle of the 19<sup>th</sup> century British and German missionaries and traders had started to establish trading centres along the coast. That to safeguard trading rights, the British at the later part of the 19<sup>th</sup> century entered into series of treaties with the kings of Old Calabar. These treaties were entered into in recognition of the control and sovereignty exercised by Old Calabar over the sea on which they traded and exploited its resources.

The 24<sup>th</sup> defendant has also adduced evidence to show that the peoples of Lagos Island were led by “*white cap chiefs*” who did not exercise sovereign rights and that during mid - 17<sup>th</sup> century the Benin Kingdom came to the Island by sea to conquer and impose King Ado as King of Lagos Island. That since then the Chiefs held the land as proprietors on behalf of the present and future members of their families. That since 1840 Lagos had become one of the principal centres of international commerce. That the shoreline of Lagos State was found suitable for use as natural wharves and many local and foreign traders and sailors made use of them. That from time immemorial, the indigenous people of the clans, villages, communities, towns, cities or local governments in Lagos contiguous or appurtenant to or abutting the Offshore Waters, have claimed and exercised sovereign rights and dominion over, and made extensive use of, the Offshore Waters for the purpose of exercising rights of coast frontage owner, fishing, navigation, transport and dredging for sand, domestic activities, war and ports. All these facts are deposed to in the affidavit sworn to by His Royal Highness the Oba of Lagos, Oba Adeyinka Oyekan.

Useful, as the pieces of evidence adduced by both the 9<sup>th</sup> and 24<sup>th</sup> defendants are, I am afraid they do not answer the question as to the boundaries of Cross River State and Lagos State in the context of the provisions of sections 2 and 3 of the 1999 Constitution. The various treaties exhibited to the affidavit of the Obong of Calabar make no mention of the extent of the seaward boundary of the Old Calabar.

We are still left with the legal question to determine the seaward boundaries of the littoral States in this case. The position under the common law is stated in the case of *The Queen v Keyn*, (1876) 2 Ex. D 63. This case is cited in the Canadian case of *Reference Re Ownership of Offshore Mineral Rights* 65 DLR (2<sup>nd</sup>) 353; 1967 DLR 2037. It is stated therein that:-

*At common law the realm of England and of any British Colony ends at the low-water mark. The territorial waters beyond the low-water mark are not part of the realm."*

There are series of legislations which defined or directed the definition of the boundaries of Nigeria from the days of the amalgamation of the Colony of Lagos, the Southern Protectorate and the Northern Protectorate on 1<sup>st</sup> January, 1914. These are the Nigeria Protectorate Order-in-Council 1914; The Nigeria Protectorate Order-in-Council, 1922; Nigeria (Protectorate and Cameroon) Order-in-Council, 1946, Nigeria (Constitution) Order-in-Council, 1951 and the Nigeria (Constitution) Order-in-Council, 1954; as variously amended up to 1960.

The Constitution of the Federation of Nigeria, 1960 provides in section 2 thereof that the Federation of Nigeria shall consist of regions and Federal territory. Section 3 thereof provides that there shall be three Regions, that is to say Northern Nigeria, Western Nigeria and Eastern Nigeria. Subsections (2), (3) and (4) of section 3 provide that the Regions shall comprise of those parts of the former protectorate of Nigeria that on 30<sup>th</sup> day of September 1960 comprise of Northern Region and Eastern Region of Nigeria and those parts of the former Colony and Protectorate of Nigeria that on the 30<sup>th</sup> day of September 1960 were comprised in the Western Region of Nigeria. The Federal territory shall comprise those parts of the former Colony of Nigeria that on the 30<sup>th</sup> day of September, 1960 were comprised in the Federal Territory of Lagos.



Section 2 of the 1963 Constitution of the Federal Republic of Nigeria before the amendment of 1967, provided that there shall be a Federation comprising Regions and Federal territory. Section 3 subsection (1) provided that there shall be four Regions, namely, Northern Nigeria, Eastern Nigeria, Western Nigeria and Mid-Western Nigeria. Subsection (2) thereof provided that the Regions and Federal territory shall consist of the areas comprised in those territories respectively on the 30<sup>th</sup> day of September, 1963. B

The 1979 Constitution of the Federal Republic of Nigeria provided in section 2 subsection (2) that Nigeria shall be a Federation consisting of States and a Federal capital Territory. Section 3 subsection (2) provided, before the 1984 amendment, that each State of Nigeria named in the first column of Part I of the First Schedule to the Constitution shall consist of the area shown opposite thereto in the second column of the Schedule. These are exactly the same as the provisions of section 3 subsection (2) of the 1999 Constitution, which we seek to interpret, and are, as can be seen, a departure from the previous Constitutions which refer back to the boundaries defined under the colonial legislations. C D

This notwithstanding, nowhere has either the 1979 Constitution or the 1999 Constitution or any law for that matter repealed the definition of the boundaries contained in the colonial legislations. I, therefore, hold that such definition is extant by virtue of the provisions of section 315 (1) (a) of the 1999 Constitution, which provides:- E F

*“315 (1) Subject to the provisions of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be –* G

(a) an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws;”

The boundary of a State is not expressly listed as an item under the Exclusive Legislative List but could be inferred from items 14 on “*Creation of States*” read together with items 67 and 68 thereof. Item 67 provides:- H

*“67. Any other matter with respect to which the National Assembly has power to make laws in accordance with provisions of this*

*Constitution.*”

While item 68 reads:-

“68. *Any matter incidental or supplementary to any matter mentioned elsewhere in this list.*”

See Section 8 of the 1999 Constitution; *Balewa v Doherty*, B (1963) 1 WLR 949 at p.961; *McCulloch v Maryland*, 4 Wheat, 316, at p.421 and Federalism in Nigeria under the Presidential Constitution by B. O. Nwabueze, p.316 chapters 3 and 4.

Now by section 5 subsection (2) (a) of the Nigeria (Constitution) Order-in-Council, 1951, the then Governor of Nigeria acting in his discretion, might by Proclamation, with the approval of the British Secretary of State, define and from time to time vary the boundaries of any Region of Nigeria. In 1954 the Governor issued a proclamation titled “*The Northern Region, Western Region and Eastern Region (Definition of Boundaries) Proclamation 1954*”. It was published as Legal Notice No.126 of 1954. For ease of reference I quote hereunder the Proclamation which is contained in the Laws of the Federation of Nigeria and Lagos 1958 Volume XI on pages 686 – 687 without the Schedules thereof:

E “Whereas by paragraph (a) of subsection (2) of the section 5 of the Nigeria (Constitution) Order in Council, 1951, it is provided that the Governor, acting in his discretion, may by Proclamation, with the approval of a Secretary of State, define and from time to time vary the boundaries of any Region:

F AND WHEREAS the existing boundaries of each Region are defined in divers instruments made between the year 1915 and the year 1951;

G AND WHEREAS it is expedient to define the Boundaries of each Region in a single Proclamation, but without varying the same;

H NOW, THEREFORE, I, JOHN STUART MACPHERSON, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief in and over Nigeria, with the approval of a Secretary of State do proclaim, and it is hereby proclaimed, as follows: -

1. This Proclamation may be cited as the *Northern Region, and Western Region and Eastern Region (Definition of Boundaries) Proclamation, 1954.*

2. (1) *The boundaries of the Northern Region are hereby*

*defined as being those set out in the First Schedule to this Proclamation.*

*(2) The boundaries of the Western Region are hereby defined as being those set out in the Second Schedule to this Proclamation.*

*(3) The boundaries of the Eastern Region are hereby defined as being those set out in part I and II of the Third Schedule to this Proclamation. GIVEN under my hand and the Public Seal of Nigeria this 9<sup>th</sup> day of September, 1954."*

Both the Second Schedule thereto, which defines the boundaries of the Western Region and the Third Schedule thereto, which defines the boundaries of the Eastern Region, give the southern boundary of each Region as "*The Sea*". The Federal Capital Territory which consisted of Lagos Town only was delimited by the Lagos Local Government (Delimitation of the Town) Order-in-Council 1953 which was published as Western Region Order-in-Council No. 7 of 1953 and is Cap 93 of the Laws of the Federation of Nigeria and Lagos 1958. The Schedule thereto gives the southern boundary of the town as "*The Sea*". It is significant that all the littoral States of Nigeria formerly belonged to either the Western Region or the Eastern Region. From the foregoing, for all intent and purposes, the southern boundaries of the littoral States were prescribed by law to be "*the sea*".

Perhaps I should point out that The Northern Region, Western Region and Eastern Region (Definition of Boundaries) proclamation, 1954 made under the Nigeria (Constitution) Orders-in-Council, 1954 to 1958, is not contained in any volume of the Laws of the Federation of Nigeria 1990. The omission is due to the provisions of the Revised Edition (Authorised Omissions) order, 1990, s.14 of 1990, which contained in the Index Volume of the 1990, s.1.4 of 1990, which is contained in the Index Volume of the 1990 Laws of the Federation of Nigeria at page xxvii. By Section 3 subsection (1) of the Revised Edition (Laws of the Federation of Nigeria) Act, 1990, No. 21 of 1990, the Attorney-General of the Federation may by order specify a Schedule of enactments which shall not be necessary for the Law Revision Committee to include in the Revised Edition. This power was exercised by the Attorney-General under the Revised Edition. (Authorised Omissions) Order, 1990 s.1.4 of 1990, and the 1954

Proclamation is listed under paragraph (a) of Part III of the Schedule to the 1990 Order.

However, the omission does not render the 1954 Proclamation as repealed, obsolete or spent; it remains valid, extant and in operation by virtue of the provisions of subsection 2 of section 3 of the Revised Edition (Laws of the Federation of Nigeria) 1990 No. 21 of 1990 which provides: -

*“(2) Enactments omitted in accordance with subsection (1) of this section, shall have the same force and validity as if they had not been omitted in the revised edition.”*

It remains to determine the meaning of the word “sea”. The Concise Oxford Dictionary, 17<sup>th</sup> Edition, defined it as “Expanse of salt water that covers most of earth’s surface and encloses its continents and islands, the ocean, any part of this as opposed to dry land or fresh water.” It follows that the dry land or fresh water abutting the sea is not part of it. Therefore the seaward boundary of a littoral State could be the dry land or the fresh water abutting the sea. In view of the statement in the case of Queen v Keyn (supra) which shows the seaward boundary of a State under the common law is low water mark, I hold, with respect, that the southern boundaries of the littoral States in this case end at the low water mark along the coast.

This finding accords also with the rules of International Law. For example, under the United Nations Convention on the Law of the Sea, 1982, which is in force in Nigeria and is published in Nigeria’s Treaties in Force 1970 – 1990 by the Federal Ministry of Justice, Volume 2 at p. 330, Articles 5 and 7 in Part II thereof on Territorial Sea and Contiguous Zone state as follows:-

*“Article 5*

*Normal base line*

*Except where otherwise provided in this Convention, the normal base line for measuring the breadth of the Territorial sea is the low-water line along the coast as marked on large-scale charts officially recognised by the coastal State.”*

*“Article 7*

*Straight base line*

*In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicin-*

*ity, the method of straight base lines joining appropriate points may be employed in drawing the base line from which the breadth of the territorial sea is measured". (underlining mine for emphasis).*

Perhaps I need to explain here that "coastal State" in the Convention means Nation State and not internal States of a country like the littoral States in the present case. In a federation, it applies to the Federation and not the constituent or federating States that comprise the federation. This is necessarily so, because international law applies to countries that are members of the comity of Nations. The Federation of Nigeria is such a country and the 1999 Constitution affirms this by including "External Affairs" as item 26 in the Exclusive Legislative List. The 36 constituent States of Nigeria are not members of the comity of Nations and so the provisions of international law in a Convention do not directly apply to them but the Federation.

Finally, it has been argued by some of the defendants, quoting what I said in A-G of the Federation v –G of Abia State and 35 Ors., (2001) 11 NWLR (Part 725) 689 at p.732 F viz:-

*"There cannot be a boundary dispute between the Federation, which consists of all the States of Federation, and individual States whether littoral or otherwise since the boundaries are the same, see section 2 subsection (2) of the Constitution which provides that "Nigeria shall be a Federation consisting of States and a federal Capital Territory."*

That if the boundary of Nigeria under international law extends to the sea that is the territorial sea or contiguous zone or continental shelf or to whatever extent, then, that is the same as the boundary of any littoral State.

With respect, this argument cannot be correct. My dictum above, on a careful examination, is tied down to the provisions of section 2 subsection (2) of the 1999 Constitution, and not the issue of territorial waters which is a subject of international law. For instance articles 2 and 3 of Part II of the United Nations Convention on the Law of Sea, 1982 (supra) on Territorial Sea and Contiguous Zone provide:-

*"Article 2*

*Legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil*

1. *The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, adjacent belt of sea, described as the territorial sea.*

B 2. *This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.*

3. *The sovereignty over the territorial sea is exercised subject to this Convention and other rules of international law.*

*Article 3*

C *Breadth of the territorial sea*

*Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from base lines determined in accordance with this Convention.” (Underlining mine)*

D A further reference to the history of territorial waters, which expanded the international law on it, may explain further. In the *Queen v Keyn*, (supra) at pp. 81 – 82, it is stated as follows:-

*‘The sound conclusions which result from the investigation of the authorities which have been referred to appear to me to be these:-*

E *The consensus of civilized independent states has recognised a maritime extension of frontier to the distance of three miles from low-water mark, because such a frontier or belt of water is necessary for the defence and security of the adjacent state.*

F *It is for the attainment of these particular objects that a dominium has been granted over this portion of the high seas.*

G *This proposition is materially different from the proposition contended for; namely, that it is competent to a state to exercise within these waters the same rights of jurisdiction and property which appertain to it in respect to its lands and its ports. There is one obvious test by which the two sovereignties may be distinguished.*

H *According to modern international law, it is certainly a right incident to each state to refuse a passage to foreigners over its territory by land, whether in time of peace or war. But it does not appear to have the same right with respect to preventing the passage of foreign ships over this portion of the high seas.*

*In the former case there is no jus transitus; in the latter case there is.”*

It is to be noted that the 3 nautical miles mentioned in the case

were later extended to 12 nautical miles by the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, which preceded the 1982 United Nations Convention on the Law of the Sea.

From the foregoing the provisions of the Convention which enable the Federation of Nigeria to enact laws such as the Territorial Waters Act, Cap 428, the Sea Fisheries Act, Cap 404 and the Exclusive Economic Zone Act, Cap 116 can be seen. What the Federation has over the territorial waters and air space is the power to exercise sovereignty over the territorial waters and air space and not that they constitute extension of the boundary of Nigeria or indeed the littoral States.

This is clear from the provisions of the Territorial Waters Act which are inter alia concerned with jurisdiction in respect of offences committed in the territorial waters and restriction on Nigeria courts from trying persons other than Nigerian citizens for offences committed in territorial waters. It is nowhere stated, in the Act, that Nigerian seaward boundary, as opposed to territorial waters, is extended to the extend of the territorial waters. Similarly, the Sea Fisheries Act is concerned with the control, regulation and protection of sea fisheries in the territorial waters of Nigeria and not extension of the seaward boundary of Nigeria. The same applies to the Exclusive Economic Zone Act which is legislation on exercise of sovereign rights by Nigeria in relation to the conservation or exploitation of the natural resources of the seabed, its subsoil and super adjacent waters etc. within the territorial waters. The Act does not make provisions for extending the seaward boundary of Nigeria on the whole there is no law which I am aware of which has extended the littoral boundary of Nigeria from that defined by the 1954 Proclamation. None of the defendants has cited any law which has extended the seaward boundary of Nigeria beyond that defined by the Proclamation.

I now turn to the proviso to section 162 subsection (2) of the 1999 Constitution. The subsection provides –

*“(2) The President, upon the receipt of advice from the Revenue Mobilization Allocation and Fiscal Commission, shall, table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of States, internal revenue generation,*

*land mass, terrain as well as population density.*

*Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen percent of the revenue accruing to the Federation Account directly from Natural resources."*

- B It is clear from the proviso thereto that the principle of derivation is to be reflected constantly in the formula to be approved by the National Assembly, which shall not be less than 13% of the revenue accruing to the Federation Account directly from any natural resources.
- C The provisions are not limited to littoral States but all States from which revenue is derived from their natural resources. I will say more on this when I come to consider the counterclaims made by some of the littoral States.

For the meantime I am satisfied from the foregoing that the D seaward boundary of the littoral States is "*the sea*" which means the low-water mark abutting the States. So that any natural resources derived from such area will attract not less than 13% of revenue directly derived from the natural resources when a formula for distribution of the Federation Account is evolved by the National Assembly pursuant to section 162 (2) of the 1999 Constitution.

#### DEFENDANTS' COUNTER-CLAIMS

As stated earlier in this judgment the following defendants have raised counter-claims against the plaintiff in their various statements of defence, namely, the 3<sup>rd</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 15<sup>th</sup>, 17<sup>th</sup>, 20<sup>th</sup>, F 24<sup>th</sup>, 27<sup>th</sup>, 28<sup>th</sup>, 32<sup>nd</sup> and 33<sup>rd</sup>. The 20<sup>th</sup> and 27<sup>th</sup> defendants withdrew their counter-claims in the course of addressing the court. I hereby strike out the counterclaims.

Order 3 rule 1 of the Supreme Court Rules, 1985, as amended, G provides that where no provisions exist in the Rules the practice and procedure of the Supreme Court shall be conducted in substantial conformity with the current practice and procedure in the Federal High Court. The Rules have made no provisions with regard to counter-claim. Hence the provisions of the Federal High Court (Civil H Procedure) Rules, 2000 apply.

Order 26 rule 16 of the Federal High Court Rules, 2000 provides –

*"16. Where any defendant seeks to rely upon any fact as supporting a right of set-off or counter-claim, he shall, in his statement of*



*defence, state specifically that he does so by way of set-off or counter-claim as the case may be, and the particulars of such set-off or counter-claim shall be given."*

In the present case the 15<sup>th</sup>, 17<sup>th</sup> and 33<sup>rd</sup> defendants do not specifically plead counter-claim except that their Statement of Defence bear pleadings with semblance of counter-claim. It is settled that where a relief is not mentioned in a Statement of Claim it will be deemed to have been abandoned – see *Tella v. Akere & Ors* (1958) WRNLR 26, *Lewis & Lewis v Durnford*, (1907) 24 TLR 64 and *Otanioku v Mustafa*, (1977) 11 – 12 SC. 9 which laid down that if no relief is claimed in a statement of claim then there is no issue joined between the parties. A counter-claim from the point of view of pleadings is deemed to be a statement of claim. I will accordingly, discountenance the pleadings in the Statements of Defence of the 15<sup>th</sup>, 17<sup>th</sup> and 33<sup>rd</sup> defendants as they do not amount to counter-claim in the true sense of a counter-claim.

The 3<sup>rd</sup> defendant pleads –

*"Whereof the 3<sup>rd</sup> defendant counter-claims from (sic) the plaintiff –*

*(1) A declaration that the 3<sup>rd</sup> defendant is by virtue of section 162 (2) of the Constitution of the Federal Republic of Nigeria 1999 entitled to receive a minimum of 13% of the entirety of the natural resources derived from any dichotomy as to on-shore and off-shore natural resources.*

*(2) An order compelling the plaintiff to pay the said balance of 40% of 13% due to the 3<sup>rd</sup> defendant from the 29<sup>th</sup> day of May, 1999 till date in respect of the natural resources derived from Akwa Ibom State.*

*(3) Payment of the sum of N15,006,418,955.28 being the sum due from the plaintiff to the 3<sup>rd</sup> defendant Calculated as 13% of the revenue from natural resources derived from Akwa Ibom State for the Period June, 1999 to February, 2001."*

The 6<sup>th</sup> defendant pleads for a decision that since the 1999 Constitution came into force on the 29<sup>th</sup> May, 1999, the principle of derivation as provided under section 162 subsection (2) of the Constitution came into operation with effect from the date in question. He then asks for the following orders:-

*"(b) An order that Plaintiff do pay over to Bayelsa State, the*

share due to the State under the proviso to section 162 (2) of the Constitution as from 29/5/99 (which) has been wrongly withheld.

(c) An order for Account by the plaintiff to pay the 6<sup>th</sup> Defendant all monies so far accrued from Bayelsa State to the Federation Account in respect of off-shore revenue.

B (d) An order that the Plaintiff should pay the 6<sup>th</sup> Defendant 13% of all revenue so far accrued to the Federation Account from Bayelsa State in respect of off-shore mineral oils in the State.

(e) An order that Plaintiff should pay to the 6<sup>th</sup> Defendant 13% of all the revenue that has accrued from Natural Gas in Bayelsa State to the Federation Account.”

In the 8<sup>th</sup> defendant's Statement of Defence, it is pleaded that the 8<sup>th</sup> defendant had been generating revenue from natural resources derived from Borno State. The natural resources are Minerals and Agricultural products, which include “precious stones, and metals, potash, gypsum, gold, livestock, fish, hide and skin, horns, groundnuts, beans, mangoes, grains, pepper, cotton and gum Arabic”. That the plaintiff has failed and/or refused to pay 13% of the revenue derived from the resources to the 8<sup>th</sup> defendant. Whereof the 8<sup>th</sup> defendant counterclaims against the plaintiff as follows: -

“(a) A declaration that the 8<sup>th</sup> Defendant/Counter-claimant is entitled to 13<sup>th</sup> of the total revenue accruing to the Federation Account directly from the Natural Resources mentioned above.

F (b) To order the Plaintiff to give account of the revenue generated from these Natural Resources to the 8<sup>th</sup> Defendant/Counter-claimant.

(c) To order the Plaintiff to pay the 8<sup>th</sup> Defendant/Counter-Claimant an amount equivalent to the 13% of the total Revenue derived from the Natural Resources from the 29<sup>th</sup> day of May, 1999 to date.”

H The 9<sup>th</sup> defendant avers that since the creation of Akwa Ibom State out of the former Cross River State, the allocation of revenue from the Federation Account to the 9<sup>th</sup> defendant has been “arbitrary, oppressive and unjustified.” That the President of the Federal Republic of Nigeria has failed, refused and, or neglected to table a proposal, before the National Assembly, for revenue allocation from the Federation Account. Whereof the 9<sup>th</sup> defendant counterclaims against the plaintiff as follows:-

*“(1) A declaration that the 9<sup>th</sup> defendant has been deprived of her total earnings on derivation since its recognition as an oil-producing State.*

*(2) An order directing the Accountant-General of the Federation, through the Plaintiff, to render an account of all monies received and disbursed from the Federation Account from 29<sup>th</sup> May, 1999 till the date of judgment.*

*(3) An order compelling the Federal Government of Nigeria to render account of all monies illegally and unconstitutional retained by it beyond its statutory allocation from the 29<sup>th</sup> May, 1999.*

*(4) A declaration that the 9<sup>th</sup> defendant is entitled to 13% of all income derived from activities at the Calabar Port, quarries, rivers and seas (sic) in and abutting Cross River State.*

*(5) An order compelling the Federal Government of Nigeria to render account of the proceeds of oil mineral products extracted from the oil wells lying east of longitude 8° 17'E in the Calabar/Cross River Estuary from 23<sup>rd</sup> September, 1987 till date of judgment.*

*(6) A declaration that the Federal Government of Nigeria has not clearly defined it (sic) mode of valuation of collectable Oil revenue.*

*(7) An order compelling the Federal Government of Nigeria to pay to Cross River State the sum total of the income rightly accruing to her from petroleum operations carried on in OMLs 114, 14 and 115 from the 23<sup>rd</sup> September, 1987 till date of judgment.*

*(8) A declaration that the area beyond and adjacent to the Littoral State of Cross River State of Nigeria not exceeding 200 nautical miles from the base line from which the breadth of the territorial sea of the Nigerian State is measured form part of the Territory of the Cross River State of Nigeria and the natural resources located within the Exclusive Economic Zone ought to be deemed regarded or treated as located within the Cross River State of Nigeria for the purpose of calculating the revenue accruing to the Federation Account pursuant to the proviso to section 162 subsection (2) of the Constitution of the Federation Republic of Nigeria, 1999.”*

The 10<sup>th</sup> defendant contends that the plaintiff has failed in discharging its constitutional obligations to the 10<sup>th</sup> defendant by wilfully refusing to implement fully the provisions of the proviso to section 162 subsection (2) of the 1999 Constitution from 29<sup>th</sup> May

1999 despite oral and written demands by the defendant. That the plaintiff has since 29<sup>th</sup> May, 1999, engaged in misapplication of the provisions of section 162 subsections (20 and (3) of the Constitution. The defendant counterclaims as follows against the plaintiffs:-

B *“(a) A declaration that section 44(3) and the proviso to section 162 (2) of the 1999 Constitution do not recognize the so-called on-shore/offshore dichotomy which has since been abolished by Act N. 106 of 1992 and presently being unconstitutionally employed by the Plaintiff in the course of determining the revenue allocation due to the 10<sup>th</sup> Defendant from the Federation Account.*

C *(b) An order directing the Plaintiff to pay the sum of N1 1,333,392,572.10 (eleven billion, three hundred and thirty-three million, three hundred and ninety-two thousand, five hundred and seventy-two naira ten kobo) being areas of the minimum 13% derivation under the proviso to section 162 (2) of the 1999 Constitution (commencing from 1<sup>st</sup> June, 1999 – 31<sup>st</sup> December, 1999) without any form of distinction between onshore and/or offshore revenue to the 10<sup>th</sup> Defendant/Counter-claimant.*

E *(c) An Order directing the Plaintiff to pay the sum of N9,404,861,382.46 (nine billion, four hundred and four million, eight hundred and sixty-one thousand, three hundred and eighty-two naira, forty-six kobo) to the 10<sup>th</sup> Defendant being arrears of the minimum 13% derivation on off-shore revenue accruing directly from the 10<sup>th</sup> Defendant to the Federation Account between 30<sup>th</sup> January, 2000 – 28<sup>th</sup> February, 2002 or until judgment is delivered.*

F *(d) Interest at the ruling bank rate 14% from 1/6/99 and 30/1/2000 until judgment; and thereafter, at any higher rate as the Supreme Court may order.”*

G *(e) A declaration that the first charge system being adopted by the Plaintiff whereby it deducts certain percentage of revenue from the Federation Account for debt servicing before paying the minimum 13% derivation to the oil producing States is unconstitutional, null and void.*

H *(f) A declaration that the under-listed economic policies and/or practices of the Plaintiff are unconstitutional being in conflict with the 1999 Constitution.*

*(i) Exclusion of natural gas as constituent of derivation for the purposes of the proviso to section 162 (2) of the 1999 Constitution.*

(ii) *Non payment of the shares of the 10<sup>th</sup> Defendant in respect of proceeds from capital against taxation and stamp duties.*

(iii) *Funding of the judiciary as a first line charge on the Federation Account.*

(iv) *Servicing of external debts via first line charge on the Federation Account.* B

(v) *Funding of Joint Venture Contracts and Nigerian National Petroleum Corporation (NNPC) Priority projects as first line charge on the Federation Account.*

(vi) *Unilaterally allocating 1% of the revenue accruing to the Federation Account to the Federal Capital Territory.* C

(h) *A perpetual injunction restraining the Plaintiff from further violating the provisions of section 162 of the 1999 Constitution.'*

The 24<sup>th</sup> defendant pleads that the Federal Government has operated the Federation Account from 29<sup>th</sup> May 1999 in a manner D inconsistent with the spirit of the Allocation of Revenue (Federation Account, etc.) (Amendment) Act, No. 106 of 1992 and section 162 (2) of the 1999 Constitution. That the Federal Government had created a dichotomy between the on-shore and off-shore revenue from minerals in computing amounts to be disbursed to States based on E the principle of derivation that is not in accordance with the Constitution. That the Federal Government has fixed a formula different from that stipulated in Act No. 106 of 1992 and applied it in sharing mineral revenue derived from off-shore sources amongst the 3 tiers of F government. That the Federal Government has held the bulk of revenue derived from other natural resources, including but not restricted to, fishing ports and their operations, and hydroelectric generation, which it refuses to allot to States, in which the resources are derived, their share under the principle of derivation. That the Federal Government has created a first charge over the fund in the Federation G Account towards servicing its external indebtedness irrespective of the fact that such debt was incurred by the Federal Government and not the States in particular the Lagos State. That there is no basis in H law for 1% direct charge on the Federation Account for the development of the Federal Capital Territory. That Lagos State with the special status as a former Federal Capital with massive federal infrastructure that is currently not maintained, ought to be paid 1% of the Federation Account since the infrastructure still generate revue by

way of ports, airport traffic and other economic activities.

The defendant then counter-claims as follows:-

B *“(a) An interpretation of the provisions of Section 2 and 3 of the Constitution in relation to the Territorial Waters, the Exclusive Economic Zone, and the Continental Shelf of Nigeria.*

C *(b) Or alternatively, a declaration that all that areas now referred to as the Territorial Waters, Exclusive Economic Zone and Continental Shelf culturally and geographically form or are deemed to form part of the Littoral States immediately abutting the said area.*

*(c) A declaration that the Territorial Waters, Exclusive Economic Zone and the Continental Shelf culturally and geographically form part of the Littoral States immediately abutting the said area.*

D *(d) A further declaration that the Lagos State is entitled to 13% of whatever revenue is derived from the Territorial Waters abutting the coast of the Lagos State.*

*(e) A declaration that Nigeria’s claim to Territorial Waters, Exclusive Economic Zone and Continental Shelf arises only because of the unique positioning of the States bordering on the seas.*

E *(f) A declaration that the vesting of mining rights, powers and ownership of minerals in, upon or under the Territorial Waters, Exclusive Economic Zone up to the continental Shelf of Nigeria does not operate to divest ownership or deemed ownership of the said waters from the State.*

F *(g) A declaration that any waters which are not deemed or considered a part of any state within the Federation (which means any of the 36 States of Nigeria or the Federal Capital Territory) do not form or constitute a part of the Federal Republic of Nigeria.*

G *(h) A declaration that natural resources mean any material in its natural state which when exploited has economic value.*

H *(i) A declaration that for the purposes of Section 162 (2) of the 1999 Constitution, the Federal Government of Nigeria is not entitled to allocation of any revenue on the basis of derivation, but rather Nigeria only States from which natural resources are derived.*

*(j) The 24<sup>th</sup> Defendant/Counter-Claimant is entitled to the Waters as owners, and if not as beneficial owner by virtue of historical usage, usufructuary rights, riparian rights, traditional history, access to the waters and suffers from pollution or environmental damage*

from such seas.

*(k) An order of this Honourable Court directing office of the Accountant General of the Federation, through the plaintiff to render an account of all monies received and disbursed from the Federation account from 29 May 1999 till the date of instituting this action.* B

*A further order directing the payment of amount due to the 24<sup>th</sup> Defendant/Counter- Claimant as its share (by virtue of the principle of derivation stipulated in Section 162 (2) of the 1999 Constitution) of the all revenue accruing from the state to the federation account.* C

*(l) A further order directing the payment of 1% of the statutory allocation of the Federal Government to Lagos State as the former Federal Capital Territory for the maintenance of Federal infrastructure and installation within the State.”* D

The 28<sup>th</sup> defendant avers in his Statement of Defence that with effect from the 29<sup>th</sup> May, 1999 it is entitled to 13% of the revenue accruing to the Federation Account directly from natural resources derived from Ondo State, in accordance with the provisions of section 162 subsection (2) of the 1999 Constitution. That the Federal Government has refused, despite demands by all the States including the defendant, to pay to Ondo State the 13% of the revenue which accrued to the Federation Account from 29<sup>th</sup> may, 1999 to 31<sup>st</sup> December, 1999. It is also pleaded and contended that the boundary of Ondo State extends beyond off-shore its coastline and that natural resources found in such area are resources derived from Ondo State for the purposes of applying the provisions of section 162 subsection (2) of the 1999 Constitution. The defendant therefore counter-claims thus:- E

*“(1) A declaration that its Seaward boundary extends beyond its coastline and that natural resources derived offshore its coastline are derived from its State to which the provisions of Section 162 (2) of the Constitution should apply.* F

*(2) An order directing the Plaintiff to calculate and pay over to the 28<sup>th</sup> Defendant 13% of revenue accruing to the Federation Account directly from natural resources derived from offshore locations adjacent to the 28<sup>th</sup> Defendant’s coastline with effect from 29<sup>th</sup> of May 1999.* G

(3) *A declaration that the 28<sup>th</sup> Defendant is entitled with effect from 29<sup>th</sup> May 1999 to 13% of the revenue accruing to the Federation Account directly from the natural resources derived onshore within the State in accordance with the provisions of Section 162 (2) of the Constitution of the Federal Republic of Nigeria.*

B (4) *An order directing the Plaintiff to pay over forthwith to the 28<sup>th</sup> Defendant 13% of all revenue that has accrued to the Federation Account directly from natural resources derived from onshore locations in its State from 29<sup>th</sup> May 1999 to 30th December, 1999”.*

C The 32<sup>nd</sup> defendant pleads that the term “natural resources” under section 162 subsection (2) of the 1999 Constitution includes any material in its natural state which when exploited has economic value and includes the harbours, natural wharves, ports and rivers for hydroelectric power and irrigation. Therefore it is contended that Rivers State is entitled to 13% of all revenue accruing to Federation Account, from the natural wharves used as ports in Rivers State. That despite the fact that the 1999 Constitution came into force on 29<sup>th</sup> May, 1999, the Federal government only commenced payment to oil producing State 13% revenue accruing to the Federation Account from mineral oil derived from the States, with effect from the 1<sup>st</sup> January, 2000. Accordingly, the defendant counter-claims as follows:-

F “a. *A declaration that the principle of derivation provided for under section 162 (2) of the 1999 Constitution is applicable to 100% of the total revenue derived from any natural resources from any State of the Federation.*

b. *A declaration that the “on-shore” dichotomy applied by the Plaintiff to the derivation principle is not tenable under the 1999 Constitution and is therefore unconstitutional null and void.*

G c. *A declaration that the 32<sup>nd</sup> Defendant is entitled to be paid 13% of all revenue accruing to the Federation Account from any natural resources particularly oil production/extraction from her territory with effect from 29<sup>th</sup> May 1999 and up to and the including 31<sup>st</sup> December, 1999.*

H d. *A declaration that the boundary of the 32<sup>nd</sup> Defendant within the Federal Republic of Nigeria as a Coastal State comprises of its entire land mass, territorial waters, Continental Shelf and the Exclusive Economic Zone to which the 32<sup>nd</sup> Defendant is contiguous.*

e. *A declaration that the Plaintiff is neither entitled to allocation*



*of any revenue from the Federation Account on the basis of derivation nor is she envisaged as a beneficiary under Section 162 (2) of the 1999 Constitution.*

*f. An order compelling the Plaintiff to furnish the 32<sup>nd</sup> Defendant with a full Statement of Account of the total revenue accruals into the Federation Account derived from any natural resources from 29<sup>th</sup> May 1999 until the date of judgment in this suit.* B

*g. A further order compelling the Plaintiff to furnish the 32<sup>nd</sup> Defendant with a Statement of the Allocation to each State of the Federation and the Plaintiff from the Federation Account with effect from 29<sup>th</sup> May 1999 up to the date of judgment.* C

*h. An order directing the Plaintiff to pay to the 32<sup>nd</sup> Defendant all arrears of 13% of the 40<sup>th</sup> total “off-shore” production derivation accruals to which she is entitled from 29<sup>th</sup> May 1999 and continuing to date.* D

*i. An order compelling the Plaintiff to pay to the 32<sup>nd</sup> Defendant all arrears of 13% “on-shore” and “off-shore” oil revenue from 29<sup>th</sup> May 1999 to 31<sup>st</sup> December, 1999.*

*j. An order compelling the Plaintiff to pay to the 32<sup>nd</sup> Defendant 13% of all revenue accruing to the Federation Account from the wharves, and sea ports within Rivers State.”* E

The plaintiff has filed a defence denying all the counter-claims aforementioned. He pleads in the defence that the counter-claims of the 3<sup>rd</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> defendants ought to be dismissed for various reasons which he has pleaded in the defence. He also contends that the counter-claims of the 24<sup>th</sup>, 27<sup>th</sup>, 28<sup>th</sup>, 32<sup>nd</sup> and 33<sup>rd</sup> defendants ought to fail for various reasons. F

#### EVIDENCE IN SUPPORT OF COUNTER-CLAIMS

Affidavit evidence have been adduced by the 3<sup>rd</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 24<sup>th</sup> and 32<sup>nd</sup> defendants in support of their pleadings with respect to their counter-claims. The 28<sup>th</sup> defendant has not adduced any evidence in support of is counter-claim. It is trite that any party who desires judgment to be given in his favour as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist. In other words averments in pleadings must be proved by evidence, unless admitted by the opposing party. If a party fails to do so then the party has not discharged the burden of proof – see sections 135 to 140 of the Evidence Act, Cap. 112. G H

There are of course some exceptions to this general rule which do not apply here.

The 28<sup>th</sup> defendant avers in his Statement of Defence that the Federal Government, despite demands, has refused to pay to Ondo State the 13% of the revenue which accrued to the Federation Account from 29<sup>th</sup> May, 1999 to 31<sup>st</sup> December, 1999. Surely evidence is required to prove this averment. Failure to adduce evidence is fatal to the defendant's counter-claim.

The affidavit evidence adduced by the 3<sup>rd</sup> defendant is sworn to by Mr. Ifiok Ukanna, Acting Director of Civil Litigations, of the Ministry of Justice, Akwa Ibom State. Part of the evidence is that the Federal Government had been paying to Akwa Ibom State the amount due to it on the derivation but that in making the payment, it unjustly withheld 40% of the 13% due and the plaintiff has held on to such amount and has refused to pay despite repeated demands by the 3<sup>rd</sup> defendant. A letter by the Accountant-General of Akwa Ibom State to the 3<sup>rd</sup> defendant is exhibited to the affidavit as "*exhibit D*". Attached to exhibit D is exhibit D<sup>1</sup> which contains details of "*unpaid derivation*" (revenue) for the period June to December 1999. Also attached to exhibit D is exhibit D<sup>2</sup> which contains details of "*unpaid derivation*" (revenue) for the periods January to December 2000 and January to February 2001. It is also deposed in the affidavit that the total amount due to Akwa-Ibom State which is wrongly withheld by the plaintiff adds up to N15,006,418,955.28, for the periods in question.

The 8<sup>th</sup> defendant adduces affidavit evidence sworn to by Alhaji Yakubu Bukar, Solicitor-General of Borno State. The deponent deposed that he was informed by the Accountant-General of Borno State on 19<sup>th</sup> November, 2001 and that he believes the former, that companies and individuals have been marketing and mining the natural resources mentioned in the defendant's Statement of Defence. That by that reason revenue had been accruing to the Federation Account directly from the natural resources. That the Federal Government has not been remitting 13% of the revenue due to Borno State as required by the Constitution. That the Federal Government had been granting licences for the natural resources to be mined, for which fees and levies are collected by the Federal Government as revenue which was never rendered by the Federal Government of

Borno State.

The 9<sup>th</sup> defendant adduces affidavit evidence sworn to by Mrs. Eyamba Henshaw, Accountant-General of Cross River State. She deposed that with effect from 29<sup>th</sup> May 1999, the 9<sup>th</sup> defendant has suffered significant losses resulting in infrastructure decay, economic collapse, social dislocation affecting the economic growth and development of Cross River State. That the said losses are as a result of the deliberate policy of the plaintiff in making the same percentage distribution amongst oil-producing States, which has no bearing to actual production data. From records available to the deponent in her office, she is aware that the Cross River State has lost billions of naira as income. That the state has been denied income from oil and gas, fishing from the continental shelf, the territorial waters and exclusive economic zone abutting Cross River State, pier licences, collection of rates, harbour dues, shipping dues, which are collected from the users of ports, piers and harbours in Cross River State, income from solid mineral chippings which come from Akpampa and are used in the Niger-Delta in drilling mud, logging activities in the forest of Cross River State, two-thirds of which have been appropriated by the Federal Government to form a National Park and logging concessions. That despite the fact that the Directorate of Petroleum Resources has credited Cross River State with 1.1501% of the total crude oil production, the State receives only 0.0023% of total revenue allocation. That the Federal Government has unconstitutionally created a “*first charge*” on sums in the Federation Account, as a result of which it deducts monies from the Federation Account before applying the principle of derivation. That the defendant has protested against the deduction and deprivation of income it has suffered. The deponent has exhibited to the affidavit “*Exhibit CRSAG I*” which is a memorandum submitted to the Revenue Mobilization Allocation and Fiscal Commission by the Governor of Cross River State, which is dated the 22<sup>nd</sup> November, 2000 and titled “*Cross River State Request for Equitable Derivation Formula.*” That from a true representation of oil-produced in 1999, 2000 and 2001 the Cross River State emerges as the 7<sup>th</sup> largest oil producing State as shown by “*Exhibits CRSAG 4, 5, and 6*” to the affidavit. That despite this, the defendant has continued to be made to receive 0.0023% with effect from the year 2000. That the provisions of the proviso to section 162 subsec-

tion (2) of the Constitution have not been applied to the defendant and that the defendant is entitled to 13% of all income derived by the Federal Government from its forestry resources.

The 10<sup>th</sup> defendant adduces affidavit evidence sworn to by Mr. Gaban Emmanuel Okirhienyefa, Legal Officer in Delta State Ministry of Justice. He deposes that the Surveyor-General of Delta State, Mr. D. O. Akpoghene had informed him that maps are kept in the Ministry of Lands, Surveys and Urban Development of Delta State which show the rigs and oil wells in the coastline of Delta State. Also kept in the Ministry are Oil/Condensate Production Statics of January to September, 2000 prepared by the Department of petroleum Resources of the Nigerian National Petroleum Corporation. That the oil rigs and wells located in some of the off-shore areas abutting the coastline of the 10<sup>th</sup> defendant bear the names of the communities D indigenous to Delta State.

In a further affidavit, sworn to by Mr. Gaban Emmanuel Okirhienyefa, it is stated that he had been informed by the Commissioner of Finance and Economic Planning of Delta State and he believes him, that the accounting firm of Deloitte Touche was requested to review the computation of revenue allocation by Delta State due from the Federal Government. This was done and the report by the accounting firm shows that there was a short-fall, from the computation, of the sum of N20,367,065,636 from 1<sup>st</sup> June, 1999 to 31<sup>st</sup> January 2001. The schedule of the under-payment, which was jointly signed by the Commissioner of Finance and Economic Planning, Mr. David Edevbie and Accountant-General, Mr. C. O. Siakpere, is attached to the affidavit in question as "*Exhibit A*".

The 24<sup>th</sup> defendant adduces affidavit evidence through Mr. Olawale Edun, Commissioner for Finance, Lagos State who deposes that over the years Lagos State has not been a beneficiary of the payments made to States based on the principle of derivation. That as Commissioner for Finance he attends meetings, together with other States' Commissioners for Finance and the Minister of Finance, for the purpose of determining the amount of revenue due for allocation and distribution. That from the May 1999 a dichotomy had been surreptitiously introduced, separating off-shore sources of revenue. That the payment of revenue accruing based on the principle of derivation now excludes from distribution to the States revenue accruing

from off-shore sources and that is now kept exclusively by the Federal Government. That objection was raised, by Lagos State and other States, in the manner of distribution of revenue from the Federation Account. That revenue accruing to Lagos State from the Federation Account since the 29<sup>th</sup> May, 1999 has not been paid to it on the basis of derivation. That the revenue accruing to Lagos State from the Federation Account from exploitation of natural resources is peculiarly known to the Federal Government and details of which have not been made available to Lagos State. In addition to this the defendant has suffered significant economic losses resulting in infrastructure decay, social dislocation and economic depression. That Lagos State has a lot of resources which accrue to it as a result of its unique position. These include fishes, ports, piers, wharves and sea transport. That the Federal Government has benefited from the resources in Lagos State by collecting import duties, fees for fishing licences, pier licences, harbour dues and other port charges.

The 32<sup>nd</sup> defendant adduces affidavit evidence sworn to by Mr. Rufus N. Godwins, Assistant Director of Civil Litigations, in the Ministry of Justice of Rivers State, to the effect that Mr. Akeodi Oyaghiri had informed him as follows and he believes him. That the 32<sup>nd</sup> defendant and other States had demanded that the provisions of section 162 (2) of the 1999 Constitution which provide for the payment of not less than 13% of the revenue accruing from any natural resources to States, from which the natural resources are derived, should be implemented with effect from the 29<sup>th</sup> May, 1999. That the Federal Government in violation of the provisions persistently refused to make the payment. That sometime in March or April, 2000 the Federal Government decided to comply with the constitutional provisions, but in doing so, paid arrears to the defendant and other benefiting States with effect from the 1<sup>st</sup> January 2000 instead of the 29<sup>th</sup> May, 1999. That in complying with the provisions of section 162 (2), the Federal Government introduced the dichotomy of on-shore/off-shore oil to the principle of derivation and refusing to pay to the defendant and all other States entitled to 13% of the revenue accruing to the Federation Account from off-shore mineral resources estimated to be approximately 45% of the total revenue derived. That the defendant had thus been paid only 60% of the stipulated minimum 13% on the total on-shore oil production revenue due to

States from which the natural resources is derived. That no revenue from derivation has ever been paid to the defendant on the remaining 40% of the total off-shore oil production.

That in June, 1999 the Federal Government commenced production, sale and shipment of natural gas. That the defendant has never been furnished by the Federal Government with any document or statement of account showing precisely the quantity of natural gas sold and the value of all the natural gas derived from the territory of the Rivers State. That despite repeated demands for the payment of 13% of the total revenue accruing to Federation Account from natural gas, which is a natural resource derived from Rivers State, the Federal Government has failed and neglected to pay to the defendant 13% of the revenue in gross violation of the Constitution. Nor has it in fact paid any money on account of sale of natural gas from June, 1999 to date.

That the Federal Government has despite repeated demands, deliberately refused and neglected to account for revenue accruing to the Federation Account from natural resources located in the defendant's territory such as wharves, sea ports, internal waters and harbours. That the refusal of the Federal Government to furnish the defendant with a full statement of account, in respect of all the natural resources derived from its territory, is a calculated attempt to deprive the defendant of its entitlement as provided under the 1999 Constitution.

Various documents showing the manner of revenue accruing to the Federation Account and the manner in which the distribution is made between the three tiers of government have been exhibited in the affidavit of Mr. Rufus N. Godwins. They have been produced in support of the defendant's case. They are marked as "Exhibits RN1, RN1A, RN2, RN2A, RN3, RN4, RN5, RN6, RN7 and RN8" respectively.

The plaintiff has not adduced evidence whether oral or documentary in rebuttal of the aforementioned pieces of evidence adduced by the counter-claimants. Therefore the pieces of evidence stand unchallenged.

#### ARGUMENT IN THE COUNTER-CLAIMS

The 3rd defendant contends that he has filed affidavit evidence in support of his pleadings in relation to his counter-claim and the

plaintiff has offered no evidence whatsoever in rebuttal. Therefore the Court should enter judgement in his favour on the counter-claim. That what is being counter-claimed is merely outstanding balance on account. That in the absence of a formula by the National Assembly under section 162 of the Constitution, the Allocation of Revenue (Federation Account etc) Act Cap 16 as amended by Act No. 106 of 1992, which abolished off-shore and on-shore dichotomy, applies as an existing law by virtue of the provisions of section 315 of the Constitution. B

The 6<sup>th</sup> defendant canvases that with effect from 29<sup>th</sup> May, 1999, the Revenue Mobilization, Allocation and Fiscal Commission, the President of the Federal Republic of Nigeria and the National Assembly are envisaged under the provisions of section 162 subsection (2) of the Constitution to take steps in the process of producing a formula for allocation of revenue from the Federation Account. As it would take time for the formula to evolve, section 313 of the Constitution makes a transitional provision for the allocation of revenue from the Federation Account. To this effect the formula applicable with effect from 1<sup>st</sup> January to 31<sup>st</sup> December, 1998 is to apply. The law in that respect is the Allocation of Revenue (Federation Account etc.) Act Cap 16 as amended by Act No. 106 of 1992. Therefore for the time being there is no vacuum as to the law applicable to the distribution of the Federation Account and that the distinction between oil produced on-shore and off-shore is abolished. It follows that States have a right to their respective share of revenue from the Federation Account under the Act in Cap. 16 as amended. C D E F

It is argued that the Revenue Allocation (Federation Account etc.) Act, Cap. 16 as amended is an “*existing law*” by virtue of the provisions of section 315 subsection (4) (b) of the Constitution. The fact section 313 of the Constitution makes reference to the Act that does not affect the position of the Act as an “*existing law*” under the Constitution. G

It is canvassed that the 13% mentioned in section 162 subsection (2) of the Constitution must be taken into consideration when the National Assembly comes to enact a revenue allocation formula. The Constitution does not envisage that any percentage that is less than 13% should apply. Since the proviso to section 162 (2) came into operation with the rest of the Constitution on 29<sup>th</sup> May, 1999 it H

is submitted that the States become entitled to 13% of the revenue derived from their natural resources. Therefore what has been provided in the proviso needs not to await the enactment envisaged in the Constitution by the National Assembly. In other words with the coming into operation of the Constitution no other step is needed to bring into effect the application of the 13%. It is submitted that the 1% derivation formula fixed by the Allocation of revenue (Federation Account etc.) Act as amended is contrary to the 13% provided by the proviso to section 162 (2). The Act is to that extent void by virtue of the provisions of section 1 subsection 3 of the 1999 Constitution.

The 8<sup>th</sup> defendant argues that parties are bound by their pleadings and that the Court has a duty to decide issues settled in the pleadings and only admitted averments need not be proved – *International Bank of West Africa v. Imano & Anor.*, (2001) 2 SCNJ 160 and *Obulor v Oboro*, (2001) 4 SCNJ 22 at pp. 27 – 28. That since the plaintiff has admitted the defendant's counter-claim it will not be just and equitable to refuse its counter-claim.

The 9<sup>th</sup> defendant argues that a duty is imposed by law on the Federal Government to render accurate and regular account of all monies in the Federation Account. That the position of the Federal Government in maintaining and administering the Federation Account is, by virtue of section 162 subsection (1) of the Constitution, that of a trustee for the State Governments and the Local Governments. It is the duty of a trustee to keep proper accounts of the trust he administers and the beneficiary has an unfettered right to call upon the trustees for accurate information as to the state of the trust – *A-G. of Bendel State v A-G. of the Federation & Ors.*, (1983) 14 NSCC 181 at page 193. That the defendant made demands on the plaintiff for accounts but the plaintiff refused to render the account. The plaintiff should therefore be compelled to deliver account to the defendant.

The brief of argument filed by the 10<sup>th</sup> defendant does not present any argument in support of his counter-claim nor did learned Attorney-General address the Court orally on the counter-claim.

The 24<sup>th</sup> defendant contends that Lagos State is, by virtue of the proviso to section 162 subsection (2) of the Constitution, entitled to revenue derived from off-shore waters and all other natural resources within the State. It is submitted that the Allocation of Rev-



enue (Federation Account, etc.) Act Cap. 16, as amended, is the legislation governing the allocation of revenue from the Federation Account by virtue of the provisions of section 313 of the Constitution. The Act, it is argued, has abolished the off-shore and on-shore dichotomy in the distribution of revenue on derivation of natural resources.

It is canvassed that the words ‘*natural resources*’ in section 162 (2) encompasses more than minerals, mineral oils and natural gas. The definition of the term in Collins Dictionary of the English Language, page 980 which is “*naturally occurring materials such as coal, fertile land etc. that can be used by man,*” is referred to by learned Attorney-General, so also the definition in Black’s Law Dictionary, 6<sup>th</sup> Edition page 1027. Based on the definitions it is submitted that submerged lands and sea bed abutting Lagos State are natural resources of Lagos State which have been developed, like any other natural resources, to give economic benefit. That 13% of the revenue accruing directly from such resources should be paid to Lagos State pursuant to section 162 (2) of the Constitution. It is further argued that the Federal Government is a trustee to the State with regard to the Federation Account; as such it is liable to render account to the defendant, and the Court should compel it to do so.

The 32nd defendant argues that it is entitled to judgment on its counter-claim since the evidence it has adduced has not been contradicted by the plaintiff. It is submitted that since the Constitution came into effect on 29<sup>th</sup> May, 1999, the defendant is entitled to receive 13% derivation revenue from that date and not 1<sup>st</sup> January, 2000 as implemented by the plaintiff. That having regard to the provisions of sections 313 and 315 of the Constitution the defendant’s counter-claim is valid. The defendant canvasses that the plaintiff having exclusive right to explore and exploit natural resources derived from the Rivers State and being charged with the responsibility for the maintenance and disbursement of the Federation Account, the defendant, as beneficiary, is entitled to be furnished with full and accurate statement of account of all monies touching and concerning natural resources whether by way of receipt or disbursement - A-G. of Bendel State v A-G. of the Federation & 18 Ors., (1983) 1 SCNLR 239 at p. 255. Learned Attorney-General argues that the Allocation of Revenue (Federation Account, etc.) Act Cap 16 as amended by

Act No. 106 of 1992 is an “*existing law*” for the revenue allocation pursuant to section 162 (2) of the Constitution. That its provisions have been preserved by the combined effect of sections 313 and 315 of the Constitution.

For the plaintiff, reference is made to Order 25 rules 2 (1) and B 3 of the Federal High Court (Civil Procedure) Rules, 2000, to ask the Court to dispose of and determine the counter-claims by the defendants by the points of law pleaded in paragraphs (6(1) and 7 (i) and (ii) of the plaintiff’s defence to the counter-claims. Reference is also C made to Order 5 rule 2 of the same Rules and it is submitted that, based on the rule, only the respective counter-claimants and the plaintiff are parties to the counter-claims. Therefore, no one else is a party to the counter-claims even if that person is a defendant to the substantive action. Order 5 rule 3 (2) of the Rules is also referred to and D it is submitted that we ought to strike out or direct, where we are satisfied that any counter-claim is not duly constituted for the purpose of trying the relief claimed, that counter-claim be tried separately so that the proper parties can be joined for the purpose of the trial. However, that in the present case the proper order to make is E to strike out the counter-claim concerned. It is emphasised that all the parties interested or likely to be affected by the counter-claim concerned. It is emphasised that all the parties interested or likely to be affected by the counter-claims have not been joined.

F It is submitted that no formula of revenue allocation under section 162 of the Constitution is in force as the National Assembly is yet to enact one. However, the 1999 Constitution has made provisions under section 313 thereof for the allocation of revenue in the meantime, thus enabling the Allocation of Revenue (Federation Account, etc.) Act Cap 16 to continue to apply. It is submitted that this G will be so even where the provisions of the Act are inconsistent with the provisions of section 162 of the Constitution because the Act does not operate as an “*existing law*” under 315 but b force of the transitional provisions of section 313. It is further argued by that H reason that the amendment to the Act by Act No. 106 of 1992 abolishing on-shore and off-shore oil production in section 4A (6) of Cap. 16, is a temporary enactment pending the coming into force of the revenue allocation formula under section 162 (2). It is then submitted that until the enactment of a relevant Act under section 162 (2)

of the Constitution for distribution of moneys in the Federation Account all counter-claims based upon the assumption that such a formula exists are misconceived and untenable.

On the counter-claims for account of moneys accruing to the Federation Account it is contended that there is no basis for the counter-claim since the Commissioner for Finance of each of the States is a member of the Federation Account Allocation Committee which was established pursuant to section 5 subsection (1) of the Allocation of Revenue (Federation Account, etc) Act, Cap. 16. Reference is made to the function of the Committee under section 5 subsection (3) thereof.

Furthermore, each State is represented, by a member, on the Revenue Mobilization Allocation and Fiscal Commission and none of the counter-claimants has alleged that the Commission, has failed or refused or neglected to supply it with a statement of account on request made.

It is contended that the payment of 1% of moneys in the Federation Account as provided by the Allocation of Revenue (Federation Account, etc) Act Cap. 16 for the purposes of the Federal Capital Territory is lawful by reason of the provisions of section 4A(a) of the Act as amended by Act No. 106 of 1992, which remains in force by virtue of the provisions of the Constitution. Also that the deduction of moneys from the Federation Account to service or pay debts owed by the Federal or State Governments is lawful by reason of sections 3 and 4 of the General Loan and Stock Act, Cap. 161 and section 314 of the Constitution.

On the deduction from the Federation Account of moneys intended for the purposes of primary education which is paid to Local Governments instead of the State Governments, it is submitted that payment of moneys representing the share of Local Governments in accordance with Cap. 16. It is observed that primary education is a subject under the function of Local Governments under the Constitution.

With regard to the declaratory orders being sought in the counter-claims it is argued that a court does not act in vain. Accordingly, court will not make any declaration, which does not settle or determine a dispute or controversy between the parties. By virtue of section 232 subsection (1) of the Constitution, this Court has no un-

limited jurisdiction to grant declaratory orders in cases where existence or extent of a legal right does not depend on such declaration or where the declaration will serve no useful purpose.

It is finally submitted that by reason of the foregoing each of the reliefs claimed by the counter-claimants ought to fail as indicated  
B in paragraph 7 of the plaintiffs defence to the counter-claims.

#### CONSIDERATION AND DETERMINATION OF COUNTER-CLAIMS

Chief Williams, learned Senior Advocate, has raised the preliminary point that all the counter-claims should be struck out since  
C not all the parties whose interest in the counter-claims is affected or likely to be affected have been joined, that is, that the other States of Nigeria are not made parties to the counter-claims. He relies on Order 5 rules 2 and 3 (2) of the Federal High Court (Civil Procedure) Rules, 2000, which provide as follows:

D “2(1) Subject to sub-rule (2) of this rule, a defendant in any action who alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in the action in respect of any matter (whenever and however arising) may, instead of bringing a separate action, make a counter-claim in respect of that matter; and where he  
E does so he shall add the counter-claim to his defence.

(2) Sub-rule 1 of this rule shall apply in relation to a counter-claim as if the counter-claim were a separate action and as if the person making the counter-claim were a plaintiff and the person against whom it is made, a defendant.”

F “3(2) *If it appears on the application of any party against whom a counter-claim is made, that the subject matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order it to be tried separately or make such other order as*  
G *may be expedient.*”

In reply, Professor Yemi Osinbajo, learned Attorney-General of Lagos State, argued that all the parties supposed to be joined are in court in respect of the plaintiff’s claim. They are by virtue of that been served with the counter-claims and therefore are aware of all  
H the counter-claims, but have done nothing to be joined. In that case, it is not necessary to join them or the failure to join them is not fatal to the counter-claims. He cites the case of *Green v. Green*, (1987) 2 NSCC 1115 at p. 1122 where Oputa, JSC observed thus on lines 25 – 30:-

*“Under our law, one reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action. See Amon v. Raphael Tuck & Sons Ltd., (1956) 1 Q.B.D. 357 at p. 380 per Devlin J. Under our law also a person whose interest is involved or is in issue in an action and who knowingly chose to stand by and let others fight his battle for him is equally bound by the result in the same way as if he were a party: See In Lart (1896) 2 Ch. D. 788; Leads v Amherst 16 L J. Ch. 5; Esiaka v Obiasogwu 14 W.A.C.A 178; Abuakwa v. Adanse (1957) 3 All ER 559.”*

I quite agree. This, therefore, disposes of the preliminary point raised by Chief Williams.

Now, section 162 subsections (1) – (5) of the 1999 Constitution provides as follows:-

*“162 – (1) The Federation shall maintain a special account to be called “the Federation Account” into which shall be paid all revenues collected by the Government of the Federation, except the proceeds from the personal income Tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja.*

*(2) The President, upon the receipt of advice from the Revenue Mobilization Allocation and Fiscal Commission, shall, table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take not account, the allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density.*

*Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen per cent of the revenue accruing to the Federation Account directly from the natural resources.*

*(3) Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the local Government councils in state on such terms and in such manner as may be prescribed by the National Assembly.*

*(4) Any amount standing to the credit of the States in the Federation Account shall be distributed among the States on such terms*

*and in such manner as may be prescribed by the National Assembly.*

*(5) The amount standing to the credit of local Government councils in the Federation Account shall also be allocated to the States for the benefit of their local government councils on such terms and in such manner as may be prescribed by the National Assembly”.*

B From these provisions it follows that a special account called  
 “*Federation Account*” has been created under the Constitution and  
 all revenue collected by the Federal Government, with few excep-  
 tions mentioned therein, shall be paid into the Account. The excep-  
 C tions are not relevant for the purpose of the present case. The Re-  
 venue Mobilization, Allocation and Fiscal Commission, an executive  
 body established under section 153 subsection (1) (n) of the Consti-  
 tution, has the duty to advise the President of the Federal Republic of  
 Nigeria on the proposals for revenue allocation from the Federation  
 D Account. The President is to table such proposals before the National  
 Assembly, which in turn shall take into account the allocation prin-  
 ciples specified under section 162 subsection (2) of the Constitution.  
 These bodies, namely, the Revenue Mobilization Allocation and Fis-  
 cal Commission, the President and the National Assembly are en-  
 E joined, in following the principles of derivation, to constantly reflect  
 in any approved formula for the allocation of revenue from the Fed-  
 eration Account, that not less than thirteen per cent of the accruing  
 to the Federation Account, directly from any natural resources is allo-  
 cated to the State from which the natural resources are derived. I  
 F mention here State, as beneficiary based on the practice under the  
 past Constitutions and legislations, but not specifically with a view to  
 the 1999 Constitution. This is so, because some doubt about States  
 alone being the sole beneficiaries to the principle of derivation is cre-  
 G ated by subsection (3) of section 162 which provides that “*any*  
*amount*” standing to the credit of the Federation Account shall be  
 distributed between the Federal and State Governments and indeed  
 the Local Government Councils in each State.

H It is necessary to make the observation because the counter-  
 claims in this case place emphasis on the allocation of the 13% of the  
 revenue on derivation to State only and no reference is made to the  
 Local Government Councils in whose areas the natural resources  
 may have been derived. Section 3 of the Cap 16 states:-

*“3. For the allocation from Federation Account among Local*

*Governments, the same factors and weights as those used for sharing revenue from the Federation Account among States shall apply.”*

It seems to me, if the Local Government Councils are envisaged by the Constitution to partake in the 13% of the revenue on derivation, payment in that respect is to be made to the respective State Governments in accordance with the provisions of subsection B (5) of section 162 of the Constitution.

Now, it is a matter of common knowledge and, therefore, subject to judicial notice, that the Revenue Mobilization, Allocation and Fiscal Commission has advised the President in accordance with the provisions of subsection (2) of the section 162 and the President has C tabled before the National Assembly proposals for revenue allocation from the Federation Account. However, the National Assembly is yet to pass an Act which prescribes the formula for the allocation.

Thus, there is no approved system of revenue allocation by D the National Assembly pursuant to the provisions of the 1999 Constitution. In the absence of the formula the Constitution provides under section 313 as follows:-

*“313. Pending any Act of the National Assembly for the provision of a system of revenue allocation between the Federation and E the States, among the States, between the States and local government Councils and among the local government councils in the States, the system of revenue allocation in existence for the financial year beginning from 1<sup>st</sup> January 1998 and ending on 31<sup>st</sup> December 1998 shall, subject to the provisions of this Constitution and as from F the date when this section comes into force, continue to apply:*

*Provided that where functions have been transferred under this Constitution from the Government of the Federation to the States and from the States to Local Government councils the appropriate G provisions in respect of such functions shall also be transferred to the States and the local government councils, as the case may require.”*

The system of revenue allocation applicable during the financial year beginning from 1<sup>st</sup> January, 1998 and ending on 31<sup>st</sup> December 1998 is the Revenue Allocation (Federation Account etc.) H Act, Cap 16 of the Laws of the Federation of Nigeria, 1990, as amended in 1992 by the Allocation of Revenue (Federation Account etc.) (Amendment) Decree (i.e. Act) No. 106 of 1992.

Section 1 of the Allocation of Revenue (Federation Account

etc.) Act Cap 16 as amended, now reads:-

“1. *The amount standing to the credit of the Federation Account (as specified in subsection (1) of the section 149 of the Constitution of the Federal Republic of Nigeria) shall be distributed by the Federal Government among the various governments in Nigeria and*

B *the Funds concerned on the following basis, that is to say –*

(a) *the Federal Government ... 48.5 per cent;*

(b) *the State Governments ... 24 per cent;*

(c) *Local Government Councils ... 20 per cent;*

C (d) *Special funds ... 7.5 per cent;*

(i) *Federal Capital Territory... 1 per cent of the Federation Account;*

(ii) *Development of the Mineral Producing areas ... 3 per cent of the revenue accruing to the Federation Account derived from minerals;*

(iii) *General ecological problems ... 2 per cent of the Federation Account;*

(iv) *Derivation... 1 per cent of the revenue accruing to the Federation Account derived from minerals;*

E (v) *Stabilization Account... 0.5 per cent of the Federation Account, plus the revenue arising out of using mineral revenue, instead of the Federation Account as the base for allocation to the Fund for the development of the mineral producing areas and derivation.”*

F Happily, section 162 subsection (1) of the 1999 Constitution is the same as section 149 subsection (1) of the 1979 Constitution except for the word “*Abuja*” which is added after the “*Federal Capital Territory*” at the end of the provisions of the former. The wordings are the same and so the provisions of the Act cannot be said to be inconsistent with those of section 162 subsection (2) of the 1999 Constitution. The expression “*section 149 subsection (1) of the 1979 Constitution*” is however inconsistent with “*section 162 subsection (2) of the 1999 Constitution*” which is now the applicable provision.

G The expression pertaining to 1979 Constitution in the Act is, pursuant to the provision of section 1 subsection (3) of the 1999 Constitution, void and those of the 1999 Constitution prevail. So that “*section 149 subsection (1) of the 1979 Constitution*” shall now read “*section 162 subsection (2) of the 1999 Constitution*”. Subsection (3) of section 1 of the 1999 Constitution provides –



*“1(3) If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void”.*

By section 315 subsection (1) of the 1999 Constitution, an “existing law” shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of the Constitution. Chief Williams contends that the Allocation of revenue (Federation Account etc.) Act Cap 16, as amended, is not an “existing law” but a transitional legislation under the special provisions of section 313 of the Constitution. The counter-claimants have submitted otherwise. They argued that the Act is both transitional under section 313 and an “existing law” under section 315 of the Constitution.

Chief Williams has submitted further that the provisions of section 313 are special as they expressly apply to the Revenue Allocation (Federation Account etc.) Act Cap 16 as amended, whereas those of section 315 are general in nature and hence by the canon of interpretation of enactments, the special excludes the general (that is the Latin maxim – *generalia specialibus non derogant*).

I agree with the submissions of the counter-claimants that the provisions of both section 313 and 315 apply to the Act and they are not mutually exclusive of the other. It is clear that the two sections are not repugnant to each other, therefore the maxim does not apply. In any case the provisions of section 315 are both general and special because under subsection (5) thereof special provisions are made to safeguard a number of legislations, such as the National youth Service Act and the Land Use Act. This, I think, should create an exception to the maxim even if it were to apply.

As has been seen earlier all the counter-claims are based on the premise that the provisions as to 13% of the revenue from natural resources should, on principle of derivation under section 162 (2), apply to the current system of allocation of revenue. This is a misconception and cannot be correct; because the National Assembly is yet to enact an Act that will take into account the provisions of subsection (2) of section 162 including the proviso thereto. In my view the provisions cannot apply to the Act, as it now stands, until it is modified by the President of the Federal Republic of Nigeria in accordance with the provisions of section 315 (2) and (4) of the Constitution. The President has not made any “modification” to the

Act in question to bring it in conformity with the Constitution. Therefore, all such claims in the counter-claims are misconceived and must fail and I hereby deem them all as failed.

The proviso to section 162 subsection (2) of the Constitution applies “*natural resources*” and not to “*minerals*” only. The words  
 B “*natural resources*” are defined in Webster’s New Twentieth Century Dictionary, unabridged, Second-Edition – Deluxe Colour to mean “those actual and potential forms of wealth supplied by nature as coal, oil, water power, arable land etc.” The words are also defined in  
 C Black’s Law Dictionary Special Delux, Fifth Edition to mean –

*“Any material in its native state which when extracted has economic value. Timber-land, oil and gas wells, ore deposits, and other products of nature that have economic value. The cost of natural resources is subject to depletion, often called “wasting assets.”*

D *The term includes not only timber, gas, oil, coal, minerals, lakes, and submerged lands, but also features which supply a human need and contribute to the health, welfare, and benefit of a community, and are essential to the well-being thereof and proper enjoyment of property devoted to park and recreational purposes..”*

E As can be seen, by the words “*natural resources*” the Constitution envisages resources that embrace not only oil and gas but others. The words are more embracing than the word “*mineral*” which has been defined by the Webster New Twentieth Century Dictionary,  
 F (supra) to mean:-

*“1. An inorganic substance occurring naturally in the earth and having a consistent and distinctive set of physical properties (e.g. colour, hardness, and crystalline structure) and a composition) and a composition that can be expressed by a chemical formula, sometimes  
 G applied to similar substances of organic origin as coal.*

*2. any naturally occurring substance that is neither vegetable nor animal.”*

In this case we are concerned with “*natural resources*” as provided under the proviso to section 162 subsection (2) of the Constitution and not “*minerals*” as provided under the Allocation of Revenue (Federation Account etc.) Act, Cap. 16, as amended. It follows  
 H from the definition of “*natural resources*” that claims in the counter-claims relating to wharves, ports, piers, pier licences, collection of rates, harbour dues, shipping dues, quarries, sea, livestock, fish, hide

and skin, horns, groundnuts, beans, mangoes, grains, pepper, cotton, and gum arabic, are untenable as they do not fall under the definition of “*natural resources*.”

As shown above, section 1 of the Allocation of Revenue (Federation Account, etc.) as amended, deals with the distribution of the Federation Account. Apart from distributing the Federation Account among the Federal Government, State Governments and Local Governments it created “Special Funds.” Under the “Special Funds” 1% for the Federation Account is allocated to the Federal Capital Territory; 3% of the Federation Account to the development of the mineral producing areas; 2% of the Federation Account to the development of mineral producing areas; 2% of the Federation Account to general ecological problems 1% of the Federation Account to derivation and 0.5% to stabilization account. Section 4A of the Act, as amended, expatiates on the contents of the “*Special Funds*”. Section 162 subsection (3) of the 1999 Constitution is clear as to the distribution of the Federation Account. It mentions that only the Federal and State Governments and the Local Governments in each State are entitled to share in the Federation Account.

It follows that the provisions of section 1 (d) of the Act on “*Special Funds*” is inconsistent with the provisions of section 162 (3) of the Constitution. It is accordingly void by virtue of the provisions of section 1 subsection (3) of the Constitution. Such deduction from the Federal Account is, in my opinion, unconstitutional.

It is to be observed that the provisions of section 314 of the 1999 Constitution which renders the Act applicable makes it clear therein that such application is “*subject to the provisions of this Constitution*.” Similarly, being an “*existing law*”, the provisions of section 1 (d) of the Act can be declared invalid by this court in view of the provisions of section 315 subsection (3) of the Constitution, which reads: -

*“315(3) Nothing in this Constitution shall be construed as affecting the power of a court of law or any tribunal established by law to declare invalid any provision of an existing law on the ground of inconsistency with the provision of any other law.”*

It has transpired also that other deductions are being made from the Federation Account in respect of monies paid to the National Judicial Council for funding the Federal and State Judiciaries;

for servicing external debts and for funding Joint Venture Contracts and Nigerian National Petroleum Corporation priority projects. All these deductions are carried out as first line charge on the Federation Account. All the deductions are not provided for by the 1999 Constitution, notwithstanding the provisions of section 162 subsection (9) B in the case of the National Judicial Council, so that even if any enactment has provided for them, like the Appropriation Act by the National Assembly, such enactment is inconsistent with the Constitution and is therefore invalid to the extent of the inconsistency. Sections 3 and 4 of the General Loans and Stock Act, Cap. 161, which the C plaintiff relies upon to support deductions from the Federation Account for servicing foreign debts, falls under this category. Section 314 of the Constitution, which the plaintiff relies upon does not, in my opinion, provide justification for making the deduction from the D Federation Account. The section provides:-

*"314. Any debt of the Federation or of a State which immediately before the date when this section comes into force was charged on the revenue and assets of the Federation or on the revenue and assets of a State shall, as from the date when this section comes into E force, continue to be so charged."*

I think the charge to the revenue of the Federation or the revenue of a State simply means a charge to the Consolidated Revenue of the Federation or the Consolidated Revenue of a State into which F monies received from the Federation Account are credited – see sections 80 (1) and 120 (1) of the 1999 Constitution. Section 80 subsection (1) provides:-

*"80(1) All revenues or other moneys raised or received by the Federation (not being revenues or other moneys payable under this G Constitution or any Act of the National Assembly into any other public fund of the Federation established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the Federation."*

While section 120 subsection (1) reads:-  
H *"120(1) All revenues or other moneys raised or received by a State (not being revenues or other moneys payable under this Constitution or any Law of a House of Assembly into any other public fund of the State established for a special purpose) shall be paid into and form one Consolidated Revenue Fund of a State."*

I now come to consider the individual claims by the counter-claimants. I propose to deal with the claims in the light of the afore-said. The claims have been stated earlier in this judgment under the heading "Defendants' Counter-Claims."

3<sup>rd</sup> Defendant's Counter-claim:

The declaration sought under claim No. (1) cannot be granted because no enactment has been passed by the National Assembly in respect of section 162 subsection (2) of the Constitution. Part of the claim is predicated on off-shore derivation which by the decision in the plaintiff's claim cannot succeed. The claim is therefore dismissed. B

The order sought in claim No. (2) cannot be granted because it is based on the formula to be enacted under Section 162 subsection (2) of the Constitution which has not yet been enacted. C

The payment of the sum of 15,006,418,955.28 under claim No. (3) cannot be granted, as it is based on the provisions of section 162 subsection (2) which is yet to be enacted. D

On the whole of the counter-claim fails and it is hereby struck out rather than dismissed, since Akwa Ibom State may be entitled to receive funds in arrears when the National Assembly comes to pass the necessary enactment on revenue Allocation. E

6<sup>th</sup> Defendant's Counter-claim:

The determination sought under claim No. (a) is subject to the direction of the National Assembly. The Court cannot restrict the National Assembly from exercising its discretion by such pronouncement. F

The order sought in claim (b) for the payment of 13% of the revenue on derivation to Bayelsa State cannot be granted as the National Assembly is yet to enact an Act on the Allocation of Revenue as envisaged by section 162 subsection (2) of the Constitution. G

The order sought under claim (c) for an account to be rendered in respect of all moneys that have so far accrued to the Federation Account in respect of the off-shore oil production from Bayelsa State cannot be granted, because the Act applicable to the allocation of revenue at present abolished the difference that existed between on-shore and off-shore oil production. And with regard to the provisions of section 162 (2) of the Constitution, no Act for the allocation of revenue has been enacted by the National Assembly. H

The order sought under claim No. (d) is similar to claim No.

(c). for the reasons applicable to the latter claim (d) cannot be granted.

Claim No. (e) cannot be granted because it is based on 13% of the revenue derived from natural resources as provided under section 162 subsection (2) of the constitution. The National Assembly is yet to pass a bill which give the defendant the right to so claim.

B On the whole the counter-claim by the 6th defendant has failed. I strike it out instead of dismissing it as the defendant may be entitled to the claims in future when the National Assembly comes to pass the necessary legislation for the allocation of revenue under the Constitution.

C 8<sup>th</sup> Defendant's Counter-Claim

It seems to me that the 8<sup>th</sup> defendant is by virtue of the provisions of section 162 (2) of the Constitution entitled to receive some revenue from the Federation Account in respect of the natural resources derived in Borno State. These are precious stones, gypsum, potash and gold. However, the National Assembly is yet to pass a bill for the payment of such revenue from the Federation Account as envisaged by the Constitution. Consequently the declaration sought under claim (a) cannot be granted –

E There is no evidence led or adduced to show that demand has been made by the Defendant for an account and it has been refused by the plaintiff. In the circumstance claim No. (b) for an order to compel the plaintiff to give an account of revenue generated from natural resources derived from Borno State cannot be granted.

F The order sought under claim No. (c) for the plaintiff to pay to the defendant an amount equivalent to 13% of the total revenue derived from the natural resources in Borno State cannot be granted because no bill has yet been passed by the National Assembly on the allocation of revenue from the Federation Account as envisaged by the Constitution under section 162 (2) thereof.

G On the whole the counter-claim by the defendant has failed and it is hereby struck out instead of being dismissed since the relief being claimed may materialize in arrears when the National Assembly passes the necessary legislation.

H 9<sup>th</sup> Defendant's Counter-Claim

The declaration sought under claim No. (1) cannot be granted because evidence has not been adduced to show the total revenue earned on derivation, which is deprived the defendant by the plain-

tiff, since the defendant was recognised as an oil-producing State. The claim is struck out.

Claim No. (2) for an order for the Accountant-General of the Federation to render an account of all the moneys received into and disbursed from the Federation Account from the 29<sup>th</sup> May, 1999 till the date of this judgment is granted. The defendant is entitled to such account in view of the decision of this Court in the case of Attorney General of Bendel State v Attorney-General of the Federation & Ors. (1983) 14 NSCC 181. However, it is not pleaded that account was requested and refused by the plaintiff. The claim therefore fails and it is struck out.

The order sought under claim No. (3) for the Federal Government to render account of all monies illegally and unconstitutionally retained by it beyond its statutory allocation from the 29<sup>th</sup> May, 1999 cannot be granted because no evidence has been adduced to show the amount retained. The claim is nebulous. It is therefore, struck out.

The declaration sought in claim No. (4) that the defendant is entitled to 13% of all income derived from activities at the Calabar Port, quarries, rivers and seas abutting Cross River State cannot be granted because such activities are not synonymous with “*natural resources*” mentioned under section 162 subsection (2). The claim is dismissed.

Claim No. (5) which seeks an order to compel the Federal Government to render account of the proceeds, of oil mineral products extracted from the oil wells lying east of longitude 8° 17'E in the Calabar/Cross River Estuary from 1987 till date of judgment cannot be granted; because no sufficient evidence has been adduced to show whether the area in question is within the seaward boundary of the Cross River State, since any claim arising from revenue accruing from 29<sup>th</sup> May, 1999 to the date of this judgment is caught by the provisions of section 162 subsection (2) of the 1999 Constitution. There is no clarity in the claim. It is hereby struck out.

The declaration sought under Claim No. (6) is vague. There is no sufficient evidence adduced by the defendant to show that the plaintiff “*has not clearly defined its mode of valuation of collectable oil revenue.*” The declaration cannot, therefore, be granted. The claim is struck out.

The order being sought under claim No. 7 to compel the Federal Government to pay Cross River State “*The sum total of the income rightly accruing to her from petroleum operations carried on in OMLs 114, 14 and 115 from the 23<sup>rd</sup> September, 1987 till date of judgment*” is vague. The area in question is not clear. Is it within the seaward boundary of the State or it extends beyond the seaward boundary? The evidence adduced does not answer the question. If it is the latter the order cannot be made. The claim, therefore, fails. It is struck out.

The declaration sought under claim No. 8 cannot be granted in view of the decision in the plaintiff’s claim because the territorial waters do not constitute part of the Cross River State. The claim fails and it is hereby dismissed.

On the whole the counter-claim fails.

10<sup>th</sup> Defendant’s Counter-Claim

The declaration sought under claim No. (a) cannot be granted in view of the decision in favour of the plaintiff’s claim with regard to the seaward boundary of littoral States and in particular Delta State.

The order sought in claim No. (b) for the sum of N11,33,392,572.10 to be paid to the defendant being arrears of the minimum 13% derivation from natural resources under the proviso to section 162 (2), commencing from June 1999 to 31 December, 1999, cannot be granted; because the defendant is not by the decision in favour of the plaintiff entitled to revenue accruing from derivation beyond the seaward boundary of Delta State. The claim is struck out.

The order sought in claim (c) which is to direct the plaintiff to pay the sum of N9,404,861,382.46 to the defendant being the minimum 13% derivation revenue in respect of off-shore oil operation between 30<sup>th</sup> January 2000 to 28<sup>th</sup> February, 2001 cannot be granted because the seaward boundary of the Delta State is the low water mark as decided in favour of the plaintiff. The claim is hereby dismissed.

By reason of the conclusion I reached in respect of claims Nos. (a), (b) and (c) it is untenable to grant the interest sought in claim No. (d). The claim is dismissed.

The declaration sought in claim No. (e) is refused and is hereby struck out.



The declaration sought under claim No. (f) from (i) to (iv) inclusive is granted as prayed.

The order for account sought under Claim No. (g) cannot be granted in the absence of evidence of demand and refused by the plaintiff.

The declaration sought under claim No. (h) cannot be granted because it is vague in the absence of an Act of the National Assembly on revenue allocation as envisaged by the Constitution under section 162 (2) thereof. The claim is dismissed. B

On the whole the counter-claim succeeds in part only. C

#### 24<sup>th</sup> Defendant's Counter Claim

The interpretation being sought in claim No. (a) which is to interpret sections 2 and 3 of the 1999 Constitution has been given while considering the claim of the plaintiff above.

The alternative declaration being sought in claim No. (b) cannot be granted in view of the decision in the plaintiff's case which is that the seaward boundary of the littoral States is the low water mark. It is dismissed. D

The declaration being sought under claim No. (c) cannot be granted as the evidence adduced by the defendant has not sufficiently established the facts being claimed. The claim is dismissed. E

The declaration being sought in claim No. (d) cannot be granted because the entitlement to 13% revenue on derivation is tied to derivation from within the State and not beyond the seaward boundary of the State. The claim is dismissed. F

The declaration being sought under claim No. (e) is refused because Nigerian's claim to Territorial Waters, Exclusive Economic Zone and Continental Shelf is based on the provisions of the United Nations Conventions on the Law of the Sea 1958 and 1982. The claim is dismissed. G

The declaration sought under claim No. (f) is refused because the seaward boundary of the littoral States is the low water mark. The claim is dismissed.

The declaration being sought under claim No. (g) is not based on a claim of right. It is therefore dismissed. H

The declaration being sought under claim No. (h) does not give the full definition of "*natural resources*" as shown above. As a result of declaration is refused and the claim is struck out.

Claim No. (j) cannot be granted as the territorial sea beyond the low water mark is subject to the exercise of sovereignty by Nigeria only and not subject to its ownership by littoral States. The claim is dismissed.

B      The first arm of claim No. (k) is refused as in the case of similar claim by the 9<sup>th</sup> defendant above. The second arm of the claim cannot be granted as it is vague. The 24<sup>th</sup> defendant has not specified the amount due to it. The second arm of the claim cannot be granted. The claim as a whole is struck out.

C      Claim No. (1) on the statutory allocation to Lagos State of 1% of the Federation Account is neither supported by any provision of the Constitution nor any legislation. The claim is therefore baseless. It is hereby dismissed.

On the whole the counter-claim succeeds in part only.

D      28<sup>th</sup> Defendant's Counter-Claim

The declaration being sought in claim No. (1) cannot be granted in view of the decision in the plaintiff's case. The claim is dismissed.

E      The declaration sought in Claim No. (2) cannot be granted following the decision in the plaintiff's case that the seaward boundary of Ondo State is the low water mark. The claim is dismissed.

The declaration being sought under Claim No. (3) cannot be granted as it will pre-empt the decision of the National Assembly in passing a bill under section 162 (2) of the Constitution. It is struck out.

F      The declaration sought in Claim No. (4) cannot be granted as the National Assembly is yet to enact the necessary legislation to entitle the defendant the declaration being sought. The claim is struck out.

G      The counter-claim fails as a whole.

32<sup>nd</sup> Defendant's Counter-Claim

H      The declaration under claim No. (a) cannot be granted because the principle provided under section 162 subsection (2) applies to not less than 13% of the revenue derived from the natural resources and not 100% of the total revenue. The claim is struck out.

The declaration being sought under claim No. (b) cannot be granted because the National Assembly as held is not empowered under the provisions of section 162 (2) to determine the principle of

derivation with respect to off-shore oil revenue since off-shore is not part of any State. The claim is struck out.

The declaration being sought in claim No. (c) cannot be granted as it pre-empts the Act to be passed by the National Assembly under section 162 (2) of the Constitution. The claim is struck out.

The declaration being sought under claim No. (d) cannot be granted in view of the decision in the plaintiff's case. The claim is struck out. B

The declaration being sought under claim No. (e) is granted as prayed.

The declaration being sought under claim No. (f) is granted as in the case of the other defendants above. C

The declaration being sought in claim No. (g) is refused as no demand was made for account and refused by the plaintiff. The claim is struck out. D

The declaration being sought under claim No. (h) cannot be granted in view of the decision in the plaintiff's case. The claim is hereby dismissed.

The order sought in claim No. (i) cannot be granted, in view of the decision in the plaintiff's case. The claim is dismissed. E

The order being claimed in claim No. (j) cannot be granted because wharves and sea ports are not "*natural resources*".

On the whole the counter-claim succeeds only in part.

### CONCLUSION

It is for these and the reasons contained in the judgment of my learned brother Ogundare, JSC, the draft of which I have had the advantage of reading in advance, that I arrived at the conclusion that the plaintiff's case succeeds. The seaward boundary of littoral States for the purposes of section 162 subsection (2) of the 1999 Constitution is, as provided by the 1954 Proclamation, the sea, which in other words is the low water mark. F

The defendant's claims under the various counter-claims are awarded as follows:-

(1) It is hereby declared in favour of the 10<sup>th</sup> Defendant that the first charge system being adopted by the plaintiff whereby it deducts certain percentage of revenue from the Federation Account for debt servicing before paying the constitutional minimum 13% revenue on derivation to the oil producing States is unconstitutional, H

null and void.

(2) It is hereby declared in favour of the 10<sup>th</sup> defendant that the under-listed economic policy and/or practices of the plaintiff are unconstitutional being in conflict with the 1999 Constitution: -

B (i) Exclusion of natural gas as constituent of derivation for the purposes of the proviso to section 162 (2) of the 1999 Constitution.

(ii) Non-payment of the share of the 10<sup>th</sup> defendant in respect of proceeds from capital gains taxation and stamp duties.

C (iii) Funding of the Judiciary as a first-line charge on the Federation Account.

(iv) Servicing external debts via first-line charge on the Federation Account.

D (v) Funding of Joint Venture Contracts and Nigerian National Petroleum Corporation (NNPC) Priority Projects as first line charge on the Federation Account.

(vi) Unilaterally allocating 1% of the revenue accruing to the Federation Account to the Federal Capital Territory.

I make no order as to costs. Instead each party should bear its own cost.

E Finally, I wish before ending this judgment to express our gratitude to all the learned counsel for the parties for their industry. Their briefs of argument and oral submissions have been of tremendous help to the Court.

F \_\_\_\_\_

### **WALI JSC**

G I have had the privilege of reading before now, the lead judgement of my learned brother Ogundare, JSC, with which I agree. I wish to make my contribution by way of emphasis only.

The plaintiff, by a writ of Summons filed in this Court pursuant to the provision of section 232(1) of the 1999 Constitution seeks for the following reliefs against the defendants jointly and severally: -

H *“a determination by this Honourable Court of the seaward boundary of a littoral State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to the proviso to section 162(2) of the Constitution of the Federal Republic of Nigeria, 1999”.*

After service of the Writ on the defendant and entering appearance, this Court made an order of filing and exchange of pleadings, followed also by filing and exchange of briefs the 29<sup>th</sup> and 30<sup>th</sup> defendants, that is Osun and Oyo State respectively did not file any brief. In the brief filed by the plaintiff, the following solitary issue was formulated for consideration by this Court. B

*“what is the seaward boundary of a maritime State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to the proviso to section 162(2) of the Constitution of the Federal Republic of Nigeria 1999.”* C

In his argument in support of the issue above, the learned Senior Advocate, Chief F.R.A Williams referred to the Territorial Waters Act Cap 428 of the Laws of the Federation, the Sea Fisheries Act Cap 404 and the Exclusive Economic Zone Act, Cap 116 respectively of the Laws of the Federation and submitted in his brief as follows: -

By the provisions of Subsection (1) of the Territorial Waters Act Cap 428, the limits of the territorial waters of Nigeria was defined E in the following terms -

(a) *“The territorial waters of Nigeria for all purposes include every part of the open sea within thirty nautical miles of the coast of Nigeria measured from low water mark) or of the seaward limits of inland waters.”* F

(b) *“The sea Fisheries Act, Cap 404, Laws of the Federation of Nigeria, carries the long title “An Act to make provisions for the control, regulation and protection of Sea Fisheries in the Territorial Waters of Nigeria.” The definition Section, section 11 of the Act, provides that “territorial waters of Nigeria” has the same meaning as in Section 1 of the Territorial Waters Act.* G

(c) The scope and content of the Exclusive Economic Zone Act is reflected in its long title which reads as follows –

*“An Act to delimit the Exclusive Economic Zone of Nigeria H being an area exceeding up to 200 nautical miles seawards from the coasts of Nigeria. Within this Zone, and subject to Universally recognised rights of other States (including land-locked States), Nigeria would exercise certain sovereign rights especially in relation to the*

*conservation or exploitation of the natural resources (minerals, living species etc.) of the seabed, its subsoil and super adjacent waters and the right to regulate by law the establishment of artificial structures and installations and marine scientific research, amongst other things.”*

B Nigeria is a creation of Great Britain which colonized it. Before then the component parts were independent of one another engaged in inter-necine wars and conflicts. The British Government gradually united the country and governed it. The Northern part was called the Northern Protectorate while the Southern part was called the Southern Protectorate. It was in 1914 that the two Protectorate units were merged together. By 1951, the country was divided into three regions, to wit: Northern, Western and Eastern Regions. In 1954 the boundaries of the three Regions were stated. See L.N. 126 of 1954. The Northern Region, Western Region and Eastern Region D (Definition of Boundaries) proclamation 1954 which gave the boundaries of the littoral parts of both Western and Eastern Regions seaward as “*the Sea*”.

E Nigeria became an independent sovereign country in 1960 and by 1964 another Region was carved out of the Western Region and given the name of Midwest Region. After the military take over in 1966, the successive military regimes continued to create states out of the four regional States and by 1996 the country had been divided into 36 states. The sea-ward boundaries of the littoral states both under the common law and statutory provisions is as stated in F N. 126 of 1954 and which is the sea on the low-water mark.

G The fact that Nigeria as a sovereign state is accorded control and sovereignty over its territorial waters, the contiguous zone and the continental shelf by the municipal legislation and Geneva conventions referred to by the plaintiff, did not extend the land territory of Nigeria. Their effects are for economic benefits derived therefore and the security of the country. None of the littoral states is sovereign despite the historical narration by some of them. They are all part and parcel of the sovereign independent state of Nigeria. None of H them can exercise any control beyond the land mass of their respective states. They cannot claim that revenue accruing from mineral resources off-shore belongs to any of them. Whatever revenue accrues from drilling off-shore belongs to the whole Federation of Nigeria based on section 162 of the 1999 Constitution, their claims that

they are entitled to not less than 13% of the total revenue accruing from off-shore drilling must therefore fail and same is hereby refused and dismissed.

Most of the claims by the counter claiming states are based on the provisions of section 162 of the 1999 Constitution. The section provides as follows –

*“162 – (1) The Federation shall maintain a special account to be called “the Federation Account” into which shall be paid all revenues collected by the Government of the Federation, except the proceeds from the personal income Tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja.*

*(2) The President, upon the receipt of advice from the Revenue Mobilization Allocation and Fiscal Commission, shall, table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density.*

*Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen percent of the revenue accruing to the Federation Account directly from Natural resources.”*

*(3) Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the local Government councils in each State, on such terms and in such manner as may be prescribed by the National Assembly.*

*(4) Any amount standing to the credit of the States in the Federation Account shall be distributed among the States on such terms and in such manner as may be prescribed by the National Assembly.*

*(5) The amount standing to the credit of Local Government councils in the Federation Account shall also be allocated to the States for the benefit of their local government councils on such terms and in such manner as may be prescribed by the national Assembly”.*

The proviso to subsection (2) of section 162 of the 1999 Constitution specifically provides that “*the principle of derivation shall*

*be constantly reflected in any approved formula as being no less than thirteen per cent of the revenue accruing to the Federation Account directly from any natural resources*"; and subsection (4) gives the National Assembly the power to provide by legislation the formula for the distribution among the states of the Federation, the amount standing in the Federation account, subject to the proviso in subsection (2) of section 162. The National Assembly is yet to provide the formula.

Section 315(2) of the 1999 Constitution gives the President of the Republic of Nigeria as the appropriate authority, power to amend any existing law to conform with the provision of the Constitution.

Neither the National Assembly has made any provision, nor has the President made any amendment by way of modification, to the allocation of Revenue (Federation Account etc) Cap 16 as amended by Decree No. 106 of 1992, to bring it into conform with section 162 of the 1999 Constitution. I have no hesitation in arriving at the conclusion that Cap 16 as amended by Decree No. 106 of 1992 is an existing law though some provisions in it are ultra vires the provisions of the 1999 Constitution. Happily enough the President is implementing the provision of proviso to section 162(2) of the 1999 by way of gentleman's agreement as confirmed to this Court by the defendants. It was the contention of the plaintiff that claims by some of the defendants are baseless and unnecessary as not all necessary parties to the counter-claims are joined. In his oral address to the Court, the Attorney-General of Lagos State, relying on *GREEN v. GREEN* (1987) 18 NSCC (pt. 155); submitted that all necessary parties to the counter-claims are aware of such counter-claims and they knowingly choose to stand-by and let others fight the battle for them. They will be bound by the result in the same way as if they were parties. This submission is tenable and I endorse it. All the defendants are aware of the counter-claims as same have been served on them all. They will be bound by any decision arrived at by this Court on the counter- claims.

The counter-claims were separately filed by the 3<sup>rd</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 15<sup>th</sup>, 17<sup>th</sup>, 24<sup>th</sup>, 28<sup>th</sup> and 32<sup>nd</sup> defendants. Both the 20<sup>th</sup> and the 27<sup>th</sup> defendants have withdrawn the counter-claims they separately filed and having been withdrawn, they are hereby



struck out. Equally struck out are the counter-claims by the 15<sup>th</sup> and 17<sup>th</sup> defendants as no briefs were filed in support. I shall now proceed to deal with remaining counter-claim, State by State.

3<sup>rd</sup> Defendant - Akwa Ibom State – Counter-claims as follows: -

(1) *A declaration that the 3<sup>rd</sup> defendant is by virtue of section 162(2) of the Constitution of the Federal Republic of Nigeria 1999 entitled to receive a minimum of 13% of the entirety of the natural resources derived from any dichotomy as to on-shore and off-shore natural resources.* B

(2) *An order compelling the plaintiff to pay the said balance of 40% of 13% due to the 3<sup>rd</sup> defendant from the 29<sup>th</sup> day of May, 1999 till date in respect of the natural resources derived from Akwa Ibom State.* C

(3) *Payment of the sum of N15,006,418,955.28 being the sum due from the plaintiff to the 3<sup>rd</sup> defendant calculated as 13% of the revenue from natural resources derived from Akwa Ibom State for the Period June, 1999 to February, 2001.”* D

Having decided in favour of the plaintiff as regards the boundaries of the littoral states and that no formula for the distribution of revenue accruing to the Federation Account is enacted by the National Assembly, the claim No. 1 becomes speculative and is hereby refused and it is struck out. Equally refused and struck out are claims Nos. 2 and 3 as both are based on section 162 of the 1999 constitution. E  
F

6<sup>th</sup> Defendant – Bayelsa State: Counter-claims as follows

*“(a) Determination to the effect that, the Constitution of the Federal Republic of Nigeria 1999 having come into force on 29/5/99, the principle of derivation under the proviso to Section 162(2) of the Constitution came into operation on the same day – that is, to say, 29/5/99 and plaintiff is obliged to comply therewith from that day.* G

*“(b) An order that Plaintiff do pay over to Bayelsa State, the share due to the State under the proviso to section 162(2) of the Constitution as from 29/5/99 (which) has been wrongly withheld.* H

*(c) An order for Account by the plaintiff to pay the 6<sup>th</sup> Defendant all monies so far accrued from Bayelsa State to the Federation Account in respect of off-shore revenue.*

(d) *An order that the Plaintiff should pay the 6<sup>th</sup> Defendant 13% of all revenue so far accrued to the Federation Account from Bayelsa State in respect of off-shore mineral oils in the State.*

(e) *An order that Plaintiff should pay to the 6<sup>th</sup> Defendant 13% of all the revenue that has accrued from natural Gas in Bayelsa State to the Federation Account.”*

The claims are all based on the section 162(2) of 1999 Constitution and the formula for the distribution of the revenue accruing to the Federation has not been enacted by the National Assembly. The claims are hereby struck out.

8<sup>th</sup> Defendant:- Borno State:- Counter-claims as follows –

“(a) *A declaration that the 8<sup>th</sup> Defendant/Counter-claimant is entitled to 13<sup>th</sup> of the total revenue accruing to the Federation Account directly from the Natural Resources mentioned above.*

(b) *To order the Plaintiff to give account of the revenue generated from these Natural Resources to the 8<sup>th</sup> Defendant/Counter-claimant.*

(c) *To order the Plaintiff to pay the 8<sup>th</sup> Defendant/Counter-Claimant an amount equivalent to the 13% of the total Revenue derived from the Natural Resources from the 29<sup>th</sup> day of May, 1999 to date.”*

The claims are based on section 162(2) of the Constitution and the formula for distribution of revenue accruing to the Federation Account are yet to be enacted by the National Assembly. The claims are premature and are therefore struck out.

9<sup>th</sup> Defendant:- Cross River State: Counter-claims as follows:

“(1) *A declaration that the 9<sup>th</sup> defendant has been deprived of her total earnings on derivation since its recognition as an oil-producing State.*

(2) *An order directing the Accountant-General of the Federation, through the Plaintiff, to render an account of all monies received and disbursed from the Federation Account from 29<sup>th</sup> May, 1999 till the date of judgment.*

(3) *An order compelling the Federal Government of Nigeria to render account of all monies illegally and unconstitutional retained by it beyond its statutory allocation from the 29<sup>th</sup> May, 1999.*

(4) *A declaration that the 9<sup>th</sup> defendant is entitled to 13% of*

*all income derived from activities at the Calabar Port, quarries, rivers and seas (sic) I and abutting Cross River State.*

*(5) An order compelling the Federal Government of Nigeria to render account of the proceeds of oil mineral products extracted from the oil wells lying east of longitude 8° 17'E in the Calabar/Cross River Estuary from 23<sup>rd</sup> September, 1987 till date of judgment.* B

*(6) A declaration that the Federal Government of Nigeria has not clearly defined it (sic) mode of valuation of collectable Oil revenue.*

*(7) An order compelling the Federal Government of Nigeria to pay to Cross River State the sum total of the income rightly accruing to her from petroleum operations carried on in OMLs 114, 14 and 115 from the 23<sup>rd</sup> September, 1987 till date of judgment.* C

*(8) A declaration that the area beyond and adjacent to the Littoral State of Cross River State of Nigeria not exceeding 200 nautical miles from the base line from which the breadth of the territorial sea of the Nigerian State is measured form part of the Territory of the Cross River State of Nigeria and the natural resources located within the Exclusive Economic Zone ought to be deemed regarded or treated as located within the Cross River State of Nigeria for the purpose of calculating the revenue accruing to the Federation Account pursuant to the proviso to section 162 subsection (2) of the Constitution of the Federal Republic of Nigeria, 1999."* D E

The claim in No. 1 is not supported by evidence. It is vague; F claim 2 is also vague as no particulars are provided and this also applies to claim No. 3 Claim No. 4 is vague for want of particulars. Claim No. 5 is equally vague for want of particulars as well as claim No. 6. As for claim No. 7, no particulars in support as regard the quantum of the sum being claimed. It is vague and speculative. Claim G Nos. 1-7 are hereby struck out. Claim No. 8 is dismissed based on the decision made in favour of the plaintiff on the sea-ward boundary of the 9<sup>th</sup> defendant and other littoral states.

10<sup>th</sup> Defendant – Delta State: Counter-claims as follows -

*"(a) A declaration that section 44(3) and the proviso to section 162(2) of the 1999 Constitution do not recognize the so-called onshore/offshore dichotomy which has since been abolished by Act N. 106 of 1992 and presently being unconstitutionally employed by the Plaintiff in the course of determining the revenue allocation due* H

to the 10<sup>th</sup> Defendant from the Federation Account.

(b) An order directing the Plaintiff to pay the sum of N11,333,392,572.10 (eleven billion, three hundred and thirty-three million, three hundred and ninety-two thousand, five hundred and seventy-two naira ten kobo) being arrears of the minimum 13% derivation under the proviso to section 262(2) of the 1999 Constitution (commencing from 1<sup>st</sup> June, 1999 – 31<sup>st</sup> December, 1999) without any form of distinction between onshore and/or offshore revenue to the 10<sup>th</sup> Defendant/Counter-claimant.

(c) An Order directing the Plaintiff to pay the sum of N9,404,861,382.46 (nine billion, four hundred and four million, eight hundred and sixty-one thousand, three hundred and eighty-two naira, forty-six kobo) to the 10<sup>th</sup> Defendant being arrears of the “minimum 13% derivation on off-shore revenue accruing to the Federation Account between 30<sup>th</sup> January, 2000 – 28<sup>th</sup> February, 2002 or until judgment is delivered.”

(d) Interest at the ruling bank rate 14% from 1/6/99 and 30/1/2000 until judgment; and thereafter, at any higher rate as the Supreme Court may order.”

(e) A declaration that the first charge system being adopted by the Plaintiff whereby it deducts certain percentage of revenue from the Federation Account for debt servicing before paying the minimum 13% derivation to the oil producing States is unconstitutional, null and void.

(f) A declaration that the under-listed economic policies and/or practices of the Plaintiff are unconstitutional being in conflict with the 1999 Constitution.

(i) Exclusion of natural gas as constituent of derivation for the purposes of the proviso to section 162(2) of the 1999 Constitution.

(ii) Non-payment of the shares of the 10<sup>th</sup> Defendant in respect of proceeds from capital against taxation and stamp duties.

(iii) Funding of the judiciary as a first line charge on the Federation Account.

(iv) Servicing of external debts via first line charge on the Federation Account.

(v) Funding of Joint Venture Contracts and Nigerian National Petroleum Corporation (NNPC) Priority projects as first line charge

on the Federation Account.

*(vi) Unilaterally allocating 1% of the revenue accruing to the Federation Account to the Federal Capital Territory.”*

*“(g) An order directing the plaintiff to account for and or return all monies in its custody directly attributable to the misapplication complained of herein to the Federation Account for disbursement in accordance with the 1999 Constitution from 29<sup>th</sup> May, 1999 to date.”*

*“(h) A perpetual injunction restraining the Plaintiff from further violating the provisions of Section 162 of the 1979 Constitution.”*

Claims (a) and (b) are inter-related and in view of decision of this Court that the sea-ward boundary of Delta State is the low water-mark or the sea, these claims cannot be sustained. They are struck out; claim No. 3(c) cannot also be sustained in view of this court’s decision as regards the seaward boundary of this states. The claim is struck out.

Claim (d) is equally unsustainable due to my decision on (b) and (c). It is hereby struck out. Claim No. (e) is sustained as no provisions is made in the 1999 Constitution for deducting any amount from the Federation Account for debt servicing before distributing the accrued revenue therein in accordance with Section 162(3) of the 1999 Constitution. In short the declarations prayed for in (f) (i) to (vi) are hereby granted. As for the declaration prayed for in (h), it cannot be granted since the National Assembly is yet to enact the law in compliance with Section 162(3) of the 1999 Constitution.

24<sup>th</sup> Defendant – Lagos State – Counter – claims as follows

*“(a) An interpretation of the provisions of Section 2 and 3 of the Constitution in relation to the Territorial Waters, the Exclusive Economic Zone, and the Continental Shelf of Nigeria.*

*(b) Or alternatively, a declaration that all that areas now referred to as the Territorial Waters, Exclusive Economic Zone and Continental Shelf culturally and geographically form or are deemed to form part of the Littoral States immediately abutting the said area.*

*(c) A declaration that the Territorial Waters, Exclusive Economic Zone and the Continental Shelf culturally and geographically form part of the Littoral States immediately abutting the said area.*

*(d) A further declaration that the Lagos State is entitled to*

*13% of whatever revenue is derived from the Territorial Waters abutting the coast of the Lagos State.*

*(e) A declaration that Nigeria's claim to Territorial Waters, Exclusive Economic Zone and Continental Shelf arises only because of the unique positioning of the States bordering on the seas.*

B *(f) A declaration that the vesting of mining rights, powers and ownership of minerals in, upon or under the Territorial Waters, Exclusive Economic Zone up to the continental Shelf of Nigeria does not operate to divest ownership or deemed ownership of the said waters from the State.*

C *(g) A declaration that any waters which are not deemed or considered a part of any state within the Federation (which means any of the 36 States of Nigeria or the Federal Capital Territory) do not form or constitute a part of the Federal Republic of Nigeria.*

D *(h) A declaration that natural resources mean any material in its natural state which when exploited has economic value.*

*(i) A declaration that for the purposes of Section 162(2) of the 1999 Constitution, the Federal Government of Nigeria is not entitled to allocation of any revenue on the basis of derivation, but rather Nigerian only States from which natural resources are derived.*

E *(j) The 24<sup>th</sup> Defendant/Counter-Claimant is entitled to the Waters as owners, and if not as beneficial owner by virtue of historical usage, usufructuary rights, riparian rights, traditional history, access to the waters and suffers from pollution or environmental damage from such seas.*

F *(k) An order of this Honourable Court directing office of the Accountant General of the Federation, through the plaintiff to render an account of all monies received and disbursed from the Federation account from 29 May, 1999 till the date of instituting this action.*

*(l) A further order directing the payment of amount due to the 24<sup>th</sup> Defendant/Counter Claimant as its share (by virtue of the principle of derivation stipulated in Section 162(2) of the 1999 Constitution) of all revenue accruing from the state to the Federation account.*

*(m) A further order directing the payment of 1% of the statutory allocation of the Federal Government to Lagos State as the former Federal Capital Territory for the maintenance of Federal infrastruc-*

*ture and installation within the State.”*

The declaration sought for in (a) has already been settled in favour of the plaintiff. Claim in (b) has also been settled in favour of the plaintiff and this also applies to (c). As for (d) it cannot be granted since the National Assembly has not made any law in compliance with Section 162(2) of the 1999 Constitution as required of it. As for (e) this also has been settled in the plaintiff's favour and cannot be sustained. The declaration prayed for in (f) cannot be granted since the boundary sea-ward has been settled in favour of the plaintiff that it is the Low Water-Mark or the Sea. Item (g) cannot be sustained having regard to the decision made in plaintiffs' favour. Claim in (h) is vague and is hereby struck out. The declaration requested for in (i) is vague and is accordingly refused and same is struck out. Claim (j) cannot be sustained as same has been settled in plaintiff's favour. Claim (k) cannot be sustained as no particulars of such a claim are given. It is accordingly refused and struck out. Claim (1) cannot be granted as the National Assembly has not enacted any law in compliance with Section 162(2) of the 1999 Constitution. It is hereby refused. As for (m) this cannot also be sustained as the 1999 Constitution did not make any provision to that effect, nor any other law. It is refused and dismissed.

28<sup>th</sup> Defendant – Ondo State: Counter – Claims as follows

*“(1) A declaration that its Seaward boundary extends beyond its coastline and that natural resources derived offshore its coastline are derived from its State to which the provisions of Section 162(2) of the Constitution should apply.*

*(2) An order directing the Plaintiff to calculate and pay over to the 28<sup>th</sup> Defendant 13% of revenue accruing to the Federation Account directly from natural resources derived from offshore locations adjacent to the 28<sup>th</sup> Defendant's coastline with effect from 29<sup>th</sup> of May 1999.*

*(3) A declaration that the 28<sup>th</sup> Defendant is entitled with effect from 29<sup>th</sup> May 1999 to 13% of the revenue accruing to the Federation Account directly from the natural resources derived on-shore within the State in accordance with the provisions of Section 162(2) of the Constitution of the Federal Republic of Nigeria.*

*(4) An order directing the Plaintiff to pay over forthwith to the 29<sup>th</sup> Defendant 13% of all revenue that has accrued to the Fed-*

*eration Account directly from natural resources derived from onshore locations in its State from 29<sup>th</sup> May 1999 to 30<sup>th</sup> December, 1999”.*

The Counter-claim (1) has been settled in favour of the plaintiff that the boundary of the 28<sup>th</sup> Defendant sea-ward is the low-water mark or the sea. As for claims (2) to (4) none can be granted as the  
B National Assembly has not promulgated any law as required under section 162(2) of the 1999 Constitution. Claims (1) to (4) are therefore incompetent and are hereby struck out.

32<sup>nd</sup> Defendant – Rivers State: Counter – claims as follows:-

C “a. A declaration that the principle of derivation provided for under section 162(2) of the 1999 Constitution is applicable to 100% of the total revenue derived from any natural resources from any State of the Federation.

b. A declaration that the “on-shore” dichotomy applied by  
D the Plaintiff to the derivation principle is not tenable under the 1999 Constitution and is therefore unconstitutional null and void.

c. A declaration that the 32<sup>nd</sup> Defendant is entitled to be paid 13% of all revenue accruing to the Federation Account from any natural resources particularly oil production/extraction from her  
E territory with effect from 29<sup>th</sup> May 1999 and up to and including 31<sup>st</sup> December, 1999.

d. A declaration that the boundary of the 32<sup>nd</sup> Defendant within the Federal Republic of Nigeria as a Coastal State comprises of  
F its entire land mass, territorial waters, Continental Shelf and the Exclusive Economic Zone to which the 32<sup>nd</sup> Defendant is contiguous.

e. A declaration that the Plaintiff is neither entitled to allocation of any revenue from the Federation Account on the basis of derivation nor is she envisaged as a beneficiary under Section 162(2)  
G of the 1999 Constitution.

f. An order compelling the Plaintiff to furnish the 32<sup>nd</sup> Defendant with a full Statement of Account of the total revenue accruals into the Federation Account derived from any natural resources from 29<sup>th</sup> May 1999 until the date of judgment in this suit.

H g. A further order compelling the Plaintiff to furnish the 32<sup>nd</sup> Defendant with a Statement of the Allocation to each State of the Federation and the Plaintiff from the Federation Account with effect from 29<sup>th</sup> May 1999 up to the date of judgment.

h. An order directing the Plaintiff to pay to the 32<sup>nd</sup> Defen-



*dant all arrears of 13% of the 40% total "off-shore" production derivation accruals to which she is entitled from 29<sup>th</sup> May 1999 and continuing to date.*

*i. An order compelling the Plaintiff to pay to the 32<sup>nd</sup> Defendant all arrears of 13% "on-shore" and "off-shore" oil revenue from 29<sup>th</sup> May 1999 to 31<sup>st</sup> December, 1999.* B

*j. An order compelling the Plaintiff to pay to the 32<sup>nd</sup> Defendant 13% of all revenue accruing to the Federation Account from the wharves, and sea ports within Rivers State."*

*k. An order compelling the plaintiff to pay to the 32<sup>nd</sup> Defendant 13% of all revenues accruing to the Federation Account from natural gas produced and extracted from Rivers State from 29<sup>th</sup> May 1999, and continuing up to the date of judgment."* C

Claim (a) cannot be granted as it is vague for want of particulars to support and explain it. It is incompetent and is struck out. D  
Claims (b) and (c) are premature as the National Assembly has not enacted the legislation required under Section 162(2) of the 1999 Constitution; while claim (d) has been settled in the plaintiff's favour. Claim (b), (c) and (d) are hereby struck out. Claim (e) is baseless E  
having regard to Section 162(2) of the 1999 Constitution. It is struck out. Claim (f) and (g) cannot be granted as there is nothing to show that such a request was made to the plaintiff and the latter has refused to grant it. They are refused and accordingly dismissed. Claim (h) and (1) have already been settled in plaintiff's favour and same F  
are refused and struck out. Claim (j) cannot be granted as the National Assembly has not made any law in compliance with Section 162(2) of the 1999 Constitution. The request is premature and is struck out. Claim (k) cannot be granted as the Defendant has not provided the necessary particulars to support it. It is incompetent and G  
same is struck out. On the whole, the plaintiff's case succeeds and the declaration sought is granted as prayed. Also some claims in the Counter-claims filed by some of the Defendants separately succeed and hereby granted.

It is for these, and the fuller reasons in the lead judgment of H  
my learned brother Ogundare, JSC that I grant the declaration prayed for by the Plaintiff and some of the prayers in the counter-claims of the Defendants. I adopt the consequential orders made in the lead judgment, including the one as to costs.

**KUTIGI JSC**

Pursuant to Order 3 Rule 3 of the Supreme Court Rules, the plaintiff commenced this action by filing a Statement of Claim instead of an Originating Summons or an Originating Motion, thus making it clear that the facts in issue or some of them are disputed or are likely to be disputed. A summons accompanied by a copy of the Statement of Claim was then issued to each Defendant to appear and answer the claim. Every Defendant thereafter filed its memorandum of appearance and a Statement of Defence with or without a counter-claim. The Counter-claiming Defendants are –

1. Akwa Ibom State (3<sup>rd</sup> Defendant)
2. Bayelsa State (6<sup>th</sup> Defendant)
3. Borno State (8<sup>th</sup> Defendant)
4. Cross river State (9<sup>th</sup> Defendant)
5. Delta State (10<sup>th</sup> Defendant)
6. Gombe state (15<sup>th</sup> Defendant)
7. Jigawa State (17<sup>th</sup> Defendant)
8. Katsina State (20<sup>th</sup> Defendant)
9. Lagos State (24<sup>th</sup> Defendant)
10. Ondo State (28<sup>th</sup> Defendant)
11. Rivers state (32<sup>nd</sup> Defendant)
12. Sokoto State (33<sup>rd</sup> Defendant)

Needless to mention that all the remaining Defendants support the Plaintiff in its claim.

Ogun State, the 27<sup>th</sup> Defendant, originally filed a Counter-Claim against the Plaintiff but later in the proceedings it applied to withdraw the counter-claim. It was accordingly struck-out. The claims of each Counter-claiming Defendant will be considered at the appropriate time later in this judgment. The plaintiff filed a Defence to the Counter-claims.

Now, the plaintiff's Statement of Claim reads as follows-  
"STATEMENT OF CLAIM

*1. The Plaintiff is the Attorney-General of the Federation and brings this action as the representative of the Government of the Federal Republic of Nigeria.*

*2. The 1<sup>st</sup> to the 36<sup>th</sup> Defendants are the Attorneys-General*

*of each of the 36 States which along with the Federal Capital Territory Abuja, comprise the Federal Republic of Nigeria. Each defendant is used as the representative of the Government of each State.*

*3. Section 162(1) of the Constitution of the Federal Republic of Nigeria, 1999 (hereafter referred to as “the Constitution”) provides that “the Federation Account” into which shall be paid all revenue subject to certain exceptions which are not material to this case collected by the Federation.*

*4. Pursuant to the provisions in Section 162(2) of the Constitution and subject to certain conditions therein specified, the president of the Federal Republic of Nigeria is required to table before any approved formula for revenue allocation.*

*5. By a proviso to the aforementioned Section 162(2) of the Constitution, the principle of derivation must be reflected in any approved formula for revenue allocation.*

*6. The plaintiff states that in the context of section 162(2) of the Constitution the expression “principle of derivation” means the principle that revenue accruing to the Federal Account from any natural resources shall be deemed to have been derived from the State or territory where such resources are located.*

*7. The Plaintiff further states that the proviso to section 162(2) of the Constitution requires that any approved formula for revenue allocation from the Federation Account shall reflect the fact that not less than 13% of revenue accruing to the said Federation Account from any natural resources are allocated to the Government of the State or territory where such resources are located.*

*8. By reason of the facts pleaded in paragraph 5, 6 and 7 of this Statement of Claim, the Plaintiff states that for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from any State or territory pursuant to the proviso to Section 162 of the Constitution:-*

*(a) The natural resources located within the boundaries of any State are deemed to be derived from that State;*

*(b) In the case of the littoral States comprised in the Federal Republic of Nigeria (i.e. the States of Akwa-Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers) the Seaward boundary of each of the said States is the low water mark of the land surface thereof or (if the case so requires) the seaward limits of inland waters*

within the State;

(c) *The natural resources located within the territorial waters of Nigeria and the Federal Capital Territory are deemed to be derived from the Federation and not from any State;*

(d) *The natural resources located within the Exclusive Economic Zone and the Continental Shelf of Nigeria are subject to the provisions of any treaty or other written agreement between Nigeria and any neighbouring littoral foreign State, derived from the Federation and not from any State.*

9. *In further support of the averments in paragraph 8 of this Statement of Claim the plaintiff will contend at the trial of this action that under the provisions contained in the Constitution it is only the Federal Government of Nigeria and not the Government of any of States comprised in the Federal Republic of Nigeria that has power to:*

(i) *Exercise legislative, executive or judicial powers over the entire area designated as the “territorial waters of Nigeria” pursuant to the provisions of the Territorial Waters Act, Cap. 428, Laws of the Federation of Nigeria 1990, as amended.*

(ii) *Exercise any of the sovereign rights exercisable by Nigeria over the entire area designated as the “Exclusive Economic Zone” Pursuant to the provisions of the Exclusive Economic Zone Act, Cap. 110, Laws of the Federation of Nigeria, as amended.*

10. *The States of Akwa-Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers dispute the averment of the Federal Government of Nigeria as pleaded in paragraph 8 hereof and claim that natural resources located offshore ought to be treated or regarded as located within their respective States”.*

WHEREUPON the Plaintiff claims:-

*“A determination by this Honourable Court of the seaward boundary of a littoral State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to the proviso to section 162(2) of the Constitution of the Federal Republic of Nigeria, 1999”.*

The Plaintiff did not call any witness at the hearing. There was also no affidavit evidence on its part. None of the Defendants also called any witness although some of the counter-claiming De-

fendants filed affidavits and or counter-affidavits to support their claims, and or oppose Plaintiff's case as the case may be.

In compliance with the order of Court, the parties filed and exchanged briefs of argument which cover the plaintiff's claim and the claims of the counter-claiming Defendants.

The Plaintiff on page 3 of its brief has submitted only one <sup>B</sup> question for determination in this action as follows:-

*"What is the seaward boundary of a maritime State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to the proviso to section 162(2) of the Constitution of the Federal Republic of Nigeria 1999."* <sup>C</sup>

The Plaintiff's starting point in its brief of argument was the examination of some provisions of the 1999 Constitution. That Section 3 Subsection 1 makes provision for 36 States by name whilst subsection 2 stipulates that –

*"(2) Each State of Nigeria named in the First column of part 1 of the First Schedule to this Constitution shall consist of the area shown opposite thereto in the Second column of that Schedule."* <sup>E</sup>

That in the First Schedule the area of each of the 36 States of the Federation is defined by reference to what is described in the said Schedule as "Local Government Area." It follows therefore that no area of land or water which does not come within a "Local Government Area", can under the Constitution be treated as forming part of the territory of any of the 36 States of Nigeria. It was therefore submitted that the territory of a State extends to all areas over which Local Government Council within that State has power to administer and to make by-laws. In other words, the territory of a State is exactly <sup>F</sup> co-extensive with the totality of the Local Government Areas within its territory. I say at once that I find no difficulty whatsoever in agreeing with this submission by the plaintiff. <sup>G</sup>

The plaintiff then went on to examine section 4 of the Constitution which pertains to the scope of legislative powers of the Federal Republic of Nigeria and of the States of the Federation and submitted that whilst the National Assembly is conferred with power to make laws for peace, order and good government of the Federal Republic of Nigeria with respect to matters outside the territory thereof, <sup>H</sup>

it is not competent under the Constitution for the House of Assembly of a State to make laws having effect outside the territory of that State. That is also agreeable without any difficulty.

The plaintiff went on to examine some Federal enactments which took effect as Acts of the National Assembly under Section 315 B of the 1999 Constitution. These enactments are

1. Territorial Waters Act Cap. 428 Laws of the Federation of Nigeria 1990.

2. Sea Fisheries Act, Cap. 404 Laws of the Federation of C Nigeria 1990.

3. Exclusive Economic Zone Act Cap. 116 Laws of the Federation of Nigeria 1990 and

4. Interpretation Act Cap. 192 Laws of the Federation of Nigeria 1990.

D That by the provisions of Section 1 Subsection 1 of the Territorial Waters Act, the limits of the territorial waters of Nigeria was defined as -

*“The territorial waters of Nigeria for all purposes include every part of the open sea within thirty nautical miles of the coast of Nigeria E measured from low water mark or of the seaward limits of inland waters.”*

It is therefore to be inferred therefore that the territorial waters of the Federal Republic of Nigeria commences from –

F The low water mark along the coast or the seaward limits of inland waters; and so the territorial limit of a State adjacent or contiguous to the sea or coastal waters, is the low water mark along the coast or the seaward limits of inland waters.

That the Sea Fisheries Act which carries the long title of:

G *“An Act to make provisions for the control, regulation and protection of Sea Fisheries in the Territorial Waters of Nigeria,”* also provides in its definition section, Section 12 thereof, that *“territorial waters of Nigeria”* has the same meaning as in Section 1 of the Territorial Waters Act. That the authority and powers of the Federal Government over the entire maritime belt or territorial waters is clearly H reflected in Section 1 Subsections (1) and (2). It was therefore submitted that the Sea Fisheries Act is also consistent with the notion that it is the Federal Government, and it alone, that can lawfully exercise Governmental powers over the maritime belt or the territorial waters

of Nigeria.

That the scope and content of the Exclusive Economic Zone Act is reflected in its long title thus –

*“An Act to delimit the Exclusive Economic Zone of Nigeria being an area exceeding up to 200 nautical miles seawards from the coasts of Nigeria. Within this Zone, and subject to Universally recognised rights of other States (including land-locked States), Nigeria would exercise certain sovereign rights especially in relation to the conservation or exploitation of the natural resources (minerals, living species etc.) of the seabed, its subsoil and super adjacent waters and the right to regulate by law the establishment of artificial structures and installations and marine scientific research, amongst other things.”*

Section 1 Subsection 1 of the Act also reads –

*“1. (1) Subject to the other provisions of the Act, there is hereby denominated a zone to be known as the Exclusive Economic Zone of Nigeria (herein after referred to as the “Exclusive Zone”) which shall be an area extending from the external limits of the territorial waters of Nigeria up to a distance of 200 nautical miles from the base lines from which the breadth of the territorial waters of Nigeria is measured.”*

Reference was then made to the Interpretation Act wherein it is provided under section 18(1) that the expression – “*territorial waters*” means any part of the open sea within thirty nautical miles of the coast of Nigeria measured from the low water mark or the seaward limits of inland waters.”

It was accordingly submitted that the Exclusive Economic Zone Act is also consistent with the notion that the territory of our coastal states stops at

(b) the low water mark; or

(c) the seaward limits of inland waters; as the case may require;

and that this is why governmental powers in or over the zone are vested exclusively in the Federal Government and are not shared with any of the littoral States of Nigeria.

In further support of its case, the plaintiff has also called in aid some foreign decisions of the Supreme Court of United States of America, the Supreme Court of Canada and the High Court of Australia. I will say in short that reliance on those decisions is misplaced.

The cases addressed their own peculiar positions which in no way resemble the position in Nigeria. The Constitutions are different. There is no dispute here in Nigeria with regard to the right of the Federal Government to the entire property in, and control over all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or  
 B in, under or over the territorial waters and the Exclusive Economic Zone of Nigeria (see Section 44(3) of the Constitution). The only dispute here is whether or not the natural resources are derived from littoral States for the purpose of enjoying the benefits of section 162(2)  
 C of the Constitution. The foreign decisions are clearly in my view not of any assistance here. The historical factors and or colonial circumstances of these countries are quite different from ours.

There is no doubt that each of the Territorial Waters Act, the Sea Fisheries Act and the Exclusive Economic Zone Act relied on by  
 D plaintiff respectively defined the extent or boundary of its own area of operation that is to say –

Every part of the open sea within thirty nautical miles of the coast of Nigeria measured from low water mark or the seaward limits of inland waters, for the territorial waters of Nigeria. The same area  
 E of the sea for territorial waters of Nigeria above, is covered also by the Sea Fisheries Act. Under the Exclusive Economic Zone, the area covered “*extends from* ‘external limits of the territorial waters of Nigeria up to a distance of 200 nautical miles from the base lines from which the breadth of the territorial waters of Nigeria is measured.  
 F

I have read through the three enactments referred to above and I am unable to find anything expressly in any of them which show that the seaward boundary of the Nigerian State or indeed the littoral component States therein, is the low water mark or the seaward limits of inland waters. I believe that much is understood by the  
 G Plaintiff because it is only asking the Court to make an inference that the seaward boundary of a littoral State is the low water mark or seaward limits of inland waters, simply because the three enactments referred to above all have their boundaries starting from the same  
 H low water mark or seaward limits of inland waters and that it is only the Federal Government that is vested exclusively with powers over the areas or zones under these enactments. Speaking for myself, I think in the absence of any express enactment, it will be unsafe and indeed dangerous to make the inference urged on the Court by the



plaintiff. I believe “*boundaries*” must be expressly provided for or defined and must not be left to inference. In other words what is required is express authority.

The Plaintiff has undoubtedly failed to show us any provision of the 1999 Constitution or any law or enactment for that matter which expressly provides for a seaward boundary of a littoral State which this Court is required to interpret. In other words the plaintiff has not identified any law which the Court is to interpret. Indeed as the Plaintiff realized from the beginning Section 3(1) of the Constitution created 36 States by name, while Section 3(2) provides that each States shall be made up of Local Government Areas named in the First Schedule of the Constitution. The Court has not been told how a Local Government Area has in fact been created, or constituted or made up, to enable anyone know whether the littoral Local Government Areas have seaward boundaries. One thing, however, is clear to everyone and that is there are no high seas! There is also clearly nothing in Section 162(2) of the Constitution about “*seaward boundary*” of a littoral State for interpretation by this Court.

It is now appropriate to examine our statute books more closely to find out whether or not apart from those enactments relied upon by he Plaintiff above, there are other enactments which expressly deal with the issue of “*seaward boundary*” of the Nigerian State itself before the creation of the component 36 States including the littoral States.

Nigeria we are told is a creation of the British starting with the Island of Lagos which they declared a colony in 1861, and culminating in 1885 when European powers met in Berlin and shared the entire Africa continent amongst themselves. Before this date, the British had by force of arms or by treaties with traditional rulers established themselves over the country. They later declared the Northern and Southern parts of the country as Protectorates of Northern and Southern Nigeria respectively. In 1914 they created a single administration for the two Protectorates and Lagos as well as amalgamated the protectorates. The story is a long one. But Nigeria finally got its independence from Britain in 1960. It will thus be absurd to have expected the colonial masters or powers to have ruled all these long 100 years from 1861 – 1960, without reducing the boundaries of their colony into writing. This they in fact did. In the case of Nigeria it is: THE

NORTHERN REGION, WESTERN REGION AND EASTERN REGION (DEFINITION OF BOUNDARIES) PROCLAMATION, 1954, Laws of the Federation of Nigeria and Lagos, 1958, Volume XI.

Apart from the short preamble, the Proclamation has only two sections thus –

B “1. *This Proclamation may be cited as the Northern Region, and Western Region and Eastern Region (Definition of Boundaries) Proclamation, 1954.*

C 2. (1) *The boundaries of the Northern Region are hereby defined as being those set out in the First Schedule to this Proclamation.*

(2) *The boundaries of the Western Region are hereby defined as being those set out in the Second Schedule to this Proclamation.*

D (3) *The boundaries of the Eastern Region are hereby defined as being those set out in part I and II of the Third Schedule to this Proclamation.*”

We are here only concerned with the definition of boundaries of the Western Region and Eastern Region being littoral Regions as it were and therefore presently share littoral States between them. It should be mentioned straight away that it is only the Federal Capital Territory Abuja that has its boundaries defined in Part II of the First Schedule of the 1999 Constitution (see Section 297(1) thereof). That is proper. The component states of the Nigerian State as stated F above are only “defined” by reference to Local Government Areas that make up each State while the Local Government Areas themselves are never defined anywhere.

Now, back to the Northern Region, Western Region and Eastern Region (Definition of Boundaries) Proclamation, 1954. As I said G we are not here concerned with the boundaries of Northern Region, not being a Littoral Region. I proceed therefore straight first to the Second Schedule to the Proclamation which deals with boundaries of Western Region. It is instructive to note that pattern of definition H followed in all the three schedules to the Proclamation is to start with the definition of the Northern boundary of each Region i.e. North, then East, then South and finally west.

In the Second Schedule which defines the boundaries of Western Region, under South the definition merely reads “*South. The*

*sea.*”

Also in the Third Schedule Part 1 which defines the boundaries of Eastern Region, under South, the definition again reads “*South. The sea*”. Part II deals with the Southern Cameroon which is not our concern here now.

The Lagos Local Government (Delimitation of the Town) Order in Council, 1953, Laws of the Federation of Nigeria and Lagos 1958 Volume VIII declared the limits of the town of Lagos which town was excluded from the Western Region in the 1954 Proclamation above. In the description of the limits of the town in the schedule of the Order-in-Council, which follows the usual pattern for the proclamation, has this on the Southern boundary – “*On the South – The Sea.*”

It is therefore abundantly clear and beyond doubt that right from the colonial days the Southern boundary of the littoral Nigerian State is simply The Sea which I believe is the Atlantic Ocean in the case of Nigeria. Nothing more and nothing less. Consequently it follows that seaward boundary of the component littoral States must also be the sea. What I am saying in short is that the seaward boundary of a littoral state is co-extensive with the seaward boundary of the Nigerian State itself. It is a fundamental and cardinal principle of interpretation that where in its ordinary meaning a provision is clear and unambiguous effect should be given to it without resorting to external aid (see for example ATTORNEY-GENERAL OF BENDEL STATE vs. ATTORNEY-GENERAL OF THE FEDERATION (1981) 10 S.C. 1)

I have earlier on in this judgment rejected the Plaintiff’s submission that the seaward boundary of a littoral State is the low water mark or the seaward limits of inland waters. It ought to be so because I cannot even at this stage substitute the words or phrases “*low water mark*” or “*seaward limits of inland waters*” for the word “*sea*” used by the Proclamation and Order-in-Council above. That would in my view be tantamount to judicial legislation. That is not allowed. This Court has no legislative powers and it cannot rewrite the laws. Only the legislature can lawfully and properly do that if it so wishes.

I must observe again that even the plaintiff’s claim before the Court is simply – “*A determination of the seaward boundary of a littoral State within the Federal Republic of Nigeria...*”

It has not suggested any limitations nor starting or stopping points. This is left open to the Court to decide.

I have therefore no hesitation in coming to the conclusion that the seaward boundary of a littoral State within the Federal Republic of Nigeria is the sea as provided for under the 1954 Proclamation (for the Regions) and the 1953 Order-in-Council (for the town of Lagos). I completely agree with the view that Nigeria exercise sovereign power over its territorial waters as well as the Exclusive Economic Zone only as a result of treaties and conventions it had entered into and not because the area or areas form part of Nigeria in the first place.

One other point that must be mentioned is that the 1954 Proclamation and the 1953 Order-in-Council referred to above are conspicuously missing or omitted from the Laws of the Federation of Nigeria, 1990. This is because by the Revised Edition (Authorised Omissions) Order, 1990 the Law Revision Committee was empowered to omit all imperial enactments or statutes or subsidiary matters pertaining to them which are no longer relevant to Nigeria as contained in Parts I, II and III of schedule 1 to the Order. That probably explains why these laws escaped the attention of Counsel on all sides. I would have thought that the best way out is to continue to print these imperial enactments, statutes for subsidiary matters pertaining to them until such a time that any of them is expressly or by necessary implication repealed or replaced by Nigerians themselves. What is not relevant today may become very relevant tomorrow as we have seen here now.

### THE COUNTER-CLAIMS

Having determined the seaward boundary of the Nigerian littoral States, it is now appropriate to delve into the claims of the counter-claiming States. The counter-claiming states will be taken one after the other.

But before I do that, I would like to summarize the point of law raised by the plaintiff in its pleading and brief relating to the reliefs claimed by the counter-claiming Defendants. Any of the submissions may be applied as may be found appropriate in deciding any of the counter-claims.

It was contended that since only a counter-claiming Defendant and the Plaintiff herein are parties to each counter-claim even

where the relief or reliefs claimed affect or are likely to affect the interest of other parties, we ought to strike it out or direct that the counter-claim be tried separately so that all proper parties can be joined for the purpose of trial because in that case the counter-claim cannot be said to have been duly or properly constituted. But the position here is that all papers were served on all the parties, Plaintiff and Defendants. It was submitted that until the authorities are able to produce the formula envisaged under section 162 of the 1999 constitution, the provisions enacted in the Allocation of Revenue etc Act Cap. 16 as modified by Decree 106 of 1992 will continue to apply for distribution of revenue. That Cap 16 as modified does not operate on an “*existing law*” under the provisions of section 315 of the constitution but rather by force of the transitional provisions of section 313. I quite agree with Chief Williams S.A.N on this point. Section 313 clearly subjects Cap. 16 as modified or as amended to the provisions of the constitution only. It therefore cannot in my view be modified or altered by an appropriate authority like other existing laws under section 315 of the constitution. Cap. 16 as modified is therefore a “*special*” existing law being a transitional provision (unlike any other existing law) relating to distribution of funds pending the enactment of a formula by the National Assembly. The plaintiff also says that there is no legal basis for us to order an account against it since none of the counter-claiming Defendants has alleged that it had failed, refused, or neglected on request to supply it with a Statement of Account.

It was also contented that some of the counter-claims are unnecessary in as much as they raise issues which can only succeed if Plaintiff’s case fails. It was also submitted that the 1% of moneys in the Federation Account paid to the Federal Capital Territory (F.C.T.) is lawful by reason of the provisions of Section 4A(a) of Cap. 16 as amended, which remains in force by virtue of section 313 of the Constitution. The trouble here is that Cap. 16 as modified, is subject to the Constitution, and any provision therein which is inconsistent with the Constitution is null and void. Plaintiff said it is lawful to deduct moneys from the Federation Account to service or pay debts owed by the Federal Government by virtue of the provisions of sections 3 and 4 of the General Loan and Stock Act Cap. 161 and section 314 of the Constitution. This law Cap. 161 is subject to the

Constitution and it cannot therefore afford to be inconsistent with it. I say also that section 314 talks about “*Revenue and Assets*” of the Federation and “*Revenue and Assets*” of a State separately. The debts must therefore either be referable to the Federation or a State and not both at the same time.

B The plaintiff also contend that it is lawful for moneys intended for primary education to be paid to any other person or authority other than a State Government in accordance with the provisions of Cap 16 as modified. Again Cap. 16 as amended, is subject to the  
C Constitution and cannot over ride it. It was stressed that it is well settled that a Court does not act in vain. Accordingly we should not make any declaration which does not settle or determine a dispute or controversy between the parties. Section 232(1) of the Constitution was cited in support. We were urged to dismiss all the counter-claims  
D before the Court. As I said already any of these submissions will be applied to any of the counter-claims below as may be found appropriate and suitable.

1. Akwa Ibom State – 3<sup>rd</sup> Defendant

Paragraph 27 of the Amended Statement of Defence and  
E Counter-Claim reads in part –

“Wherefore the 3<sup>rd</sup> Defendant counter-claims from the plaintiff:-

(1) A declaration that the 3<sup>rd</sup> defendant is by virtue of section 162 (2) of the Constitution of the Federal Republic of Nigeria  
F 1999 entitled to receive a minimum of 13% of the entirety of the natural resources derived from any dichotomy as to on-shore and off-shore natural resources.

(2) An order compelling the plaintiff to pay the said balance  
G of 40% of 13% due to the 3<sup>rd</sup> defendant from the 29<sup>th</sup> day of May, 1999 till date in respect of the natural resources derived from Akwa Ibom State.

(3) Payment of the sum of N15,006,418,955.28 being the sum due from the plaintiff to the 3<sup>rd</sup> defendant Calculated as 13% of  
H the revenue from natural resources derived from Akwa Ibom State for the Period June, 1999 to February, 2001.”

In view of the determination made in favour of the plaintiff above, it is not arguable now to say that the 3<sup>rd</sup> Defendant is entitled to “13% minimum” free from any dichotomy as to on-shore and off-

shore natural resources. Claim (1) therefore fails. It is dismissed.

Claims (2) & (3) which are also based on the entitlement of “13% minimum” must also fail because as at this moment the National Assembly is yet to determine any formula for revenue allocation as provided for under section 162(2) of the Constitution are being complied with by the application of the Allocation of Revenue etc Act Cap. 16 Laws of the Federation of Nigeria 1990 as amended by Allocation of Revenue etc Amendment Decree 106 of 1992 (hereinafter referred to as Cap. 16 as amended). The claims fail.

In summary all the claims fail, they are accordingly dismissed. C

2. Bayelsa State – 6<sup>th</sup> Defendant

In paragraph 6 of its Counter-Claim the 6<sup>th</sup> Defendant claims thus

*“(a) Determination to the effect that, the Constitution of the Federal Republic of Nigeria 1999 having come into force on 29/5/99, the principle of derivation under the proviso to Section 162(2) of the Constitution came into operation on the same day – that is, to say, 29/5/99 and plaintiff is obliged to comply therewith from that day.*

*“(b) An order that Plaintiff do pay over to Bayelsa State, the share due to the State under the proviso to section 162(2) of the Constitution as from 29/5/99 (which) has been wrongly withheld.*

*“(c) An order for Account by the plaintiff to pay the 6<sup>th</sup> Defendant all monies so far accrued from Bayelsa State to the Federation Account in respect of off-shore revenue.*

*“(d) An order that the Plaintiff should pay the 6<sup>th</sup> Defendant 13% of all revenue so far accrued to the Federation Account from Bayelsa State in respect of off-shore mineral oils in the State.*

*“(e) An order that Plaintiff should pay to the 6<sup>th</sup> Defendant 13% of all the revenue that has accrued from natural Gas in Bayelsa State to the Federation Account.”*

It is clear that all the claims above have as their foundation “being not less than 13%” derivation principle enshrined in section 162(2) of the Constitution. As stated in respect of Akwa Ibom State above, the “13% minimum” will only come into operation when the National Assembly determines the necessary revenue allocation formula as stipulated under section 162(2) of the Constitution. Meanwhile the authorities are bound to apply the provisions of section

313 of the Constitution as they are now doing through Cap. 16 as amended.

Claims (a), (b), (c), (d), and (e) therefore fail and each and everyone of them is hereby dismissed.

3. Borno State – 8<sup>th</sup> Defendant

B The reliefs sought by Borno State in paragraph 6 of its Counter-Claim read thus –

*“(a) A declaration that the 8<sup>th</sup> Defendant/Counter-claimant is entitled to 13% of the total revenue accruing to the Federation Account directly from the Natural Resources mentioned above.*

C *“(b) To order the Plaintiff to give account of the revenue generated from these Natural Resources to the 8<sup>th</sup> Defendant/Counter-claimant.*

D *“(c) To order the Plaintiff to pay the 8<sup>th</sup> Defendant/Counter-Claimant an amount equivalent to the 13% of the total Revenue derived from the Natural Resources from the 29<sup>th</sup> day of May, 1999 to date.”*

E Claims (a) & (c) based on the “13% minimum” as explained above are premature. They have to await the Revenue Allocation formula to be determined by the National Assembly. Claims (a) & (c) therefore fail. Each of them is accordingly dismissed. As I said above Section 313 of the Constitution is being complied with now through Cap 16 as amended.

F As for claim (b), there is no evidence that any of the crops listed by the defendant is a revenue earning natural resource to the Federation Account and what amount, if any, is generated by each of the crops.

The claim is therefore vague. It is accordingly struck-out.

G 4. Cross River State – 9<sup>th</sup> Defendant

Paragraph 24 of the Counter-Claim reads in part –

*“(1) A declaration that the 9<sup>th</sup> defendant has been deprived of her total earnings on derivation since its recognition as an oil-producing State.*

H *“(2) An order directing the Accountant-General of the Federation, through the Plaintiff, to render an account of all monies received and disbursed from the Federation Account from 29<sup>th</sup> May, 1999 till the date of judgment.*

*“(3) An order compelling the Federal Government of Nigeria*



*to render account of all monies illegally and unconstitutionally retained by it beyond its statutory allocation from the 29<sup>th</sup> May, 1999 till the date of judgment.*

*(4) A declaration that the 9<sup>th</sup> defendant is entitled to 13% of all income derived from activities at the Calabar Port, quarries, rivers and seas in and abutting Cross River State.* B

*(5) An order compelling the Federal Government of Nigeria to render account of the proceeds of oil mineral products extracted from the oil wells lying east of longitude 8 and abutting Cross River State.*

*(6) An order compelling the Federal Government of Nigeria to render account of the proceeds of oil mineral products extracted from the oil wells lying east of longitude 8° 17'E in the Calabar/Cross River Estuary from 23<sup>rd</sup> September, 1987 till date of judgment.* C

*(7) An order compelling the Federal Government of Nigeria D to pay to Cross River State the sum total of the income rightly accruing to her from petroleum operations carried on in OMLs 114 and 115 from the 23<sup>rd</sup> September, 1987 till date of judgment.*

*(8) A declaration that the area beyond and adjacent to the Littoral State of Cross River State of Nigeria not exceeding 200 nautical miles from the base line from which the breadth of the territorial sea of the Nigerian State is measured form part of the Territory of the Cross River State of Nigeria and the natural resources located within the Exclusive Economic Zone ought to be deemed regarded or treated as located within the Cross River State of Nigeria for the purpose of calculating the revenue accruing to the Federation Account pursuant to the proviso to section 162 subsection (2) of the Constitution of the Federation Republic of Nigeria, 1999."* E F

I saw straight away that claim (1), (2), (3), (5), (6) & (7) are G vague for want of sufficient averments and or evidence in support thereof. There is nothing to show that the plaintiff had refused to render account to the Defendant after a request (see claim (2), Claim (7) has also not stated any amount to be paid to the Defendant by the plaintiff. In respect of claim (5) too we do not know how many oil H wells are involved. Each and everyone of these claims above is therefore struck-out. As for claim (4) which claims "13% minimum," this is premature as stated above. Claim (8) has clearly been caught by the plaintiff's case above. Claims (4) & (8) are therefore struck-out. As I

said above an Act of the National Assembly for revenue allocation is awaited (see Section 162(2) of the Constitution) while Section 313 of the Constitution is being complied with right now by the application of Cap. 16 as amended.

5. Delta State – 10<sup>th</sup> Defendant

B The 10<sup>th</sup> Defendant counter-claims from the plaintiff as follows –

C “(a) A declaration that section 44(3) and the proviso to section 162(2) of the 1999 Constitution do not recognize the so-called onshore/offshore dichotomy which has since been abolished by Act No. 106 of 1992 and presently being unconstitutionally employed by the Plaintiff in the course of determining the revenue allocation due to the 10<sup>th</sup> Defendant from the Federation Account.”

D This claim ought to fail now in view of the determination made in favour of the Plaintiff above. The Plaintiff is only complying with the provisions of Section 313 of the Constitution pending the Act of the National Assembly under Section 162(2) of the Constitution. It is hereby struck-out.

E “(b) An order directing the Plaintiff to pay the sum of N11,333,392,572.10 (eleven billion, three hundred and thirty-three million, three hundred and ninety-two thousand, five hundred and seventy-two naira ten kobo) being arrears of the minimum 13% derivation under the proviso to section 162(2) of the 1999 Constitution (commencing from 1<sup>st</sup> June, 1999 – 31<sup>st</sup> December, 1999) without any form of distinction between onshore and/or offshore revenue to the 10<sup>th</sup> Defendant/Counter-claimant.”

F As stated elsewhere in this judgment, this claim based on “minimum of 13%” derivation is premature, until the National Assembly determines Revenue Allocation formula pursuant to Section 162(2) of the Constitution. It is Section 313 of the Constitution which is being complied with now by the application of Cap. 16 as amended. The claim is accordingly refused.

G “(c) An Order directing the Plaintiff to pay the sum of H N9,404,861,382.46 (nine billion, four hundred and four million, eight hundred and sixty-on thousand, three hundred and eighty-two naira, forty-six kobo) to the 10<sup>th</sup> Defendant being arrears of the minimum 13% derivation on off-shore revenue accruing directly form the 10<sup>th</sup> Defendant to the Federation Account between 30<sup>th</sup> January, 2000 –

*28<sup>th</sup> February, 2002 or until judgment is delivered.*

This claim has no basis as stated under similar claims above. It fails and it is refused.

*“(d) Interest at the ruling bank rate 14% from 1/6/99 and 30/1/2000 until judgment; and thereafter, at any higher rate as the Supreme Court may order.”* B

There is nothing to support the claim for the interest. It has no basis. It fails and it is dismissed.

*(e) A declaration that the first charge system being adopted by the Plaintiff whereby it deducts certain percentage of revenue from the Federation Account for debt servicing before paying the minimum 13% derivation to the oil producing States is unconstitutional, null and void.* C

Section 162(3) of the 1999 Constitution clearly stipulates that any amount standing to the credit of the Federation Account shall be distributed amongst the Federal and State Governments and the Local Government Councils in each State. To the extent therefore that the plaintiff deducts certain percentage from the Federation Account for debt servicing before distribution of same among the Federal and State Governments and Local Government Council in the States, that singular act by the Plaintiff is clearly unconstitutional null and void, notwithstanding any contrary provision in any other law, the Constitution being supreme. E

*“(f) A declaration that the under-listed economic policies and/or practices of the Plaintiff are unconstitutional being in conflict with the 1999 Constitution. That is to say:* F

*(i) Exclusion of natural gas as constituent of derivation for the purposes of the proviso to section 162(2) of the 1999 Constitution.* G

*(ii) Non payment of the shares of the 10<sup>th</sup> Defendant in respect of proceeds from capital against taxation and stamp duties.*

*(iii) Funding of the judiciary as a first line charge on the Federation Account.*

*(iv) Servicing of external debts via first line charge on the Federation Account.* H

*(v) Funding of Joint Venture Contracts and Nigerian National Petroleum Corporation (NNPC) Priority projects as first line charge on the Federation Account.*

*(vi) Unilaterally allocating 1% of the revenue accruing to the Federation Account to the Federal Capital Territory.”*

I have already said under claim (e) above that only (1) The Federal Government, (2) State Governments, and (3) Local Government Councils in each State, are entitled to partake in the sharing of revenue in the Federation Account as provided for under Section 162(3) of the Constitution notwithstanding any contrary provision in any other law which will be treated as null, void and unconstitutional, the Constitution being supreme. I have therefore no hesitation in declaring as unconstitutional, null and void the following –

(1) The funding of the Judiciary as a first line charge on the Federation Account.

(2) Servicing of external debts as first line charge on the Federation Account.

(3) Funding of Joint Venture contracts and the Nigerian National Petroleum Corporation (N.N.P.C) Priority Projects as first line charge on Federation Account; and

(4) Unilateral allocation of 1% of revenue in the Federation Account to the Federal Capital Territory.

Claims (f) (iii) – (vi) above therefore succeed and they are allowed.

As for claim (f) (i) no reason has been adduced by the Defendant as to why natural gas is not regarded as a natural resource or being treated like other natural resources. The claim must therefore be struck-out because it is vague.

Claim (f) (ii) pertains to non-payment of shares in respect of proceeds from capital gains taxation and stamp duties. The Defendant has not stated or provided the amount or value of these shares, nor the period covered under this claim. It is therefore vague and consequently struck-out.

*“(g) An order directing the plaintiff to account for and or return all monies in its custody directly attributable to the misapplication complained of herein to the Federation Account for disbursement in accordance with the 1999 Constitution from 29<sup>th</sup> May, 1999 to date.”*

This claim is vague as the amount claimed is not quantified or stated. It must be struck out accordingly.

*“(h) A perpetual injunction restraining the Plaintiff from fur-*

*ther violating the provisions of Section 162 of the 1979 Constitution.”*

Section 162 of the Constitution contains ten (10) subsections imposing one function or another on the President, the National Assembly, the States and Houses of Assembly amongst others. So it is not only the Plaintiff that is, involved in the implementation of Section 162. But the Defendant’s claim for injunction restraining the Plaintiff from further violating the Constitution in respect of claims (e), (f) (iii), (iv), (v) and (vi) which I have already allowed above can be granted and it is hereby granted.

6. Gombe State – 15<sup>th</sup> Defendant

The claim is simply that –

*“Wherefore the 15<sup>th</sup> Defendant prays this Honourable Court to determine that by the provisions of Section 162(2) of the Constitution of the Federal Republic of Nigeria, all the 36 States in the country are entitled to 13% of revenue accruing directly to the Federation’s Account from any natural resources.”*

The simple answer for this claim is that there is no legal basis presently for the claim, until the National Assembly determines the formula for revenue allocation as provided under Section 162(2) of the Constitution. The system of revenue allocation presently operated under Section 313 of the Constitution is the Allocation of Revenue etc Act Cap. 16 Laws of Federation of Nigeria 1990 as modified by Allocation of Revenue etc Amendment Decree 106 of 1992 as stated earlier. The claim is accordingly struck-out.

7. Jigawa State – 17<sup>th</sup> Defendant

The 17<sup>th</sup> Defendant claims determination of this Honourable Court that:-

*“(a) The natural resources derived from any part of Nigeria are deemed to be derived from Nigeria and not from a particular area where the resources may be physically located.*

*(b) The Federal Republic of Nigeria is a State and not a section thereof when interpreting the economic agenda prescribed by the constitution.*

*(c) That by section 162(2), all States represented by the defendants in this suit are equally entitled to at least 13% of the revenue accruing to the Federation Account directly from any natural resources.*

*(d) That the rule of not less than thirteen percent enshrined*

*in the Constitution under Section 162(2) shall be applied based on principle of equality and justice to embrace all the States forming the Federation.*

Claims (a) & (b) are both related to the plaintiff's claim already settled above. The issues will not be reopened here again. The claims fail and are accordingly dismissed.

Claims (c) & (d) which relate to "13% minimum" are premature. The "13% minimum" only becomes operative when the National Assembly determines its own formula for revenue allocation as stipulated under section 162(2) of the Constitution. There is no legal basis for the application of "13% minimum" now. It is the provisions of Section 313 of the Constitution that is being followed by the application of Cap 16 as amended. Claims (c) & (d) are accordingly each struck out.

8. Katsina State – 20<sup>th</sup> Defendant

The claims against the plaintiff read as follows –

*"(a) A declaration that the boundary of each littoral State of the Federation comprises the land mass, the low water mark of the land surface or seaward limits of inland waters within the particular State.*

*(b) A declaration that all areas now referred to as territorial waters, continental shelf and Exclusive Zone be deemed to be part of the Federal Republic of Nigeria and belong to the entire States in the Federation and not just as few States and that revenue directly derived from those areas be considered national property to which allocation principles under Section 162(2) of the Constitution of the Federal Republic of Nigeria shall apply.*

*(c) A declaration that retention by the Federal Government of revenue realized from Excess Crude Oil Sales Petroleum Profit Tax, Royalty on Crude Oil without disbursement to the three tiers of Government as and when due is unconstitutional.*

*(d) An order compelling the plaintiff to furnish the 20<sup>th</sup> Defendant with full statement of Account of total revenue accruable into the Federation Account derived from any resources effective from 29<sup>th</sup> May, 1999 until the date of judgment of this suit.*

*(e) An order compelling the Plaintiff to pay the 20<sup>th</sup> Defendant (Katsina State Government) its legitimate share of the Federation Account less monies already paid from the said Account from*

*29<sup>th</sup> May, 1999 till date of judgement in this suit.*

*(f) A determination of what in law amounts to principle of derivation under Section 162(2) of the Constitution of the Federal Republic of Nigeria, 1999.”*

Claims (a) & (b) border on the Plaintiff’s case already decided above. They are accordingly struck out as being improper. Claim (c) is vague. The amount involved is not quantified and there is nothing to show that the plaintiff in fact retains anything from the sales. It is accordingly refused. As for claims (d), there is no evidence of any previous demand by the Defendant. It must also be refused. The Defendant has again failed to show the amount paid into the Federation Account and the amount already paid to it under claim (e). This claim also fails. I dismiss it.

Claim (f) does not arise strictly in these proceedings now. It is premature until after the National Assembly decides its own revenue allocation formula. It is not properly before us and must be struck out. It is hereby struck out.

9. Lagos State – 24<sup>th</sup> Defendant

The 24<sup>th</sup> Defendant claims as follows –

*“(a) An interpretation of the provisions of Section 2 and 3 of the Constitution in relation to the Territorial Waters, the Exclusive Economic Zone, and the Continental Shelf of Nigeria.*

*(b) Or alternatively, a declaration that all that areas now referred to as the Territorial Waters, Exclusive Economic Zone and Continental Shelf culturally and geographically form or are deemed to form part of the Littoral States immediately abutting the said area.*

*(c) A declaration that the Territorial Waters, Exclusive Economic Zone and the Continental Shelf culturally and geographically form part of the Littoral States immediately abutting the said area.*

*(d) A further declaration that the Lagos State is entitled to 13% of whatever revenue is derived from the Territorial Waters abutting the coast of the Lagos State.*

*(e) A declaration that Nigeria’s claim to Territorial Waters, Exclusive Economic Zone and Continental Shelf arises only because of the unique positioning of the States bordering on the seas.*

*(f) A declaration that the vesting of mining rights, powers and ownership of minerals in, upon or under the Territorial Waters, Exclusive Economic Zone up to the continental Shelf of Nigeria does*

*not operate to divest ownership or deemed ownership of the said waters from the State.*

(g) *A declaration that any waters which are not deemed or considered a part of any state within the Federation (which means any of the 36 States of Nigeria or the Federal Capital Territory) do not form or constitute a part of the Federal Republic of Nigeria.*

(h) *A declaration that natural resources mean any material in its natural state which when exploited has economic value.*

(i) *A declaration that for the purposes of Section 162(2) of the 1999 Constitution, the Federal Government of Nigeria is not entitled to allocation of any revenue on the basis of derivation, but rather Nigeria only States from which natural resources are derived.*

(j) *The 24<sup>th</sup> Defendant/Counter-Claimant is entitled to the Waters as owners, and if not as beneficial owner by virtue of historical usage, usufructuary rights, riparian rights, traditional history, access to the waters and suffers from pollution or environmental damage from such seas.*

(k) *An order of this Honourable Court directing office of the Accountant General of the Federation, through the plaintiff to render an account of all monies received and disbursed from the Federation account from 29 May 1999 till the date of instituting this action.*

(l) *A further order directing the payment of amount due to the 24<sup>th</sup> Defendant/Counter-Claimant as its share (by virtue of the principle of derivation stipulated in Section 162(2) of the 1999 Constitution) of the all revenue accruing from the state to the federation account.*

(m) *A further order directing the payment of 1% of the statutory allocation of the Federal Government to Lagos State as the former Federal Capital Territory for the maintenance of Federal infrastructure and installation within the State."*

A careful reading of claims (a), (b), (c), (d), (e), (f), (g), (i) and (j) above, show that they all border on the plaintiff's claim. Sea-ward boundary of littoral States having been determined in Plaintiff's favour, claims (a) – (g), (i) and (j) become largely untenable. Each and everyone of them is hereby dismissed.

As for claim (h) there are no materials on which this declaration can be based. It is refused. Claims (k) and (l) have not been



quantified and there is nothing to show that the plaintiff has refused Defendant's demand for an account. Each and everyone of these claims is hereby refused. There is clearly no legal basis for the Defendant's demand in respect of claim (m). It is accordingly struck out.

10. Ondo State – 28<sup>th</sup> Defendant B

The 28<sup>th</sup> Defendant Counter-claims as follows –

*“(1) A declaration that its Seaward boundary extends beyond its coastline and that natural resources derived offshore its coastline are derived from its State to which the provisions of Section 162(2) of the Constitution should apply.”* C

*“(2) An order directing the Plaintiff to calculate and pay over to the 28<sup>th</sup> Defendant 13% of revenue accruing to the Federation Account directly from natural resources derived from offshore locations adjacent to the 28<sup>th</sup> Defendant's coastline with effect from 29<sup>th</sup> of May 1999.”* D

*“(3) A declaration that the 28<sup>th</sup> Defendant is entitled with effect from 29<sup>th</sup> May 1999 to 13% of the revenue accruing to the Federation Account directly from the natural resources derived onshore within the State in accordance with the provisions of Section 162(2) of the Constitution of the Federal Republic of Nigeria.”* E

*“(4) An order directing the Plaintiff to pay over forthwith to the 28<sup>th</sup> Defendant 13% of all revenue that has accrued to the Federation Account directly from natural resources derived from onshore locations in its State from 29<sup>th</sup> May 1999 to 30th December, 1999”.* F

Claim (l) is clearly the Plaintiff's case which has been decided earlier. It is therefore struck-out. As for claims (2), (3) and (4) there is no law presently on which “13% minimum” could be paid over to the 28<sup>th</sup> Defendant. It is premature. It has to wait the determination of a formula for revenue allocation by the National Assembly as provided for under Section 162(2) of the constitution. In short, there is no legal basis to ground all these claims. Each and everyone of them is struck out.

10. Rivers State – 32<sup>nd</sup> Defendant H

The 32<sup>nd</sup> Defendant counter-claims against the plaintiff as follows

*“a. A declaration that the principle of derivation provided for under section 162(2) of the 1999 Constitution is applicable to 100%*

*of the total revenue derived from any natural resources from any State of the Federation.*

*b. A declaration that the “on-shore” dichotomy applied by the Plaintiff to the derivation principle is not tenable under the 1999 Constitution and is therefore unconstitutional null and void.*

B *c. A declaration that the 32<sup>nd</sup> Defendant is entitled to be paid 13% of all revenue accruing to the Federation Account from any natural resources particularly oil production and extraction and natural gas from her territory with effect from 29<sup>th</sup> May 1999 and up to and including 31<sup>st</sup> December, 1999.*

C *d. A declaration that the boundary of the 32<sup>nd</sup> Defendant within the Federal Republic of Nigeria as a Coastal State comprises of its entire land mass, territorial waters, Continental Shelf and the Exclusive Economic Zone to which the 32<sup>nd</sup> Defendant is contiguous.*

D *e. A declaration that the Plaintiff is neither entitled to allocation of any revenue from the Federation Account on the basis of derivation nor is she envisaged as a beneficiary under Section 162(2) of the 1999 Constitution.*

E *f. An order compelling the Plaintiff to furnish the 32<sup>nd</sup> Defendant with a full Statement of Account of the total revenue accruals into the Federation Account derived from any natural resources from 29<sup>th</sup> May 1999 until the date of judgment in this suit.*

F *g. A further order compelling the Plaintiff to furnish the 32<sup>nd</sup> Defendant with a Statement of the Allocation to each State of the Federation and the Plaintiff from the Federation Account with effect from 29<sup>th</sup> May 1999 up to the date of judgment.*

G *h. An order directing the Plaintiff to pay to the 32<sup>nd</sup> Defendant all arrears of 13% of the 40<sup>th</sup> total “off-shore” production derivation accruals to which she is entitled from 29<sup>th</sup> May 1999 and continuing to date.*

*i. An order compelling the Plaintiff to pay to the 32<sup>nd</sup> Defendant all arrears of 13% “on-shore” and “off-shore” oil revenue from 29<sup>th</sup> May 1999 to 31<sup>st</sup> December, 1999.*

H *j. An order compelling the Plaintiff to pay to the 32<sup>nd</sup> Defendant 13% of all revenue accruing to the Federation Account from the wharves, and sea ports within Rivers State.”*

*k. An order compelling the plaintiff to pay to the 32<sup>nd</sup> Defendant 13% of all revenues accruing to the Federation Account from*

*natural gas produced and extracted from Rivers State from 29<sup>th</sup> May 1999, and continuing up to the date of judgment.”*

Claims (a), (b) (d) and (e) border on the Plaintiff’s case. Each one is accordingly struck out. Claims (c), (h), (i) and (j) all lack the legal basis on which the deductions sought could be made. I repeat again that any claim to “13% minimum” is premature. It has to await the determination of a formula by the National Assembly vide the provisions of Section 162(2) of the constitution. Each of these claims is hereby refused. B

As for claims (f) and (g), there is nothing to show that there had been a previous demand by the Defendant for an account which the plaintiff had failed to honour. In addition the amount claimed under (g) is not stated or quantified and thereby rendering it vague. Each of these claims is dismissed. C

12. Sokoto State – 33<sup>rd</sup> Defendant D

The 33<sup>rd</sup> Defendant claims as follows –

*“(a) The natural resources derived from any part of Nigeria (by whatever name called) are deemed to be derived from Nigeria and not from a particular spot/area where the resources may be physically situate.”* E

*“(b) The natural resources located within the territorial waters of Nigeria and the Federal Capital Territory are deemed to be derived from the Federation of Nigeria and not from any area or part of Nigeria.”*

*“(c) The Federal Republic of Nigeria is a State and not a section thereof where interpreting the economic agenda and code prescribed by the constitution.”* F

*“(d) By and under section 162(2), all Areas/Sections (States) represented by the defendants in this suit are all entitled in equal G shares only) to at least 13% of the revenue accruing to the Federation Account directly from any natural resources.”*

*“(e) The 33<sup>rd</sup> defendant is entitled to payment in arrears monies equal to the sums paid to either Akwa-Ibom or Bayelsa or Cross Rivers or Delta or Edo or Ogun, Ondo and Rivers States since while the Plaintiff wrongly interpreted and applied Section 162(2) of the constitution of the Federal Republic of Nigeria.”* H

*“(f) That the Federal Government of Nigeria should apologize to the Defendants, save those listed in sub paragraph (e) herein for*

*the inequality and discrimination occasioned by the misapplication of the not less than thirteen percent rule enshrined in the Constitution- vide Section 162(2)."*

Claims (a), (b) and (c) all relate to the Plaintiff's claim already decided above. I do not need to repeat it here again. The  
B claims are hereby each dismissed.

Claims (d), (e) and (f) do not arise for determination now until the National Assembly determines the formula for revenue allocation under Section 262(2) of the constitution. There is now no law  
C to enforce the "13% minimum." "13% minimum" is certainly not provided for in the Allocation of Revenue (Federation Account, etc) Act Cap. 16 Laws of the Federation of Nigeria, 1990 Volume 1 as modified by Allocation of Revenue (Federation Account etc) (Amendment) Decree No. 106 of 1992. Each of these claims is accordingly  
D struck out.

#### SUMMARY OF DECLARATIONS

1. The seaward boundary of a littoral State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural  
E resources derived from that State pursuant to the proviso to section 162(2) of the Constitution of the Federal Republic of Nigeria, 1999 is the sea as provided by the law.

2. The first charge system being adopted by the Plaintiff  
F whereby it deducts certain percentage of revenue from the Federation Account for debt servicing before distributing of same amongst -  
(a) The Federal Government,  
(b) The State Governments and  
(c) Local Government Councils in each State

G As stipulated under Section 162(3) of the Constitution is unconstitutional, null and void notwithstanding the provision of any other law to the contrary, the constitution being the supreme law of the country.

H 3. Funding of the Judiciary as a first line charge on the Federation Account is unconstitutional notwithstanding the provision of any other law to the contrary.

4. Servicing of external debts via first line charge on the Federation Account is unconstitutional, null and void notwithstanding the provisions of any other law to the contrary.

*5. Funding of Joint Venture Contracts and Nigerian National Petroleum Corporation (NNPC) Priority projects and first line charge on the Federation Account is unconstitutional, null and void notwithstanding the provision in any other law to the contrary.*

*6. Unilaterally allocating of 1% of the revenue accruing to the Federation Account to the Federal Capital Territory is unconstitutional, null and void notwithstanding the provision in any other law to the contrary.*

*7. The Plaintiff is hereby restrained by an order of perpetual injunction from further violation of declarations 2,3,4,5 & 6 above.*

It is manifest that everyone in the case stands to benefit one way or the other from the decisions above. There will therefore be no order as to costs.

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### OGWUEGBU JSC

The plaintiff's claim against the defendants jointly and severally is for:

*"A determination by the Supreme Court of the seaward boundary of a littoral State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to section 162(2) of the Constitution of the Federal Republic of Nigeria, 1999"*

The thirty six States of Nigeria are defendants in the proceedings. A Statement of Claim accompanied the writ of summons and these were served on the defendants who in turn filed their memoranda of appearance. Each subsequently filed its Statement of Defence and the 3<sup>rd</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 15<sup>th</sup>, 17<sup>th</sup>, 20<sup>th</sup>, 24<sup>th</sup>, 28<sup>th</sup>, 32<sup>nd</sup> and 33<sup>rd</sup> defendants counter-claimed. The respective counter-claims will be considered at the appropriate stage in this judgement. The plaintiff filed a Reply to the Defence and Defence to the Counter-Claims.

*The Plaintiff's Statement of Claim reads:-*

*1. The Plaintiff is the Attorney-General of the Federation and brings this action as the representative of the Government of the Federal Republic of Nigeria.*

*2. The 1<sup>st</sup> to the 36<sup>th</sup> Defendants are the Attorneys-General*

*of each of the 36 States which along with the Federal Capital Territory Abuja, Comprise the Federal Republic of Nigeria. Each defendant is used as the representative of the Government of each State.*

B 3. Section 162(1) of the Constitution of the Federal Republic of Nigeria, 1999 (hereafter referred to as “the Constitution”) provides that “the Federation Account” into which shall be paid all revenue subject to certain exceptions which are not material to this case collected by the Federation.

C 4. Pursuant to the provisions in Section 162(2) of the Constitution and subject to certain conditions therein specified, the President of the Federal Republic of Nigeria is required to table before the National Assembly proposals for revenue allocation.

D 5. By a proviso to the aforementioned Section 162(2) of the Constitution, the principle of derivation must be reflected in any approved formula for revenue allocation.

E 6. The plaintiff states that in the context of section 162(2) of the Constitution the expression “principle of derivation” means the principle that revenue accruing to the Federal Account from any natural resources shall be deemed to have been derived from the State or territory where such resources are located.

F 7. The Plaintiff further states that the proviso to section 162(2) of the Constitution requires that any approved formula for revenue allocation from the Federation Account shall reflect the fact that not less than 13% of revenue accruing to the said Federation Account from any natural resources are allocated to the Government of the State or territory where such resources are located.

G 8. By reason of the facts pleaded in paragraph 5, 6 and 7 of this Statement of Claim, the Plaintiff states that for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from any State or territory pursuant to the proviso to Section 162 of the Constitution:-

(a) The natural resources located within the boundaries of any State are deemed to be derived from that State;

H (b) In the case of the littoral States comprised in the Federal Republic of Nigeria (i.e. the States of Akwa-Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers) the seaward boundary of each of the said States is the low water mark of the land surface thereof or (if the case so requires) the seaward limits of inland waters

within the States;

(c) *The natural resources located within the territorial waters of Nigeria and the Federal Capital Territory are deemed to be derived from the Federation and not from any State;*

(d) *The natural resources located within the Exclusive Economic Zone and the Continental Shelf of Nigeria are subject to the provisions of any treaty or other written agreement between Nigeria and any neighbouring littoral foreign State, derived from the Federation and not from any State.*

9. *In further support of the averments in paragraph 8 of this Statement of Claim the plaintiff will contend at the trial of this action that under the provisions contained in the Constitution it is only the Federal Government of Nigeria and not the Government of any of States comprised in the Federal Republic of Nigeria that has power to:-*

(i) *Exercise legislative, executive or judicial powers over the entire area designated as the "territorial waters of Nigeria" pursuant to the provisions of the Territorial Waters Act, Cap. 428, Laws of the Federation of Nigeria 1990, as amended.*

(ii) *Exercise any of the sovereign rights exercisable by Nigeria over the entire area designated as the "Exclusive Economic Zone" pursuant to the provisions of the Exclusive Economic Zone Act, Cap. 110, Laws of the Federation of Nigeria, as amended.*

10. *The States of Akwa-Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers dispute the averment of the Federal Government of Nigeria as pleaded in paragraph 8 hereof and claim that natural resources located offshore ought to be treated or regarded as located within their respective States".*

WHEREUPON the Plaintiff claims:-

*"A determination by this Honourable Court of the seaward boundary of a littoral State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to the provision to section 162(2) of the Constitution of the Federal Republic of Nigeria, 1999".*

The court ordered the parties to file briefs of argument and these were filed and exchanged and in some cases, affidavit evidence were also filed. These will also be considered at various stages of the

judgment. In the plaintiff's view and in so far as it conceived the action filed, the sole question for determination is as follows:

*"What is the seaward boundary of a maritime State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to the proviso to section 162(2) of the Constitution of the Federal Republic of Nigeria 1999."*

Before the three persons or authorities charged with the responsibility of determining the formula for the application of section 162(2) of the Constitution, and in particular, the derivation principle can carry out the exercises, the seaward limit of the territory of each of the maritime or littoral States of Nigeria adjacent to or contiguous to the open sea should be ascertained.

The Plaintiff in its brief of argument referred the court to section 3 of the Constitution which makes provisions for 36 States by name and part 1 of the First Schedule to the Constitution where the 36 States are described in the said Schedule as "*Local Government Areas*". Based on that definition Chief Williams, SAN contented that no area of land or water which does not come within a '*Local Government Area*' can under the Constitution be treated as forming part of the territory of any of the 36 States of Nigeria.

The court was also referred to section 4 of the Constitution wherein express power was conferred on the National Assembly to make laws for peace, order and good government of the Federal Republic of Nigeria with respect to "*External Affairs*" pursuant to Item 26 of the Exclusive Legislative List and that the National Assembly alone is competent to make laws for the country with respect to matters outside the territory of the Federal Republic of Nigeria.

Chief Williams, SAN referred us to certain Federal enactments which took effect as Acts of the National Assembly under section 315 of the Constitution:

(i) Territorial Waters Act, Cap. 428, Laws of the Federation of Nigeria, 1990

(ii) Sea Fisheries Act, Cap. 404, Laws of the Federation of Nigeria, 1990 and

(iii) Exclusive Economic Zone Act, Cap. 116. Laws of the Federation of Nigeria, 1990.



(iv) The Interpretation Act, Cap. 192, Laws of the Federation of Nigeria, 1990.

It was his submission that each of the above enactments was validly enacted by the Federal Legislature pursuant to its power to make laws with respect to external affairs. Reference was made to section 1 of the Territorial Waters Act from which an inference can be drawn to the effect that the territorial waters of the Federal Republic of Nigeria commences from the low water mark along the coast or the seaward limits of inland waters. B

He referred to Openheim, International Law, 8<sup>th</sup> ed. Vol. 1 p. 488, American Jurisprudence 2<sup>nd</sup> ed. Vol. 45 p. 502 para. 62 and Article 3 of the United Nations Convention on the Law of the Sea 10.12.82 otherwise known as UNCLOS which authorizes every State the right to establish the breadth of its territorial waters upon to a limit not exceeding 12 nautical miles, measured from base lines determined in accordance with the Convention. C D

The court was referred to section 11 of the Sea Fisheries Act which provides that the “*territorial waters of Nigeria*” has the same meaning as in section 1 of the Territorial Waters Act. It was submitted that the Fisheries Act is also consistent with the notion that it is the Federal Government alone that can lawfully exercise governmental powers over the maritime belt or the territorial waters of Nigeria. E

Chief Williams, SAN also referred the court to the long title of the Exclusive Economic Zone Act which delimits the Exclusive Economic Zone of Nigeria up to 200 nautical miles sea-wards from the coast of Nigeria within which zone Nigeria could exercise certain sovereign rights subject to universally recognized rights. It was submitted that this Act is also consistent with the notion that the boundary of a littoral or coastal State stops at the low water mark or the seaward limits of inland waters, as the case may require. Reference was also made to the interpretation Act, Cap. 192, Laws of the Federation of Nigeria, 1990 which defined “*territorial waters*” also. F G

Chief Williams, SAN urged the court to hold that in the case of littoral States comprised in the Federal Republic of Nigeria, the seaward boundary of them is the low water of the land surface thereof or (if the case so requires) the seaward limits of inland waters within the State and that the land or waters over which Nigeria exercise or is authorized under the Constitution to exercise sovereign rights under H

the Constitution include land or waters which lie or are situated beyond the low water of the land surface thereof, or as the case may be, the seaward limits of inland waters within any State.

In support of the above submissions, Chief Williams, SAN referred the court to the following decisions of three common law jurisdictions of USA, Canada and Australia:

- (a) U.S. v Louisiana Led. 1025
- (b) Reference Re Ownership of Offshore Mineral Rights Vol. 65 DLR 2nd; 354, 1968
- (c) New South Wales & Ors. v. Commonwealth 8 ALR (1975-6) 1.

He quoted extensively the opinions expressed by the judges in the above three cases.

The Defendants/Littoral States in particular formulated various issues for determination in their respective briefs. Some of these issues overlap and every attempt will be made to cover all related issues raised. For example the 9<sup>th</sup> Defendant (Cross River State) put the issues thus:

*“The 9<sup>th</sup> Defendant says respectfully that the sole issue formulated by the plaintiff does not arise from his pleadings let alone the issues joined by all the pleadings in this action – as that is not a case about what accrues to the Federation Account, as suggested, but what comes out of it in virtue of Section 162(2) Proviso.*

Obversely, the 9<sup>th</sup> Defendant contends humbly that the fact and issues joined by the parties in this suit raise the following issues:

*“Whether the action should not be dismissed, the plaintiff not leading any evidence? (if the question is answered in the affirmative), whether for the purpose of revenue allocation (and otherwise howsoever), Cross River State extends to the Offshore Waters abutting its coast? A number of sub-issues arise out of this later issues.”*

The 10<sup>th</sup> Defendant (Delta State) identified the following issues as arising in the matter:

*“(i) Whether the plaintiff in this case has furnished the Supreme Court with sufficient evidence consisting of materials, instruments, survey plans, geographical co-ordinates or base lines to enable the Court to ascertain the seaward boundary of the 10<sup>th</sup> Defendant.*

*(ii) Whether the plaintiff has any other relief other than the*

*determination of the seaward boundary of the 10<sup>th</sup> Defendant as a Littoral state.*

*(iii) Whether in the context of section 162(2) of the 1999 Constitution the expression ‘principle of Derivation’ can properly be construed to mean ‘the principle that revenue accruing from the Federation Account shall be deemed to have been derived from the State or Territory from where whose resources are located’ as put in paragraph 6 of the plaintiff’s Statement of Claim.*

*(iv) Whether it is correct to say that it is only the government of the Federation that has the exclusive authority to exercise legislative, executive or judicial powers over the entire areas designated as Territorial Waters of Nigeria and the areas designated as Exclusive Economic Zone.”*

There is this preliminary issue of whether the action should not be dismissed on the ground that the Plaintiff did not lead any evidence on the sole issue submitted. Chief Williams, SAN in his oral argument submitted that there is no issue of fact as far as the seaward limit of a littoral state is concerned. He referred the court to paragraph 8 of the Plaintiff’s Statement of claim which the littoral State deny. He submitted that it is a question of law and not fact. He referred the court to the case of Pioneer Plastic Contractors Ltd. v. Commission of Customs & Excise (1967) Ch. 597.

I have no doubt in my mind that the sole issue identified by Williams SAN in this case can be determined without any evidence oral or by affidavit. If the question simply reads: What is the seaward boundary of a maritime State such as Nigeria, I do not think one would need survey plans and geographical co-ordinates to answer the question. The reference to the calculation of amount of revenue accruing to the Federation Account directly from any natural resources derived from a littoral State pursuant to section 162(2) of the Constitution comes into play after the boundary has been ascertained. In any case what is before the court is a question of the interpretation of section 162 of the Constitution which is question of pure law and this court in Ruling dated 11<sup>th</sup> July, 2001 on a preliminary objection as to the jurisdiction of this court to entertain this action gave reasons for overruling the objection which laid this issues to rest.

Some of the arguments of the defendants as to the seaward boundary of a coastal State within the Federal Republic of Nigeria

are as follows:

Lagos State (24<sup>th</sup> Defendant) Professor Osinbajo, Attorney-General of Lagos State submitted in the 24<sup>th</sup> Defendant's brief that:

*"Since the Offshore Waters by legislation, international law and section 44(3) of the Constitution form part of the Territory of Nigeria, the said Waters must form part of either the FCT, which is not the case, or the coastal States which is beyond petty fogging... The 24<sup>th</sup> Defendant denies that no LGA is in the offshore waters, as otherwise well established by the affidavit of Sakibu Balogun. Further, it is crucial to note that the "low water mark" as a matter of law is a term used to determine land boundaries between a coastal State and the seas, while "seaward limit or boundary" is used to determine the boundary between inland waters and the seas."*

He submitted that the Offshore Waters abutting Lagos State are appurtenant to the land of Lagos State and are only a part of Nigeria, or enjoyable by Nigeria, by virtue of the fact that Lagos State is a constituent unit of the Federation of Nigeria. He further submitted that the Offshore Waters cannot be claimed by the Federal Government since it demonstrated that the Federal Government constitutionally does not have any territory beyond the Federal Capital Territory, Abuja. It was also contended that Offshore Waters are being claimed by the 24<sup>th</sup> Defendant by virtue of being a natural prolongation and appurtenances of its land mass, historical use over the years, constitutional provisions of 1960 and 1963 Constitutions, legislation, Territorial Waters Act, treaties conventions being entered into after the fact to harmonize and establish public international law.

6<sup>th</sup> Defendant (Bayelsa State) Mr. T. Ongolo, Attorney-General & Commissioner for Justice of 6<sup>th</sup> Defendant in the brief stated that the contention of the plaintiff that the boundary of a coastal State is the low water mark along the coast and or the seaward limit of inland waters, would in effect create a boundary between a coastal State and the Federation with the territory of a coastal State ending at a low water mark and a Federal territory commencing from the low water mark up to the seaward limit defined by statutes. He submitted that arguments of that type is fundamentally flawed because it is an established principle of international law that a State or Nation without a coast cannot have any 'territorial water' and to qualify to have territorial waters, the State must have a coastal land washed by

water from the sea. He further submitted that territorial sea is viewed as a maritime territory of the coastal State. He referred the court to International Law by Schwarzenberger 3<sup>rd</sup> ed. p. 318 at 324 and contended that under international law, territorial water is inseparable from the land which it waters.

28<sup>th</sup> Defendant (Ondo State)

On the validity and legal effect of the Territorial Waters Act, Chief Ogedengbe, Attorney-General of 28<sup>th</sup> Defendant submitted that even though the validity of the Territorial Waters Act must be presumed until challenged, it does not foreclose the right of this Court to consider the correctness of the interpretation placed on the provisions of the Act by the Plaintiff. He urged the Court not to uphold the deductions made by the Plaintiff as to the effect of the Territorial Waters Act as it will create a situation in which the Act will override the Constitution as to what land mass/territory should form part of the Federal Republic of Nigeria. We were also urged to ignore the foreign decisions relied upon by the plaintiff as they relate to competing claims as to ownership of the land and the mineral resources under the Territorial Waters of Nigeria. That the coastal States have never denied that the mineral resources are owned by the Federal Government pursuant to the provisions of the Minerals Act.

I will at this stage consider the seaward boundary of the Nigerian State in the light of the submissions made by the parties in the proceedings. British administration in Nigeria in the early days took the form of chartered companies whose powers were based on treaties with Nigerian Chiefs. Up to December, 1913 the country now known as Nigeria was administered as two distinct and separate British territories known as the Northern Protectorate and the Southern Protectorate. The two territories were amalgamated in January, 1914 and it became known as the Colony and Protectorate of Nigeria. Then came the introduction of the Richards Constitution in 1947. The next phase of Nigeria's constitutional development was reached in 1954 with the introduction of the Macpherson Constitution based on Nigeria Constitutional Conference held in London in July/August 1953. The final phase was reached in 1960 with the enactment by the British Government of an Act entitled "*An Act to make provision. For, And In Connection With, The Attainment By Nigeria Of Fully Responsible Status Within The Commonwealth.*"

The short title is the Nigeria Independence Act. The legal status and name of the country were changed from “*The Colony and Protectorate of Nigeria*” to “*Nigeria*”. This was the product of the Nigeria Constitutional Conferences held in London in May/June, 1957 and September/October, 1958. Until 1954 the boundaries of each of the three Regions were defined in divers instruments made between 1915 and 1951. By the Northern Region, Western Region and Eastern Region (Definition of Boundaries) Proclamation, 1954, the Governor and Commander-in-Chief of Nigeria with the approval of the Secretary of State proclaimed the boundaries of the Northern, Western and Eastern Regions of Nigeria and these boundaries were defined in Schedules 1,2 and 3 to the Proclamation. The southern boundaries of the western Easter Regions were stated to be “*The Sea*” which means the Atlantic Ocean. This definition is a starting point even though it did not throw enough light on the issue under consideration. Since the southern boundaries of the Western and Eastern Regions is the Sea and all the littoral Defendants are States created from the two Regions, their southern boundaries is automatically the same sea which is also the southern boundary of Nigeria by virtue of this Proclamation of 20<sup>th</sup> September, 1954.

Having come to the conclusion that the Sea is the southern boundary of the littoral States (Defendants), the seaward limit of the territory of each of them will now be considered. References were also made by learned counsel to section 3 and 4 of the Constitution. They read:

“3. (1) *There shall be thirty-six States in Nigeria, that is to say, Abia, Adamawa, Akwa Ibom, Anambra, Bauchi, Bayelsa, Benue, Borno, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Gombe, Imo, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Lagos, Nasarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Sokoto, Taraba, Yobe and Zamfara.*

(2) *Each State of Nigeria named in the first column of Part 1 of the First schedule to this Constitution shall consist of the area shown opposite thereto in the second column of that Schedule.*

(3) *The headquarters of the Government of each State shall be known as the Capital City of that State as shown in the third column of the said Part 1 of the First Schedule opposite the State named in the first column thereof.*

*(4) The Federal Capital Territory, Abuja shall be as defined in Part II of the First Schedule to this Constitution.*

*(5) The provisions of this Constitution in Part 1 of Chapter VIII hereof shall, in relation to the Federal Capital Territory, Abuja, have effect in the manner set out thereunder.*

*(6) There shall be seven hundred and sixty-eight local government area in Nigeria as shown in the second column of Part I of the First Schedule to this Constitution and six area councils as shown in Part II of that Schedule.”*

This is not helpful.

“4. (1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives.

(2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the exclusive Legislative List set out in Part 1 of the Second Schedule to this Constitution.

(3) The power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the House of Assembly of States.

(4) In addition and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have power to make laws with respect to the following matters, that is to say -

(a) any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and

(b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

(5) If any Law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other Law shall to the extent of the inconsistency be void.

(7) The House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or

any part thereof with respect to the following matters, that is to say –

(a) any matter not included in the Exclusive Legislative List set out in Part 1 of the second schedule to this Constitution;

(b) any matter included in the Exclusive Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and

(c) any other matter with respect to which it is empowers to make laws in accordance with the provisions of this Constitution.

Section 4(2) of the Constitution confers power on the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive legislative List to the exclusion of the House of Assembly and Item 26 in the Exclusive Legislative List (Part 1 of the Second Schedule to the Constitution), external affairs is one of such matters. The scope of the power of the House of Assembly of a State to make laws for peace, order and good government is limited to “*the State or any part thereof*”. That power of the National Assembly will be seen in this judgment to strengthen the claim of the Plaintiff.

Chief Williams, SAN referred the court to four enactments which took effect as Acts of the National Assembly under section 315 of the Constitution, namely, the Territorial Waters Act, the Sea Fishers Act and the Exclusive Economic Zone Act and the Interpretation Act. He also referred to certain International Treaties and Conventions and decisions of the apex courts of United States of America, Canada and Australia in support of his claim.

The Territorial Waters Act in its section 1(I) provides that the territorial waters of Nigeria shall for all purposes include every part of the open sea within 30 nautical miles of the coast of Nigeria (measured from low water mark) or of the seaward limits of inland waters. The Sea Fisheries Act in its definition section (section 12) provides that “*territorial waters of Nigeria*” has the same meaning as in section 1 of the Territorial Waters Act. The Exclusive Economic Zone Act in its title reads:

*“An Act to delimit the Exclusive Economic Zone of Nigeria being an area extending up to 200 nautical miles seawards from the coasts of Nigeria. Within this Zone, and subject to universally recognised rights of other States (including land-locked States), Nigeria would*



*exercise certain sovereign rights especially in relation to the conservation or exploitation of the natural resources (minerals, living species, etc) of the seabed, its subsoil and super adjacent waters and the right to regulate by laws the establishment of artificial structures and installations and marine scientific research, amongst other things.”*

B

The 200 nautical miles mentioned in the Act is pursuant to section 1(I) thereof. Section 18 of the Interpretation Act defines “territorial waters” as any part of the open sea within 30 nautical miles of the coast of Nigeria (measured from low water mark) or of the seaward limits of inland waters.

C

By virtue of section 315 of the Constitution the four enactments mentioned above are existing laws of the National Assembly and by virtue of section 4(2) and (3) of the Constitution, the National Assembly has the power to make laws for the peace, order and good government of the Federation of Nigeria or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part 1 of the Second Schedule to the Constitution. Item 26 of the said exclusive list is external affairs and each of the aforementioned enactments is concerned with external affairs, one of the items in the Exclusive Legislative list which the State Houses of Assembly are banned from legislating upon.

E

In the circumstance, the Federal Government alone and not the littoral States can lawfully exercise legislative, executive and judicial powers over the maritime belt or territorial waters and sovereign right over the exclusive economic zone subject to universally recognized rights. The validity of the four aforementioned enactments has not been questioned.

F

The position at common law as to what constitutes the seaward boundary of a littoral State is not different from that expressed in the four enactments of the Federal legislature set out above. In *Queen v. Keyn* (1875/77) 1-2 Ex. D. 63, a prisoner was indicted at the Central criminal Court, London for manslaughter. He was a foreigner and in command of a foreign ship, passing within three miles of the shore of England and on a voyage to a foreign port, and whilst within that distance his ship ran into a British ship and sank her, whereby a passenger on board the later ship was drowned.

H

The issue before the appellate court was whether the Central

Criminal Court has jurisdiction to try an offence by a foreigner on board a foreign ship within or without the limit of three miles from the shore of England. It was held by the whole of the majority of the court that the Central Criminal Court had no jurisdiction because prior to 28 Hen. 8, c. 15, the admiral had no jurisdiction to try offences by foreigners on board foreign ships, whether within or without the limited of three miles from the shore of England. Part of the decision in that case relevant to this appeal is the statement of that court as to the limits of the realm of England. Sir R. Philimore in his judgement (p. 67) said:

“The jurisdiction which now exists over offences committed at sea is that which was once possessed by the Court of the admiral. The country extends to low-water mark, where the “high seas” begin; between the high and low-water mark, the Courts of oyer and terminer had jurisdiction when the tide is out, the Court of admiral when the tide is in. There appears to be no sufficient authority for saying that the high sea was ever considered to be within the realm, and, notwithstanding what is said by Hale in his treatise *de Jure Maris* and *Pleas of the Crown*, there is a total absence of precedents since the reign of Edward III, if indeed any existed then, to support the doctrine that the realm of England extends beyond the limits of the counties.”

The counties of England extend to low-water mark where the high seas begin and the realm of England does not extend beyond the limits of the counties.

In the light of the foregoing, the seaward boundary of the littoral States which are component parts of Nigeria is the low water mark of the land surface thereof or the seaward limits of the inland waters within the States as the case may be and in the case of the 9<sup>th</sup> Defendant (Cross River State) which has archipelagic island, her southern boundary is the seaward limit of her internal waters.

It is Nigeria as a sovereign State which can exercise jurisdiction and rights as a coastal State over her territorial waters, contiguous zone, other zone in which she has a special interest and the high seas and will answer the claims of other members of the international community, for, any breach of her obligations and responsibilities under international Conventions such as the United Nations Convention on the Law of the Sea 1982 and nor her littoral States who

have no international personality. The principles of international law laid down by the courts of United States of America, Canada and the Commonwealth of Australia in the cases of *U.S. v. Louisiana Reference Re Ownership of Offshore Mineral Rights*, and *New South Wales & Ors. v. Commonwealth* (supra) are not only persuasive but relevant and applicable to this case. B

This is a convenient stage to consider the machinery and the formula for distribution of any amount standing to the credit of the Federation Account with particular reference to section 162(2) of the 1999 Constitution. The Federal Republic of Nigeria is required “*to maintain a special account to be called the ‘Federation Account’ into which shall be paid all revenues collected by the Government of the Federation*” except some specified proceeds from a few sources of revenue which are not material to this case. Certain provisions of section 162 provide the machinery for the distribution of any amount standing to the credit of the Federation Account and three persons, organs or authorities, namely, the Revenue Mobilization Allocation and Fiscal Commission, the president and the National Assembly are charged with specific functions in relations to the exercise of distributing the aforementioned amount among the three tiers of Government (the Federal and State Governments and the local government councils in each State). C D E

The Revenue Mobilization Allocation and Fiscal Commission is established by the Constitution (see section 153 (1)(n) of the Constitution and Article 32(a) Part One of the third Schedule to the Constitution vests the Commission with power to: F

“(a) *monitor the accruals to and disbursement of revenue from the Federation Account;*

(b) *review, from time to time, the revenue allocation formulae and principles in operation to ensure conformity with changing realities;*

*Provided that any revenue formula which has been accepted by an Act of the National Assembly shall remain in force for a period of not less than five years from the date of commencement of the Act.”* H

Section 162(2) of the Constitution which forms the foundation of the proceedings provides:

“162(2) *The President, upon the receipt of advice from the*

*Revenue Mobilization Allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density:*

*Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen percent of the revenue accruing to the Federation Account directly from Natural resources.*” (Underlining is for emphasis).

The above proviso to section 162(2) of the Constitution requires that any approved formula for revenue allocation shall reflect the fact that not less than 13% of revenue accruing to the said Federation Account from any natural resources are allocated to the Government of the State or territory where such resources are located.

The division of revenue between the various parts of Nigeria has been a recurrent problem since the amalgamation of the North and South in 1914. The history began with the Report by Sir Sydney Phillipson published in 1947 on the Administrative and Financial Procedure under the 1947 Constitution. That Constitution provided a Legislative Council for the whole of Nigeria, together with Regional Houses of Assembly for North, East and West; the North also had a House of Chiefs. The Regional Houses had no powers to legislate or appropriate revenues. The Phillipson Report was therefore concerned with the principles on which revenue raised by the Central government should be allocated for expenditure by the regional authorities. The report considered two principles:

(a) The principle of derivation - that is, giving to a Region a sum related to that Region's contribution to central revenue, and

(b) The principle of even progress - that is, giving relatively more to backward areas to enable them to catch up with the rest.

Phillipson decided that greater weight should be given to derivation and that successive annual allocations should move in that direction, while having regard to the existing level of services of each Region.

In 1950, as part of the constitutional review, a Commission on Revenue Allocation was appointed and the Commissioners' Report signed by Professor J. R. Hicks and Sir Sydney Phillipson was

published in 1951. Their recommendations were reflected in the 1951 Order-in-Council. The principle of derivation was recommended for retention in respect of half of the revenue from taxes on tobacco. The system operated until 1953-54, when, following the Constitutional Conference of 1953, Sir Louis Chicks was appointed Fiscal Commissioner. He recommended the retention of the existing independent revenues and the extension of the derivative principle to the whole of the remaining centrally-raised revenues. His recommendations were accepted with minor modifications and it formed the basis of the provisions of the 1954 Order-in-council. The arrangements for revenue distribution made in 1954 attracted many criticisms. They include: -

(i) The deficiencies in the application of the principle of derivation, particularly as it related to the allocation to the Regions of their share of import duties.

(ii) The absence of any provision which would differentiate at all between the particular needs of a Region and the revenues arising within its boundaries.”

In May/June, 1957 a Fiscal Commission under the chairmanship of Mr. Jeremy Raisman was appointed. The Report of the Commission made substantial departures from the Hicks-Phillipson recommendations. The recommendations of Mr. Raisman came into effect on 1<sup>st</sup> April, 1959.

Some highlights of allocation of revenue in the 1960 Constitution were:

(i) Funds from the Distributable Pool Accounts as follows: Section 135 of the 1960 Constitution provided for the distribution as follows:

(a) to Northern Nigeria, forty ninety-fifths;

(b) to Western Nigeria, twenty-four ninety-fifths;

(c) to Eastern Nigeria, thirty-one ninety-fifths

(ii) Section 134(1) made provision for the payment by the Federation to each Region a sum equal to 50% of :

(a) the proceeds of any royalty received by the Federation in respect of any minerals extracted in that Region; and,

(b) any mining rents derived by the Federation during that year from within that Region.

(iii) Section 134(5) defined “*minerals*” in the section 134 to

include “*mineral oil*”.

(iv) Section 134(6) provides that for the purpose of section 134, continental shelf of a Region shall be deemed to be part of the Region.

The 1960 arrangements were retained in the 1963 Constitution except that the share of Western Nigeria from which Mid-Western Nigeria was carved out was shared between the two. Section 134(6) of the 1960 Constitution on the continental shelf was re-enacted as section 140(6) of the 1963 Constitution.

The derivation principle in the distribution of revenue from the Distributable Pool Account was reflected in the 1960 and 1963 Constitutions in so far as proceeds of any royalty received by the Federation in respect of any minerals extracted in that Region and any mining rents derived by the Federation during that year from the Region. This was completely absent in the 1979 Constitution. The 1979 Constitution was also silent on the treatment of continental shelf of a Region as part of that Region.

Section 149 of the 1979 Constitution provided a machinery for the distribution of revenue accruing to the Federation Account. The arrangements were replaced in 1982 by the Allocation of Revenue (Federation Account, Etc) Act, Cap. 16 Laws of the Federation of Nigeria, 1990. The long title of the Act reads:

*“An Act to prescribe the basis for distribution of revenue accruing to the Federation Account between the Federation and State Governments and the Local Government Councils in the State; the formula for distribution amongst the States; the proportion of the total revenue of each State to be contributed to the State Local Government Account; and for other purposes connected therewith.”*

It was amended by Decree No. 106 of 1992 otherwise known as Allocation of Revenue (Federation Account, Etc) (Amendment) Decree, 1992. Section 4 of Cap. 16 is one of its provisions that were amended. A new Section 4A was inserted and it dealt with allocations under special funds. It is necessary that I reproduce it in full as the provisions will have important Defendants.

*“4A(1) An amount equivalent to 1 per cent of the Federation Account shall be allocated to the Federal Capital Territory.*

*(2) An amount equivalent to 3 per cent of the Federation Account derived from mineral revenue shall be paid into a fund to*

*be administered by the Oil Mineral Producing Areas Development Commission established by the Oil Mineral Producing Areas Development Commission Decree 1992 for the development of the mineral producing areas, in accordance with such directives as may be issued in that behalf, from time to time by the National Assembly, and the fund shall be distributed among the areas on the basis of need, subject to section 2 of the Oil Mineral Producing Areas Development Commission Decree.* <sup>B</sup>

*(3) For the purposes of subsection (2) of this section and for the avoidance of any doubt, the distinction hitherto made between on-shore and off-shore oil mineral revenue for the purpose of revenue sharing and the administration of the Fund for the development of the oil mineral producing areas, is hereby abolished.* <sup>C</sup>

*(4) An amount equivalent to 2 per cent of the Federation Account shall be paid into a fund to be administered by an Agency to set up for that purpose for the amelioration of general ecological problems in any part of Nigeria, in accordance with directives as may be issued from time to time by the National Assembly.*

*(5) An amount equivalent to 0.5 per cent of the Federation Account shall be allocated and paid into a Fund to be designated "Stabilization Fund", which shall be administered by the Minister For Finance; the residue arising out of using mineral revenue, instead of the Federation Account as the base for allocation to the Fund for the development of the mineral producing areas shall be added to this Fund.* <sup>E</sup> <sup>F</sup>

*(6) An amount equivalent to 1 per cent of the Federation Account derived from mineral revenue shall be shared among the mineral producing States based on the amount of mineral produced from each state and in the application of this provision, the dichotomy of on-shore and off-shore oil production and mineral oil and non mineral oil revenue is hereby abolished.* <sup>G</sup>

*(7) For the purpose of this Decree, and for the avoidance of any doubt, where any State of the Federation suffers absolute decline in its revenue arising from factors outside its control, as a result of the implementation of this Decree, the Stabilization Fund shall be used to initially augment the allocation to that State, in accordance with acceptable threshold, to be worked out by the National Revenue Mobilization Allocation, and Fiscal Commission at which re-* <sup>H</sup>

*course can be had to the Fund and for how long.”*

The system we ought to operate now is that provided in section 162(2) of the 1999 Constitution which I reproduced earlier in this judgment. It is surprising that almost three years after the coming into force of the 1999 Constitution, section 162(2) has not come  
B into operation. The Government fell back on the provisions of section 313 of the Constitution which reads:

“313 Pending any Act of the National Assembly for the provision of a system of revenue allocation between the Federation and  
C the States, among local government councils in the States, the system of revenue allocation in existence for the financial year beginning from 1<sup>st</sup> January 1988 shall, subject to the provisions of this Constitution and from the date when this section comes into force, continue to apply:

D *Provided that ...”*

The proviso does not call for consideration in this judgment. As a result of section 313 of the Constitution Cap 16 of the Laws of the Federation, 1990 as amended by Decree No. 106 of 1992 operates in so far as it is not inconsistent with the provisions of the Consti-  
E tution.

Chief Williams, SAN has submitted in the Plaintiff’s brief that until the authorities responsible are able to produce the Formula envisaged under section 162 of the 1999 Constitution, the provisions enacted in Cap. 16 as amended will continue to apply and that this  
F will be so even where the provisions of Cap. 16 are inconsistent with the provisions of section 162 of the Constitution. In other words, that Cap. 16 does not operate as an “*existing law*” under the provisions of section 315 but rather by force of the transitional provisions of  
G section 313.

Chief Williams, SAN further argued that the provision abolishing “*on shore and off shore oil production*” dichotomy cited in section 4A(6) of Cap. 16 as amended by Decree 106 of 1992 is in force not as an existing law but as a temporary enactment pending  
H the coming into force of the Revenue Allocation Formula under section 162.

I agree with Chief Williams, SAN that until the authorities responsible for the production of the formula envisaged under section 162 of the Constitution do so, the provisions enacted in Cap. 16



as amended will continue to apply but I do not agree with him that the said Cap. 16 as amended will apply even where it is inconsistent with the provisions of the Constitution. Cap. 16 as amended by Decree No. 106 of 1995 is an existing law as a result of the provisions of section 313 of the Constitution.

As an existing law and by virtue of the provisions of section 313 will continue to be applied until a new system of revenue allocation envisaged under section 162 is produced. Its application will be subject to the provisions of the 1999 Constitution. That being the case, any application of the provision of section 4A(1) (6) of Cap. 16 will be inconsistent with the Constitution. Furthermore, the 1999 Constitution not having made any provision of “*onshore and off-shore*” principle in respect of oil produced from a State, it cannot be considered by Decree No. 106 of 1992.

Whereas the provisions of section 134(6) of the 1960 Constitution and section 140(6) of the 1963 Constitution and section 4A (6) of Cap. 16 as amended were meant to increase the oil revenue accruing to the oil producing Region/States by deeming the continental shelf as part of the territory of the Region/State, the 1999 constitution failed to recognize those concessions and was silent on them. This was not accidental having regard to the controversy giving rise to the proceedings.

Be that as it may, having regard to my earlier conclusion in this judgment that the seaward boundary of a littoral State within the Federal Republic of Nigeria is the low water of the land surface of the coastal land or (if the case so requires as in the case of the 9<sup>th</sup> Defendant) the seaward limits of inland waters within the State, the principle of derivation which shall constantly be reflected in any approved formula as being not less than 13% of the revenue accruing to the Federation Account from any natural resources located within the boundary of that littoral State as found in this judgment.

#### THE COUNTER-CLAIMS:

After the determination of the plaintiff’s case, I will now consider the counter-claims of the 3<sup>rd</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 15<sup>th</sup>, 17<sup>th</sup>, 20<sup>th</sup>, 24<sup>th</sup>, 28<sup>th</sup>, 32<sup>nd</sup> and 33<sup>rd</sup> Defendants.

Akwa Ibom State - 3<sup>rd</sup> Defendant

In paragraph 27 of the Amended Statement of Defence and Counter-Claim the 3<sup>rd</sup> Defendant counter-claims as follows:

“(1) A declaration that the 3<sup>rd</sup> defendant is by virtue of section 162 of the Constitution of the Federal Republic of Nigeria 1999 entitled to receive a minimum of 13% of the entirety of the natural resources derived from any dichotomy as to onshore and offshore natural resources.

B (2) An order compelling the plaintiff to pay the said balance of 40% of 13% due to the 3<sup>rd</sup> defendant from the 29<sup>th</sup> day of May, 1999 till date in respect of the natural resources derived from Akwa Ibom State.

C (3) Payment of the sum of N15,006,418,955.28 being the sum due from the plaintiff to the 3<sup>rd</sup> defendant Calculated as 13% of the revenue from natural resources derived from Akwa Ibom State for the Period June, 1999 to February, 2001.”

The first claim of the defendant is based on 13% minimum D free from onshore and offshore dichotomy. This claim therefore fails in view of my earlier findings in this judgment in favour of the plaintiff. Claims (2) and (3) fail because as of today the Plaintiff cannot lawfully pay the 13% in the absence of a revenue allocation formula under section 162(2) of the Constitution. In case any littoral State E has been paid 13% since 29<sup>th</sup> May, 1999, that should be treated as a gift in view of the conclusion reached in the Plaintiff’s claim.

Bayelsa State – 6<sup>th</sup> Defendant

In paragraph 6 of the counter-claim, the 6<sup>th</sup> defendant F counter-claims as follows:

“(a) Determination to the effect that, the Constitution of the Federal Republic of Nigeria 1999 having come into force on 29/5/99, the principle of derivation under the proviso to Section 162(2) of the Constitution came into operation on the same day - that is, to G say, 29/5/99 and plaintiff is obliged to comply therewith from that day.

(b) An order that Plaintiff do pay over to Bayelsa State, the share due to the State under the proviso to section 162(2) of the Constitution as from 29/5/99 has been wrongly withheld.

H (c) An order for Account by the plaintiff to pay the 6<sup>th</sup> Defendant all monies so far accrued from Bayelsa State to the Federation Account in respect of off-shore revenue.

(d) An order that the Plaintiff should pay the 6<sup>th</sup> Defendant 13% of all revenue so far accrued to the Federation Account from

*Bayelsa State in respect of off-shore mineral oils in the State.*

*(e) An order that Plaintiff should pay to the 6<sup>th</sup> Defendant 13% of all the revenue that has accrued from Natural Gas in Bayelsa State to the Federation Account."*

Claim (a) succeeds on the ground that there is no denial by the Plaintiff that section 162(2) of the Constitution came into force on 29-5-99. The relief sought is granted. Claim (b) will be refused because the 6<sup>th</sup> Defendant did not establish by evidence oral or documentary what share is due to her under the proviso to section 162(2) of the Constitution and in any case when the formula under section 162(2) comes into being, the percentage can be more than 13% but not less. It is therefore not possible now to determine how much is withheld. Claim (b) is accordingly struck out for uncertainty. In respect of Claim (c) no demand for account had been made by the Defendant and the plaintiff refused to render the same. Claim (c) is therefore struck out. Claims (d) is based on the onshore and offshore dichotomy and having regard for conclusion I reached in the claim brought by the Plaintiff, claim (d) of the 6<sup>th</sup> Defendant is dismissed. Claim (e) which is based on natural gas resource qualified as accruing to the Federation Account of which the 6<sup>th</sup> defendant is entitled under section 162(2) but there is no basis for the use of 13% as the yardstick for calculating her entitlement. It is therefore struck out.

Borno State - 8<sup>th</sup> Defendant

*"(a) A declaration that the 8<sup>th</sup> Defendant/Counter-claimant is entitled to 13% of the total revenue accruing to the Federation Account directly from the Natural Resources mentioned above.*

*(b) To order the Plaintiff to give account of the revenue generated from these Natural Resources to the 8<sup>th</sup> Defendant/Counter-claimant.*

*(c) To order the Plaintiff to pay the 8<sup>th</sup> Defendant/Counter-Claimant an amount equivalent to the 13% of the total Revenue derived from the Natural Resources from the 29<sup>th</sup> day of May, 1999 to date."*

The foundation of claims (a) and (c) is based on the proviso to section 162(2). For the reasons given earlier in this judgment, they are struck out. Claim (b) is dismissed for lack of evidence that the crops enumerated are natural resources within the context of section 162(2).

Cross River State – 9<sup>th</sup> Defendant

Paragraph 24 of the 9<sup>th</sup> Defendant's Statement of Defence  
And Counter-Claim reads:

B “(1) A declaration that the area beyond and adjacent to the littoral state of Cross River State of Nigeria not exceeding 200 nautical miles from the base line from which the breadth of the territorial sea of the Nigerian State is measured form part of the Territory of the Cross River State of Nigeria

C (2) A declaration that all natural resources derived from the High Seas offshore Cross River State is derived from the territories of Cross River State and for which Cross River State is entitled to be paid at least 13% of the revenue derived therefrom based on the principle of derivation.

D (3) A declaration that the 9<sup>th</sup> defendant is entitled to 13% of all income derived by the FGN from activities at the Calabar Port, the quarries, rivers and seas in and abutting Cross River State.

E (4) An order directing the Accountant-General of the FGN, through the Plaintiff, to render an account of all monies received and disbursed from the Federation Account from 23<sup>rd</sup> September, 1987 till the date of judgment.

Alternatively,

F (5) An order compelling the Federal Government of Nigeria to render account of the proceeds of oil mineral products extracted from the oil wells lying east of longitude 8°17'D in the Calabar/Cross River Estuary from 23<sup>rd</sup> September, 1987 till date of judgment.

G (6) An Order compelling the Federal Government of Nigeria to render account of all monies derived from any place in Nigeria (from 29<sup>th</sup> May 1999 till the date of judgment in this suit) which were not paid into the Federation Account or which were not made to form part of the distributable pool set up in the 1999 Constitution.

H (7) An Order compelling the Federal Government of Nigeria to pay to Cross River State the sum total of the income rightly accruing to Cross River State pursuant to paragraphs 40(1), (2) and (6) above.”

Claims (1) and (2) are dismissed the reason being that the two items of counter-claim have been declared in favour of the Plaintiff. Claim (3) must also be dismissed for lack of evidence that income derived by the Federal Government must yield revenue accruing to

the Federation Account and no one knows where exactly those ports and quarries are located. Claims (4) , (5) and (6) are struck out for the simple reason that there is no pleading that demand for account was made and refused. Claim (7) is vague and uncertain. It is dismissed.

Delta State - 10<sup>th</sup> Defendant

B

Counter-claim:

*“(a) A declaration that section 44(3) and the proviso to section 162 (2) of the 1999 Constitution do not recognize the so-called onshore/offshore dichotomy which has since been abolished by Act No. 106 of 1992 and presently being unconstitutionally employed by the Plaintiff in the course of determining the revenue allocation due to the 10<sup>th</sup> Defendant from the Federation Account.*

C

*(b) An order directing the Plaintiff to pay the sum of N1 1,333,392,572.10 (eleven billion, three hundred and thirty-three million, three hundred and ninety-two thousand, five hundred and seventy-two naira ten kobo) being areas of the minimum 13% derivation under the proviso to section 162 (2) of the 1999 Constitution (commencing from 1<sup>st</sup> June, 1999 - 31<sup>st</sup> December, 1999) without any form of distinction between onshore and/or offshore revenue to the 10<sup>th</sup> Defendant/Counter-claimant.*

E

*(c) An Order directing the Plaintiff to pay the sum of N9,404,861,382.64 (nine billion, four hundred and four million, eight hundred and sixty-one thousand, three hundred and eighty-two naira, forty-six kobo) to the 10<sup>th</sup> Defendant being arrears of the minimum 13% derivation on off-shore revenue accruing directly from the 10<sup>th</sup> Defendant to the Federation Account between 30<sup>th</sup> January, 2000 - 28<sup>th</sup> February, 2001 or until judgment is delivered.*

F

*(d) Interest at the ruling bank rate 14% from 1/6/99 and 30/ 1/2000 until judgment; and thereafter, at any higher rate as the Supreme Court may order.”*

*(e) A declaration that the first charge system being adopted by the Plaintiff whereby it deducts certain percentage of revenue from the Federation Account for debt servicing before paying the minimum 13% derivation to the oil producing States is unconstitutional, null and void.*

H

*(f) A declaration that the underlisted economic policies and/or practices of the Plaintiff are unconstitutional being in conflict with*

*the 1999 Constitution. That is to say:*

*(i) Exclusion of natural gas as constituent of derivation for the purposes of the proviso to section 162 (2) of the 1999 Constitution.*

*(ii) Non payment of the shares of the 10<sup>th</sup> Defendant in respect of proceeds from capital against taxation and stamp duties.*

*(iii) Funding of the judiciary as a first line charge on the Federation Account.*

*(iv) Funding of Joint Venture Contracts and Nigerian National Petroleum Corporation (NNPC) Priority projects as first line charge on the Federation Account.*

*(v) Unilaterally allocating 1% of the revenue accruing to the Federation Account to the Federal Capital Territory*

*(g) An order directing the plaintiff to account for and/or return all monies in its custody directly attributable to the misapplications complained of herein to the Federation Account for disbursement in accordance with the 1999 Constitution from 29/5/99 till date."*

*(h) A perpetual injunction restraining the Plaintiff from further violating the provisions of Section 162 of the 1979 Constitution."*

I adopt the reasoning and conclusions of my learned brother Ogundare, JSC in the leading judgement as to various items of the counter-claim of the 10<sup>th</sup> Defendant. As for claim (e) the first charge system being adopted by the Plaintiff whereby it deducts certain percentage of revenue standing to the credit of the Federation Account for payment of external debt before distribution among three tiers of government as provided in section 162(3) of the Constitution is unconstitutional, null and void. Claims (f) (i) to (vi) are clearly unconstitutional and in breach of Section 162(3) of the Constitution. I too grant an injunction restraining the Plaintiff from further breach of the Constitution as itemized in paragraph 20 (f) (i) to (vi) of the 10<sup>th</sup> Defendant's Statement of Defence and Counter-claim.

Lagos State - 24<sup>th</sup> Defendant

In paragraph 53 of her Statement of Defence and Counter-claim, the 24<sup>th</sup> Defendant counter-claims as follows:

*"(a) An interpretation of the provisions of Section 2 and 3 of the Constitution in relation to the Territorial Waters, the Exclusive Economic Zone, and the Continental Shelf of Nigeria.*

(b) *Or alternatively, a declaration that all that areas now referred to as the Territorial Waters, Exclusive Economic Zone and Continental Shelf culturally and geographically form or are deemed to form part of the Littoral States immediately abutting the said area.*

(c) *A declaration that the Territorial Waters, Exclusive Economic Zone and the Continental Shelf culturally and geographically form part of the Littoral States immediately abutting the said area.* <sup>B</sup>

(d) *A further declaration that the Lagos State is entitled to 13% of whatever revenue is derived from the Territorial Waters abutting the coast of the Lagos State.*

(e) *A declaration that Nigeria's claim to Territorial Waters, Exclusive Economic Zone and Continental Shelf arises only because of the unique positioning of the States bordering on the seas.* <sup>C</sup>

(f) *A declaration that the vesting of mining rights, powers and ownership of minerals in, upon or under the Territorial Waters, Exclusive Economic Zone up to the continental Shelf of Nigeria does not operate to divest ownership or deemed ownership of the said waters from the State.*

(g) *A declaration that any waters which are not deemed or considered a part of any state within the Federation (which means any of the 36 States of Nigeria or the Federal Capital Territory) do not form or constitute a part of the Federal Republic of Nigeria.* <sup>E</sup>

(h) *A declaration that natural resources mean any material in its natural state which when exploited has economic value.*

(i) *A declaration that for the purposes of Section 162(2) of the 1999 Constitution, the Federal Government of Nigeria is not entitled to allocation of any revenue on the basis of derivation, but rather Nigeria only States from which natural resources are derived.* <sup>F</sup>

(j) *The 24<sup>th</sup> Defendant/Counter-claimant is entitled to the Waters as owners, and if not as beneficial owner by virtue of historical usage, usufructuary rights, riparian rights, traditional history, access to the waters and suffers from pollution or environmental damage from such seas.* <sup>G</sup>

(k) *An order of this Honourable Court directing office of the Accountant General of the Federation, through the plaintiff to render an account of all monies received and disbursed from the Federation account from 29 May, 1999 till the date of instituting this action.* <sup>H</sup>

(l) *A further order directing the payment of amount due to the 24<sup>th</sup> Defendant/Counter Claimant as its share (by virtue of the principle of derivation stipulated in Section 162(2) of the 1999 Constitution) of the all revenue accruing from the state to the federation account.*

B (m) *A further order directing the payment of 1% of the statutory allocation of the Federal Government to Lagos State as the former Federal Capital Territory for the maintenance of Federal infrastructure and installation within the State.”*

C Claim (a) does not disclose any existence or extent of the counter-claimant’s legal right to confer the original jurisdiction of the court as envisaged in section 232 of the Constitution. It is dismissed. Claims (b) to (h) are fully answered in the plaintiff’s claim which this court has granted in this judgement and are hereby dismissed. Claims D (i) and (j) also fail and are dismissed. Claims (k) and (l) are struck out and claim (m) has no support in law and is dismissed.

Ondo State – 28<sup>th</sup> Defendant:

Counter- Claim:

E “(1) *A declaration that its seaward boundary extends beyond its coastline and that natural resources derived offshore its coastline are derived from its State to which the provisions of Section 162(2) of the Constitution should apply.*

F (2) *An order directing the Plaintiff to calculate and pay over to the 28<sup>th</sup> Defendant 13% of revenue accruing to the Federation Account directly from natural resources derived from offshore locations adjacent to the 28<sup>th</sup> Defendant’s coastline with effect from 29<sup>th</sup> of May, 1999.*

G (3) *A declaration that the 28<sup>th</sup> Defendant is entitled with effect from 29<sup>th</sup> May 1999 to 13% of the revenue accruing to the Federation Account directly from the natural resources derived on-shore within the State in accordance with the provisions of Section 162(2) of the Constitution of the Federal Republic of Nigeria.*

H (4) *An order directing the Plaintiff to pay over forthwith to the 28<sup>th</sup> Defendant 13% of all revenue that has accrued to the Federation Account directly from natural resources derived from onshore locations in its State from 29<sup>th</sup> May 1999 to 30<sup>th</sup> December, 1999”.*

Claims (1) and (2) are dismissed. The seaward boundary of each littoral State has been determined in favour of the Plaintiff. Claims



(3) and (4) must be struck out. There is no formula yet for calculating the entitlement of any State under section 162(2).

Rivers State - 32<sup>nd</sup> Defendant

The 32<sup>nd</sup> Defendant counter-claims thus:

*“a. A declaration that the principle of derivation provided for under section 162(2) of the 1999 Constitution is applicable to 100%<sup>B</sup> of the total revenue derived from any natural resources from any State of the Federation.*

*b. A declaration that the “on-shore”, “offshore” dichotomy applied by the Plaintiff to the derivation principle is not tenable under the 1999 Constitution and is therefore unconstitutional, null and void.<sup>C</sup>*

*c. A declaration that the 32<sup>nd</sup> Defendant is entitled to be paid 13% of all revenue accruing to the Federation Account from any natural resources particularly oil production/extraction from her territory with effect from 29<sup>th</sup> May 1999 and up to and the including 31<sup>st</sup> December, 1999.*

*d. A declaration that the boundary of the 32<sup>nd</sup> Defendant within the Federal Republic of Nigeria as a Coastal State comprises of its entire land mass, territorial waters, Continental Shelf and the Exclusive Economic Zone to which the 32<sup>nd</sup> Defendant is contiguous.<sup>E</sup>*

*e. A declaration that the Plaintiff is neither entitled to allocation of any revenue from the Federation Account on the basis of derivation nor is she envisaged as a beneficiary under Section 162(2)<sup>F</sup> of the 1999 Constitution.*

*f. An order compelling the Plaintiff to furnish the 32<sup>nd</sup> Defendant with a full Statement of Account of the total revenue accruals into the Federation Account derived from any natural resources from 29<sup>th</sup> May, 1999 until the date of judgment in this suit.*

*g. A further order compelling the Plaintiff to furnish the 32<sup>nd</sup> Defendant with a Statement of the Allocation to each State of the Federation and the Plaintiff from the Federation Account with effect from 29<sup>th</sup> May 1999 up to the date of judgment.<sup>G</sup>*

*h. An order directing the Plaintiff to pay to the 32<sup>nd</sup> Defendant all arrears of 13% of the 40<sup>th</sup> total “off-shore” production derivation accruals to which she is entitled from 29<sup>th</sup> May, 1999 and continuing to date.*

*i. An order compelling the Plaintiff to pay to the 32<sup>nd</sup> Defen-*

*dant all arrears of 13% “on-shore” and “off-shore” oil revenue from 29<sup>th</sup> May, 1999 to 31<sup>st</sup> December, 1999.*

*j. An order compelling the Plaintiff to pay to the 32<sup>nd</sup> Defendant 13% of all revenue accruing to the Federation Account from the wharves, and sea ports within Rivers State.”*

B *k. An order compelling the plaintiff to pay to the 32<sup>nd</sup> Defendant 13% of all revenues accruing to the Federation Account from natural gas produced and extracted from Rivers State from 29<sup>th</sup> May, 1999, and continuing up to the date of judgment.”*

C Claim (a) - No legal right exists for the invocation of the original jurisdiction of the court. Claim (b), the seaward boundary and Claim (d) of the 32<sup>nd</sup> Defendant State had been determined in the Plaintiff’s claim and are hereby dismissed. Claim (e) is dismissed. The Plaintiff is a beneficiary by virtue of section 162(3) of the Constitution along with the States and Local Government Councils. Claims D (c), (h), (i) and (k) are struck out. They are based on 13% as the formula is not yet in place. Claims (f) and (g) are struck out. No demand for account and refusal by the Plaintiff to do so was pleaded. It is struck out.

E Sokoto State - 33<sup>rd</sup> Defendant

The counter-claim of the 33<sup>rd</sup> Defendant reads:

“(a) *The natural resources derived from any part of Nigeria (by whatever name called) are deemed to be derived from Nigeria and not from a particular spot/area where the resources may be physically situate.*

F *(b) The natural resources located within the territorial waters of Nigeria and the Federal Capital Territory are deemed to be derived from the Federation of Nigeria and not from any area or part of Nigeria.*

G *(c) The Federal Republic of Nigeria is a State and not a section thereof where interpreting the economic agenda and code prescribed by the Constitution.*

H *(d) By and under section 162(2), all Areas/Sections (States represented by the defendants in this suit are all entitled in equal shares only) to at least 13% of the revenue accruing to the Federation Account directly from any natural resources.*

*(e) The 33<sup>rd</sup> defendant is entitled to payment in arrears monies equal to the sums paid to either Akwa-Ibom or Bayelsa or*

*Cross Rivers or Delta or Edo or Ogun, Ondo and Rivers States since while the Plaintiff wrongly interpreted and applied Section 162(2) of the constitution of the Federal Republic of Nigeria.*

*(f) That the Federal Government of Nigeria should apologize to the Defendants, save those listed in sub paragraph (e) herein for the inequality and discrimination occasioned by the misapplication of the not less than thirteen percent rule enshrined in the Constitution - vide Section 162(2)."*

Claims (a) and (b) have been decided in favour of the plaintiff. Claims (c), (d) and (f) do not disclose any cause of action and they are struck out. In claim (e) the 33<sup>rd</sup> Defendant did not establish that money paid was derived from natural resources in her territory. The claim is accordingly dismissed.

Gombe State - 15<sup>th</sup> Defendant

There is no legal basis for the claim of the 15<sup>th</sup> Defendant. The 13% when it comes into operation will apply to those States envisaged in the proviso to section 162(2). The claim is dismissed.

Jigawa State - 17<sup>th</sup> Defendant

All the 4 claims are dismissed. They have no basis in law.

Summary of Conclusions

The Plaintiff's claim succeeds and I hereby hold that the seaward boundary of a littoral State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to the provisions of section 162(2) of the 1999 Constitution of the Federal Republic of Nigeria, is the low-water mark of the land surface of the coastal land of the State or (as in the case of Cross River State) limits of the inland waters within the State.

The first charge system being adopted by the Plaintiff whereby it deducts certain percentage of revenue from the Federation Account for servicing external debts, funding the judiciary, funding Joint Venture Contracts and the NNPC Priority Projects, allocation to the Federal Capital Territory of 1% of the revenue accruing to the Federation Account and other such charges are unconstitutional, null and void notwithstanding the provisions of any other law to the contrary. The plaintiff must act strictly within section 162(3) of the constitution in its dealings with any amount standing to the credit of the

Federation Account. I also abide by all other orders made in the leading judgment of my learned brother Ogundare, JSC including that restraining the Plaintiff from further breaches of the provisions of the Constitution in the manner set out in this judgment. There will be no order as to costs.

B I must also express my appreciation to all learned counsel for the industry they exhibited in their briefs and oral submissions and for their invaluable assistance to the court.

C

### ONU JSC

Having been privileged to have a preview of the leading judgment of my learned brother Ogundare, JSC just delivered, I am in entire agreement with his reasoning and conclusions. I wish, however, to add by way of emphasis the following contribution of mine:

The Plaintiff's case against the aggregate of all of Nigeria, herein Defendants, (but now in particular comprising the littoral States of Akwa-Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers) is for the purpose of calculating the amount of revenue accruing to the "*Federation Account*" directly from any natural resources derived from these States pursuant to the proviso to Section 162(2) of the Constitution of the Federal Republic of Nigeria, 1999 be determined by this Court. What caused and how the controversy leading to this case originated, may be gleaned from the 10 paragraph Statement of Claim filed at the instance of the Plaintiff. And with its inception, the original jurisdiction of this Court was invoked by virtue of Section 232(1) of the 1999 Constitution, which provides that:

G "*232(1) The Supreme Court shall, to the exclusion of any other Court, have original jurisdiction in any dispute between the Federation and a State or between States if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.*

H *(2) In addition to the jurisdiction conferred upon it by Subsection (1) of this Section, the Supreme Court shall have such original jurisdiction as may be conferred upon it by any Act of the National Assembly. Provided that no original jurisdiction shall be conferred upon the Supreme Court with respect to any criminal matter."*

Accordingly, the action giving rise to this case, was commenced

on the 6<sup>th</sup> day of February, 2001 by the Plaintiff herein, when the Plaintiff took out the civil summons for the purpose, with the 10 paragraph Statement of Claim (supra). For the effective trial and disposal of the issues, parties acceded to the filing and exchange of Briefs to be accompanied by the Defendants' counter-claims where desirable so as to enable us make effective interpretations of the Sections of the Constitution that may be or are relevant. The 4<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 17<sup>th</sup>, 19<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup>, 29<sup>th</sup> and 30<sup>th</sup> Defendants each filed no brief and this court did not countenance any expatiation from any of them thereon. As Chief Williams, SAN for the Plaintiff pointed out, even if he adduced affidavit evidence in place of oral evidence although he was not minded to do so, because the matter being purely one of law, his address to court in my view, would take care of the matter. The learned Senior Advocate after relying on and citing in support thereof the case of Pioneer Plastic Contractors Ltd. v. Commissioners of Customs and Excise (1967) Ch. 597, submitted and rightly so, that as a good deal of the matters pleaded bordered on law, the Plaintiff needed not give evidence, as a submission of law would suffice. I think Chief Williams was right moreso that there are in existence littoral states as well as conventions e.g. United Nations Convention on the Law of the Sea of 10-12-82 (UNCLOS for short) on which legal submissions could be based, sustained or overruled. Also this Court's earlier case No. SC.28/2000 reported in A-G. of the Federation v. A-G Abia State & 35 Ors (2001) 11 NWLR (Part 725) 689 which summarized at page 638 (per Ogundare JSC).

The dispute or controversy as it were, triggered off the action herein from the discharge by the President of the Federal Republic of Nigeria of his duties and responsibilities under Section 162 of the 1999 Constitution. Subsection (1) of Section 162 of the Constitution enjoins the Federation to maintain a special account (otherwise referred to as "*the Federation Account*") into which shall be paid all revenues collected by the Federal Government except revenues from certain sources which are not material to this action. Sub-section (2) (ibid) enjoins the President to:

*"table before the National Assembly proposal for revenue allocation from the Federation Account."*

It is to be noted that it is upon consideration of the proposal for revenue allocation so tabled by the President under the Sub-

section, that the National Assembly approves the formula for such allocation. Be it also noted, that it is under Sub-section 3 of Section 162 (ibid) that the foregoing three arms of Government viz:

- (a) the Federal Government
- (b) State Government and
- (c) Local Government

each shares the moneys standing to the credit of the Federation Account. See Sub-section (3) of Section 162 of the Constitution (ibid).

It is pertinent to stress also that there are three very important persons or authorities who are charged with specific functions in relation to the exercise of distributing the amount among the three tiers of Government aforementioned. They are:

1. *“Revenue Mobilization Allocation and Fiscal Commission which is a body established by the Constitution itself. See Section 153 (1)(n) of the Constitution. By article 32(a) of Part 1 of the third Schedule to the Constitution, the Commission is vested with power to:*

*“monitor the accruals to and disbursement of revenue from the Federation Account.”*

Section 162(2) of the Constitution provides by implication that the Committee is to tender advice to the president on the formula for the distribution of revenue from the Federation Account.

2. *The second authority in the process of distribution of any amount in the Federation Account is the President.*

3. *The third, and perhaps the most important authority in the exercise of distribution of moneys in the Federation Account, is the National Assembly and this, upon the receipt of advice from the Revenue Mobilization Allocation and Fiscal Commission, which “shall table before the National Assembly and this, upon the receipt of advice from the Revenue Mobilization Allocation and Fiscal Commission, which “shall table before the National Assembly proposals for the revenue allocation from the Federation Account.”*

Thus, any advice to be tendered to the President by the Commission as well as any proposals to be tabled before the National Assembly by the President must be in conformity with the principles enacted in Section 162 of the Constitution.

As to the present controversy, the proviso to Section 162(2) of the Constitution requires that any approved formula for revenue al-

location from the Federation Account shall reflect the fact that not less than 13% of revenue accruing to the said Federation Account from any natural resources are allocated to the Government of the State or territory where such resources are located. That being so, it is necessary for each of the persons or authorities concerned in the distribution of moneys in the Federation Account to ascertain precisely the natural resources located in each of the States of the Federation. In particular, it has to be ascertained the extent to which natural resources located on coastal land and the adjoining sea/sea-bed ought to be treated as being located in the littoral or maritime State, which borders it. From the pleadings - the Plaintiff's Statement of Claim, Statements of Defence and Counter-claim by some (not all) the Defendants, it is clear that the majority of the States as well as the Federal Government are of the opinion that none of the States can claim that natural resources on coastal land outside the low water mark or (if the case so requires) the seaward limit of inland waters are located within its territory. Since all the littoral or maritime States, to wit: Akwa-Ibom, Bayelsa, Cross-River, Delta, Lagos, Ogun, Ondo and Rivers hold the contrary view, the action herein is to determine this controversy.

#### QUESTION FOR DETERMINATION

From the pleadings filed by all parties to this action, the sole question for determination as far as Plaintiff (which filed a Brief) is concerned, is as follows:

What is the seaward boundary of a maritime State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to the proviso to Section 162(2) of the Constitution of the Federal Republic of Nigeria, 1999.

All the States of the Federation, as can be seen, are joined in the action and the parties except the 29<sup>th</sup> and 30<sup>th</sup> Defendants i.e. Osun and Oyo States, filed and exchanged their respective pleadings. As 4<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 17<sup>th</sup>, 19<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup>, 29<sup>th</sup> and 30<sup>th</sup> Defendants filed no briefs therefore, this Court did not countenance expatiation thereon from each of them. Be that as it may, the pleadings of the Plaintiff and the eight littoral Defendant States reflect their respective stands in the dispute. For instance, some

of the Defendants raised such objections as the absence of any dispute, misjoinder, lack of jurisdiction on the part of this Court to take cognisance of the action etc., some of these points have been taken care of during the hearing of this case and have effectively been disposed of. See the case of Attorney-General of the Federation v.

B Attorney-General of Abia State & 35 Ors. (2001) 11 NWLR 689.

Notwithstanding the decision of this Court mentioned above, 3<sup>rd</sup> Defendant (Akwa Ibom State) in the affidavit evidence in support of his case still maintained that he has no dispute with the Plaintiff. This cannot strictly be correct because in paragraph 16 of the C affidavit evidence of Ifiok Uleana, a legal practitioner and Acting Director of Civil Litigation in the Ministry of Justice, Uyo, Akwa-Ibom State, deposed as follows:

D *“That the 3<sup>rd</sup> Defendant has never had any dispute with the Plaintiff regarding on-shore or off-shore derivation since as our counsel has advised and I verily believe, that question has been settled by Decree No. 106 of 1992.”*

In paragraphs 27 and 29, however, the deponent averred condescendingly thus:

E *“27. That the Federal Government has been paying to defendant Akwa Ibom State the amount due to it on derivation but in paying, the Federal Government has unjustly withheld 40% of the 13% due and the Plaintiff has held on to such amounts and has refused to pay despite repeated demands by the 3<sup>rd</sup> Defendant.”*

F *29. “That the total amount due to Akwa Ibom State Government and wrongly withheld by the Plaintiff is N15,006,418,955.28 covering the period indicated in paragraph 28 above and the plaintiff has not denied owing this amount.”*

G Were there to be no dispute between the parties – Plaintiff and 3<sup>rd</sup> Defendant, there would have been no talk of underpayment complained of by the 3<sup>rd</sup> Defendant. Hence, there is no gainsaying the fact that a dispute and a serious one at that, had arisen between the 3<sup>rd</sup> Defendant and the Plaintiff calling for a settlement. Here, the H Federal Government contends that natural resources derivable from Nigeria’s territorial waters, continental shelf and exclusive economic Zone, are not derivable from any of the littoral States. The littoral States argue otherwise, claiming those areas as part of their respective territories. As to whether it still could reasonably be suggested



that there is no concrete dispute between the parties as to entitle either side to invoke the original jurisdiction of this Court in Section 232(1) of the 1999 Constitution to resolve same, I would answer the question in the negative. When the Court afforded the parties the option to adduce affidavit evidence, the Plaintiff, followed by 3<sup>rd</sup>, 9<sup>th</sup>, 10<sup>th</sup> 24<sup>th</sup> and 32<sup>nd</sup> Defendants did so while the others declined to do so. For the better part of the proceedings, the parties except some of the Defendants, filed and exchanged briefs with the others – and of course, the Plaintiff. B

#### THE PLAINTIFF'S CASE

The historical and political metamorphosis of the entity called Nigeria as recapitulated by my learned brother Ogundare, JSC I wish most respectfully to adopt. In addition I wish to further expatiate as follows: C

Section, 3 of the Constitution. What the matter is for consideration on this vital matter is, as to the exact boundary of the area comprised in each of the littoral States of Nigeria. In other words, what is the seaward limit of the territory of each of the States adjacent to or contiguous to the open Sea from which resources accrue and are not being shared well or equitably? D E

To start with, the answer to any consideration of this question, must necessary involve Section 3 of the 1999 Constitution. Sub-section (2) thereof stipulates:

*“(2) Each State of Nigeria, named in the first column of Part 1 of the First Schedule to this Constitution shall consist of the area shown opposite thereto in the second Column of that Schedule.” F*

It is Plaintiff's contention that the territory of a State extends to all areas over which a Local Government Council within that State has power to administer and to make laws. In order words, the territory of a State is exactly co-extensive with the totality of the local government areas within its territory. G

Section 4 of the Constitution. The extent of the territory of a State is also reflected in the scope of the legislative powers conferred on States under the 1999 Constitution and is to be contrasted with the express powers conferred on the National Assembly to make laws for the peace, order and good government of the Federal Republic of Nigeria with respect to “*External Affairs*” pursuant to item 26 of exclusive Legislative List. It is indisputable that only the National As- H

sembly and it alone, is competent to make laws for Nigeria with respect to matters outside the territory of Federal Republic. The scope of the Legislative powers conferred on the National Assembly as compared with those conferred on the House of Assembly of a State is very clearly reflected in Sub-sections (3) and (7) of Section 4 of the  
 B 1999 Constitution, which enacts that:

*“(3) The power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List shall, save as  
 C otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States.”*

*(7) The House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters...”*

D Certain Federal enactments. Among the enactments which took effect as Acts of the National Assembly under Section 315 of the 1999 Constitution are the Territorial Waters Act, Chapter 428 of the Laws of the Federation, the Petroleum Act, Cap. 350, the Sea Fisheries Act, Cap. 404, and the Exclusive Economic Zone Act 116. It is  
 E necessary to examine the effect of each of these enactments on the question under consideration.

Each of the enactments in question, be it noted, was validly enacted by the Federal Legislature pursuant to its power to make  
 F laws for the Federal Republic of Nigeria with respect to External Affairs. See the Minerals Act in which the Federal Government has taken over all Rivers. Except and until any person with the necessary locus standi can successfully challenge the validity of any of these enactments, their validity must be presumed. See this Court’s decision in Peenok Investment Ltd. v. Hotel Presidential Ltd. (1982 )  
 G NSCC Vol. 13 page 477 at page 510 line 51 to page 511 line 2 where Eso, JSC declared as follows:

*“As I have earlier pointed out, until the Edicts in question here are avoided by the courts, they have the force of law as enactments  
 H validly made by the Rivers State Government; for it to be valid. Until they are so avoided therefore, the defence raised by the Respondents to the action herein would be valid.”*

By the provisions of Sub-section (1) of the Territorial Waters Act, Cap. 428 the limits of the territorial waters of Nigeria was de-

fined as follows:

*“The territorial waters of Nigeria shall for all purposes include every part of the open sea within thirty nautical miles of the coast of Nigeria (measured from low water mark) or of the seaward limits of inland waters.”*

Since the enactment in question must be treated as valid (until a court of law decides otherwise) it is to be inferred therefrom that the territorial waters of the Federal Republic of Nigeria commence from:

The low water mark along the coast and the seaward limits of inland waters. That being so, the territorial limit of a State adjacent or contiguous to the sea or coastal waters is the low water mark along the coast and the seaward limits of inland waters. This conclusion is consistent with the rules of International law where – under the general (though not the universal) practice has been that territorial waters are drawn along the low water mark following the sinusitis of the coast. See Oppenheim, International Law, 8<sup>th</sup> Edition Vol. 1 page 488 and Untied Nations Convention on the Law of the Sea of 10/12/82 otherwise known as UNCLOS (supra), which provides as follows:

*“Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from base lines determined in accordance with this Convention.”*

The Sea Fisheries Act, Cap. 4 Laws of Nigeria which carries the title: An Act, to make provisions for the control, regulation and protection of Sea Fisheries in the Territorial Waters of Nigeria provides in its definition section, (Section 11 of the Act) that “*territorial waters of Nigeria*” has the same meaning as in Section 1 of the Territorial Waters Act. The authority and powers of the Federal Government over the entire maritime belt or “*territorial waters*” is reflected in Sub-sections (1) and (2) of the Sea Fisheries Act which stipulates as follows:

*“1(1) Subject to the provisions of this Section, no person shall operate or navigate any motor fishing boat within the territorial waters of Nigeria unless a license in respect of that vessel has been issued to the owner thereof.*

*(2) Any person operating or navigating or causing to be operated or navigated a motor fishing boat in contravention of Sub-section 1 of this Section shall be guilty of an offence under this Act and on conviction shall be liable to, imprisonment for one year, or to a*

*fine of one thousand Naira or for each day during which the offence continues, or to both such fine and imprisonment. ”*

As can be seen, the Sea Fisheries Act is also consistent with the notion that it is the Federal Government, and it alone, that lawfully qualified to exercise governmental powers over the maritime belt or  
B the territorial waters of Nigeria.

The scope and content of the Exclusive Economic Zone Act which defies abridgement of its long title reads as follows:

*“An Act to delimit the Exclusive Economic Zone of Nigeria being  
C an area, ‘extending up to 200 nautical miles seawards from the coasts of Nigeria.*

*Within this Zone, and subject to universally recognized rights of other States (including land locked States), Nigeria would exercise certain sovereign rights especially in relation to the conservation or  
D exploitation of the natural resources (minerals, living species etc) of the sea bed, its sub-soil and subjacent waters and the right to regulate by law the establishment of artificial structures and installations and maritime scientific research among other things. ”*

The 200 nautical miles mentioned in the Act is pursuant to  
E Section 1(1) thereof refers to:

*“a distance of 200 nautical miles from the base lines from which the breadth of the territorial waters of Nigeria is measured. ”*

See also the Interpretation Act, Cap. 192, Laws of the Federation of Nigeria as amended by Decree No. 1 of 1998. That enactment, it is to be noted, applies for the purpose of interpreting the provisions of the Constitution. See Section 318(4) of the 1999  
F Constitution. In Section 18 of the Act, No. 192 of 1998.

*“...territorial waters “means any part of the open sea within 12  
G nautical miles of the coast of Nigeria (measured from low water mark) or of the seaward limits of inland waters. ”*

In the light of the above postulations by the Plaintiff I agree entirely with him that the Economic Zone Act is also consistent with the notion that the territory or our coastal States stop at:

- H (a) the low water mark or  
(b) the seaward limits of inland waters.

This is why, to my mind, governmental powers in or over the zone are vested exclusively in the Federal Government and not shared with any of the littoral States of Nigeria.

Rationale of the interpretation.

There is good sense of leaving all governmental powers in the maritime belt and the economic zone with the Government which has the military might and clout for the operational control that are crowned in the nation's Armed Forces. Thus, the sovereign rights and authority of Nigeria over the area outside our maritime belt can only be better and effectively maintained as well as secured by the Armed Forces – particularly the Nigerian Navy and Air Force. None of the State Governments along our coast possesses the resources and wherewithal to exercise governmental powers outside any part of the State beyond (a) the low water mark or (b) the seaward limit of the inland waters.

It is for the above reasons that I readily accept the Plaintiff's invitation. To hold as follows:

1. In the case of the littoral States comprised in the Federal Republic of Nigeria, namely, the States of Akwa-Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers, the seaward boundary of each of the said States is the low water of the land surface thereof or (if the case so requires) the seaward limits of inland waters within the State.

2. The land or waters over which Nigeria exercises or is authorised under the Constitution to exercise sovereign governmental powers under the Constitution include land or waters which lie or are situated beyond the low water mark of the land surface thereof or (if the case so requires) the seaward limits of inland waters within any State.

It is the Federal Government and it alone that is competent to exercise such governmental powers. No State Government is competent to do so. Chief Williams referred us to several cases decided in other common law jurisdictions to buttress his submission and urged us to apply those principles decided in the case on hand. The littoral or marine defendants in this case on the other hand dissuaded us from doing so as their counsel submitted they have no application. Notable among the cases cited in support are: *R. v Keyn* (1876) 2. H L.D 63 at page 67 (per Sir Phillimore); *The Mecca* (1895) page 95 at page 107 (per Lindley, L.J.); *Attorney- General of Southern Nigeria v. John Holts & Co. (Live Mool) Ltd & Ors.* (1915) A.C. 599 (P.C.); 2 NLR 1 Full Court (Common Law). And from other Common law

jurisdictions such decisions as *US v. Louisiana* L.ed 1025 (U.S.A.), *Reference Re Ownership of Offshore Mineral Rights* (1968) 65 DLR 2<sup>nd</sup> 354 1968 (Canada); *New South Wales & Ors. v. Commonwealth* 8 ALR (1975 – 6) 8 ALR (Australia).

I am of the view that these cases cited by the Plaintiff from the United States, Canada and Australia respectively are not only relevant to the present case but are persuasive as to the sharing of revenue between the Federation and the littoral States. Thus, the answer to the question as to whether resources derived off-shore were so derived from the Federation or the contiguous coastal States are considered to be similarly relevant to both in so far as the distribution machinery and formula are concerned.

#### THE COUNTER-CLAIMS

I now wish to consider the Counter-claims of the 3<sup>rd</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 15<sup>th</sup>, 17<sup>th</sup>, 24<sup>th</sup>, 28<sup>th</sup>, 32<sup>nd</sup> and 33<sup>rd</sup> Defendant States. As 20<sup>th</sup> and 27<sup>th</sup> Defendants had, in the mean time, withdrawn their Counter-claims those pieces of pleading are both struck out.

The 15<sup>th</sup> Defendant in his statement of defence averred:

*“Whereupon the 15<sup>th</sup> defendant prays this honourable Court to determine that by the provision of Section 162(2) of the Constitution of the Federal Republic of Nigeria, all the 36 States in the country are entitled to 13% of revenue accruing directly to the Federation’s (sic) account from any natural resources.”*

By paragraph 10 of his own statement of defence the 17<sup>th</sup> Defendant pleaded thus:

*“WHEREOF the 17<sup>th</sup> Defendant claims determination of this Honourable Court that:*

*(a) The natural resources derived from any part of Nigeria are deemed to be derived from Nigeria and not from any particular area where the resources may be physically located.*

*(b) The Federal Republic of Nigeria is a state and not a section thereof when interpreting the economic agenda prescribed by the Constitution.*

*(c) That by Section 162(2), all states represented by the Defendants in this suit are equally entitled to at least 13% of the revenue accruing to the Federation Account directly from any natural resources.*

*(d) That the rule of not less than 13% enshrined in the Constitution under Section 162(2) shall be applied based on principle of*

*equality and justice to embrace all the States forming the Federation.”*

Both Defendants (15<sup>th</sup> and 17<sup>th</sup>) each did not file a written brief in support of their pleadings; neither did they make any arguments in elaboration thereof. In the light of what I had herein before stated vis-a-vis the interpretation of section 162(2) of the Constitution, the contentions are of no avail. They are discountenanced. B

Chief Williams, SAN has submitted on behalf of the Plaintiff that we strike out all the Counter-claims, in that necessary parties are not joined in each Counter-claim. He cited in support of his contention Order 5 rule 2 of the Federal High Court (Civil Procedure) Rules, 2000 which stipulates: C

*“2(1) Subject to sub-rule (2) of this rule, a defendant in any action who alleges that he has any claim or entitled to any relief or remedy against the plaintiff in the action in respect of any matter (whenever and however arising) may, instead of bringing a separate action, make a counter-claim in respect of that matter; and where he does so he shall add the counter-claim to his defence.*

*(2) Sub-rule 1 of this rule shall apply in relation to a counter-claim as if the counter-claim were a separate action and as if the person making the counter-claim were a plaintiff and the person against whom it is made a defendant.* E

*(3) A counter-claim may be proceeded with notwithstanding that judgment is given for the plaintiff in his action, or that the action is stayed, discontinued or dismissed.”* See Ntiaro & Anor. v. Akpan & Anor. 3 NLR 10. F

He added that only a counter-claiming Defendant and Plaintiff are parties to the counter-claim, arguing further in his brief as follows: G

*“No one else is a party to the counter-claim even if that person is a defendant to the substantive action. The rules of the Federal High Court make no provision for joining strangers to the action or existing co-defendants as parties to the counterclaiming Defendant; nor can only in a counter-claim in respect of a relief claimed, is one which so affects or is so likely to affect the interest of other parties, that the court ought not to entertain the claim for that relief behind the back of other persons who are not joined as parties to the action.* H

It is to be observed that sub-rule (2) of Order 5 rule 3 stipu-

lates as follows:

(2) *"If it appears on the application of any party against whom a counter-claim is made, that the subject matter of the counterclaim ought for any reason to be disposed of by a separate action, the court may order it to be tried separately or make such other order as may be expedient."*

*The Plaintiff respectfully submits that where this court is satisfied that any counter-claim is not duly constituted for the purpose of trying the relief claimed, it ought to strike out or direct that the counter-claim be tried separately so that all proper parties can be joined for the purpose of trial. The plaintiff however submits that in the circumstances of this case, the proper order to make is to strike out the counter-claim concerned."*

The learned Senior Advocate concluded by urging us to strike out all the claims contained in the reliefs claimed by the counter-claiming Defendants on the ground that all parties interested in or likely to be affected by the said counter-claims, have not been joined.

Adopting to good effect his illuminating brief on the point, the learned Attorney-General of Lagos State (24<sup>th</sup> Defendant/Counter-Claimant in the case on hand) in his oral submissions, urged us to overrule Chief Williams. He called in aid the case of *Green v. Green* (1987) 18 NSCC (Part 2) page 11 15 at 1122; (1987) 3 NWLR (Part 61) 483 by submitting that all necessary parties to the counter-claims were fully aware of them and if they chose to stand by they would be bound by the result of the counter-claims. Order 12 Rule 5(1) of the Federal High Court (Civil Procedure) Rules, 2000 (applicable to these proceedings) which provides for joinder of interested parties was relied upon. It states:

*"5(1) if it appears to the Court, at or before the hearing of suit, that all the persons who may be entitled to or who claim some share or interest in the subject matter of the suit, or who may likely to be affected by the result, have not been made parties, the Court, may adjourn the hearing of the suit to a future day, to be fixed by the Court, and direct that such person shall be made either plaintiffs or defendants in the suit, as the case may be."*

From the historical perspective, Nigeria is a coastal State with a continental shelf. It is a creation of Great Britain which colonized it with limits thereto and rights to a shelf such as in defined by Articles



76, 77 and 78 of the U.N. Conventions on the Law of the Sea. Trade with Imperial sea-going trading companies grew along the trading posts and ports culminating in treaties between component parts thereof as ruled by the local chiefs/kings of the one part, and in the case of Nigeria later, the British Government, on the other part. The British Government later united some of these parts from about early 1860's until 1914 when under Lord Lugard, Northern and Southern Nigeria were amalgamated and governed as an entity. B

By 1951, the country was divided into three Regions, viz Northern, Western and Eastern Regions. In 1954, a further delimitation took place with a law being promulgated which gave the boundaries of its littoral parts in the Western and Eastern Region seaward as far as "*the sea*." C

Nigeria became an independent sovereign country in October, 1960 while by 1964, a fourth Region known as the mid-West Region was created. After the military take-over of the country's government in January, 1966, successive military administrations created States out of the Regions until by the last count, we now have 36 States. The Seaward boundaries of the littoral State under the common law and statutory provisions is as stated in N.126 of 1954 E and which is the sea or the low water mark.

The constitutional provisions relating to revenue allocation made staccato movements under the military through Decrees until the coming into force of the 1979 Constitution in Section 149(2) (hereinafter referred to as Cap. 16). In 1992, the Act incorporating the Section was amended by the Military and christened as Decree 106 of 1992. By that amendment, one percent of the revenue accruing to the Federation Account derived from minerals was to be shared among the mineral producing States in proportion to the amount of minerals produced from each State, whether on-shore or off-shore. F G

It is Cap. 16 (as amended by Decree 106 of 1992) that provided the formula in use for revenue allocation before the coming into force of the 1999 Constitution on 29<sup>th</sup> May, 1999. There is clear difference in the wordings of section 149(2) of the 1979 Constitution and Section 162(2) of 1999 Constitution; for while the former made no provision for sharing revenue accruing from natural resources on derivation principle, the latter did in respect of revenue allocation as it related to revenue accruing from natural resources on derivation basis. H

For clarity, the provisions stated as follows:

*“149(2) Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Government councils in each State, on such terms and in such manner as may be prescribed by the National Assembly.”*

B *“162(2) The President, upon the receipt of advice from the Revenue Mobilization Allocation and Fiscal Commission shall table before the National Assembly proposals for revenue allocation the Federation Account, and in determining the formula, the National*  
 C *Assembly shall take into account, the allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density.*

Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen  
 D percent of the revenue accruing to the Federation Account directly from any natural resources.”

Another parallel provision that ought to be equally considered is Section 4A of Cap. 16 (as amended by Decree No. 106 of 1992). It states:

E *“4(1) An amount equivalent to 1 percent of the Federation Account shall be allocated to the Federal Capital Territory.*

*(2) An amount equivalent to 3 percent of the Federation Account derived from mineral revenue shall be paid into a fund to be administered by the Oil Mineral Producing Areas Development Commission established by the Oil Mineral Producing Areas Development Commission Decree 1992 for the development of the mineral producing areas, in accordance with such directives as may be issued in that behalf, from time to time by the National Assembly, and the*  
 F *fund shall be distributed among the areas on the basis of need, subject to Section 2 of the Oil Mineral Producing Areas Development Commission Decree.*  
 G

*(3) For the purposes of Sub-section (2) of this Section, and for the avoidance of any doubt, the distinction hitherto made between*  
 H *on-shore and off-shore oil mineral revenue for the purpose of revenue sharing and the administration of the fund for the development of the oil mineral producing areas all, is hereby abolished.*

*(4) An amount equivalent to 2 percent of the Federation Account shall be paid into a fund to be administered by an Agency to*

*be set up for that purpose for the amelioration of general ecological problems in any part of Nigeria, in accordance with directives as may be issued from time to time by the National Assembly.*

(5) *An amount equivalent of 0.5 percent of the Federation Account shall be allocated and paid into a Fund to be designated ‘Stabilization Fund’ which shall be administered by the Minister for Finance; the residue arising out of using mineral revenue, instead of the Federation Account as the base for allocation to the Fund for development of the mineral producing areas shall be added to this Fund.*

(6) *An amount equivalent to 1 percent of the Federation Account derived from mineral revenue shall be shared among the mineral producing States based on the amount of mineral produced from each State and in the application of this provision, the dichotomy of on-shore and off-shore oil producing and mineral oil and non-mineral oil revenue is hereby abolished.*

(7) *For the purpose of this Decree, and for the avoidance of any doubt, where any State of the Federation suffers absolute decline in its revenue arising from factors outside its control, as a result of the implementation of this Decree, the Stabilization Fund shall be used to initially augment the allocation to that of the State, in accordance with acceptable level, to be worked out by the National Revenue Mobilization Allocation and Fiscal Commission, at which recourse can be had to the Fund and for how long.”*

The National Assembly is yet to enact a law relating to the revenue allocation as it is enabled by Section 162(2) of the Constitution. In order not to leave a vacuum, it (the Constitution) has provided in Section 313 thus:

*“313. Pending any Act of the National Assembly for the provision of a system of revenue allocation between the Federation and the States, among the States, between the States and local government councils and among the local government councils in the States, the system of revenue allocation in existence for the financial year beginning from 1<sup>st</sup> January, 1998 and ending on 31<sup>st</sup> December, 1998 shall, subject to the provisions of this Constitution and as from the date when this Section comes into force, continue to apply.”*

By this provision Cap. 16 (its proviso is apparently of no application here albeit as amended by Decree No. 106 of 1992), is to

continue to be used in so far it is not inconsistent with the provisions of the Constitution. Chief Williams has argued on Plaintiff's behalf among other things, that until the responsible authorities are able to produce the formula for revenue sharing envisaged in Section 163, the provisions enacted in Cap. 16 would continue to apply. He further argued that this will continue to be so even where the provisions of Cap. 16 are not inconsistent with the provisions of section 162, thus giving the idea that Cap. 16 does not operate as an '*existing law*' pursuant to Section 315 but rather by virtue of the transitional provisions of Section 313 (ibid).

The learned Senior Advocate further argued that what remained and worthy of note is the provision abolishing '*on-shore and off-shore oil production*' dichotomy enacted in Section 4A(6) of Cap. 16 as amended by Decree 106 of 1992 which is in force not as an existing but as a temporary enactment pending the coming into force of the Revenue Allocation formula under Section 162.

I agree that the learned Senior Advocate's preliminary objection taken as to the competence or otherwise of the counter-claims cannot be sustained; it is accordingly overruled by me. Chief Williams also raised a number of legal issues which he invited us to decide first before going into the reliefs claimed in the counter-claims. Learned Senior Advocate relied on order 25 rule 2(1) of the Federal High Court (Civil Procedure) Rules, 2000 in support. The rule provides:

*"2(1) A party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the Judge who tries the cause at or after the trial.*

*(2) A point of law so raised may, by consent of the parties, or by order of the Court or a Judge in Chambers on the application of either party, be set down for hearing and disposed of at any time before the trial."*

*(3) If, in the opinion of the Court or a Judge in Chambers the decision of the point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set off, counter-claim, or reply therein, the court or Judge in Chambers may thereupon dismiss the action or make such other order therein as may be just."*

The legal issues are:

*“(i) What is the procedure for making provision for the formula distributing the amount standing to the credit of the Federation Account pursuant to Section 162 of the Constitution.*

*(ii) As from what moment in time do the State Governments become entitled to receive their share of the amount standing to the credit of the Federation Account.* B

*(iii) Pending the arrival of the moment mentioned in Question (ii) what provision should be applied to the distribution of the amount mentioned in Question (ii).*

*(iv) Whether there is any legal basis for the Supreme Court to make an order against the Plaintiff for an account of moneys in the Federation Account.* C

*(v) Whether it is competent for any Defendant to counterclaim for a relief which raises the same or substantially the same question or question which arise in the Plaintiff’s action.* D

*(vi) Whether it is lawful for the Federal Government to appropriate 1% of the amount in the Federation Account to the Federal Capital Territory.*

*(vii) Whether it is lawful to deduct moneys from the Federation Account to service or pay debts owed by the Federal Government.* E

*(viii) Whether it is lawful for moneys intended for Local Governments or for purposes of primary education to be paid to any person or authority other than the State Government.*

*(ix) Whether this Court has jurisdiction to grant a declaration which will serve no useful purpose.”* F

In relation to issue (i), I have herein before set out what Section 313 of the Constitution provides. The short answer is that Cap.16 as amended by Decree 106 of 1992, provides in the interim a formula. The Learned Senior Advocate’s submission that Cap. 16 is an existing law within the expression encapsulated in section 315(4)(b) of the Constitution and that the proposition applies only in so far as it is inconsistent with the provisions of the constitution being of no avail, is rejected. H

On issues (ii) and (ii) learned Senior Advocate’s submission is to the effect that until the enactment of the relevant Act of the National Assembly, no formula enacted pursuant to Section 162 of the 1999 Constitution is in force for distributing moneys in the Federa-

tion Account. Accordingly, it is his submission that all counterclaims based upon the assumption that such a formula exists are misconceived and untenable.

It is pertinent at this juncture to examine Cap. 16, Section 1 (as amended) which provides thus:

- B “1. The amount standing to the credit of the Federation Account (as specified in sub-section (1) of the Section 149 of the Constitution of the Federal Republic of Nigeria) shall be distributed by the Federal Government among the various governments in Nigeria and  
C the Funds concerned on the following basis, that is to say:
- (a) the Federal Government... 48%
  - (b) the State Government... 24%
  - (c) Local Governments... 20%
  - (d) Special Funds... 7.5%
- D (i) Federal Capital Territory ... 1% of the Federation Account;  
(ii) Development of the Mineral Producing areas... 3% of the revenue accruing to the Federation derived from minerals;  
(iii) General ecological Problems... 2% of Federation Account;  
(iv) Derivation... 1% of the revenue accruing to the Federa-  
E tion Account derived from minerals;  
(v) Stabilization Account... 0.5% of the Federation Account, plus the Revenue arising out of using mineral revenue, instead of the Federation Account as the base for allocation to the fund for the  
F development of the mineral producing areas and derivation.”

Nowhere in Section 162 of the Constitution is provision made for allocation of the fund in the Federation Account to all, or any, of the items under paragraph (d), except (d)(iv) in relation to derivation. Sub-section (3) of Section 162 provides for those arms of the  
G Federation among whom the Federation Account is to be distributed.

As can be seen, neither is the Federal Capital Territory as therein defined is a State nor a Local Government in a State. The result is that paragraph (d) Section 1 of Cap. 16 (as amended) is inconsistent  
H with the provisions of the Constitution and to that extent, that Section i.e. 1, in my view, is void. See A-G Bendel State v. A-G Federation & Ors (1983) ANLR 208.

As regards paragraph (d)(iv) of Section 1 of Cap. 16 (as amended) (ibid), in so far as it provides for one per centum of the

revenue derived from minerals, that piece of legislation is in its provision equally inconsistent when it states:

*“Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen percent of the revenue accruing to the Federation Account directly from any natural resources.”* B

The Constitution provides for “not less than 13% of the revenue accruing to the Federation Account directly from any natural resources” to be distributed on the principle of derivation. Contrast this with Cap 16 which talks of 1% of the revenue accruing to the Federation Account derived from minerals” which is to be distributed. These are undoubtedly inconsistent provisions and by the provisions of Section 1(3), 313 and 315 (1) of the Constitution the provisions of Section 1 of Cap. 16 that are inconsistent with the Constitution must perforce give way to the Constitution. C D

Sub-section 2 of Section 315 of the Constitution provides for modification of an existing law to bring it into conformity with the provisions of the 1999 Constitution when it enacted as follows:

*“(2) The appropriate authority may at any time by order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution.”* E

The word modification is defined in Sub-section (4) of Section 315 as including:

*“addition, alteration, omission or repeal.”* F

The appropriate authority in respect of Cap.16 has been stipulated to be the President. Hence, by the self same Constitution the President is empowered to add to, alter, omit or repeal to bring it into conformity with the Constitution. G

It is generally agreed by all the parties in the instant case that the figure 13% is now being use in working out the principle of derivation in respect of crude oil derived from the littoral States. This figure has freely been used by the counter-claiming Defendants in computing their reliefs. As the President has neither made an order modifying Cap. 16 that lays down this figure, nor have we been told the legal basis for its specification; nor further still, is there shown an enactment of the National Assembly made pursuant to Section 162(2) specifying that figure, it appears to me to be a rule of thumb or a H

figure arrived at as a gentleman's agreement among the parties.

The counter-claiming Defendants have argued that the figure 13% is the barest minimum allowed by the Constitution and so have urged us to use that figure in computing their reliefs put forward before us. With due respect, I am unable to accede to that request since by the use of the expression "not less than 13%," a discretion is given to the law-maker more pertinently the President as the prescribed authority, as to what figure to adopt or the National Assembly, when enacting a law pursuant to Section 162(2) of the Constitution.

Another area of inconsistency between Section 1(d)(iv) of Cap. 16 and Section 162(2) of the Constitution relates to the revenue that is subject to the derivation principle. While Cap 16 talks of revenue accruing from minerals, Section 162(2) speaks on revenue accruing from natural resources. Natural resources is not defined in the Constitution but Black's Law Dictionary 6<sup>th</sup> Edition does in the following terms:

*"Any mineral in its native state which when extracted has economic value. Timberland, oil, and gas wells, ore deposits, and other products of nature that have economic value. The cost of natural resources is subject to depletion. Often called wasting assets.*

*The term includes not only timber, gas, oil, coals, minerals, lakes and submerged lands, but also features which supply a human need and contribute to the health, welfare, and benefit of a community, and are essential to the well-being thereof and proper enjoyment of property devoted to park and recreational purposes."*

While oil, natural gas and coal come within the above definition, ports, wharves, mangoes, livestock, hide and skin, horns, groundnuts, beans grains, pepper, cotton and gum Arabic as vigorously contested in the Counter-claim of 8<sup>th</sup> Defendant – Borno State and in the oral argument of their counsel, Alhaji Kaloma Ali before us – are not. Indeed, Mangoes, livestock etc. are not natural resources but agricultural products, a term defined in Black's Law Dictionary as meaning:

*"Things which have a situs of their production upon the farm and which are brought into condition for uses of society by labour of those engaged in agricultural pursuits as contra distinguished from manufacturing or other industrial pursuits. That which is the direct*



*result of husbandry and the cultivation of the soil. The product in its natural un-manufactured condition.”*

In respect of issue (iv) the learned Senior Advocate contended that:

1. There is no basis for the counter-claims for the Plaintiff to account for moneys which accrue to the Federation Account because each State is represented on the Federation Account Allocation Committee by her Commissioner for Finance. The Committee was established pursuant to section 5(1) of Cap. 16 and its functions are (a) to ensure that allocations made to States from the Federation Account are promptly and fully paid into the treasury of each State and (b) to report annually to the National Assembly in respect of (a) and (b) each State is represented on the Revenue Mobilization Allocation and Fiscal Commission and none of the States counter-claiming for account has alleged that the Commission has on request, failed or refused or neglected to supply her with a statement of account.

I do not think Chief Williams is on a firm ground in relation to (1) above since it is not the function of the Federation Account Allocation Committee to collect revenue for the Federation Account. That is the duty of the Plaintiff. See Section 162(1) of the Constitution by whose provisions the Government of the Federation becomes a trustee. It is the duty of the trustee to render account to the beneficiaries of the trust if, and when called upon to do so. See *Attorney-General of Bendel State v. Attorney-General of the Federation & Ors.* (supra). To be entitled to an order for an account, however, the Plaintiff must have first been requested to do so by the beneficiary and has refused, failed or neglected to do so.

On (v) Chief Williams submits that some of the counter-claims are unnecessary in as much as they raise issues the success or failure of which depends on whether the Plaintiff succeeds or fails. There is merit in this contention.

Issue (vi) has already been covered. In view of the conclusion already reached on the validity of Section 1(d) of Cap. 16 (as amended) I overrule Chief William’s submissions on it. By virtue of Section 313, the provisions of Section 1(d)(i) and 4A(1) allocating 1 (one) percent of the Federation Account to the Federal Capital Territory are inconsistent with Section 162(3) of the Constitution and are, therefore, void.

Next, is Issue (vii) which deals with deductions from the Federation Account for settlement of Plaintiff's external debts. While some of the counter-claiming Defendants question the validity of such deductions, the learned Senior Advocate has argued to the contrary, citing in support Sections 3 and 4 of the General Loan and Stock Act, Cap. 161 and Section 314 of the Constitution. The purports of these enactments are that external debts are charged upon and payable out of the general revenue and assets of the Government of the Federation or of State that incurred the indebtedness and not the federation account. Neither can it constitutionally charge its debts on the federation account, in my view.

On issue (viii) the plaintiff's argument was to the effect that payment of moneys representing the share of local governments in the Federation account has to be made to those governments in accordance with Cap. 16. It was also contended that primary education is a local government function. In as much as a local government council, only primary education, learned Senior Advocate's argument thereto cannot be said to be entirely true. This is because the function obviously remains with the State Government. See *A-G Bendel State v. A-G Federation & Ors* (supra) at page 220 per Uwais, JSC as he then was.

Finally, on issue (ix) wherein Chief Williams in an illuminating answer to the submission on the question raised as to the jurisdiction of this Court to grant a declaratory relief, I shall bear this in mind when considering the counter-claims shortly in the rest of this judgment.

#### COUNTER-CLAIM OF 3<sup>rd</sup> DEFENDANT:

The 3<sup>rd</sup> Defendant (A-G of Akwa-Ibom State) counter-claims for the following reliefs:

*"(1) A declaration that the 3<sup>rd</sup> Defendant is by virtue of Section 162(2) of the Constitution of the Federal Republic of Nigeria 1999 entitled to receive a minimum of 13% of the entirety of the natural resources derived from its territory free from any dichotomy as to on-shore natural resources.*

*(2) An order compelling the Plaintiff to pay the said balance of 40% of 13% due to the 3<sup>rd</sup> Defendant from the 29<sup>th</sup> day of May, 1999 till date in respect of the natural resources derived from Akwa-Ibom State.*

*(3) Payment of the sum of 15,006,418,955.28 being the sum due from the plaintiff to the 3<sup>rd</sup> defendant calculated as 13% of the revenue from natural resources derived from Akwa-Ibom state for the period June 1999 to February, 2001.*”

Claim 1: I adopt the rationale contained in the judgment of my learned brother Ogundare, JSC which I hereby adopt to refuse the claim which is accordingly also dismissed by me. B

Claim 2: In as much as this claim is based inter alia on the use of the figure 13% in calculating the amount due to the counter-claimant on the principle of derivation in the proviso to sub-section (2) of Section 162 of the Constitution, I adopt the reasoning and conclusion of my learned brother Ogundare, JSC to refuse the claim. C

Claim 3: By the same token, it is equally refused by me. It being clear that it is not disputed that 3<sup>rd</sup> Defendant has been shown to be entitled to something which is yet to be legally determined, D both claims 2 and 3 are struck out and not dismissed.

#### COUNTER-CLAIM OF 6<sup>TH</sup> DEFENDANT

The 6<sup>th</sup> Defendant (Bayelsa State) counter-claims for the following reliefs:

*“3. The Plaintiff and the President have disputed the commencement date of the principle of derivation established under the provision of Section 162(2) of the Constitution and have for that reason withheld payment due to Bayelsa State on the principle of derivation from 29/5/99...”* E

*5. The 6<sup>th</sup> Defendant has also heavy Natural Gas deposits in her territory from which revenue has been accruing to the Federation Account, but the Plaintiff has not paid anything to the 6<sup>th</sup> Defendant in that regard.”* F

The Plaintiff, whose itemized defence to the counter-claim under four headings urged us to dismiss the counter-claim made no specific denial. In that wise, I take it that the averments in the refutation (a) – (d) must therefore be taken as admitted. Since the Plaintiff has not seriously contended that Section 162(2) did not come into effect on 29/5/99 when the Constitution, its forerunner came into effect, the determination couched as claim (a) is granted. The 6<sup>th</sup> Defendant has expressly failed to prove his entitlement to claim (b); the same is refused. The entire claim by 6<sup>th</sup> Defendant being vague and unclear is accordingly refused and it is struck out. G H

Claim (e)

The Plaintiff has not specifically denied 6<sup>th</sup> Defendant's counter-claim under this head; it is deemed admitted by him. As natural resources, revenue accrued to the Federation Account from this source and with which 6<sup>th</sup> Defendant is endowed, the latter must share out B of that revenue under the principle of derivation. Howbeit, since the 6<sup>th</sup> Defendant is 13%???? as legal basis for calculating his entitlement, the claim is otiose and cannot be granted. It is accordingly struck out.

C COUNTER-CLAIM OF 8<sup>TH</sup> DEFENDANT, TO WIT: BORNO STATE

I had elsewhere in this judgment had the occasion to say more than a word or two on the claim by this Defendant. It will suffice here to add that irrespective of their vigorous pursuit of their counter-claim attendant to which is Alhaji Ali Kaloma's serious contest of the D Plaintiff's stance, what the 8<sup>th</sup> Defendant produces and regarded as "natural resources" are no more than "agricultural products" to wit: livestock, fish, hide and skin, horns, groundnuts, beans mangoes, grains, pepper, cotton and gum Arabic within the intendment of Section 162(2) of the Constitution. As there was no evidence that Section 162(2) of the Constitution applied, these products are, at best, E agricultural or manufactured products. With regard to precious metals and potash (potassium); gypsum and gold, these are no more than natural resources.

F The Plaintiff in defence to the 8<sup>th</sup> Defendant's counter-claim pleaded as follows:

*"7(iii) The counter-claims of the 8<sup>th</sup> Defendant (Borno State) ought to be dismissed because:*

*(a) of the reasons set out in sub-paragraphs(a) – (d) of paragraph (ii) above; and*

*(b) the Plaintiff has at no time denied the existence of the legal right of the Defendant to its financial entitlement in accordance with any provision made pursuant to Section 162 of the Constitution.*

*(c) Accordingly there is no basis for the declaratory order H claimed by the Plaintiff (sic)."*

As can be seen Claims (a) and (b) above are founded on the over-flogged 13% which for want of authority and legal basis, must, in my judgment fail and they are accordingly struck out.

As there was neither an averment nor evidence proffered that

the 8<sup>th</sup> Defendant requested from the Plaintiff an account as required in claim (b) and was refused, in the light of counter-claim of the 8<sup>th</sup> Defendant, a modicum of evidence at least, should have been adduced by the latter. As none was forthcoming. The claim must therefore fail and it is accordingly dismissed.

#### COUNTER-CLAIM OF 9<sup>TH</sup> DEFENDANT (CROSS RIVER STATE) B

The counterclaim of 9<sup>th</sup> Defendant which is the most comprehensive so far after pleading in paragraph 30 stated thus:

*“30. The 9<sup>th</sup> Defendant further avers that contrary to the provisions of the Constitution, the F.G.N. deducts monies from the Federation Account before the derivation principle.”* C

He proceeded articulately and meticulously to set out particulars 1 and 2 and followed them up with paragraphs 31 and 32 thus:

*“31. The 9<sup>th</sup> Defendant further states that the Constitution does not provide for the retention by the Federal Government of D funds from the Federation Account beyond the percentage allocated to it by Act of the National Assembly.*

*32. In the premises the 9<sup>th</sup> Defendant has not been paid its entitlement from being an oil-producing state in the (sic) lien with the proviso to Section 162(2) of the Constitution.”* E

In paragraphs 33, 34, and 35 the 9<sup>th</sup> Defendant went on to claim for Natural Resources while in paragraph 36 he claimed for Account thus:

*“a. The FGN has created a dichotomy between the on-shore and off-shore revenue from natural resources in computing amounts to be disbursed to States based on the principle of derivation.”* F

*b. Since 23<sup>rd</sup> September, 1987, the 9<sup>th</sup> Defendant has been deprived of her total earnings on derivation.*

*c. The FGN has not taken the principle of derivation into account in respect of revenue derived from solid mineral and non mineral and natural resources like water ways, fishing, piers, wharves, dams and ports.*

*d. The FGN, without any basis in law makes a direct charge of 1% on the Federation Account for FCT Abuja.”* H

After setting out what he claimed in the counter-claim as follows:

*“WHEREOF the 9<sup>th</sup> Defendant counter-claims against Plaintiff as follows:*

*(1) A declaration that the area beyond and adjacent to the*

*littoral State of Cross River State not exceeding 200 nautical miles from the base line from which the breadth of the territorial sea of the Nigeria State is measured to form part of the territory of the Cross River State of Nigeria.*

B (2) *A declaration that all natural resources derived from the High Seas off-shore Cross River State is derived from the territories of Cross River State is entitled to be paid at least 13% of the revenue derived therefore based on the principle of derivation.*

C (3) *A declaration that the 9<sup>th</sup> Defendant is entitled to 13% of all income derived by the FGN from activities at the Calabar Port, the quarries, rivers and seas in and abutting Cross River State.*

D (4) *An Order directing the Accountant General of the FGN, through the Plaintiff, to render an account of all monies received and disbursed from the Federation Account from 23<sup>rd</sup> September, 1987 till the date of judgment."*

He said Sub-paragraphs (5), (6) and 7 bear out 9<sup>th</sup> Defendant's alternative claims.

The Plaintiff's defence to all these which is rather terse and short states:

E "7(iv) *The counter-claim of the 9<sup>th</sup> Defendant (Cross River State) ought to be dismissed because:*

(a) *of the reasons set out in sub-paragraphs (a) - (d) of paragraph (ii) above*

F (b) *there is no basis in law or in fact to support any of the reliefs sought for in the counterclaim."*

Claims 1 and 2A

In view of the conclusion arrived at in the Plaintiff's case, the declaration claimed must fail and are hereby dismissed.

G Claim 3.

The declaration sought here must fail and it is dismissed because there is no legal basis for the use of the figure, 13% and no evidence given of the location of the feature.

Claims 4, 5 and 6

H There is no averment in the pleadings of the 9<sup>th</sup> Defendant that the Plaintiff was called upon to account and has refused. The claims have no basis and are hereby struck out.

COUNTER-CLAIM OF 10<sup>TH</sup> DEFENDANT (DELTA STATE)

In paragraph 20 of his pleading the 10<sup>th</sup> Defendant made

various heads of claims itemized as 20(a) to 20(h). It will be sufficient here to discuss paragraph 20(f) which I consider very pertinent to lay emphasis on as follows:

*20. By reason of the foregoing, the 10<sup>th</sup> Defendant has suffered hardship, loss and damages, whereof it (sic) counterclaims from the Plaintiff as follows:*

*(f) A declaration that the underlisted economic policies and/or practice of the Plaintiff are unconstitutional being in conflict with the 1999 Constitution, that is to say:*

*(i) Exclusion of natural gas as constituent of derivation for the purposes of the proviso to Section 162(2) of the 1999 Constitution.*

*(ii) Non payment of the shares of the 10<sup>th</sup> Defendant in respect of proceeds from capital gains taxation and stamp duties.*

*(iii) Funding of the judiciary as a first line charge on the Federation Account.*

*(iv) Servicing of external debts via first line charge on the Federation Account.*

*(v) Funding of Joint Venture Contracts and the Nigerian National Petroleum Corporation (NNPC) Priority Projects as first lien charge on the Federation Account.*

*(vi) Unilaterally allocating 1% of the revenue accruing to the Federal Capital Territory.*

*“(g) ...*

*(h) A perpetual injunction restraining the Plaintiff from further violating the provisions of Section 162 of the 1999 Constitution.’*

*The brief but short defence of the plaintiff as contained in paragraph 7(v) reads thus:*

*“7(v) The counter-claims of the 10<sup>th</sup> Defendant (Delta) ought to be dismissed because:*

*(a) Of the reasons set out in sub-paragraphs (a)-(d) of paragraph (ii) above;*

*(b) For the reasons aforesaid, there is no basis to sustain items (b), (c), (d) and (g) of the said counterclaims;”*

*On the various items of claim, to wit: (a), (b), (c), (d) (e) and (f), I adopt the orders of dismissal striking out and/or grant in a modi Continental Shelf culturally and geographically form or are deemed to form part of the Littoral States immediately abutting the said areas.*

(c) *A declaration that the Territorial Waters, Exclusive Economic Zone and the Continental Shelf culturally and geographically form part of the Littoral States immediately abutting the said area.*

(d) *A further declaration that Lagos State is entitled to 13% of whatever revenue is derived from the Territorial Waters abutting the coast of Lagos State.*

(e) *A declaration that Nigeria's claim to Territorial Waters, Exclusive Economic Zone and Continental Shelf arises only because of the unique positioning of the States bordering on the seas.*

(f) *A declaration that the vesting of mining rights, powers and ownership of minerals in, upon or under the Territorial Waters, Exclusive Economic Zone up to the continental Shelf of Nigeria does not operate to divest ownership or deemed ownership of the said waters from the State.*

(g) *A declaration that any water which are not deemed or considered a part of any state within the Federation (which means any of the 36 States of Nigeria or the Federal Capital Territory) do not form or constitute a part of the Federal Republic of Nigeria.*

(h) *A declaration that natural resources mean any material in its natural state which when exploited has economic value.*

(i) *A declaration that for the purposes of Section 162(2) of the 1999 Constitution, the Federal Government of Nigeria is not entitled to allocation of any revenue on the basis of derivation, but rather Nigeria only States from which natural resources are derived.*

(j) *The 24<sup>th</sup> Defendant/Counter Claimant is entitled to the Waters as owners, and if not as beneficial owner by virtue of historical usage, usufructuary rights, riparian rights, traditional history, access to the waters and suffers from pollution or environmental damage from such seas.*

(k) *An order of this Honourable Court directing office of the Accountant General of the Federation, through the plaintiff to render an account of all monies received and disbursed from the Federation account from 29 May 1999 till the date of instituting this action.*

(l) *A further order directing the payment of amount due to the 24<sup>th</sup> Defendant/Counter-Claimant as its share (by virtue of the principle of derivation stipulated in Section 162(2) of the 1999 Constitution) of the all revenue accruing from the state to the Federation*



account.

*(m) A further order directing the payment of 1% of the statutory allocation of the Federal Government to Lagos State as the former Federal Capital Territory for the maintenance of Federal infrastructure and installation within the State."*

The enabling Section of the Constitution which confers original jurisdiction on this Court has been considered elsewhere in this judgement and I deem it unnecessary to belabour the point or engage in an academic exercise.

I make similar consequential orders as contained in the leading judgment.

#### COUNTER-CLAIM OF THE 27<sup>H</sup> DEFENDANT (OGUN STATE)

The Attorney-General of Ogun State had applied on 9<sup>th</sup> May, 2001 to withdraw his counter-claim earlier filed in this Court along with his Statement of Defence; it is accordingly struck out.

#### COUNTER-CLAIM OF THE 28<sup>TH</sup> DEFENDANT (ONDO STATE)

The 28<sup>th</sup> Defendant (Ondo State) counter-claims in his Statement of Defence thus:

*"(1) A declaration that its Seaward boundary extends beyond its coastline and that natural resources derived offshore its coastline are derived from its State to which the provisions of Section 162(2) of the Constitution should apply.*

*(2) An order directing the Plaintiff to calculate and pay over to the 28<sup>th</sup> Defendant 13% of revenue accruing to the Federation Account directly from natural resources derived from offshore locations adjacent to the 28<sup>th</sup> Defendant's coastline with effect from 29<sup>th</sup> of May, 1999.*

*(3) A declaration that the 28<sup>th</sup> Defendant is entitled with effect from 29<sup>th</sup> May, 1999 to 13% of the revenue accruing to the Federation Account directly from the natural resources derived onshore within the State in accordance with the provisions of Section 162(2) of the Constitution of the Federal Republic of Nigeria.*

*(4) An order directing the Plaintiff to pay over forthwith to the 28<sup>th</sup> Defendant 13% of all revenue that has accrued to the Federation Account directly from natural resources derived from onshore locations in its State from 29<sup>th</sup> May 1999 to 30<sup>th</sup> December, 1999".*

I respectfully adopt the reasoning and conclusion of my learned brother Ogundare, JSC to dismiss claims (1) and (2) and to strike out

claims (3) and (4) hereof.

COUNTER-CLAIM OF THE 32<sup>ND</sup> DEFENDANT (RIVERS STATE)

In her paragraph 14 of the 32<sup>nd</sup> Defendant's Counter-claim the Hon. A-G of Rivers State claimed as follows:

B "14. WHEREFOR the 32<sup>nd</sup> Defendant counter-claim against the Plaintiff as follows:

"a. A declaration that the principle of derivation provided for under section 162(2) of the 1999 Constitution is applicable to 100% of the total revenue derived from any natural resources from any State of the Federation.

C b. A declaration that the "onshore" 'offshore' dichotomy applied by the Plaintiff to the derivation principle is not tenable under the 1999 Constitution and is therefore unconstitutional null and void.

D c. A declaration that the 32<sup>nd</sup> Defendant is entitled to be paid 13% of all revenue accruing to the Federation Account from any natural resources particularly oil production and extraction, and natural gas from her territory with effect from 29<sup>th</sup> May, 1999 and up to and including 31<sup>st</sup> December, 1999.

E d. A declaration that the 32<sup>nd</sup> Defendant is entitled to be paid 13% of revenue accruing to the Federal Account from any natural resources particularly oil production and extraction and natural gas from her territory with effect from 29<sup>th</sup> May, 1999 and up to and including 31<sup>st</sup> December, 1999.

F e. A declaration that the boundary of the 32<sup>nd</sup> Defendant within the Federal Republic of Nigeria as a Coastal State comprises of its entire land mass, territorial waters, Continental Shelf and the Exclusive Economic Zone to which the 32<sup>nd</sup> Defendant is contiguous.

G f. A declaration that the Plaintiff is neither entitled to allocation of any revenue from the Federation Account on the basis of derivation nor is she envisaged as a beneficiary under Section 162(2) of the 1999 Constitution.

H g. An order compelling the Plaintiff to furnish the 32<sup>nd</sup> Defendant with a full Statement of Account of the total revenue accruals into the Federation Account derived from any natural resources from 29<sup>th</sup> May, 1999 to date i.e. 5<sup>th</sup> April, 2002

h. A further order compelling the Plaintiff to furnish the 32<sup>nd</sup> Defendant with a Statement of the Allocation to each State of the Federation and the Plaintiff from the Federation Account with effect

from 29<sup>th</sup> May, 1999 up to the date i.e. 5<sup>th</sup> April, 2002.

i. An order directing the Plaintiff to pay to the 32<sup>nd</sup> Defendant all arrears of 13% of the 40% total 'Off-shore production' accruals to which she is entitled from 29<sup>th</sup> May, 1999 and continuing to date.

j. An order compelling the Plaintiff to pay to the 32<sup>nd</sup> Defendant all arrears of 13% "on-shore" and "off-shore" oil revenue from 29<sup>th</sup> May, 1999 to 31<sup>st</sup> December, 1999. B

k. An order compelling the Plaintiff to pay to the 32<sup>nd</sup> Defendant 13% of all revenue accruing to the Federation Account from the wharves, and sea ports within Rivers State. "

l. An order compelling the plaintiff to pay to the 32<sup>nd</sup> Defendant 13% of all revenues accruing to the Federation Account from natural gas produced and extracted from Rivers State from 29<sup>th</sup> May, 1999, and continuing up to date i.e. 5<sup>th</sup> April, 2002. C

The Plaintiff in his defence to the Counter-claim pleaded thus: D

(xi) The counterclaims of the 32<sup>nd</sup> Defendant (Rivers) ought to fail because:

(a) of the reasons set forth under sub-paragraph (a)-(d) of paragraph (ii) above;

(b) there is no basis in law for item (a) of the said counter-claim. E

(c) items (b), (d) and (e) of the said counter-claims raise the same or substantially the same questions as the plaintiff's action in this suit and accordingly no useful purpose will be served prayed for by the defendant. F

(d) it is premature for the Defendant to sue for the relief claimed in items (c), (h), (i), (j) and (k) when the National Assembly has not yet enacted the formula for sharing the amount standing to the credit of the Federation Account and; G

(e) there are no facts pleaded by the Defendant to support items (f) and (g) of the said counter-claim. "

The oral argument presented on this Defendant's behalf by the Honourable Attorney-general for him, Mrs. Cookey-Gam though attractive fell short of convincing me to hold: H

"(i) that is in respect of the declaration sought in Claim (A) that the same not being a declaration of right, raises no issue upon which the existence or extent of a legal right depends, be and is accordingly struck out.

(ii) *It having been inevitably held that the southern boundary of a littoral State is the low-water mark, claims B and D be and are hereby dismissed.*

(iii) *claim (E) fails and is accordingly dismissed.*

(iv) *Claims (C), (H), (I) (J) and (K) based on the magical figure B 13% be and are hereby struck out.*

(v) *Claim J. is dismissed.*

(vi) *That as regards Claims (F) and (G) the 32<sup>nd</sup> Defendant not having pleaded facts to the effect that the he called upon the C Plaintiff to render account and the latter failed, refused or neglected to do so, these claims be and are hereby struck out.*

**COUNTER-CLAIM OF THE 33<sup>RD</sup> DEFENDANT (SOKOTO STATE)**

By paragraph 10 of his Statement of Defence, the 33<sup>rd</sup> Defendant claimed thus:

D “(a) *The natural resources derived from any part of Nigeria (by whatever name called) are deemed to be derived from Nigeria and not from a particular spot/area where the resources may be physically situate.*

E (b) *The natural resources located within the territorial waters of Nigeria and the Federal Capital Territory are deemed to be derived from the Federation of Nigeria and not from any area or part of Nigeria*

F (c) *The Federal Republic of Nigeria is a State and not a section thereof where interpreting the economic agenda and code prescribed by the constitution.*

G (d) *By and under section 162(2), all Areas/Sections (States represented by the defendants in this suit are all entitled in equal shares only) at least 13% of the revenue accruing to the Federation Account directly from any natural resources.*

H (e) *The 33<sup>rd</sup> defendant is entitled to payment in arrears monies equal to the sums paid to either Akwa-Ibom or Bayelsa or Cross Rivers or Delta or Edo or Ogun, Ondo and Rivers States since while the Plaintiff wrongly interpreted and applied Section 162(2) of the constitution of the Federal Republic of Nigeria.*

(f) *That the Federal Government of Nigeria should apologize to the Defendants, save those listed in sub paragraph (e) herein for the inequality and discrimination occasioned by the misapplication of the not less than thirteen percent rule enshrined in the Constitution-*

*vide Section 162(2)."*

The 33<sup>rd</sup> Defendant's pleading was peculiarly drafted in its failing to say expressly that its claims were by way of counter-claim. Albeit, I have given them the consideration they deserve as one.

For instance, Claims (a) and (b) having already been disposed of in the Plaintiff's case, I deem it unnecessary to say anything more thereon. Claims (c) (d) and (f) constitute mere pronouncements/State-ments; they are accordingly struck out. B

As regards paragraph (e), the Defendant being neither maritime nor littoral State against whom he was claiming to the Federation Account, he has been unable to show it is derived from his territory. Consequently, there is no legal basis for his claims under this heading – (Claim 'e') and it is accordingly dismissed. C

### CONCLUSION

For the above reasons and the more detailed ones contained D in the leading judgment of my learned brother Ogundare JSC, a preview of which I had before now, I am in entire agreement therewith that the plaintiff's case succeeds. The seaward boundary of littoral states for purposes of Section 162(2) of the 1999 Constitution is the low-water mark. E

The following claims by the underlisted Defendants/Counter-claimants are awarded as follows:

(1) It is hereby ordered that the Plaintiff shall render an account to the 3<sup>rd</sup> Defendant (Akwa-Ibom State) of all monies received and disbursed from the Federation Account from 29<sup>th</sup> May, 1999 to date i.e. 5<sup>th</sup> April, 2002. F

(2) It is hereby declared in favour of the 10<sup>th</sup> Defendant (Delta State) that the first charge system being adopted by the Plaintiff whereby it deducts certain percentage of revenue from the Federation Account for debt servicing before paying the constitutional minimum 13% revenue on derivation to the oil producing States, is unconstitutional, null and void. G

(3) It is hereby declared in favour of the 10<sup>th</sup> Defendant (Delta State) that the underlisted economic policy and or practices of the plaintiff and unconstitutional being in conflict with the 1999 Constitution: H

*(i) Exclusion of natural gas as constituent of derivation for the purposes of the proviso to section 162(2) of the 1999 Constitution.*

(ii) *Non-payment of the shares of the 10<sup>th</sup> Defendant in respect of proceeds from capital against taxation and stamp duties.*

(iii) *Funding of the judiciary as a first line charge on the Federation Account.*

B (iv) *Servicing of external debts via first line charge on the Federation Account.*

(v) *Funding of Joint Venture Contracts and Nigerian National Petroleum Corporation (NNPC).*

C (vi) *Unilaterally allocating 1% of the revenue accruing to the Federation Account to the Federal Capital Territory.*

D (4) *It is hereby ordered in favour of the 32<sup>nd</sup> Defendant (Rivers State) that the Plaintiff shall furnish to him a full statement of account of the total revenue accruals into the Federation Account derived from any natural resources in Rivers State from 29<sup>th</sup> May, 1999 till date i.e. 5<sup>th</sup> April, 2002.*

I make no order as to costs. Each party to bear its costs.

I join my learned brothers on the panel that heard this case to express our sincere thanks for the hard work counsel rendered individually and collectively to make our task lighter.

E

### **IGUH JSC**

F In this suit, the Attorney-General of the Federation, as plaintiff, claims against the Attorneys-General of all the thirty-six states of the Federal Republic of Nigeria as follows:

G “*A determination by this Honourable Court of the seaward boundary of a littoral State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to the proviso to section 162(2) of the Constitution of the Federal Republic of Nigeria, 1999*”.

H The background facts leading to the dispute between the parties have been fully set out in the leading judgement of my learning brother, Ogundare, JSC and the concurring judgment of the Honourable the Chief Justice of Nigeria, Uwais, CJN and it does not seem to me that any useful purpose will be served by my recounting them all over again. Similarly the order of this court in respect of the settlement and filing of pleadings and briefs of argument by the par-

ties in the suit and the extent these orders were complied with have also been adequately reviewed in the said judgments. It suffices to state that the plaintiff duly filed its Statement of Claim which was duly served on the defendants. All the defendants, with the exception of the 4<sup>th</sup>, 29<sup>th</sup> and 30<sup>th</sup> defendants filed their Statements of Defence and served the same on the plaintiff. The 3<sup>rd</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 15<sup>th</sup>, 17<sup>th</sup>, 20<sup>th</sup>, 24<sup>th</sup>, 28<sup>th</sup>, 32<sup>nd</sup> and 33<sup>rd</sup> defendants in their statements of Defence gave notice of and counter-claimed against the plaintiff in various particulars.

It is evident from a close study of the pleadings filed that issues were mainly joined by the parties in respect of the averments in paragraphs 8(b) – (d) and 9 of the Statement of Claim wherein it was pleaded as follows: -

*“8. By reason of the facts pleaded in paragraphs 5, 6 and 7 of this Statement of Claim, the Plaintiff states that for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from any State or territory pursuant to the proviso to Section 162 of the Constitution.*

*(b) In the case of the littoral States comprised in the Federal Republic of Nigeria (i.e. the States of Akwa-Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers) the Seaward boundary of each of the said States is the low water mark of the land surface thereof or (if the case so requires) the seaward limits of inland waters within the State;*

*(c) The natural resources located within the territorial waters of Nigeria and the Federal Capital Territory are deemed to be derived from the Federation and not from any State;*

*(d) The natural resources located within the Exclusive Economic Zone and the Continental Shelf of Nigeria are subject to the provisions of any treaty or other written agreement between Nigeria and any neighbouring littoral foreign State, derived from the Federation and not from any State.*

*9. In Further support of the averments in paragraph 8 of this Statement of Claim the Plaintiff will contend at the trial of this action that under the provisions contained in the Constitution it is only the Federal Government of Nigeria and not the Government of any of the States comprised in the Federal Republic of Nigeria that has power to:-*

(i) *Exercise legislative, executive, or judicial powers over the entire area designed as the “territorial waters of Nigeria” pursuant to the provisions of the Territorial Waters Act, Cap 428, Laws of the Federation of Nigeria 1990, as amended.*

B (ii) *Exercise any of the sovereign rights exercisable by Nigeria over the entire area designated as the “Exclusive Economic Zone” pursuant to the provisions of the Exclusive Economic Zone Act, Cap. 110, Laws of the Federation of Nigeria, as amended.”*

C It is equally clear that the sole issue for determination with regard to the plaintiff’s claim is the seaward boundary or limit of a littoral State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to the proviso to Section 162(2) of the Constitution of the D Federal Republic of Nigeria, 1999, hereinafter also referred to as the 1999 Constitution.

E Section 162(1) of the Constitution of the Federal Republic of Nigeria, 1999 provides that the Federation shall maintain a special account to be known as “the Federation Account” into which all revenue to be known as the Federation but subject to certain exceptions shall be paid. There is next Section 162(2) of the same Constitution pursuant to which the president of the Federal Republic of Nigeria is enjoined to table before the National Assembly proposals for revenue allocation which must reflect the “principle of derivation” in any F approved formula. By virtue of the said principle, revenue accruing to the Federation Account from any natural resources are located.

Section 162(2) of the said 1999 Constitution provides in full as follows:-

G “162 (2) *The President, upon the receipt of advice from the Revenue Mobilization Allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density:*

H *Provided that the principle of derivation shall be constantly reflected in any approval formula as being not less than thirteen per cent of the revenue accruing to the Federation Account directly from*



*any natural resources.”*

The proviso to Section 162(2) of the 1999 Constitution, therefore, enacts that whatever approved formula of revenue allocation from the Federation Account shall reflect the fact that not less than 13% of the revenue accruing to the said Federation Account from any natural resources are allocated to the Government of the State from which they are generated. B

It is the case for the plaintiff and, indeed, for the vast majority of the States from their pleadings that none of the littoral States can claim that natural resources on coastal land outside the low water mark of the land surface or the seaward limit of inland waters are located within its territory. On the other hand, all the littoral or maritime States, to wit, Akwa Ibom, the 3rd defendant; Bayelsa, the 6th defendant; Cross River, the 9th defendant; Delta, the 10th defendant; Lagos, the 24th defendant; Ogun, the 27th defendant; Ondo, the 28th defendant; and Rivers, the 32nd defendant take the opposite position. In particular, learned leading counsel for the 3rd defendant, Chief Ekong Bassey, S.A.N. was of the view that the seaward limit of a littoral State includes all territorial waters of Nigeria. The straight forward question that therefore arises for resolution in the plaintiff's claim is a determination of the southern or seaward boundary of each of the littoral defendant States. The issue is naturally of considerable importance in the calculation of the precise amount of revenue accruing to the Federation Account directly from any natural resources derived from any one littoral State of Nigeria pursuant to the proviso to Section 162(2) of 1999 Constitution. C D E F

I think it is convenient at this stage to observe that it is the submission of a number of the learned counsel on behalf of some of the defendant States that the onus is on the plaintiff to prove its case and that failure on its part to lead viva voce or affidavit evidence in proof of the relief it seeks is fatal to its case. Learned leading counsel for the plaintiff, Chief F. R. A Williams, S.A.N. however contended that the sole issue in dispute between the parties in the plaintiff's claim is entirely one of law and not facts and that the plaintiff needed no viva voce or affidavit evidence to prove its cases. In my view what is in issue with regard to the plaintiff's claim is entirely a matter of law and involves no facts whatsoever. The relief claimed by the plaintiff involves nothing but the interpretation of Section 162 of the Consti- G H

tution of the Federal Republic of Nigeria, 1999 together with some other Proclamations, Orders-in-Council and relevant Laws, statutory or otherwise, and I am in entire agreement that the plaintiff needs not adduce any viva voce or affidavit evidence before the relief it claims may succeed.

B Turning now to the question under consideration, Chief Williams did in his brief in support of the plaintiff's case draw the attention of the court to three Federal enactments which, to some extent, he submitted are relevant to the issue for resolution in this appeal.

C These are : -

1. Territorial Waters Act Cap. 428 Laws of the Federation of Nigeria 1990.

2. Sea Fisheries Act, Cap. 404 Laws of the Federation of Nigeria 1990.

D 3. Exclusive Economic Zone Act, Cap. 116

I think the first observation that must be made is that whilst it cannot be disputed that the National Assembly of the Federal Republic of Nigeria is conferred with powers to make laws for the peace, order and good government of the country with respect to matters outside the territory thereof, it is not competent under the 1999 Constitution for the House of Assembly of a State to make laws having effect outside the territory of that State. Now, Section 1(1) of the Territorial Waters Act, Cap. 428, Laws of the Federation of Nigeria, 1990 provides as follows:-

F *"The territorial waters of Nigeria for all purposes include every part of the open sea within thirty nautical miles of the coast of Nigeria (measured from low water mark) or of the seaward limits of inland waters. "(underling supplied for emphasis)*

G It is clear from the above enactment that the limits of the territorial waters of Nigeria are defined to include every part of the open sea within thirty nautical miles of the coast of Nigeria measured from the low water mark or of the seaward limits of inland waters. In other words, the clear and unmistakable inference from this subsisting enactment is that "the territorial waters of Federal Republic of Nigeria" commences from the low water mark along the coast and the seaward limits of inland waters. Accordingly, it goes without saying by simple deduction that the territorial limit of a State contiguous to the sea or coastal waters is the low water mark along the coast and the

seaward limits of inland waters. Until an enactment by the National Assembly or indeed, by a State House of Assembly is repealed in clear terms or duly avoided by a court of law, it has the full force of law as an enactment duly and validly made by the appropriate legislature and in respect of which the courts of law are entitled to take judicial notice thereof as a validly enacted law of such National Assembly or House of Assembly. – See *Peenok Investment Ltd. v. Hotel Presidential Ltd.* (1982) 13 N.S.C.C. 477 at 510 – 511. B

The Territorial Waters Act has neither been repealed nor avoided and its letters must accordingly be construed and given their ordinary meaning unless this would lead to absurdity or be in conflict with other provisions of the enactment. See *Chief D. O. Ifezue v. Livinus Mbadugba and Another* (1984) 5 S.C. 79 at 101. The irresistible inference from the above enactment therefore is that the territorial waters of the Federal Republic of Nigeria commence from the low water of the land surface and the seaward limits of inland waters. D

There is next the Sea Fisheries Act, Cap. 404, Laws of the Federation of Nigeria, 1990. Section 1(1) and 1(2) therefore provide as follows:

“1(1) Subject to the provisions of this section, no person shall operate or navigate any motor fishing boat within the territorial waters of Nigeria unless a licence in respect of that vessel has been issued to the owner thereof. E

(2) Any person operating or navigating or causing to be operated or navigated a motor fishing boat in contravention of subsection (1) of this section shall be guilty of an offence under this Act and on conviction shall be liable to imprisonment for one year, or to a fine of one thousand naira for each day during which the offence continues, or to both such fine and imprisonment.” F

The powers and authority of the Federal Government over the entire maritime belt or “territorial waters” of Nigeria are beyond dispute. In my view, it is only the Federal Government, and it alone, that can lawfully exercise governmental powers over the maritime belt or the territorial waters of Nigeria thus ruling out littoral State in them after of governmental control or authority in or over the territorial waters of Nigeria. G H

Reference was also made to the Exclusive Economic Zone Act Cap. 116, Laws of the Federation of Nigeria, 1990 which has as its

long little as follows:

“An act to delimit the Exclusive Economic Zone of Nigeria being an area extending up to 200 nautical miles seawards from the coasts of Nigeria. Within this Zone, and subject to universally recognized rights of other States (including land-locked States), Nigeria would exercise certain sovereign rights especially in relation to the conservation or exploitation of the natural resources (minerals, living species, etc.) of the seabed, its subsoil and super adjacent waters and the right to regulate by law the establishment of artificial structures and installations and marine scientific research, amongst other things.”

Pursuant to Section 1(1) of the said Exclusive Economic Zone Act, the 200 nautical miles therein mentioned is defined as an area:-

“extending from the external limits of the territorial waters of Nigeria up to a distance of 200 nautical miles from the base lines from which the breadth of the territorial waters of Nigeria is measured.”

Section 6 of the same Act defines “territorial waters of Nigeria” as having the same meaning assigned thereto by Section 1(1) of the Territorial Waters Act, reproduced earlier on in this judgment. Reference may also be made by way of emphasis to Section 18 of the Interpretation Act, Cap. 192, Laws of the Federation of Nigeria, 1990 which again, defines “territorial waters” to mean:

“Any part of the open sea within thirty nautical miles of the coast of Nigeria (measured from low water mark) or of the seaward limit of inland waters.” (Underlining supplied for emphasis)

Having regard to my observations with regard to the Territorial Waters Act, Cap. 428 with particular reference to the exact point the territorial waters of the Federal Republic of Nigeria commence, it seems to me plain that the territorial limit of a littoral State of Nigeria is naturally the low water mark along the coast and the seaward limits of inland waters. I agree that the three Acts I have dealt with above have not determined in black and white the seaward boundaries of littoral states. They have, however, thrown considerable light on the issue under consideration. In my view the territory of our littoral States ends at the low water mark or the seaward limits of inland waters, whichever that is applicable. I accept the plaintiff’s submission that it is exactly for this reason that governmental authority and powers in and over the Exclusive Economic Zone measured from the low wa-

ter mark or the seaward limits of inland waters into the open sea within the prescribed nautical miles prescribed by law are vested exclusively in the Federal Government and are not shared with any of the littoral States of Nigeria.

I think it ought to be pointed out that the conclusion thus reached is not different from the position at common law. Accordingly, it has long been recognized that at common law, the realm of England and of any British Colony ends at the low water mark. The territorial waters beyond the low water mark are not part of the realm. See the *Queen v. Keyn* (1876) 2 Ex. D. 63 and the Canadian case of *Reference Re Ownership of off-shore Mineral Rights* 65 D.L.R. (2<sup>nd</sup>) 353; (1967) D.L.R. 2037.

Attention must also be drawn, to various Orders in Council and Proclamations with a view to seek further illumination on the issue under consideration. So, in Section 11 of the Nigeria Protectorate Order in Council, 1922 made on the 21<sup>st</sup> November, 1922 and published in Volume 4 of the Laws of Nigeria, 1923, the Protectorate of Nigeria was defined as:-

*“the territories of Africa which are bounded on the South by the Atlantic Ocean, on the west, north and north-east by the line of the frontier between the British and French territories, and on the east by the territories known as the Cameroons.”* (underlining supplied for emphasis)

As I indicated earlier on in this judgment, the dispute between the plaintiff and the littoral States is as to the southern or seaward limit or boundary of the latter’s territories which by virtue of the said Nigerian Protectorate Order in Council, 1922 fixed the same as the Atlantic Ocean.

There is also the Lagos Local Government (Delimitation of the Two and Division into wards) Order in Council No. 34 of 1950 by which the southern boundary of Lagos was stated to be “The Sea”. It therefore seems to me indisputable from the above Orders in Council which were made ante litem motam that the southern boundaries of Nigeria, that is to say, of the littoral States of Nigeria which are all situate south of Nigeria is “The Sea”, namely the Atlantic Ocean.

Similarly, by the Northern Region, western Region and Eastern Region (Definition of Boundaries) Proclamation, 1954 reproduced in the Laws of the Federation of Nigeria, the Lagos, 1958,

Volume 11 at pages 686 - 687, the boundaries of Western and Eastern Regions as per the 2<sup>nd</sup> and 3<sup>rd</sup> Schedules thereof were again defined as "The Sea". There is also the Lagos Local Government (Delimitation) of the Town) Order in Council, 1953 published in Cap 93 of the Laws of the Federation of Nigeria and Lagos 1958. Once again, the schedule thereof defines the southern boundary of the town of Lagos as "The Sea". As I have earlier observed, all the littoral States of Nigeria being part and parcel of the former Eastern and Western Regions of Nigeria and the former Federal Capital Territory of Lagos, their southern boundaries are indisputably "The Sea" that is to say, the Atlantic Ocean. In the circumstance and having regard to all I have said earlier on in this judgment, it seems to me, whether viewed from the position at common law or from the above Proclamations and Acts of the National Assembly already examined that what constitutes the southern or seaward boundary of the land territory of the eight littoral States of Nigeria is the low water mark of the land surface or, if the case so requires, the seaward limits inland waters within the State. Accordingly, all calculations in respect of the amount of revenue accruing to the Federation Account directly from any natural resources derived from any one littoral State pursuant to the proviso to Section 162(2) of the 1999 Constitution must be limited up to the said seaward boundary. Natural resources located offshore, within the territorial waters of Nigeria or within the Exclusive Economic Zone and the Continental Shelf of Nigeria must therefore be regarded as located within the Territory of the Federal Government and outside the respective littoral States.

#### THE COUNTER-CLAIMS

On the whole 13 defendants filed counter-claims against the plaintiff in the suit. These are the 3<sup>rd</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 15<sup>th</sup>, 17<sup>th</sup>, 20<sup>th</sup>, 24<sup>th</sup>, 27<sup>th</sup>, 28<sup>th</sup>, 32<sup>nd</sup> and 33<sup>rd</sup> defendants. The 20<sup>th</sup> and 27<sup>th</sup> defendants applied for and were granted the leave of court to withdraw their respective counter-claims in the course of the proceedings and the same were duly struck out.

Learned counsel for the plaintiff, Chief F. R. A. Williams, S.A.N. did raise a preliminary point that since the necessary parties whose interest would be affected by the result of the counter-claims were not joined as defendants therein and were therefore not made parties thereto, all the counter-claims ought to be struck out. Learned

counsel for the 24<sup>th</sup> defendant and Attorney-General Lagos State, Professor O. Osinbajo in reply contended that the non-joinder of the interested defendants as parties to the counter-claims was not fatal. He submitted that all the necessary parties are aware of the counter-claims and would be bound by the doctrine of standing by whether or not they applied to defend the counter-claims. B

In this regard, it has been repeatedly held that if a person with his full knowledge of a pending suit was content to stand by and see his battle fought by somebody else in the same interest, he is bound by the result and should not be allowed to reopen the issues in that case. In other words, that person is estopped from reopening the issues determined in such a case. See *Isaac Marbell v. Richard Akwei* (1952) 14 W.A.C.A 143 and *Nana Ofori Atta II v. Nana Agyei* (1952) 14 W.A.C.A. 149. As Cockburn, C.J. put it in *Roden v. London Small Arms Co.* 46 L.J., Q.B.D. 213, the doctrine is well known and recognized in courts of law that if you stand by and allow another to do an act in a particular way which you could have prevented at the time, you must be held bound by the act so done with your acquiescence. See too *Re Lart, Wilkinson v. Blades* (1896) 2 Ch. 788. And as Lord Penzance observed in *Wytcherley v. Andrews* L. R. Courts of Probate and Divorce, Vol. 2, 327:- C D E

*“That principle is founded on justice and common sense”* The court views the doctrine from the point of view of substantial justice and that which right reason requires. F

In the present case, it is evident that a good number of defendants including, no doubt, the littoral States are vitally interested in the result of the counter-claims before the court but did nothing and preferred to stand by and see their battle fought by the counter-claiming defendants. Although joinder of parties is at the discretion of the court, it cannot be disputed that if applications to be joined as defendants to the counter-claims had been made, they would clearly have been granted. I cannot however see my way clear why it is imperative that there must be a joinder of all the defendants or, at least, those of them that are interested in the result of the counter-claims before the court may decide the issues raised in those counter-claims. All the defendants are fully aware of the counter-claims but are content to stand by and see their battle fought by some one else in the same interest. In these circumstances, it is clear to me that the H

counter-claims are properly before the court and that the non-joiner notwithstanding, the un-joined defendants having allowed and/or acquiesced to their battle being fought by someone else in the same interest must be bound by the ultimate result in the case. See too *Odua Esiaka and others v. Vincent Obiasogwu and others* (1952) 14 W.A.C.A 178 where the West African Court of Appeal in circumstances not entirely dissimilar to those in the present case succinctly put the matter as follows: -

“If, then they were not parties, what was said by Cockburn, C.J. in *Roden v. London Small Arms Co.* 46 L.J., Q. B. 213 is in point, namely, the doctrine is well known and recognized in courts of law that if you stand by and allow another to do an act in a particular way which you could have prevented at the time, you must be held bound by the act so done with your acquiescence. The plaintiffs knew perfectly well that any order in the Enquiry affecting Onyeama’s title would equally affect theirs as the self same right and title were substantially in issue. Therefore, they cannot now be heard to complain that they were not parties..... Another way to look at the matter is to ask: if Onyeama had succeeded, who would have taken the benefit of the Beaumont decision? Clearly it would have been the plaintiffs”.

In my view, the counter-claims before the court are not defective by virtue of the fact that all the parties interested in or likely to be affected by them have not been joined and the preliminary objection of Chief Williams to the contrary is hereby overruled. I will now briefly dispose of the individual claims of the counter-claimant defendant.

Counter-Claim of 3<sup>rd</sup> defendant:

The 3<sup>rd</sup> defendant’s counter-claim against the plaintiff is as follows:

(1) A declaration that the 3<sup>rd</sup> defendant is by virtue of section 162(2) of the Constitution of the Federal Republic of Nigeria 1999 entitled to receive a minimum of 13% of the entirety of the natural resources derived from any dichotomy as to on-shore and off-shore natural resources.

(2) An order compelling the plaintiff to pay the said balance of 40% of 13% due to the 3<sup>rd</sup> defendant from the 29<sup>th</sup> day of May, 1999 till date in respect of the natural resources derived from Akwa Ibom State.

(3) Payment of the sum of N15,006,418,955.28 being the



*sum due from the plaintiff to the 3<sup>rd</sup> defendant calculated as 13% of the revenue from natural resources derived from Akwa Ibom State for the Period June, 1999 to February, 2001. ”*

Claim 1:

The declaration sought under claim 1 cannot now succeed having regard to my determination of the plaintiff’s claim in its favour. B  
Beside, the National Assembly is yet to enact the appropriate formula envisaged under Section 162(2) of the Constitution. Claim 1 is accordingly dismissed.

Claims 2 and 3:

The orders sought under claims 2 and 3 having been based on the use of the figure 13% without any legal basis as against the appropriate formula yet to be enacted by the National Assembly under Section 162(2) of the Constitution cannot be granted. Both claims are accordingly refused. However as the 3<sup>rd</sup> defendant is legally entitled to receive some funds yet to be determined from the plaintiff in respect of the period claimed as soon as the National Assembly passes an enactment pursuant to the provisions of Section 162(2) of the Constitution, both claims are hereby struck out but not dismissed. C D

Counter-Claim of 6<sup>th</sup> Defendant:

As per paragraph 6 of its counter-claim, the 6<sup>th</sup> defendant claims as follows: E

*“(a) Determination to the effect that, the Constitution of the Federal Republic of Nigeria 1999 having come into force on 29/5/99, the principle of derivation under the proviso to Section 162(2) of the Constitution came into operation on the same day - that is, to say, 29/5/99 and plaintiff is obliged to comply therewith from that day. F*

*“(b) An order that Plaintiff do pay over to Bayelsa State, the G share due to the State under the proviso to section 162(2) of the Constitution as from 29/5/99 which has been wrongly withheld.*

*(c) An order for Account by the Plaintiff to pay the 6<sup>th</sup> Defendant all monies so far accrued from Bayelsa State to the Federation Account in respect of off-shore revenue. H*

*(d) An order that the Plaintiff should pay the 6<sup>th</sup> Defendant 13% of all revenue so far accrued to the Federation Account from Bayelsa State in respect of off-shore mineral oils in the State.*

*(e) An order that Plaintiff should pay to the 6<sup>th</sup> Defendant*

*13% of all the revenue that has accrued from Natural Gas in Bayelsa State to the Federation Account."*

Claims (a) and (b)

It does not seem to me that there is much dispute between the parties in respect of claim (a). Without doubt, the Constitution of the Federal Republic of Nigeria came into effect on the 29<sup>th</sup> May, 1999. It cannot also be disputed that the provisions of Section 162(2) of the said Constitution came into operation on the same date. In the circumstance, the determination sought under claim (a) must be and is hereby granted.

The order sought under claim (b) is based on facts which are patently fluid, speculative and uncertain as the National Assembly is yet to enact the necessary Act on the allocation of revenue under Section 162(2) of the Constitution. Accordingly, claim (b) is hereby refused and it is struck out.

Claims (c) and (d):

The above claims must fail in view of the fact that the southern boundary of each littoral State, inclusive of the 6<sup>th</sup> defendant, is the low water mark. Accordingly the 6<sup>th</sup> defendant is not entitled to a share in the revenue accruing to the Federation Account from natural resources derivable from Continental Shelf of Nigeria. Both claims must therefore fail and are hereby dismissed.

Claim (e):

Claim (e) must also fail as no legal basis has been established for the use of the 13% figure by the 6<sup>th</sup> defendant in calculating its entitlement. It is accordingly struck out.

Counter-claim of 8<sup>th</sup> Defendant

The 8<sup>th</sup> defendant counter-claimed as follows: -

"(a) A declaration that the 8<sup>th</sup> Defendant/Counter-claimant is entitled to 13% of the total revenue accruing to the Federation Account directly from the Natural Resources mentioned above.

(b) To order the Plaintiff to give account of the revenue generated from these Natural Resources to the 8<sup>th</sup> Defendant/Counter-claimant.

(c) To order the Plaintiff to pay the 8<sup>th</sup> Defendant/Counter-Claimant an amount equivalent to the 13% of the total Revenue derived from the Natural Resources from the 29<sup>th</sup> day of May, 1999 to date."

Claims (a) and (c) having been based on the 13% question in respect of which an Act of the National Assembly is required but is yet to be enacted are premature and must be struck out. In the same vain, claim (b) is equally not established in the absence of evidence of demand on the plaintiff by the 8<sup>th</sup> defendant to render account and refusal by the said plaintiff to render such account. The 8<sup>th</sup> B defendant's counter-claims hereby fail. Claims (a) and (c) are hereby struck out but not dismissed since the 8<sup>th</sup> defendant may be entitled to some amount of money therefrom on the passing into law by the National Assembly of the appropriate legislation. Claim (b) is dismissed. C

Counter-claim of the 9<sup>th</sup> Defendant

Paragraph 37 of the counter-claim of the 9<sup>th</sup> Defendant reads thus:

*"(1) A declaration that the area beyond and adjacent to the littoral state of Cross River State of Nigeria not exceeding 200 nautical miles from the base line from which the breadth of the territorial sea of the Nigerian State is measured from part of the Territory of the Cross River State of Nigeria.*

*(2) A declaration that all natural resources derived from the High Seas offshore Cross River State is derived from the territories of Cross River State and for which Cross River State is entitled to be paid at least 13% of the revenue derived therefrom based on the principle of derivation.*

*(3) A declaration that the 9<sup>th</sup> defendant is entitled to 13% of all income derived by the FGN from activities at the Calabar Port, the quarries, rivers and seas and abutting Cross River State.*

*(4) An order directing the Accountant-General of the FGN, through the Plaintiff, to render an account of all monies received and disbursed from the Federation Account from 23<sup>rd</sup> September, 1987 till the date of judgment.*

*Alternatively*

*(5) An order compelling the Federal Government of Nigeria to render account of the proceeds of oil mineral products extracted from the oil wells lying east of longitude 8° 17'D in the Calabar/Cross River Estuary from 23<sup>rd</sup> September, 1987 till date of judgment.*

*(6) An Order compelling the Federal Government of Nigeria to render account of all monies derived from any place in Nigeria*

*(from 29<sup>th</sup> May 1999 till the date of judgment in this suit) which were not paid into the Federation Account or which were not made to form part of the distributable pool set up in the 1999 Constitution*

*(7) An Order compelling the Federal Government of Nigeria to pay to Cross River State the sum total of the income rightly accruing to Cross River State pursuant to paragraphs 40(1), (2) and (6) above."*

In respect of claims (1) and (2), it is clear that following my determination of the plaintiff's claim in its favour, the declaration claimed under claims (1) and (2) must fail and they are accordingly dismissed by me.

With regard to claim (3), the declaration sought must fail as the figure of 13% used is without legal authority. Claim (3) is hereby dismissed.

In respect of claims (4), (5) and (6), there is no evidence that the 9<sup>th</sup> defendant asked for an account from the plaintiff but was refused. There is no legal basis for these claims and they are hereby struck out.

Claim 7 lacks particulars and is vague for want of sufficient evidence. It is also based on claims (1), (2) and (6) above which I have already dismiss. In the circumstance, claim (7) must also stand dismissed and it is hereby dismissed by me.

Counter-Claim of 10<sup>th</sup> defendant:

I have read the treatment of he counter-claim of the 10<sup>th</sup> defendant in the leading judgment of my learned brother, Ogundare, JSC, and I agree with the conclusions therein reached. For the same reasons as are therein stated, claims (a), (b), (c) and (d) fail and they are hereby dismissed by me.

The declaration sought in claim (e) and granted as modified in the leading judgment together with those sought in claims (f) (i) - (iv) are also granted by me in terms stated in the said leading judgment. Claim (g) lacks material details. The amount claimed has not been quantified and it is therefore vague. It is hereby struck out. The injunction sought under claim (h) restraining the plaintiff from further violating the Constitution in the manner declared in claim (f) is hereby granted.

Counter-claims of the 15<sup>th</sup> and 17<sup>th</sup> Defendants

The counter-claims of the 15<sup>th</sup> and 17<sup>th</sup> defendants apart from

their inadequacies as contained in the leading judgment and the judgment of the Hon. Chief Justice of Nigeria cannot be sustained having regard to the interpretation already placed on section 162 of the 1999 Constitution. They are hereby struck out.

Counter-claim of the 24<sup>th</sup> defendant:

The 24<sup>th</sup> defendant counter-claimed as follows: -

B

*“(a) An interpretation of the provisions of Section 2 and 3 of the Constitution in relation to the Territorial Waters, the Exclusive Economic Zone, and the Continental Shelf of Nigeria.*

*(b) Or alternatively, a declaration that all that areas now referred to as the Territorial Waters, Exclusive Economic Zone and Continental Shelf culturally and geographically form or are deemed to form part of the Littoral States immediately abutting the said area.*

C

*(c) A declaration that the Territorial Waters, Exclusive Economic Zone and the Continental Shelf culturally and geographically form part of the Littoral States immediately abutting the said area.*

D

*(d) A further declaration that the Lagos State is entitled to 13% of whatever revenue is derived from the Territorial Waters abutting the coast of the Lagos State.*

*(e) A declaration that Nigeria’s claim to Territorial Waters, Exclusive Economic Zone and Continental Shelf arises only because of the unique positioning of the States bordering on the seas.*

E

*(f) A declaration that the vesting of mining rights, powers and ownership of minerals in, upon or under the Territorial Waters, Exclusive Economic Zone up to the Continental Shelf of Nigeria does not operate to divert ownership or deemed ownership of the said waters from the State.*

F

*(g) A declaration that any waters which are not deemed or considered a part of any state within the Federation (which means any of the 36 States of Nigeria or the Federal Capital Territory) do not form or constitute a part of the Federal Republic of Nigeria.*

*(h) A declaration that natural resources mean any material in its natural state which when exploited has economic value.*

*(i) A declaration that for the purposes of Section 162(2) of the 1999 Constitution, the Federal Government of Nigeria is not entitled to allocation of any revenue on the basis of derivation, but rather Nigeria only States from which natural resources are derived.*

H

*(j) The 24<sup>th</sup> Defendant/Counter-Claimant is entitled to the*

*Waters as owners, and if not as beneficial owner by virtue of historical usage, usufructuary rights, riparian rights, traditional history, access to the waters and suffers from pollution or environmental damage from such seas.*

B (k) *An order of this Honourable Court directing office of the Accountant General of the Federation, through the plaintiff to render an account of all monies received and disbursed from the Federation account from 29<sup>th</sup> May, 1999 till the date of instituting this action.*

C (l) *A further order directing the payment of the sum of... being the amount due to the 24<sup>th</sup> Defendant/Counter-Claimant as its share (by virtue of the principle of derivation stipulated in Section 162(2) of the 1999 Constitution) of the all revenue accruing from the state to the Federation account.*

D (m) *A further order directing the payment of 1% of the statutory allocation of the Federal Government to Lagos State as the former Federal Capital Territory for the maintenance of Federal infrastructure and installation within the State."*

E It is clear to me that claims (b), (c), (d) and (j) relate to issues already considered and determined in favour of the plaintiff in its case against the defendants. They are accordingly dismissed. Claims (a), (e) (f) (g) (h) and (i) are incompetent for reasons contained in the leading judgment and they are hereby struck out. Claim (k) for an account cannot be granted in the absence of evidence that such account had been asked for and refused. It is hereby struck out. Claim (l) is vague, uncertain and has not been quantified. It is also struck out. There is no legal basis for claim (m) and it is hereby struck out.

G Counter-claim of the 28<sup>th</sup> defendant

The counter-claim of the 28<sup>th</sup> defendant is as follows: -

H "(1) *A declaration that its Seaward boundary extends beyond its coastline and that natural resources derived offshore its coastline are derived from its State to which the provisions of Section 162(2) of the Constitution should apply.*

(2) *An order directing the Plaintiff to calculate and pay over to the 28<sup>th</sup> Defendant 13% of revenue accruing to the Federation Account directly from natural resources derived from offshore locations adjacent to the 28<sup>th</sup> Defendant's coastline with effect from 29<sup>th</sup>*

of May, 1999.

(3) A declaration that the 28<sup>th</sup> Defendant is entitled with effect from 29<sup>th</sup> May, 1999 to 13% of the revenue accruing to the Federation Account directly from the natural resources derived on-shore within the State in accordance with the provisions of Section 162(2) of the Constitution of the Federal Republic of Nigeria. B

(4) An order directing the Plaintiff to pay over forthwith to the 29<sup>th</sup> Defendant 13% of all revenue that has accrued to the Federation Account directly from natural resources derived from on-shore locations in its State from 29<sup>th</sup> May, 1999 to 30<sup>th</sup> December, 1999'. C

It is my view that claims 1 and 2 touch on the plaintiff's claim against the defendants which has been resolved in favour of the plaintiff. They are accordingly dismissed. Claims 3 and 4 are premature as they pre-empt the decision of the National Assembly in the enactment of the necessary legislation pursuant to the provisions of Section 162(2) of the Constitution. They are hereby struck out. D

Counter-claim of the 32<sup>nd</sup> defendant:

These are as follows:

"a. A declaration that the principle of derivation provided for under section 162(2) of the 1999 Constitution is applicable to 100% of the total revenue derived from any natural resource from any State of the Federation. E

b. A declaration that the "on-shore," "off-shore" dichotomy applied by the Plaintiff to the derivation principle is not tenable under the 1999 Constitution and is therefore unconstitutional null and void. F

c. A declaration that the 32<sup>nd</sup> Defendant is entitled to be paid 13% of all revenue accruing to the Federation Account from any natural resources particularly oil production and extraction and natural gas from her territory with effect from 29<sup>th</sup> May, 1999 and up to and the including 31<sup>st</sup> December, 1999. G

d. A declaration that the boundary of the 32<sup>nd</sup> Defendant within the Federal Republic of Nigeria as a Coastal State comprises of its entire land mass, Territorial Waters, Continental Shelf and the Exclusive Economic Zone to which the 32<sup>nd</sup> Defendant is contiguous. H

e. A declaration that the Plaintiff is neither entitled to allocation of any revenue from the Federation Account on the basis of derivation nor is she envisaged as a beneficiary under Section 162(2) of the

1999 Constitution.

*f. An order compelling the Plaintiff to furnish the 32<sup>nd</sup> Defendant with a full Statement of Account of the total revenue accruals into the Federation Account derived from any natural resources from 29<sup>th</sup> May, 1999 until the date of judgment in this suit.*

*g. A further order compelling the Plaintiff to furnish the 32<sup>nd</sup> Defendant with a Statement of the Allocation to each State of the Federation and the Plaintiff from the Federation Account with effect from 29<sup>th</sup> May, 1999 up to the date of judgment.*

*h. An order directing the Plaintiff to pay to the 32<sup>nd</sup> Defendant all arrears of 13% of the 40% total “off-shore” production derivation accruals to which she is entitled from 29<sup>th</sup> May, 1999 and continuing to date.*

*i. An order compelling the Plaintiff to pay to the 32<sup>nd</sup> Defendant all arrears of 13% “on-shore” and “off-shore” oil revenue from 29<sup>th</sup> May, 1999 to 31<sup>st</sup> December, 1999.*

*j. An order compelling the Plaintiff to pay to the 32<sup>nd</sup> Defendant 13% of all revenues accruing to the Federation Account from the wharves, and sea ports within Rivers State.”*

*k. An order compelling the plaintiff to pay to the 32<sup>nd</sup> Defendant 13% of all revenues accruing to the Federation Account from natural gas produced and extracted from Rivers State from 29<sup>th</sup> May, 1999, and continuing up to the date of judgment.”*

Claim (a) is incompetent as it raises no issue upon which the existence of a legal right depends as stated in the leading judgment. It is accordingly struck out. Claims (b) and (d) have been considered in the plaintiff’s claim and resolved against the defendants. They are hereby dismissed. Claims (c), (h), (i) and (k) pre-empt the act of the National Assembly under Section 162(2) of the Constitution. The claims are premature and are hereby struck out. Claim (e) is not an issue between the parties in this case and must be dismissed as baseless. Claims (f) and (g) must also be struck out as there is no evidence of demand and refusal to furnish the Statements of Account/Allocation in issue. Claims (h) and (i) are caught by the resolution of the main case in favour of the plaintiff. They are hereby dismissed. Claim (j) is speculative as wharves and sea ports are not natural resources. It is hereby dismissed.

Counter-claim of the 33<sup>rd</sup> defendant:



The 33<sup>rd</sup> defendant counter-claimed as follows:

*“(a) The natural resources derived from any part of Nigeria (by whatever name called) are deemed to be derived from Nigeria and not from a particular spot/area where the resources may be physically situate.*

*(b) The natural resources located within the territorial waters of Nigeria and the Federal Capital Territory are deemed to be derived from the Federation of Nigeria and not from any area or part of Nigeria*

*(c) The Federal Republic of Nigeria is a State and not a section thereof where interpreting the economic agenda and code prescribed by the constitution.*

*(d) By and under section 162(2), all Areas/Sections (States) represented by the defendants in this suit are all entitled in equally shares only) at least 13% of the revenue accruing to the Federation Account directly from any natural resources.*

*(e) The 33<sup>rd</sup> defendant is entitled to payment in arrears monies equal to the sums paid to either Akwa-Ibom or Bayelsa or Cross Rivers or Delta or Edo or Ogun, Ondo and Rivers States since while the Plaintiff wrongly interpreted and applied Section 162(2) of the constitution of the Federal Republic of Nigeria.*

*(f) That the Federal Government of Nigeria should apologize to the Defendants, save those listed in sub paragraph (e) herein for the inequality and discrimination occasioned by the misapplication of the not less than thirteen percent rule enshrined in the Constitution-vide Section 162(2).”*

Claims (a) and (b) are related to the plaintiff’s claim already disposed of and they are hereby dismissed. Claims (c), (d) and (f) do not constitute legal reliefs for adjudication and they are hereby struck out. There is no legal basis for claim (e) and it is hereby dismissed by me.

It is for the above and the more detailed reasons contained in the judgment of my learned brother, Ogundare, JSC., that I, too, hold that the plaintiff’s claim succeeds as claimed. The defendants’ counter-claims succeed and stand dismissed or struck out in parts as spelt out above.

Having regard to all the circumstances of this matter, I think that this is a proper case where the parties ought to bear their own

costs.

Accordingly there will be no order as to costs.

May I in conclusion take this opportunity to express my gratitude to all the learned counsel for the parties for the industry they exhibited in the presentation of their respective cases.

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